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## **Filipino Nurses Lose Visa Fight**

**By Reuben S. Seguritan**

Seven Filipino nurses who had sued the INS for denying them H-1B visa suffered a setback when a U.S. Court of Appeals recently held that they were not entitled to the visa.

The court said that the nurses did not work in a specialty occupation which was the minimum requirement for H-1B. A specialty occupation, according to the court, is one that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation.

The cases arose when Vintage Health Resources petitioned the INS to allow the nurses to work in different hospitals and other medical facilities in the U.S. Vintage is a medical contract service agency which has brought hundreds of Filipino nurses into U.S., locating jobs for them as registered nurses.

The INS denied the H-1B petitions stating that the position did not meet any of the criteria enumerated in the Code of Federal Regulations. These criteria are as follows:

1. A bachelor's or higher degree is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

Vintage had argued that it only hired nurses with BSN degrees, thus meeting one of the criteria as abovestated. The INS, however, countered that the proper focus of inquiry was not what Vintage or an employment agency required but what the contracting facility required. Vintage failed to prove that the medical facilities, where the nurses would actually work, required a bachelor's degree. Vintage was only able to show that such facilities preferred nurses with BSN degrees but did not require that nurses had BSN degrees.

The nurses appealed the INS' decision to the INS Administrative Appeals court but they lost. They then filed complaints with the Federal District Court but their claims were likewise dismissed.

In the Court of Appeals, the question was raised as to whether Vintage was an employer that was justified in requiring a BSN degree. Vintage contended that the nurses were its contractual employer before it contracted them to medical facilities.

The Court held that Vintage was, at best, a token employer. It also said that it didn't have to decide whether Vintage was an employer because even if it was, the medical facilities were also employers of the nurses and more relevant employers. The nurses provided services to the facilities not to Vintage.