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Undue Rules Fuel Nursing Shortage

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It goes without saying that the nursing shortage is taking its toll on the quality of healthcare in the country. Hospitals and other medical facilities have responded to the crisis primarily by recruiting foreign-educated nurses. But current US immigration law, while relatively liberal with respect to foreign RNs, has been less than welcoming.

An employer who wishes to recruit foreign nurses usually opt to file for an I-140 immigrant petition. An immigrant visa allows the foreign nurse to work in the US permanently, as opposed to a nonimmigrant visa which only permits her to work for a limited period.

Filing an I-140 petition on behalf of foreign nurses is a relatively straightforward process compared to those for other professions because it skips the most time-consuming stage of the immigration process—the labor certification application.

Generally, employment-based immigration involves two steps: first, the employer files a labor certification application with the Department of Labor (DOL). This is intended to ascertain that the local job market does not have the available worker. A labor certification is issued when there is no available qualified worker for the position. Securing a labor certification alone can take years. Alien labor certification offices in New York, New Jersey and California, for instance, are currently dealing with two to four year backlogs.

The US Congress, however, passed a law that listed professional nurses as one of the two pre-certified occupations. This means an employer need not obtain a labor certification before filing an immigrant petition for a foreign nurse because the unavailability of qualified US workers had already been predetermined. The I-140 petition for the foreign nurse, together with the supporting documents, may then be filed by the employer right away with the applicable USCIS Service Center. There are four such Service Centers located in Vermont, Nebraska, Texas and California. Currently, Vermont is processing I-140s faster than the other three Service Centers.

Initially, it appears that professional nurses are better off than other professionals who wish to enter the US as immigrant workers. After all, foreign nurses need not wait years to obtain their labor certification.

The tests and certifications that foreign nurses have to obtain before being eligible for US immigration, however, are primarily responsible for the slow and circuitous immigration process that falls short of the urgency in filling the current nursing shortage.

Testing, Certifications and the Green Card

The Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) is widely considered by many foreign nurses as their golden ticket to employment in the US. The CGFNS Certificate is one of the supporting documents filed with the I-140 petition of the prospective employer with the USCIS.

The CGFNS Certification process evaluates three important aspects of a foreign nurse's qualification for work in the US, namely: educational credentials; English language proficiency and nursing knowledge. Typically a Filipino nurse who wishes to work in the US would take an English language test with an accredited agency like the TOEFL. She submits the TOEFL exam results to the CGFNS along with her educational and work credentials, and then takes a comprehensive nursing knowledge exam administered by the CGFNS itself. The CGFNS exam is conducted in about 40 international locations.

In lieu of the CGFNS Certificate, the employer may submit an RN license from the state of intended employment or proof that the foreign nurse has passed the National Council Licensure Examination for Registered Nurses, also referred to as the "NCLEX" exam, and evidence that she cannot obtain a license because she cannot be issued a social security number.

The NCLEX or RN license has not been as widely used in support of I-140 petitions for Filipino nurses as the CGFNS because the NCLEX is only administered in the US or its territories and entails considerable expense and time for the nurses. Beginning January 2005, however, the NCLEX will be administered also in London, Hong Kong and Seoul.

The CGFNS

The CGFNS Certificate is an important supporting document in applying for the foreign nurse's green card, but it is not an authorization to practice nursing in the US. In other words, it allows the foreign nurse to come as an immigrant worker but it does not allow her to work as a nurse in the US. Foreign nurses who wish to work in a majority of the states such as New Jersey are required to pass the CGFNS exam first before taking the state NCLEX exam in order to practice nursing.

The CGFNS certification has been widely criticized as an unnecessary requirement for foreign nurses, prompting medical facilities and foreign nurse groups to call for its abolition.

The CGFNS traces its beginnings to the huge influx of foreign nurses in the 1970s when about 80 percent of them failed the US nursing licensure exams. The nursing establishment then thought a predictive mechanism must be put in place in order to determine which foreign nurses will be able to meet the requirements for US nursing licensure and therefore stay and work here.

But the underlying presumption for requiring the CGFNS tests was flawed from the beginning. The high failure rate of foreign RNs in the nurse licensure exams was not due to any academic deficiency or lack of nursing knowledge. Many foreign RNs failed the exams because unlike their American counterparts they hardly had the opportunity to study and prepare. They were overworked and were required to take the first available licensure test right away.

The American cultural bias of the nurse licensure exam also adversely affected the foreign RN's chance of passing. Observers noted that the difficulty encountered by foreign RNs with the NCLEX was not so much the content of the exam but its language and the multiple choice format.

Nearly three decades since it was first administered, the value of the CGFNS exam as a predictor of a foreign nurse's qualification to practice in the US is still largely overrated.

Several states, including New York, California, Colorado, Arizona, Ohio and Oregon do not require the CGFNS Certificate before a foreign nurse may sit down for the state nurse licensure test. The nursing boards in these states are obviously satisfied with their system *sans* the CGFNS.

Those foreign RNs who wish to work in states where the CGFNS is required prior to licensing may still work in such CGFNS states if they have already obtained their license in a non-CGFNS state like Arizona or Colorado and they apply for licensure reciprocity. This circumvention only underscores the needlessness of the expense and delay of the CGFNS certification.

Overall, the CGFNS has not proven itself an effective predictor of a foreign nurse's qualification to work in the US. In the past, proponents of the CGFNS said that 85 percent of those who passed the CGFNS exam would pass the NCLEX. The latest NCSBN figures, however, indicate that only about 40 percent of all foreign nurses pass the NCLEX exam. A nurse who has not passed the NCLEX would have to wait for three months and pay additional fees to retake the exam. To cut down costs and reduce delay, some US employers require the foreign nurse to take and pass the NCLEX exam in Saipan or Guam before coming to the US. This indicates a growing awareness among US employers that the CGFNS exam does not really serve their purpose.

