

# US Immigration Options for Filipino Teachers

**By Reuben S. Seguritan**

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In the next ten years, America will need to hire two million teachers to meet the rising enrollment demand and replace an aging teaching force. Half of the US teachers will retire during this period. Sources include the Philippines, India and Russia. (*See National Education Association [NEA]; Y Axis Overseas Careers; Christian Science Monitor [CSM] articles.*)

There is an urgent need for teachers in the following areas: special education (97.5%); science (97.5%); and math (95%). An acute shortage also exists for bilingual and English as Second Language (ESL) teachers and educational technology specialists. (*Y Axis article*)

Annual earnings of kindergarten elementary and secondary school teachers ranged from \$32,000 to \$55,000 in 2000. Extra pay is given for coaching sports and working with students on extracurricular activities. (*Ibid.*)

At present, as many as 10,000 foreign teachers work in public school systems on "non-immigrant" or cultural exchange visas. (NEA) The two temporary work visas used to hire foreign teachers are the "H-1B" specialty occupation visa and the "J-1" exchange visitor visa. (*NEA 2003 Trends in Foreign Teacher Recruitment*).

Individual schools, districts and state education agencies are the largest single type of "importer" of foreign educators. (*Ibid.*) California, New York Texas, Florida and Chicago offer visas under temporary exchange programs and H-1B (*CSM*). Vocational schools, day care centers and Catholic schools also hire a large number of foreign teachers.

It not surprising that the Philippines enjoys some degree of preference in the recruitment of teachers. The manager of the Houston Independent School District remarked that she is pleased with the Filipinos' high work ethic, English skills and training that is equivalent to US standards.

However, some problems for foreign teachers in general may apply to Filipino recruits, such as (a) being used to managing schools differently; (b) finding US students disrespectful; and (c) trouble passing the mandatory state test. (*CSM*)

In general, there are two ways by which foreign teachers may enter the US for the purpose of employment: first, through a non-immigrant visa, and second through an immigrant visa.

## **NONIMMIGRANT (TEMPORARY) VISAS**

As noted above, there are two types of non-immigrant visa used to bring in foreign teachers: first, the H-1B specialty occupation visa, and second, the J-1 visa.

The H-1B program allows the employer to temporarily employ a foreign worker in the US on a NON-IMMIGRANT basis in a specialty occupation. To hire a foreign worker on an H-1B visa, the job must be a professional position that requires, at a minimum a bachelor's degree in the field of specialization.

An H-1B classification is valid for the period of employment indicated in the labor condition application (LCA), for up to three (3) years; a foreign worker can be in H-1B status for maximum CONTINUOUS period of six years.

After the sixth year, the foreign worker must remain outside the US for one year before another H-1B petition can be approved. Certain foreign workers with labor certification applications or immigrant visa petitions in process for extended periods may stay in H-1B status beyond the normal six-year limitation, in one-year increments.

The J-1 visa, on the other hand, is used by many students and scholars coming to the US. It is often subject to a two-year home residency requirement, which means that the J-1 visa holder and his or her family members cannot immigrate to the US until they return to their home country for two years. It also means they are unable to change from a J-1 to another nonimmigrant visa from within the US or to receive an H-1B or L-1 visa at a US consulate.

Such a residency requirement is imposed on three categories of J-1s: (1) whenever the visa holder receives funding from the US government, the government of their home country or from an international organization; (2) when their area of study appears on the Exchange Visitor Skills List; or (3) if they are engaged in graduate medical training.

Waivers of home residency requirements are available in the following situations: (1) the requirement would result in exceptional hardship to a US citizen or permanent resident alien spouse or child; (2) the requirement will result in persecution to the alien on the basis of race, religion or political opinion; (3) the alien's home country government indicates no objection to the alien's remaining in the US (it is important to note that physicians cannot obtain a waiver with this method); or (4) an interested government agency recommends the waiver as being in the national interest.

## **IMMIGRANT VISA (PERMANENT RESIDENCY)**

In a nutshell, the immigration process for prospective employees involves three steps: first, obtaining a labor certification from the US Department of Labor (DOL); second, the application by the employer and approval of the Alien Worker Petition also referred to as the I-140 petition; and third, the application for the immigrant visa with a US consulate abroad or adjustment of status with the INS on the basis of the Labor Certification and the I-140.

### **Labor Certification**

The Labor Certification is intended to determine whether there are no qualified and available workers in the position open to the foreign worker. There are two ways by which a labor certification may be obtained, i.e., what is usually referred to as the "traditional" method and the "reduction-in-recruitment."

The traditional method of securing a labor certification begins with the employer filing an application on behalf of the foreign worker. Employer files an application on behalf of the foreign worker. The application is filed on Form ETA 750A and B with the foreign labor certification unit of the State Workforce Agency (SWA).

The SWA will oversee employer's recruitment of US workers by placing a job order in the statewide job bank system or equivalent. The employer will post job notices at workplace and place ads. It then forwards those resumes that apparently qualify to employer-applicant for interview and evaluation. The employer then files a report to the SWA giving lawful, job-related reasons for rejecting applicant.

Then the application for labor certification and supporting documents are forwarded by SWA to the regional office of the US DOL which will either grant or deny the alien labor certification. The process can take several years. The longest processing times have been noted in New York and Texas due to the large influx of immigrants.

The Reduction-in-Recruitment (RIR) method is used when employer had been unsuccessful in recruiting US-qualified workers within the last six (6) months. The employer must provide evidence of a pattern of normal industry recruitment efforts in the six-months preceding the application filing date. The application must list only the minimum experience requirements and standard requirements for education and training.

Approval of RIR does not mean the case will be certified automatically, it only means the case will be processed as an RIR.

### **Petition for immigrant worker ("Sponsorship")**

The employer files a petition for the foreign worker on an I-140 form with the INS (now the US Citizenship and Immigration Services).

The petition includes the labor certification, diploma and transcript of records and experience letter. When approved, the I-140 petition is forwarded to the National Visa Center for review. Thereafter, the NVC will forward the petition and attachments to the designated US consulate abroad. When the documentation is complete, the alien will be scheduled for immigrant visa interview.

If the alien is in the US and is in valid status, the I-140 petition and adjustment of status application may be filed concurrently.

An adjustment of status may be undertaken for H-1B holders or J-1 holders who have obtained waivers.

An immigrant visa or "green card" will eventually be granted to the foreign employee upon the fulfillment of the requirements.

The adjustment of status process may take some time. But that applicant may secure work authorization from the INS to enable the applicant to work while the adjustment of status application is pending. Usually, the processing of the work authorization can last about 80 to 120 days from the date of receipt of the application.