



IMMIGRATION OF REGISTERED NURSES



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With certain limited exceptions detailed below, petitioning for a foreign-born registered nurse (“RN”) to work in the United States involves sponsoring her for permanent residence. On January 1, 2005, the waiting times for RNs born in the Philippines, India and Mainland-China backlogged three years. **In response, President Bush signed a bill into law on May 11, 2005 which provides for 50,000 additional green cards for RNs, physical therapists (PTs) and their spouses and children. This law has completely eliminated the backlogs. Our law firm has assisted hundreds of employers and RNs across the U.S. in obtaining benefits under this law during the past few months. The State Department expects that, given the present rate of usage, the 50,000 numbers will be used up between October and December of 2006.**

PERMANENT RESIDENCE FOR NURSES PRESENT IN THE U.S.

If the RN is in the United States, the nurse will be able to start working for the employer more expeditiously than if she resides abroad, usually within 5 to 6

months.



1. The RN is required to present to the CIS many of the same documents as stated later in this article. However, since she is in the U.S., she may take the RN licensing examination (officially known as the National Council Licensure Examination for Registered Nurses or the “NCLEX-RN”) in any state. The NCLEX-RN is administered by the National Council of State Boards of Nursing. For more information regarding the exam, see

<http://www.ncsbn.org>

This web site contains contact information for nurse licensing boards in each state.

2. The employer must submit an immigrant visa petition to the appropriate CIS Service Center on behalf of the nurse. In order for the visa petition to be approved, the RN must have passed either the CGFNS exam **or** the NCLEX exam, **or** be in possession of a "full and unrestricted license" as a registered nurse in the state of intended employment.
3. Simultaneously with the submission of the visa petition, the RN and her accompanying family members may apply for adjustment of status to permanent residence, for work permits, and in most cases, for travel permits. A nurse need not be in possession of a VisaScreen certificate in order to apply for permanent residence. However, she cannot obtain permanent residence without being in possession of a VisaScreen certificate (See below).

PERMANENT RESIDENCE FOR NURSES RESIDING ABROAD

If the RN resides abroad, the following steps must be completed before the nurse may be employed in the U.S.:

1. The RN must be in possession of:

- a. A diploma from a nursing school in her country;
- b. An RN license in her country; **and**
- c. A full and unrestricted license to practice professional nursing in the state of intended employment, **or** a certification issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), **or** evidence that she has passed the NCLEX-RN licensing examination but cannot obtain a license because she lacks a social security number.

Although some states require that foreign nurses pass the CGFNS examination before taking the state RN licensing (NCLEX) examination, the number of such states is on the decline. This is because, as of January 2005, it became possible to take the NCLEX abroad in (1) Hong Kong; (2) London, England; or (3) Seoul, Korea. **On January 24, 2006, the National Council of State Boards of Nursing (NCSBN) announced that within the next year, it will be possible to take the NCLEX in Australia, India, Japan, Mexico, Canada, Germany and Taiwan as well as the three locations named above.** In addition, RNs residing abroad may take the NCLEX in Guam and Saipan.

2. RNs together with physical therapists are listed as shortage, or "Schedule A", occupations in regulations (20 C.F.R. §656.22) issued by the Department of Labor. An employer who wishes to immigrate an RN is exempt from having to submit a PERM application to the Department of Labor.

The immigration process begins when an employer submits an immigrant visa petition (Form I-140) to the service center of the Citizenship and Immigration Services (CIS) having jurisdiction over the nurse's place of intended employment. The petition must be accompanied by Labor Department form ETA-9089, by a posting notice, a prevailing wage determination and by various other documents. The petition should also be accompanied by a check for filing fees.

3. The CIS sends the approved visa petition to the National Visa Center (NVC) in Portsmouth, New Hampshire. The nurse (or her attorney) receives a "fee bill" asking for all government processing fees to be paid in advance of processing her application and those of her immediate family members. After the fees are paid, the NVC forwards a packet to the nurse or her attorney containing biographical information forms to be completed by her and her family members, and a list of documents which must be submitted.

4. The RN, or her attorney, sends the signed and completed forms and documents to the NVC which then schedules an appointment for an Immigrant Visa for the RN and her family at the U.S. Consulate or Embassy where they will have their interviews for permanent residence. At this interview, the government will examine various documents including:

- a. Applications for Immigrant Visas
- b. Police Clearances
- c. Birth Certificates
- d. Marriage Certificate, if any
- e. Divorce or Death Certificate of Spouse, if any
- f. Valid Passports
- g. Medical Examinations
- h. Photographs
- i. Recent job offer letter (or employment contract)
- j. Financial information regarding employer
- k. Government filing fees
- l. VisaScreen Certificate

The **VisaScreen Certificate** requirement was imposed by §343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). It added "uncertified health-care workers" to the list of persons who are

inadmissible to the U.S. See §212(a)(5)(C), INA.