The CGFNS has also been blamed for the high cost and delay in processing the immigration papers of the foreign nurse, making it less attractive to US employers. It can take a foreign nurse six months to a year to apply to take a CGFNS exam, wait two months for it to be administered and about three months or more for the test results to be released.

As the nursing shortage worsens, CGFNS states are beginning to take a second look at their foreign nurse screening procedures. Certain state legislators in Michigan, for example, pointed out that the CGFNS is unnecessary if a foreign-trained nurse has already passed the NCLEX and has been licensed in another state. In New Jersey, the Philippine Nurses Association there has been vocal about the abolition of the CGFNS.

The NCLEX

Perhaps the most persuasive reason for the abolition of the CGFNS is the fact that one testing and certification process already meets the requirements of both a green card application and the state nursing license—the NCLEX. The NCLEX exposes the redundancy and the waste of money associated with the CGFNS. Both the CGFNS and the NCLEX exams are similar and based on the same nursing knowledge.

As noted above, however, the location of the NCLEX nursing sites makes it less accessible to major source countries of foreign RNs, like the Philippines. Most Filipino nurses find it too expensive to come to the US, usually on a tourist visa, just to take the NCLEX exam.

This is why groups such as the Philippine Nurses Association in America have been strongly advocating for the holding of the NCLEX exam in the Philippines especially since Filipinos make up the majority of NCLEX exam takers. National Council of State Boards of Nursing (NCSBN) figures confirm that this trend continues with some 31 percent of the total foreign-educated NCLEX candidates for the first quarter of 2004 coming from the Philippines.

Despite this, the NCSBN apparently bypassed the Philippines as one of the three international NCLEX testing locations beginning January 2005, apparently for security reasons. The NCSBN, however, stressed that London, Hong Kong and Seoul are initial testing sites only and more international testing sites may be added later.

With the designation of NCLEX international testing sites, more nurses will prefer to take the NCLEX instead of the CGFNS. US employers, who usually pay for testing and certification fees will likely require the foreign nurse to take the NCLEX as well. A foreign nurse with the NCLEX would be ready to assume her duties when she arrives in the US. The foreign nurse armed with only the CGFNS certificate would be able to work only in a limited capacity. And if she does not pass the NCLEX the first time, the delay may be months or years. The

designation of more NCLEX international testing sites, particularly in countries rich in potential nurse recruits may actually render the CGFNS obsolete.

VisaScreen Certification

After the I-140 petition of the medical facility on behalf of the foreign nurse is approved, the case is forwarded to the National Visa Center for the nurse's immigrant visa application. The immigrant visa fee is paid and the foreign nurse submits a signed personal bio-date form. The NVC then submits the application to the US Embassy where the foreign nurse resides. The US Embassy in turn issues the immigrant visa upon passing the visa interview.

Before a foreign nurse can be admitted to the US, the foreign nurse must be able to present a Health Care Certification (HCC) or what is known as the VisaScreen Certificate at the US consular office. If already in the US, she would need the VisaScreen certificate before the USCIS can approve her adjustment of status.

It should be noted that the VisaScreen requirement applies to both nonimmigrant (H-1B, H-1C and TN) and immigrant workers. To allow foreign nurses in nonimmigrant status to obtain their VisaScreen certificates, the USCIS waived the requirement. Beginning July 25, 2004, however, foreign RNs and other healthcare professionals in nonimmigrant status must present their VisaScreen certificates when they cross the border or extend their status.

Here lies another kink in the immigration of foreign nurses. The VisaScreen, like the CGFNS or the NCLEX, also verifies all of the foreign nurse's credentials, English proficiency and nursing knowledge. The VisaScreen, however, is a requirement of federal law, in particular, Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and though it is not yet required at the filing of the I-140 petition.

The VisaScreen has been considered duplicative and a major aggravating factor in the delay and expense of recruiting foreign nurses to the US. In a letter to the Department of Homeland Security dated March 25, 2004, 14 US Senators said the VisaScreen "regulation will aggravate our nation's current nursing shortage and disrupt the delivery of health care services in many hospitals." They further described it as a "redundant certification."

Many hospitals and medical facilities bearing the brunt of the nursing shortage view the VisaScreen as a useless federal intervention upon a state's right to determine who can practice nursing within its jurisdiction. The VisaScreen, according to the American Hospital Association (AHA), "will exacerbate the current shortages." The AHA warned that operational problems may arise which would "result in closure of beds and inability to provide safe and quality nursing care." In no uncertain terms, the quality of patient care is the bottom line for US healthcare facilities and adding another obstacle in the recruitment of foreign nurses in the form of the VisaScreen Certificate is not helping at all.

Conclusion

Some sectors who are disinclined toward foreign RN immigration as a means of alleviating the current US nursing shortage, like the American Nurses Association, believe that the CGFNS and the VisaScreen are necessary to protect the quality of healthcare in the US.

In practical terms, however, these battery of tests and certifications are redundant, time consuming and expensive. The CGFNS Certification and the VisaScreen, both issued by one and the same designated agency, the CGFNS, have not proven to be any better than the NCLEX in determining the fitness and competence of a foreign RN to practice her profession in the US. The NCLEX, on the other hand, must be brought closer to the major source of foreign RNs.

It is precisely the quality of healthcare that is at stake now that the nursing shortage has reached critical proportions nationwide. The need to honestly re-examine and amend current US immigration laws pertaining to foreign RNs is as urgent as ever.