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Permanent Extension of Section 245(i) Sought; New Rule on Nurses

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The three-week extension of Section 245 (i) does not delay the counting of the 180-day period of unlawful presence for purposes of the three-year bar to admissibility. So that if an alien had overstayed for six months from April 1, 1997, his last day to depart to avoid the bar was September 27, 1997.

Aliens who stand to benefit are those who are not eligible to file for adjustment of status under the regular adjustment procedure such as those who entered without inspection; those who have overstayed their authorized period of stay or have otherwise failed to maintain lawful status at anytime; those who have engaged in unauthorized employment and crewmembers in the D category and transit aliens without visa. These aliens have three more weeks to file Form I-485 and I-485A so that they can be interviewed in the U.S. for their green card, instead of abroad.

The three-week reprieve was part of a temporary measure to keep the federal agencies functioning beyond the end of the fiscal year. There is still hope that Sec. 245 (i) may be extended for a longer period, if not permanently.

Immigration advocates are stepping up their efforts to pressure Congress to approve a permanent extension. Among their arguments are: (1) the extension will add about $200 million in revenues to the INS; (2) those benefited by Sec. 245 (i) are already eligible to get their green cards; (3) consular officers abroad will be freed of their mounting workload; and (4) it will promote family unity.

The opponents, on the other hand have argued that the extension would encourage illegal immigration.

New H-1A Nurses Guideline

Meanwhile, nurses filing for adjustment of status should be guided by a recent INS memo regarding maintenance of status. The memo referred to nurses who were in H-1A status by September 1, 1995 and whose H-1A status expired as of October 11, 1996 or as of September 30, 1997 and who had neither changed their status from H-1A nor departed from the U.S. and reentered in another nonimmigrant status.

If above-described nurses filed their adjustment of status between October 11, 1996 and March 7, 1997, they were considered to have automatically extended their H-1A status.

If on the other hand they filed their adjustment of status on or after March 7, 1997 but prior to September 30, 1997, Form I-129 (extension application) should have been filed in order to extend their H-1A visa. This extension should have been granted before the date of the adjustment adjudication in order for them to be considered in lawful status. If said Form I-129 is denied and the nurses appear to be otherwise eligible to adjust, they must file under section 245 (i) and pay the penalty.