

# Immigration Law Guideline for Nurses

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## LATEST DEVELOPMENTS

Nurses who have not yet obtained their green card should take note of the following developments:

1. Third and sixth preference visa petitions that were filed prior to October 1, 1991 did not become ineffective after October 1, 1993 as had previously been announced by the INS. Those 3rd and 6th preference petitions need not therefore be refiled under the new law. Under the Armed Forces Immigration Act of 1991, the old 3rd and 6th preference petitions were since automatically converted to the current employment-based second and third preference respectively. But at the same time, the law also specified that the converted petitions would continue to be effective for no more than two years after their priority date becomes current. Since visa numbers for all employment-based categories were current on October 1, 1991, their validity would have lapsed after October 1, 1993. But the INS recently ruled otherwise.

2. Nurses have until March 20, 1995 to file for Adjustment of Status under the Nursing Relief Act. To be qualified, however, they must have continuously maintained lawful non-immigrant status and should not have worked without INS authorization. The only excuse for not continuously maintaining lawful status is for such nurses to prove that it was through no fault of theirs aside from the technical reasons as defined in the law.

Unauthorized employment, on the other hand, may be excused if it occurred before November 29, 1990. Further, the new rule provides that unauthorized employment, which has been waived as a basis for ineligibility for adjustment of status, may not be used as basis of a determination that the applicant is ineligible for adjustment of status due to failure to continuously maintain lawful nonimmigrant status.

3. The three-year employment requirement of the Nursing Relief Act must have occurred before, on or after the enactment of the said law and may have occurred while the nurses were under certain visa status other than H-1. The employment also need not have been continuous.

If a letter or certification of employment cannot be presented as proof because the employer refuses to issue one or that the previous employer had gone out of business, alternate documentation like pay receipts combined with affidavits of co-workers may be acceptable.

4. Derivative family members abroad cannot avail of the benefits of the Nursing Relief Act. The law is that they must wait until the nurses' priority date becomes current. The Armed Forces Immigration Adjustment Act of 1991 extended derivative status for spouses and children of 3rd and 6th preference immigrants who adjusted their status prior to October 1, 1991 and they will continue to receive said benefits after that date.

## H-1 A REQUIREMENTS

Professional nurses who come to the US to perform nursing services, are categorized under the H-1A visa if they meet the following: 1). They must have obtained a full and unrestricted license to practice professional nursing in the country where they obtained their nursing education. 2). They must have passed the CGFNS exam, or obtained a full and unrestricted license in the state of intended employment. 3). They must be eligible under the laws of the state of intended employment to practice as a registered nurse.

Professional nursing is considered to be a profession even though the course of study is less than a baccalaureate degree; an associate degree signifying successful completion of a program for professional nurses is sufficient.

A CGFNS certificate is required of a nurse who graduated outside the United States or Canada. To qualify to take the CGFNS exam, the nurse must have obtained a license to practice general nursing in the country where she finished her nursing education.

A CGFNS certificate is not necessary if the nurse has obtained a full and unrestricted license to practice professional license in the state of intended employment. Some states like New York allow a nurse to take the licensure exam without passing the CGFNS exam.

The third requirement for H-1A visa entails that the nurse be fully qualified and

eligible under the laws governing the place of intended employment immediately upon admission to the United States. A temporary or interim license will meet this requirement.

### **REQUIRED DOCUMENTS FOR H-1A**

The I-129 petition Form is filled out by the employer and filed with the INS to apply for an H-1A visa. The following are the documents needed:

1. Employer's current approved Form 9029 or commonly known as the Labor Attestation.
- 2). A statement describing any limitations which the laws of the state or jurisdiction of intended employment place on the nurse's services.
3. The CGFNS certificate or RN license.
4. A copy of the license from the nurse's home country, her nursing diploma or degree, and her transcript of records.

### **APPROVAL OF THE I-129 PETITION**

An I-129 petition approval may be valid initially for three years and can be extended for a total of five, or even six years under extraordinary circumstances. On the other hand, a nurse who enters the country with only a CGFNS certificate will be issued a temporary permit which is valid for one year. She is required to take the first available licensing exam upon arrival. If she fails, she loses her eligibility for H-1A classification; if she passes, she obtains a permanent license and may then apply for an extension of her H-1A visa.

A nurse who fails the exam may choose to change her status to B-2 (visitor's visa) or to an F-1 (student visa) if enrolled in a nursing review class so she can legally stay and retake the exam.

After passing the exam the second time around, she may convert back to her H-1A visa.

### **H-1 A EXTENSION**

When a nurse passes the state licensure exam for the first time, she may apply for an extension of her H-1A visa. An I-129 petition form is used for an extension along with the following documents: proof of licensure, proof of valid passport, an employment letter, copy of current H-1A visa, date of entry and employment history, copy of approved labor attestation, copy of I-94, extension information for accompanying spouse and children, if applicable.

