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6-Year Delay Seen in Visa Processing for Domestic

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The Philippine employment-based third preference category had been besieged by the imposition of cut-off dates lately as a result of increased demand for visa numbers.

At the start of the year, Filipino professionals like registered nurses (RNs), physical therapists (PTs), accountants, engineers and teachers were confronted with a 2 to 3 year delay in obtaining immigrant visas when the Department of State announced the retrogression of visa processing to January 1, 2002. This cut-off date has since moved to June 1, 2002, meaning visa numbers are already available for those with priority dates falling before the said date.

Initially, the EB-3 "other worker" or the unskilled category appeared to be unaffected since the visa numbers remained current as of February 2005. Many Filipino migrant workers enter or stay in the US as general houseworkers, home attendants, adult companions, etc. under this category.

The March 2005 Visa Bulletin announced, however, that the Department of State had imposed a July 1, 2001 cut-off date on the processing of immigrant visa numbers for the EB-3 other worker category. Worse, this cut-off date had been pushed farther back to January 1, 1999, according to the June 2005 Visa Bulletin.

As a result, domestic workers, who have priority dates falling on or after January 1, 1999 will not have their immigrant visa applications processed yet. In other words, these workers should expect a delay of at least six years in obtaining their visas.

The June 2005 Visa Bulletin also floated the possibility that EB-3 other worker visas may become unavailable in the near future. This means, visa processing for this group of workers may stop altogether indefinitely. The Department of State attributes the need for retrogression to the "extremely high" demand for visa numbers in that category.

That is certainly bad news for the thousands of domestic workers who have patiently waited for years to secure labor certifications as a first step to obtaining their green card. Even as they approach the homestretch to the long, arduous process of placing their immigration status in order, they now face the reality of another long wait for immigrant visa numbers.

In the meantime, a special group of Philippine EB-3 workers could finally break free of the vicious effects of retrogression.

Starting June 1, registered nurses (RNs) and physical therapists (PTs) may already have their immigrant visa applications accepted for processing after a law was passed on May 11 to recapture 50,000 unused visa numbers from 2001 to 2004.

The visa recapture provision appeared as a rider to the supplementary spending bill for tsunami aid and Iraq which was signed into law by President George W. Bush.

The 50,000 visa numbers are specifically allocated for RNs and PTs, who mostly come from the Philippines. This measure is intended to mitigate the adverse impact of retrogression on these

shortage professions. Thousands of immigrant visa applications of RNs and PTs, which have been stalled by the retrogression since January this year will be processed immediately as a result of this law.

The recapture of 50,000 visas was widely considered a far cry from the initial version of the bill in the Senate that sought to recapture 130,000 visas, not just for RNs and PTs but for the entire EB-3 category. This version did not pass muster in Congress, however, and was eventually watered down to the recapture of just 50,000 visas for RNs and PTs only.

While visa processing is expected to improve for RNs, future recruitment of foreign nurses might undergo certain delays after the US Citizenship and Immigration Services (USCIS) issued new rules requiring the submission of the prevailing wage determination with the I-140 petition for alien worker.

The prevailing wage determination is issued upon the request of the US employer by the State Workforce Agency (SWA) having jurisdiction over the place of employment.

Turnaround time for the SWAs vary from one day (as in the case of Mississippi), a few days (New Jersey) to over a month (New York), thereby holding up the filing of the I-140 petition for the RN.

With the backlogs occurring in both employment-based and family-based immigration, the urgency for comprehensive immigration reform has heightened now more than ever. Concerned groups must actively seek the passage of the Secure America and Orderly Immigration Act of 2005 into law, following its introduction as a bipartisan initiative in Congress last week. In its present form, this bill has the potential to resolve the various problems that have emerged from a well-meaning, but broken immigration system.