

Role of Lawyers in Recruitment

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A question about the role of lawyers in the recruitment of nurses was asked after I spoke at the annual convention of the University of the East – RMMC Nursing Alumni Association USA held over a week ago.

In my talk, I cited examples of fraudulent practices such as applying for H-1B visas for nursing positions in the US that are not considered specialty or professional occupations.

These BSN graduates were issued H-1B visas in high administrative or specialized nursing positions but actually worked as general nurses or nursing assistants.

I have even heard about a nursing graduate that was issued an H-1B visa for the position of marketing research analyst but eventually worked as a nursing assistant.

Were lawyers involved in the filing of these applications?

Opportunity and Motive

The business of recruiting foreign nurses is fairly easy to embark upon. It does not require substantial resources to start up. But it does require extensive contacts in the US healthcare industry on one end, and in source countries for RNs like the Philippines..

Except to the extent that foreign nurses must meet the certification and licensing requirements for their practice in the US, foreign nurse recruitment is seldom monitored, and hardly regulated, thereby leaving the nurses vulnerable to abuse or exploitation.

It is no secret that US hospitals and healthcare institutions are severely understaffed. Just a few months ago, Congress passed a law for the recapture of 50,000 unused EB-3 visas and explicitly allocated these to nurses and physical

therapists. That nurses and physical therapists are considered pre-certified occupations by the US Department of Labor for purposes of employment-based immigration is another clear indication that the US government acknowledges the shortage.

And where there is a demand for nurses, there lies not just the opportunity but the motive as well for some recruiters and employers.

While a few of them may be complicit in cases of fraudulently obtaining H-1Bs for nurses, there is a difference in the situation of immigration lawyers, on one hand, and recruiters or employers, on the other.

Lawyers, as a general rule, are held up to high ethical standards. Enforcement of these standards is built into the practice of law by a system of self-policing among lawyers, *i.e.*, lawyers are under the obligation to report unethical practices to the appropriate bar association.

In addition, the American Immigration Lawyers Association provides peer guidance, periodic seminars and written material on ethical issues affecting immigration law practitioners. Further, the prospect of public censure, suspension or revocation of the license to practice law far outweighs any financial gain that may come from making misrepresentations or engaging in any other irregular conduct.

On the other hand, immigration lawyers, more than anyone, are acutely aware of how unduly restrictive and limiting current immigration laws are.

In a way, our broken immigration system has set the stage for the recurring episodes of fraud and irregularities in employment-based immigration such as those that occur with H-1B nurses.

Broken Legal Framework

US immigration laws still do not adequately meet the need for more foreign nurses. At present, there is no temporary work visa designed for nurses such as the H-1A program under the Nursing Relief Act, which was allowed to expire after five years.

Many nurses recruiters and employers resort to H-1Bs even if it is relatively more expensive because unlike the green card route, the processing time is significantly faster. Needless to say, hospitals, nursing homes and similar healthcare institutions need the nurses ASAP.

On the other hand, the immigrant petition for the foreign nurse could take years to process. Since the nurse can stay and work in the US for an indefinite period under a green card, this would appear to be a longer lasting solution to the nursing shortage.

At any rate, the slew of tests and certifications relating to immigrant petitions for nurses had been characterized

as unnecessary and duplicative, and are widely considered as major stumbling blocks to the recruitment of foreign nurses.

In the context of a legal framework that does not reflect the reality of the nursing shortage, foreign nurses may tend to be less vigilant of their rights (in exchange for the greener pastures in the US); foreign nurse recruiters and employers may tend to be abusive; and lawyers may tend to be less ethical.

US immigration laws should be up for a long overdue reform. A temporary visa program for nurses would be a good start. This could be followed by efforts to rationalize and streamline the requirements for foreign nurses entering the US. The CGFNS certification must be re-examined. The Visa Screen Certification with its English language testing must be scrutinized.

By fixing the broken legal framework, deeper changes can occur, possibly the reduction, if not elimination of fraudulent practices that infect the business of foreign nurse recruitment.