A VisaScreen Certificate is issued only after the RN has demonstrated that (1) her education, license and training in her country are equivalent to education, licensure and training in the U.S. and that (2) her level of competence in oral and written English are appropriate to practice professional nursing in the U.S.

The CIS regulations provide that the only organization authorized to issue VisaScreen certificates to RNs is the Commission on Graduates of Foreign Nursing Schools (CGFNS), the organization which is listed in §343. The CGFNS is located at 3600 Market Street, Philadelphia, PA, 19104-2651; telephone: (215) 349-8767; fax: (215) 349-0026; e-mail: support@cgfns.org

The CIS's VisaScreen regulations provide that even if a foreign-born RN is educated, licensed and trained in the U.S., she still must obtain a VisaScreen certificate. However, such RNs may be able to obtain a certificate on a streamlined basis. Obtaining such a certificate requires a significant expenditure of time, effort and money (over \$300) on the part of the nurse.

Unless the nurse was educated in an English-speaking country (U.S., Australia, New Zealand, Ireland, United Kingdom or Canada - all provinces except Quebec), she must achieve a certain minimum score on tests in written and spoken English administered by TOEFL (Test Of English As A Foreign Language), IELTS (International English Language Testing Service) or the TOEIC (Test of English in International Communications). Also, if the RN registered for the MELAB (Michigan English Language Assessment Battery) before November 27, 2002, this result may be sent to the CGFNS for VisaScreen purposes.

Passing scores for RNs on English exams are as follows:

IELTS: Academic Module or the General Training Module 6.5, Overall Band Score, 7.0 Speaking

TOEFL: Paper-Based 540; TOEFL Computer-Based 207; Test of Written English (TWE) 4.0; Test of Spoken English (TSE) 50.

TOEIC: 725; plus TWE: 4.0 and TSE: 50

Information about taking the **TOEFL, IELTS and TOEIC** examinations may be obtained from their web sites. They are all offered worldwide.

Passing scores for the MELAB were as follows: Final Score 79+; Oral Interview 3+.

Generally, the process of obtaining permanent residence may take between 12 to 18 months assuming that the immigrant visa quota from the RN's country of birth is not backlogged. Currently, the quota for RNs is not backlogged.

For additional information, see our article "[Nurses: How to Apply for an RN Residing Abroad](#)".

Temporary Visas for Nurses

Although most RNs do not qualify for temporary working visas, it is possible to obtain temporary visas or work permits for nurses in the following categories:

Trade NAFTA Work Permits (TN Status)

Nurses who are citizens of Canada are exempt from visa requirements. They may work in the U.S. in Trade NAFTA ("TN") status if:

1. They have an offer of employment from a U.S. employer for a period not to exceed one-year;
2. They are licensed in Canada and in the state of intended employment;
3. They are in possession of a VisaScreen certificate;

4. They have a proof of Canadian citizenship; and
5. They pay a small fee to enter the U.S.

TN status may be renewed on a yearly basis either by having the nurse reenter the U.S. with the documents listed above, or by requesting an extension of TN status from the CIS Service Center in Lincoln, Nebraska.

A TN nurse is not supposed to have any intention of remaining permanently in the U.S.

Nurses who are citizens of Mexico may also qualify for TN status. However, they must apply for TN visas at a U.S. consulate in Mexico.

H-1B Specialty Occupation Status

Traditionally, RNs have been considered “professionals” under U.S. immigration laws. From 1952 to 1989, U.S. employers could hire foreign-born nurses using “H-1” temporary visas. In 1989, the Immigration Nursing Relief Act (INRA) was enacted as a five-year pilot program. INRA provided that only health care facilities with “attestations” approved by the Labor Department could obtain “H-1A” status to employ nurses on a temporary basis in the U.S. When INRA expired in the mid-1990s, Congress decided not to extend the law since there was no shortage of RNs in the U.S. according to the ANA.

At the invitation of Senator Sam Brownback (R-KS), Attorney Carl Shusterman testified before the Senate Committee on Immigration in 2001 regarding the need for Congress to reestablish a temporary visa program for foreign-born RNs. Mr. Shusterman also assisted Senator Brownback's staff in drafting a bill which would have created a new temporary visa category for registered nurses. Unfortunately, this bill was not enacted into law.

Other occupations which formerly fell within the “H-1” category became part of the new “H-1B” category. The Immigration Act of 1990 provided that only those occupations for which a four-year university degree was a prerequisite for employment could qualify for “H-1B” status. However, in 1991, the “H-1B” category was amended to include certain foreign-born fashion models after extensive lobbying by that industry.

The H-1B category is an ineffective vehicle for most health care facilities who wish to employ RNs since the minimum entry requirement for most staff RN jobs is a two-year associate degree rather than a four-year bachelors’ degree. However, where a facility can justify that a four-year degree (or equivalent) is the minimum entry requirement for a job, such an RN may be granted an H-1B visa. An **INS memorandum**, dated November 27, 2002, explains the requirements for a registered nurse to obtain H-1B status.

Registered nurses need to be in possession of a VisaScreen certificate in order to obtain H-1B status.



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