### **VISA REVALIDATION**

When a nurse intends to travel, she may apply for revalidation to the Visa Office in Washington DC, which re-issues her an H-1A visa to save the nurse the trouble of going to the consulate offices to issue her an H-1 visa to re-enter the US. However, the Visa office requires that the nurse is still in H-1A status and her visa must not have expired for more than one year.

### **H-1A DEPENDENTS**

The 1990 Immigration Act initiated measures beneficial to the nurse and her dependents. The first measure now allows dependents of nurses--spouses and minor unmarried children--to obtain H-4 visas to travel along with the nurse to the US, or to visit her. The second, which is the principle of dual intent, now permits nurses to have both an H-1A visa and an approved immigrant petition at the same time.

Great sacrifices on the part of nurses and their families had been expended in the past without these favorable measures. Today, nurses may now travel to their homeland and be issued a new H-1A visa to return, even as an immigrant petition has been filed.

### **GREEN CARD UNDER NURSING RELIEF ACT**

The Immigration Nursing Relief Act (INRA) of 1989 allowed thousands of eligible foreign nurses to obtain their green cards almost instantly. Under the INRA, this benefit is known as the Adjustment of Status which permits a nurse to adjust her status to that of a lawful permanent resident.

Other than the condition that a nurse should not have engaged in an unauthorized employment on or after November 29, 1990, the following provisions must be met to qualify a nurse for an Adjustment of Status under the INRA:

1. She must have been in the US under an H-1 status as of Sept. 1, 1989.
2. She must have been working as a registered nurse in the US for three years prior to the date of application.
3. She must have an approved immigrant visa petition.
4. She must have maintained lawful nonimmigrant status up to the time the application for adjustment is filed.

Having met these requirements, the nurse must properly file an Adjustment of Status on Form I-485. Nurses must file their applications on or before March 15, 1995.

Accordingly, the following should be submitted with the application:

1. An approved immigrant visa petition which accords applicant preference status
2. Request for determination that alien is qualified as a registered nurse and is currently on Schedule A.
3. Letter from employers proving that applicant has been employed as a Registered Nurse in the US for at least three years prior to the filing of her application for Adjustment of Status.
4. RN license and registration.
5. Evidence to show nurse was in the US under valid H-1A status on September 1, 1989.

### **INRA DEPENDENTS**

The provisions that apply to nurses qualifying for the Adjustment of Status apply as well to their spouses and children who are already in the United States. The nurse can apply for her spouse and children to adjust status at the same time that she does.

For spouses and children of nurses who are outside the United States, visas may not be immediately available. The alternative is for them to apply for immigrant visa at the US embassy or consulate when the nurse's priority date becomes current. This means that after a nurse has applied for an adjustment of status for herself, she must submit Form I-824 notifying the proper US embassy or consulate that her spouse or children will visa process when the priority date (of principal alien) becomes current.

### **IMMIGRANT VISA PETITION**

Professional nurses are pre-certified by the Department of Labor because it has been determined by the United States Employment Service that there are not sufficient nurses who are able, willing, qualified and available for the occupation. They are required only to file for application for Alien Employment Certification by submitting Form ETA 750 A & B in duplicate. An RN license is not required; a CGFNS certificate suffices. The petition can be approved even though the nurse is already out of status.

US employers may petition their alien nurse workers by submitting the aforementioned, simultaneously with the Form I-140 which is the Immigrant Petition form for Alien Worker. Nurses easily qualify under the employment-based third preference category. But this is currently backlogged and there is a waiting time. It is advisable however to file at the earliest opportunity especially because of the five to six year limitation on H-1A visa.

In some cases, nurses may qualify under a different category such as the employment-based second or first preference.

If they are outstanding professors or researchers, they may file under the first preference. They may qualify for second preference if they are professionals with advanced degrees which may include either those with Master's degrees or those with baccalaureate degree along with at least five years of progressive experience in their profession, or they are of exceptional ability in the sciences or arts.

Priority dates are given as soon as the complete petition forms and proper supporting documentation are submitted to the INS. These priority dates follow the nurse so that even as the nurse changes employer, she may still retain her priority date. A nurse, who qualifies under both the second and third employment-based categories or is a beneficiary of multiple petitions, is entitled to use the earliest priority dates.

Approved employment-based petitions are sent to the INS, if beneficiaries choose to adjust status. If nurses choose visa process and be interviewed in their designated US consulate, the petition is sent to the Transitional Immigrant Visa Processing Center, which, in turn, forwards the petition to the designated US Consulate.

Sorry for not writing you sooner to thank you for your nice present for Spencer. A new mother suddenly finds her time cut in half so that usual things such as a good, long undisturbed night rest and remembering people to whom you owe IOU (thank you) notes become a luxury. Nonetheless, this appears to be one of those paradoxes in life in which so much is taken from you, yet the more you give, the more it replenishes you, fills you out; it leaves you whole, complete.