



Demystifying the EB-3 Retrogression

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The US is currently in the throes of a critical health worker shortage. The US Department of Labor has identified RN as the top occupation in terms of job growth through 2012. The nursing shortage is so serious that tens of thousands of hospital deaths have reportedly been attributed to it.

In the meantime, the Philippines, arguably the world's largest exporter of human labor is churning out thousands of nursing graduates who are willing and able to fill the US demand for their services.

So if supply is willing to meet demand, why are Filipino nurses having a hard time coming to the US now?

Retrogression

As early as October 2004, the Department of State already flagged the probability of retrogression. This has been widely misunderstood as a law or regulation passed to restrict the entry of foreign workers.

Retrogression is actually a means by which the Department of State copes with the oversubscription of immigrant visa numbers allotted by law for a particular category and a particular country.

Since the Philippines is one of the largest suppliers of nurses to the US over the past several years, the increased demand for immigrant visa numbers resulted in the oversubscription of its employment-based third preference (EB3).

When immigrant visa numbers are oversubscribed, as what happened with the EB3 category for the Philippines, India and China, the Department of State imposes a cut-off date beyond which immigrant visa applications will not be processed until visa numbers become available or "current."

Most Filipino professionals and skilled workers immigrating to the US like nurses, teachers, medical technologists, physical therapists and occupational therapists fall under the EB3 category.

The Department of State announced in December that the cut-off date for the EB3 category of the Philippines, India and China for January, 2005 was January 1, 2002. The practical effect of the cut-off date imposed is that immigrant visa applications with priority dates falling on or after January 1, 2002, could not be processed until visa numbers are available.

This snag in the visa application process means thousands of Filipino nurses whose priority dates fall on or after the cut-off date could not enter the US to work which, in turn, translates to the worsening of the nursing shortage here.

Unfortunately, the extent of the delay that retrogression created could not be predicted. A similar situation occurred years ago, and the delay experienced then was considerable.

In the meantime, it might be useful to note that retrogression is not a fixed aspect of the immigrant visa application process. The cut-off date may be moved depending on the availability of immigrant visa numbers over time. For April 2005, the cut-off date moves up to April 1, 2002. Thus, it is advisable to keep posted on recent developments.

Short-term measures

With severely understaffed hospitals and medical facilities, the US healthcare sector could no longer withstand the blow dealt by retrogression on its earnest efforts to recruit foreign nurses.

Fortunately, US Congressman Tom Lantos (Dem, CA) was quick to notice the absurdity of the situation—the US needing foreign registered nurses (RNs) while keeping its doors closed to them because of retrogression. Rep. Lantos then introduced the first bill in the 109th Congress to address the nursing shortage.

To be known as the “Health Improvement and Professionals Act of 2005,” the bill seeks to recapture unused employment-based immigrant visa numbers from 2001, 2002 and 2003 totaling about 130,000 to facilitate improved health care for all persons in the US.

The bill, if passed, is expected to ease considerably the EB3 backlog for the Philippines, India and China that led to the retrogression.

Another short-term solution would be to legislate a temporary visa program that specifically targets the need for foreign RNs. Existing temporary visa programs like the H-1B or H-1C are not viable options because they are far too restrictive.

A temporary visa program akin to the 5-year H-1A program under the Nursing Relief Act of 1989 would be helpful in easing the nursing shortage. Some 6,500 nurses were able to enter the US under the H-1A temporary work visa program which eventually expired in 1995. No comparable law of such nature and scope has been passed since.

Lasting solutions

The Lantos bill, if passed, would not amount to a lasting solution to the severe nursing shortage in the US. Unless an H-1A-like program is legislated without sunset provisions, short-term solutions would hardly make a dent on the problem either.

The dire situation facing the US healthcare system is not lost on lawmakers, but ironically, it seems to be lost on the public.

Bills sponsored before the US Congress seeking to address the nursing shortage beginning 2001 fizzled out for lack of public support.

One such bill was sponsored by Senator Sam Brownback and two other senators. The proposed Rural and Urban Health Center Act of 2001 was introduced on July 27, 2001. Rep. Sheila Jackson Lee introduced a similar bill a few days later.

These bills sought to remove the stringent requirements and eliminate the numerical limitation of the H-1C visa. Unfortunately, both bills died for lack of support.

Rep. Jackson Lee reintroduced her bill on January 7, 2003 and still there has not been any show of support from the public, possibly because the seriousness of the nursing shortage may not have been fully disseminated or understood.

The Democratic comprehensive immigration reform bill introduced last year that sought to reduce the visa number backlog also remains bottled up in the Judiciary Committee.

Unfortunately, immigration law reform has been unduly centered on border control and national security. In addition, some legislators, rightly or not, believe that immigration takes jobs away from the American people.

But the nursing shortage is a reality that bites and cannot be denied for the next decade. This healthcare issue deserves as much attention from the US Congress and the public as border controls or resolving employment issues.

It is about time America should be made to ponder—who will be there to care for its sick, aged and weak?

Now is the time America heard from the Filipino American community, the leaders of the US healthcare system and professional organizations. The public must know that unless meaningful changes in immigration laws are passed, there won't be enough healthcare workers to keep America strong.