

Hiring Foreign Nurses: An Immigration Update

By Reuben S. Seguritan

The severe shortage of nurses in hospitals all over America is a phenomenon that has begun to jeopardize safety and affect the quality of patient care. According to a recent report published in the New York Times, there are at least 100,000 openings for Registered Nurses nationwide. The vacancy rate in the greater New York area is averaging 8 percent and in California, it is even worse with 20 percent.

In response to this problem, hospitals have been utilizing approaches such as filling openings with recruits from other parts of the hospitals and hiring fresh nursing school graduates - without much success. Offering incentives (e.g., sign-on bonuses, relocation coverage, and new premium packages) has likewise proven to have a short-term effect because it does not increase the supply of nurses; it only redistributes.

Indeed, the U.S. is lacking in this highly important resource. The best solution appears to be bringing in foreign nurses through immigration sponsorships.

Sponsoring A Nurse As Immigrant

Since professional nurses (also called Registered Nurses) are in a pre-certified shortage occupation, they do not have to undergo the cumbersome labor certification process. They qualify for employment-based 3rd preference as skilled worker or professional. They also qualify under the employment-based 2nd preference if they have advanced degree or under 1st preference, if they are outstanding professors or researchers.

The immigration process begins with the filing of an I-140 petition at the INS Service Center that has jurisdiction over the intended place of employment. The employer may be a hospital, a nursing home, a medical clinic, a nursing service provider or any healthcare facility.

The following documents must be included in the petition:

1. Forms ETA 750A and 750B in duplicate;
2. CGFNS certificate and/or valid license issued by the state of intended employment;
3. Copy of job posting;
4. Nursing diploma or degree;
5. Nursing registration from the country where the nurse received his/her nursing education;
6. Proof of prospective employer's ability to pay wage (for an employer with 100 or more employees, a letter from a financial officer; if employees total to less than 100, a copy of annual reports, federal tax returns, or validated financial statements);
7. Evidence of an agreement for nursing services between the petitioner and healthcare facility where the nurse is destined to work if the I-140 petition is filed by a nursing service provider and not the actual healthcare facility; and,
8. Marriage certificate

A nurse who has been petitioned by an employer may be petitioned by a subsequent employer. A nurse who is the beneficiary of multiple petitions is entitled to the priority date of the first petition. A priority date is the date the INS received the completed I-140 petition with the filing fee of \$115.00. Upon approval of the I-140 petition, the nurse may file for adjustment of status if he/she is in the U.S. and the priority date is current. However, if the nurse is abroad, he/she may apply for immigrant visa at a U.S. Consulate. The VisaScreen certificate is required before the adjustment application is approved or before the immigrant visa is granted.

A temporary license may be obtained right after the alien's entry into the U.S. by signing up to take the National Council Licensure Examination (NCLEX). Not all states, however, issue temporary licenses. Most states used to require physical presence in the U.S. to register and sit for the exam. But now they allow nurses to take the exam in Guam and Saipan.

The licensure requirement in each state should be checked. Neither the temporary nor permanent license is required in the I-140 or adjustment application.

CGFNS Certificate

To obtain the Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate, the nurse has to complete a three-part certification program: the credentials review, a one-day qualifying exam on nursing knowledge, and an English language proficiency examination. The fee for the program is \$295.00 beginning with applicants applying for the November 2001 qualifying exam.

CGFNS, which administers the program, is located at 3600 Market St., Suite 400, Philadelphia, PA 19104, and telephone number (215) 349 8767.

The CGFNS certification program begins with the CGFNS's assessment of an applicant's education and credentials to determine if the applicant satisfies all the registration requirements to be a licensed professional in the field. In compliance with said requirements, the nurse must have:

1. completed high school;
2. graduated from a government-approved nursing program of at least two years;
3. received theoretical instruction and clinical practice in nursing care in various areas;
4. been issued a full and unrestricted license or registration to practice as a first-level, general nurse in the country where the general nursing education was completed;
5. been issued a current license or registration as first-level, general nurse.

Note that all transcripts and validations must be issued directly by source agencies.

The Qualifying Exam, which is a gauge of an applicant's theoretical and practical nursing knowledge, is given thrice a year at more than 40 sites worldwide.

The Test of English as a Foreign Language (TOEFL) measures an applicant's English language proficiency.

The Educational Testing Service (ETS) administers it in locations spanning the globe. The exam determines comprehension, listening, reading comprehension and structure, and written expression.

For TOEFL test scores to be valid, they must not be more than two years old and applicants must pass both TOEFL and the qualifying exam within a two-year time frame.

