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LEGAL NOTES

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Visas for teachers

The plan of the federal government to hire 100,000 teachers over a period of seven years may be a boon to Filipino teachers who intend to work here.

Because of the exploding school enrollment which has resulted in a national shortage of teachers, it is estimated that an additional 2.2 million are needed in the coming decade. Qualified teachers are hard to find especially in high poverty areas, NY City alone needs to fill 6,000 positions this fall. The US may be forced to turn to immigration to ease the shortage.

Teachers may come to the US either as immigrants or non-immigrants. Because of the long delay in the processing immigrant visas, teachers may be brought in through the H-1B program which takes only a few months.

Under the H-1B program, a school acts as the petitioner. The

school has to meet certain procedural requirements such as the submission to the Department of Labor of a Labor Condition Application attesting among others that it shall pay the prevailing wage.

The H-1B petition is submitted to the INS. If the worker is here as a tourist or student, he must be in valid status so he can change to H-1B. If the worker is in the Philippines, the petition approval will be forwarded to the US embassy in Manila where he will apply for an H-1B visa.

There are substantive requirements to establish in order to qualify under the H-1B program. As a general rule, the H-1B category is limited to occupations that require highly specialized knowledge and attainment of a Bachelor's or higher degree in a specific specialty. They are referred to as specialty occupations. There has to be a showing that the proposed duties of the job are so specialized and complex that a university-educated person is necessary to perform them.

The beneficiary needs state licensure if required for practice in the State. If he has not completed a bachelor's or higher degree, he may prove that his education, training and experience in the specialty occupation are equivalent to the completion

of a bachelor's degree.

The teaching profession is clearly a specialty occupation but not all teaching positions qualify for H-1B.

Adult/vocational teaching positions have been held to be not normally H-1B positions because in the adult/vocational school industry a bachelor's degree in a specialized area is not usually required of their teachers.

For example, an adult education teacher who managed a musical retail, service and instructional company was not eligible for an H-1B position even though he planned class schedules and taught individuals or groups.

But a parish music director who taught piano lessons and a project director who taught English to aliens qualified for H-1B. In these cases, the petitioner submitted documentation that professional teaching credentials were required for the job.