Green Card Processing Suspended for Health Care Workers

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November 1997

Health care workers like nurses, therapists and medical technologists whose green card applications have been pending for as long as two years have recently received more bad news from the INS and the State Department. According to two separate memos from these government agencies, green card interviews should not be scheduled in the absence of regulations implementing a 1996 law prohibiting the issuance of visas to health care workers who cannot present a new certificate which attests to their professional and language (English) competence.

The State Department memo said that processing green card applications for health care workers would result in a waste of time and resources and would only cause frustration and expense to the applicants. Until these regulations are formulated and implemented, processing of any such applications has temporarily been suspended.

In the 1996 law, the Commission on Graduates of Foreign Nursing Schools (CGFNS) was named as the organization to administer the credentialing program. The CGFNS started accepting applications through its new division, the International Commission on Health Care Professions (ICHP) late last summer. The certification program was designated as the Visa Screen: Visa Credential Assessment.

Under the Visa Screen program, health care workers were required to take the English tests known as TOEFL, TWE and TSE. They were also required to fill out application forms and submit school records and license validation. The application fees were not inexpensive, but many health care workers rushed to apply.

Immediately after the CGFNS started accepting applications, the INS came out with a policy statement that it would not accept any certification prior to the promulgation of the regulation, including certifications issued by the CGFNS or the ICHP. But the CGFNS informed the INS that it had the statutory authority to administer healthcare certifications. This created a lot of confusion among health care workers since many of them had already submitted their visa screen applications.

This problem created by the confusion is especially harsh on nurses because of another INS memo which subjects aliens who are unlawfully present in the U.S. for 180 days or more before filing their adjustment applications to three- or ten-year bars even if they are able to obtain advance parole to leave the U.S. while their adjustment of status applications are pending. Many nurses lost their H-1A status when the H-1A category was terminated on September 1, 1995.

Under the new immigration law, aliens who have been unlawfully present in the U.S. for more than 180 days but less than a year from April 1, 1997 are subject to a three-year bar. Those who have accrued one year or more of unlawful presence are subject to a ten-year bar.

The three-and ten-year bars are triggered simply by leaving the U.S. For example, if a nurse who has been unlawfully present in the U.S. visits an ailing relative back home, he or she will be inadmissible when he or she returns to the U.S. to resume the processing of his or her adjustment of status, even if advance parole was granted. He or she can apply for a waiver of inadmissibility but this relief is hard to obtain as it requires a showing of "extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent." And even if reentry into the U.S. is achieved, there is no assurance that he or she will be considered admissible when the application for adjustment of status is adjudicated, because physical reentry does not constitute a waiver of inadmissibility.