To sign up for the TOEFL exam, applicants must apply directly at ETS. For information, contact TOEFL ETS P.O. Box 6151 Princeton, N.J. 08541-6151 USA; Telephone (609) 771-7100; or e-mail toefl@ets.org.

Exempt from the English language proficiency requirement are applicants who meet *all* of the criteria below:

1. Native language is English;
2. Country of nursing education was Australia, Canada (excluding Quebec), Ireland, New Zealand or the U.K.;
3. Language of textbooks was English

The VisaScreen Certificate

The VisaScreen certificate requirement was imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. While it is required of those applying to become permanent residents, it is currently waived for all non-immigrant visa applicants. The VisaScreen program consists of three parts: (1) education analysis; (2) licensure validation; and (3) English language proficiency assessment. The International Commission on Healthcare Professions (ICHP), which conducts the program, holds office at 3600 Market St., Suite 400, Philadelphia, PA 19104 and its telephone number is (215) 349 8767.

Educational requirements of the VisaScreen program are:

1. Successful completion of a high school education;
2. Graduation from a government-approved nursing program of at least two years in length; and,
3. Successful completion of minimum number credit hours in specific theoretical and clinical areas during their professional program

In the case of foreign educated nurses, the following documents must be sent directly by the issuing authority to ICHP:

1. Validation of initial registration or licensure in the country where the applicant completed his or her professional education; and,
2. Validation of *all* current and previous professional registration or licenses

Note that for the purpose of meeting the English language proficiency requirements, the nurse must present passing scores in either the TOEFL, TWE and TSE, or the Michigan English Language Assessment Battery (MELAB) as follows: 540 paper-based TOEFL or 207 computer-based TOEFL; 4.0 Test of Written English (TWE); 50 Test of Written English (TWE); 79 overall MELAB; 3+ oral MELAB.

To take the TOEFL, TWE and TSE, applicants must directly sign up with the ETS. For information and application, contact ETS at the address and phone number previously mentioned.

To take the MELAB, applicants must directly register with English Language Institute. There are no MELAB test centers outside the U.S. and Canada. For information and applicant, contact the MELAB English Language Institute at 3020 North University Building Ann Arbor, Michigan 48109-1057 USA; Telephone (734) 763-3452.

Applicants who meet *all* of the following criteria may be exempt from the English language proficiency requirement:

1. Country of professional education was Australia, Canada (excluding Quebec), Ireland, New Zealand, U.K. or U.S.;
2. Language of instruction was English; and,

3. Language of textbooks was English

Foreign-educated nurses aspiring to practice as a registered nurse in the U.S. must likewise submit *one* of the following: CGFNS Certificate, passing score on the U.S. registered nurse licensure (NCLEX-RN) examination

Note that Foreign Nurses who graduated from a college in the U.S. still need to apply for a VisaScreen certificate if they are applying for a visa.

Sponsoring A Nurse As Nonimmigrant

Nurses may enter the U.S. under an H-1B visa if the prospective employer can establish that the position is a specialty occupation. A specialty occupation is one that requires as a minimum for entry the attainment of a bachelor's degree or its equivalent.

The INS has maintained that professional nursing is not a specialty occupation because only an associate degree, and not a bachelor's degree, is required for entry. Unless, the position normally requires a bachelor's or higher degree as a minimum such as Director of Nurses or Nurse Practitioner, an H-1B petition would be ordinarily denied.

To be eligible for H-1B, the employer must prove that:

- a. it has required the services of an individual holding a bachelor's or higher degree for the proposed nursing position;
- b. the services of individuals holding a bachelor's or higher degree for similar positions is required in other facilities; and,
- c. the proposed nursing position is a specialty occupation because the duties are complex and specialized

Some facilities have been able to obtain H-1B approval for the following positions: Care Plan Coordinator, Rehab Professional/Charge Registered Nurse, or Unit Management-Supervisor.

The Administrative Appeals Office (AAO) has also held that a team leader/nurse position satisfies the definition of specialty occupation. The nurse in this case performed patient care and general management of the nursing unit, training, assigning and overseeing professional and nonprofessional personnel assigned to the unit. The AAO stated that the position was comparable to that of a health service manager, which commonly required clinical experience as well as a baccalaureate or higher degree in a specialized or related area.

H-1B petitions are usually approved for three years and can be extended for another three. The petition (Form I-129) is filed with the INS Service Center with jurisdiction over the intended place of employment and must be accompanied by Form I-129W, a copy of a certified labor certification application, an employer's letter of support, supporting documents that include CGFNS Certificate, RN license in the state of intended employment, and BSN diploma. The filing fee is \$1,110.00. The labor condition application must state among others that the employer will pay the prevailing wage for the occupation.

