

From Russia, With Love

Hospice EndNotes September 2010

12.29.2009

Jennifer G. Parser
Kenneth L. Burgess

The U.S. Department of Labor predicts a growing need for registered nurses due to an aging population and technological advances that emphasize preventive health care. In fact, health care is one of the two industry sectors expected to have the largest employment growth, adding 4 million jobs between 2008 and 2018.* To fill this need, employers will have to hire more foreign nurses and health care professionals. There are a variety of nonimmigrant and immigrant visa options for foreign nurses. Let's look at them.

Nonimmigrant or Temporary Work Visas for Nurses

Before either an immigrant or nonimmigrant visa can be issued to a foreign nurse, a VisaScreen certificate must be granted by the Commission on Graduates of Foreign Nursing Schools (CGFNS). This certificate signifies that the applicant's education, training, license and experience are the equivalent of a U.S. nurse of the same type; the appropriate license is unrestricted; and the applicant is fluent in English. Certain nurses are exempt from the equivalency evaluation and English language proficiency testing if their degree is from Australia, Canada (English-speaking territories only), Ireland, New Zealand, South Africa, the United Kingdom, or the United States. The CGFNS, the International Commission on Healthcare Professions (IChP) and the Educational Testing Service Test of English as a Foreign Language administer the VisaScreen and English language tests respectively. A VisaScreen is valid for five years. Additionally, the registered nurse or professional nurse must have a full and unrestricted license to practice professional nursing in the state of intended employment or evidence of having passed the examination offered worldwide by the National Council of State Boards of Nursing. The examination is known as the National Council Licensure Examination (NCLEX-RN). North Carolina requires the NCLEX-RN as well as the CGFNS VisaScreen or alternatively an educational evaluation from the CGFNS, the International Education Research Foundation or Josef Silny Associates. If the nursing program was not taught in English, North Carolina will accept the Test of English as a Foreign Language, Test of English for International Communication Service International Examination or the International English Language Testing System.

The following nonimmigrant visas are only available to registered nurses. Licensed practical nurses and licensed vocational nurses must apply for a permanent resident visa and, upon approval, wait for a visa number to become available, since only a limited number are available annually.

TN Visa

A registered nurse who is a Canadian or Mexican national (not necessarily born there) can work in the United States

as a TN visa holder under the North American Free Trade Agreement. In addition to being qualified as a nurse by their home country, such registered nurses must have been certified by CGFNS and its division, ICHP to obtain the VisaScreen certificate. If approved for TN visa status, Canadian nurses do not need the actual visa inserted in their passports, but Mexican nurses must obtain the visa at a U.S. Consulate in Mexico. The TN visa is issued for one year, and extensions can be indefinite and up to three years in length per extension. Although extendible indefinitely, the TN visa carries with it strong nonimmigrant intent, so that its issuance is dependent upon the TN visa holder continuing to demonstrate ties with Canada or Mexico and an intent to return there at the expiration of the authorized stay.

H-1B Visa

The H-1B visa option is for a “specialty occupation,” which is normally an occupation requiring a U.S. bachelor’s degree or equivalent. This can sometimes be used for RNs, but not always, since it’s possible to be an RN without getting a U.S. bachelor’s degree or its foreign equivalent. However, if the RN’s practice area necessarily requires four years of postsecondary education, he or she may qualify for H-1B visa status. Some examples of nurses that require more advanced training to meet the standard to qualify for an H-1B are clinical nurse specialists, nurse practitioners, certified registered nurse anesthetists, nurse managers or supervisors, or critical care nurses.

To obtain any of the above visas, all registered nurses must pass the national licensing exam, NCLEX-RN. In addition, a registered nurse must meet state licensing requirements where he or she will practice and be certified by the CGFNS for the VisaScreen certificate.

Immigrant or Permanent Resident Visas for Nurses

Only registered nurses or physical therapists are exempt from labor certification, the first step to permanent U.S. residence. Labor certification is the process of proving to the U.S. Department of Labor that the prospective employer unsuccessfully attempted to hire a U.S. worker, either U.S. citizen or a permanent resident, through a detailed recruitment process. Unlike registered nurses, licensed practical nurses and licensed vocational nurses are not exempt from the labor certification process. As a result, they can only be hired through the lengthy immigrant or permanent resident visa process that includes the labor certification component. Therefore, since licensed practical nurses and licensed vocational nurses are not eligible for nonimmigrant visas, they must wait abroad until the labor certification process is complete, the immigrant visa is approved and there is a visa available to them. This results in a long delay, since the nursing profession falls into an immigrant visa category known as the third preference that includes only a limited number of visas annually and is perennially oversubscribed. Even though registered nurses and professional nurses are listed on Schedule A, Group I as pre-certified for employment in the United States by the Department of Labor, the third preference category still applies to them, so they also have a lengthy wait. The challenge to an employer is to keep them in the United States in nonimmigrant visa status while waiting for a permanent resident visa to be both approved and available.

The date on which a petition for permanent residence is filed is extremely important because this is the date, known



p.s.

Poyner Spruill^{LLP}
ATTORNEYS AT LAW

as the “priority date,” that places the applicant in line for a visa. A nurse can change employers once the application is approved even if a visa is not available and retain the same priority date. Once a visa becomes available, a nurse may only apply to adjust status to permanent resident from within the U.S. if here on a valid nonimmigrant visa with the CGFNS certificate, a full and unrestricted RN license in the state of the intended employment or proof of passing the NCLEX, and a VisaScreen.

The process for bringing nurses to the United States is highly technical and can be frustrating. With immigration reform on the horizon and a longstanding nursing shortage in the U.S., we hope the number of visas available to nurses will be increased and the lengthy waits decreased. In the meantime, Poyner Spruill is happy to assist employers with hands-on guidance in hiring foreign-trained nurses.

**Bureau of Labor Statistics, Employment Projections: 2008-2018 Summary for December 11, 2009*



p.s.

POYNER SPRUILL publishes this newsletter to provide general information about significant legal developments. Because the facts in each situation may vary, the legal precedents noted herein may not be applicable to individual circumstances. © Poyner Spruill LLP 2010. All Rights Reserved.

RALEIGH

CHARLOTTE

ROCKY MOUNT

SOUTHERN PINES

WWW.POYNERSPRUILL.COM

301 Fayetteville St., Suite 1900, Raleigh, NC 27601/P.O. Box 1801, Raleigh, NC 27602-1801 P: 919.783.6400 F: 919.783.1075