

FOREIGN TRAINED NURSES:
Issues, Challenges & Opportunities
A PowerPoint Presentation

By Reuben S. Seguritan

450 Seventh Avenue, Suite 1400

New York, NY 10123

www.seguritan.com

Philippine Nurses Association of America, Inc.

26th Annual National Convention

July 13-17, 2005

Kansas City, Missouri

I. OPPORTUNITIES

A. Continuing shortage of nurses

1. The Department of Labor has identified registered nurses (RNs) as one of the top 5 job growth occupations in the US, and that more than 1 million new and replacement nurses will be needed by 2012;
2. According to surveys conducted by the Harvard School of Public Health and the Henry J. Kaiser Family Foundation, over 50 percent of physicians have indicated that the nursing shortage is a leading cause of medical error.
3. The New England Journal of Medicine reported that a higher proportion of nursing care is associated with better outcomes for hospitalized patients.
4. In spite of this documented need for RNs, enrollments in baccalaureate nursing programs at colleges and universities across the US have declined for 5 consecutive years. (*H.R. 139, Sec. 2, introduced by Rep. Tom Lantos on 1/4/2005*)

B. More visa numbers

1. On May 11, 2005 a law was passed providing for the recapture of 50,000 unused visas specifically allotted to registered nurses and physical therapists, and their dependents.
2. RN recruitment is facilitated because applicants will be eligible for visa numbers twice: first, the traditional EB-3 cut-off date; and second, under the additional 50,000 cut-off date.
3. The US Embassy in Manila resumed processing of RN immigrant visa applications late last month.

C. Philippines as a source country

1. There is a steady supply of RNs from the Philippines;
2. There are now a total of 429 nursing schools with 200 more applying for permits. (Philippine Star, 6/18/2005)

II. ISSUES

A. New Immigration Developments

1. The promulgation of new labor certification rules (PERM) changed documentation needed for green card applications.
 - a. ETA Form 750 A and B have been superseded by ETA Form 9089;
 - b. Petitioner must post job notice within its premises and in its in-house media;
 - c. A prevailing wage determination obtained from the State Workforce Agency must be attached to the I-140 petition;
 - d. CGFNS certificate, not just proof of passing CGFNS exam, is now required.
2. The H-1B visa is still not a viable option for foreign RNs, unless the position applied for is administrative or highly specialized. Most RN positions do not qualify as specialty occupations because they do not require a bachelor's degree as a minimum requirement.
3. A Visa Screen Certificate is required at the time of filing for H-1B; Visa Screen Certificate is required for immigrant visa applications at the time of adjudication or interview.

B. Questionable Practices of Recruiters and/or Employers

1. Some recruiters and employers have engaged in fraudulent and other questionable activities such as:
 - a. Charging exorbitant placement fees;
 - b. Failing to provide agreed-upon recruitment incentives (airfare, free test reviews and RN license exam registration; assistance in securing SS and driver's license, sign-in bonuses)
 - c. Discrimination
 - d. Misrepresenting employment terms (rate of pay; work hours)
 - e. Holding on to RNs' passports;
 - f. Reporting RNs to US immigration authorities when they leave the employer before contract expiration (www.nysna.org)

2. Fraud occurs because:

- (a) distance makes it hard and expensive to verify information;
- (b) wage differentials exists between sending and receiving countries for the same occupation; and
- (c) little skill and minimal capital needed to engage in recruitment business.

(<http://www.ilo.org/public/english/protection/migrant/research/others/1997-01/ch5.htm>)

3. Recruitment practices are seldom monitored against fraud or unethical abuses such as charging exorbitant fees, substandard pay and confiscating nurses' passports, according to Deborah Burger of the California Nurses Association. (<http://www.philippinenews.com>)

C. Breach of Contract

1. An RN breaches her contract by:
 - a. Refusal to be deployed or moving to another employer during the contract period, after having received recruitment incentives.

2. A recruiter or employer commits breach by :
 - a. Failing to comply with employment terms such as transportation costs; accommodations upon arrival; rate of pay; whether permanent or temporary employment; whether part-time or full-time; where the RN will be deployed, etc.

3. An RN may protect herself by:
 - a. Insisting that a recruiter must have an actual address, not just a P.O. Box;
 - b. Checking the POEA license of recruiter/employer and dealing with the authorized representative only;
 - c. Paying the placement fee after contract signing and getting a receipt;
 - d. Examining and reviewing contract before signing;
 - e. Clarifying immigration matters. (See *<http://www.poea.gov.ph>*)

4. Remedies are available in cases of breach

a. A recruiter or employer may:

- (i) Sue the nurse in the Philippines for breach of contract. Enforcement of judgment by Philippine courts may be easier if the nurse is still in the Philippines.
- (ii) Sue for breach of contract as exemplified by the suit of Integral Care Providers Inc. against 7 RNs filed in April 2004 in Kansas City. (<http://www.filipinoreporter.com/archive/3321>)
 - Enforcement of judgment may be difficult if the RN is already in the US, but cannot be located.

