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H Visa for Nurses

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H-1B

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 registered nurse positions do not qualify for the H-1B because an associate degree, not bachelor's degree, is sufficient to qualify. Unless the position routinely requires a bachelor's or higher degree as a minimum for entry such as Director of Nurses or Nurse Practitioner, an H-1B petition would be ordinarily denied.

In order to qualify a nurse 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 qualify nurses for H-1B. The positions are Care Plan Coordinator, Rehab Professional/Charge Registered Nurse, or Unit Management-Supervisor. The AAO has also held that a team leader/nurse position satisfies the definition of specialty occupation. The nurse performed patient care and general management of the nursing unit, training, assigning and overseeing professional and nonprofessional personnel assigned to the unit. The AAO deemed that the position was comparable to that of a health service manager, which commonly has a baccalaureate or higher degree in a specialized or related area as well as clinical experience as requisites.

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 Immigration and Naturalization Service and must be accompanied by Form I-129W, copy of a certified labor certification application, employer's letter of support, and the following documents:

- CGFNS Certificate
- RN license in the state of intended employment
- BSN diploma

Note that the VisaScreen certificate is not required.

H-1C

The Nursing Relief for Disadvantaged Areas Act of 1999 created this nonimmigrant category, which was intended for foreign nurses who will work in medically underserved areas of the US. The law is a response to the serious 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;
 - b. have had at least 190 acute care beds; and
 - c. since 1994 had a Medicare population of at least 35% and a Medicaid population of at least 28% out of all its patients
2. The facility must also attest to the DOL 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 not a 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 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 worksite other than the worksite controlled by it; and
 - i. it will not transfer the H-1C nurse from one worksite 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;
- 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. The H-1C alien will be limited to a maximum stay of three years. The total number of H-1C visas available each year shall not exceed 500. The number of visas issued shall not exceed 25 for states with populations of less than nine million and 50 for states of over nine million.

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