New H-1C Visa For Disadvantaged Areas

The Nursing Relief for Disadvantaged Areas Act of 1999 created this nonimmigrant category for foreign nurses who will work in medically underserved areas of the U.S. The law was intended to alleviate the nursing shortage encountered by some healthcare facilities on account of the expiration of the 1997 H-1A nursing program. Key points of this law are the following:

1. For purposes of participation in the H-1C program, the healthcare facility must:
 - a. be located in a health professional shortage area (HPSA) as of March 31, 1997; and,
 - b. since 1994 have had at least 190 acute care beds with a Medicare population of at least 35% and a Medicaid population of at least 28% out of all its acute care patients
2. The facility must also attest to the Department of Labor that:
 - a. the employment of the H-1C nurse will not adversely affect the wages and working conditions of other nurses similarly employed;
 - b. the H-1C nurse will be paid the wage rate for registered nurses similarly employed;
 - c. there is no strike or lockout in the course of a labor dispute;
 - d. it did not lay off and will not lay off a registered nurse already employed by it within the period beginning 90 days before and ending 90 days after the date of filing of any H-1C petition;
 - e. the employment of the H-1C nurse is not intended to influence an election for a bargaining representative for registered nurses of the facility;
 - f. at the time of filing of the petition, notice of filing has been provided to the bargaining representative of the registered nurses or where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility;
 - g. it will never employ a number of H-1C nurses that exceeds 33 percent of the total number of registered nurses employed by it;
 - h. the H-1C nurse will not be authorized to perform nursing services at any work site other than the work site controlled by it; and,
 - i. it will not transfer the H-1C nurse from one work site to another.

The facility must also make an attestation that it has made efforts to recruit and retain registered nurses who are US citizens or immigrants.

To qualify for H-1C, the nurse must:

- a. have obtained a full and unrestricted license to practice professional nursing in the country where he or she obtained nursing education, or the alien must have received nursing education in the US;
- b. have passed an appropriate examination (currently the CGFNS) or have a full and unrestricted license under state law to practice professional nursing in the state of intended employment; and,
- c. be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the US and be authorized under such laws to be employed by the facility

The H-1C petition must be filed on Form I-129 at the Vermont Service Center and the H-1C alien will be limited to a maximum stay of three years. Only 500 H-1C visas will be available yearly and states with population of less than nine million shall be entitled to not more than 25 while states of over nine million populations shall have no more than 50.

Since the H-1C program will expire after the INS regulations are promulgated, all petitions must be filed by June 13, 2005.

Other Visa Options

Nurses who are Canadian citizens may enter the U.S. with a TN visa under NAFTA and can apply for the TN visa at the port of entry. The TN nurse is currently exempt from submitting the VisaScreen certificate. The TN visa is valid for one year but may be renewed every year. There is no limit on the number of years that the TN nurse can stay as nonimmigrant in the U.S. Canadian citizenship, not birth in Canada, is required, but the nursing education must have been received in Canada or the U.S.

Under certain conditions, employers may hire nurses as exchange visitors (J-1), by way of a program approved by the Department of State Exchange Visitor program. They may also participate in cultural exchange programs for a period of up to 15 months and be given a "Q" visa. Alternatively, they can apply as a trainee under H-3 visas. These visas, however, have strict criteria that are difficult to meet.

Conclusion

The best option for employers intending to recruit foreign nurses is to sponsor them as immigrants. The non-immigrant visa program, including the H-1C category is not a viable alternative because of the restrictions imposed on both the employer and the employee.

Proposals have recently been made in the U.S. Congress to ease the nursing shortage. On July 27, 2001, Senator Sam Brownback, the ranking Republican member of the Senate Immigration subcommittee, along with Senators Graham and Helms, co-sponsored the "Rural and Urban Health Care Act of 2001", which would open up the H-1C program to all health care facilities rather than just a selected handful of hospitals.

In addition, on July 27, 2001, Senator Brownback, together with Senators Helms and Hagel wrote to the INS Commissioner and the Secretary of Health and Human Services urging them to remove administrative roadblocks to the admission of nurses to the U.S. Among their demands were:

1. Process the I-140 petitions for nurses within thirty (30) days to (90) days of the date of filing; and,
2. Move the VisaScreen process from being handled overseas to being handled within the adjustment of status process. This can be achieved by granting parole, based on significant public benefit. Upon arrival in the U.S., the nurse would then be given work authorization and the opportunity to apply for adjustment of status, a process in which the VisaScreen requirements can be completed.

We can only hope that the Congress will soon take action before the problem turns into a national crisis.