- b. An RN may--
- i. File an administrative complaint against the employer's local agent with the Philippine Overseas Employment Administration (POEA) (See *Asian Placement Services, Inc. v. CA*, G.R. No. 146249, February 4, 2002).
 - Under Philippine law, the local agent in the Philippines assumes solidary liability with the foreign employer for all claims and liabilities arising from the overseas employment. This provision is required to be incorporated in the employment contract and is a condition for its approval.
 - ii. If dismissed without valid reason before contract term ended, sue employer and its local agent in the Philippines before the Migrant Worker's Desk of the National Labor Relations Commission (NLRC) or the NLRC's Regional Arbitration Branch.

- iii. If not deployed without RN's fault, withdraw application from agency and claim reimbursement of placement fee, documentation and processing expenses with the help of POEA's Legal Assistance Division. (http://www.ofwguide.com/article_item.php?articleid=13)
- iv. If terms of the employment contract are not satisfied, sue the employer in the US either for fraud, misrepresentation or breach of contract, or discrimination, depending on the circumstances of the case.
 - A Missouri nursing home paid \$2.1 million to settle a discrimination complaint by 65 Filipino RNs before the Equal Employment Opportunity Commission, according to a March 1999 Washington Post report. (<http://www.wvsumedaa.com>)

- A Texas nursing home operator and 4 nursing recruiters in California and New Jersey pleaded guilty in 1998 to participating in schemes to bring hundreds of Filipino nurses who were paid \$5 per hour and sent to healthcare facilities in 35 states. (<http://www.wvsumedaa.com>)
 - A retirement community near Chicago paid more than \$176,000 in backwages and civil penalties in 1997 for paying Filipino nurses only 58% of the prevailing wage. (<http://www.wvsumedaa.com>)
 - The Catholic Archdiocese of Chicago agreed to pay \$50,000 in fines and more than \$384,000 in backwages to 99 Filipino nurses who were underpaid at a church-operated nursing home. (<http://www.wvsumedaa.com>)
- v. If RN is on H-1B visa, she may transfer to another employer pursuant to the portability rule, or if adjustment of status application has been pending for 6 months, she may move to another job.

D. Negative impact of High RN demand

1. Substandard nursing schools have sprouted in the Philippines
 - a. Tertiary training hospitals are being overcrowded by nursing students thereby preventing the patients from getting rest. *(Philippine Star, 6/18/2005)*
 - b. The Philippine Commission on Higher Education (CHED) noted a decrease in the passing average in the nursing board exams. Passing rate in 2001 was 54%, while in 2004, it dipped to 44%. *(Philippine Star, 6/18/2005)*
 - c. The CHED notes that about 21% of all nursing schools are considered “very low performers,” meaning with only a 29 % board exam passing rate, while 36 % of all nursing schools, are in the “low performing” category, meaning, those with a passing rate of 30 to 49% only. *(Philippine Star, 3/22/05)*

2. Philippine healthcare will suffer from loss of good health professionals, including doctors.
 - 4,000 medical doctors are taking up nursing, according to the ChED Executive Director Roger Perez. (<http://www.americancity.org>)

CHALLENGES

A. Philippine Government

1. It must protect Philippine nationals from fraudulent recruitment practices
2. It must upgrade and maintain the quality of nursing schools notwithstanding continued proliferation
3. It must improve the political and economic conditions in the Philippines in order that it can withstand the departure of nurses and entice some of them to return home.

B. Registered Nurses

1. They must be vigilant; do not hesitate to report or complain about unfair or fraudulent recruitment practices and employment conditions.

C. Recruiters and Employers

1. They should observe ethical business practices in the recruitment of foreign RNs.

D. PNAA & Other Immigrant Organizations

1. They should advocate for –
 - a. the creation of a temporary visa program specifically for nurses, similar to the H-1A program;
 - b. comprehensive immigration reform, such as the McCain-Kennedy Bill, which would increase employment-based visas from 140,000 to 290,000 and further allow the recapture and redistribution of unused visa numbers.

E. Sample Letter to Congressman/Senator

Dear _____:

I am a registered voter in _____.

As a nurse and an active member of nurse organizations, I am personally aware of the need to recruit more foreign registered nurses to fill the critical shortage of healthcare professionals in hospitals, nursing homes and medical facilities nationwide.

At present, the only viable means of bringing in foreign RNs is through an immigrant visa petition, which could take more than a year to process.

There is a need to create a nonimmigrant visa program specifically intended for foreign RNs. A program similar to the H-1A of the Nursing Relief Act of 1989 will allow for an expedited processing time for the recruitment of qualified foreign RNs, thereby preventing the current shortage from worsening over the years.

There is also a need to change foreign RN recruitment rules by eliminating redundant requirements such as, the VisaScreen certificate and by increasing the limits on employment-based immigration. To achieve this, Congress must pursue a comprehensive immigration reform, best exemplified at present by the bipartisan McCain-Kennedy Bill.

I hope you could initiate and support efforts in improving our healthcare system by bringing in the needed foreign healthcare professionals.

Sincerely,
