

HIRING FOREIGN NURSES IN THE USA

From: Sherry L Neal, Esq, *Immigration Attorney**

Concern is growing over the shortage of nurses in the United States of America and the effects that such shortages will have on the quality of health care that patients receive. Currently, the national unemployment rate for registered nurses is at its lowest level in more than a decade and the gap between supply and demand is expected to continue for at least the next decade. The USA Department of Labor estimates that Registered Nurse is 'one of the 10 occupations projected to have the largest number of new jobs.' In fact, the USA Department of Labor predicts that the employment of registered nurses will grow faster than the average for all occupations through 2010.

There are several factors that contribute to the nursing shortage. First, there are estimates that the population is growing at about 1% a year, which naturally creates an increase in the demand for health care. Second, the population of the USA is ageing and the longer lifespan lends itself to a myriad of medical conditions. Third, the behaviour of some citizens—smoking, drinking, or overeating—results in health problems. Fourth, there has been an appreciable decline in enrolments at nursing schools. Fifth, there are estimates that by the year 2010 about 40% of the nurses will be 50 years or older and thereby reaching retirement. Sixth, the decrease in nursing wages in recent years has caused some students to choose alternative career options. Seventh, the registered nurse population is predominately female, some of which choose reduced work schedules or extended leaves of absence to accommodate family life.

Some states have tried to encourage USA citizens to choose a nursing career. For example, recently California Governor Gray Davis announced his plan to spend \$US60

million over the next 3 years to produce at least 5000 new nurses; a hospital CEO from Texas teamed up with Texas A & M University to develop a bachelor's programme and provide \$425 000 in scholarships; and the Dallas-Fort Worth Hospital Council raised \$600 000 to expand student enrolment in nursing programmes. However, although these measures are commendable, they are simply not sufficient to meet the nursing shortage, namely because they do not produce enough nurses and it will take several years for the prospective nurses to complete the education necessary to practice as nurses. Moreover, some of the traditional strategies that employers have used, such as signing bonuses and relocation expenses, will have very limited success as they simply redistribute the supply of nurses rather than increasing the supply.

As efforts to produce more nurses within the USA will take at least several years, many health-care facilities are looking for quicker solutions to the nursing shortage, including reaching beyond the borders of the USA to attract nurses from overseas. Historically, the immigration laws provided for an H-1a visa for nurses but that visa option expired several years ago. In 1999 Congress passed the Nursing Relief for Disadvantaged Areas Act, which created a H-1c visa for nurses. However, Congress placed a cap of 500 H-1c nurses per year and no more than 25 H-1c nurses can be sent to one state within a given year. Furthermore, the H-1c visa option applies only to disadvantaged areas and the statute and regulations are so restrictive that there are currently less than 20 facilities in the USA that even qualify to employ nurses under the H-1c visa.

The H-1b visa, which is used commonly in the information technology field and other professional occupations, can be used for nurses in certain circumstances. To qualify for an H-1b visa, the position must require at least a bachelor's degree. In some cases, the Immigration and Naturalization Service (INS) takes the view that a bachelor's degree is not required for a registered nurse. The INS bases its view on the reports from the USA Department of Labor which indicate three educational paths to a registered nurse position: a 2-year associate degree, a 3-year diploma or a 4-year bachelor's degree. However, if the health-care institution can prove that a bachelor's degree is necessary for the position, then a foreign nurse

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can obtain an H-1b visa through a process that generally takes less than 3 months.

The North American Free Trade Agreement (NAFTA) provides an immigration classification (TN status) for registered nurses. However, the TN option is limited in scope as NAFTA pertains only to citizens of the USA, Canada and Mexico. Therefore, a facility in the USA seeking to fill the nursing shortage via the TN category is limited to recruiting Canadian citizens or Mexican citizens. While there is no limit on the number of Canadian citizens who may enter the USA under the TN category, there is an annual limit of 5500 Mexican citizens who may enter the USA under the TN option. As Canada has been experiencing its own nursing shortage, it has become adept at keeping its own nurses, thereby limiting the supply of Canadian nurses who are willing to come to the USA. However, in those situations where a health-care facility does find a Canadian nurse, the TN category is a feasible, quick option.

The most practical immigration option is to bring a professional nurse to the USA as a green card holder (also referred to as a 'permanent resident'). The immigration laws permit nurses to apply for green cards under Sched-

ule A, meaning it is an occupation that the USA Department of Labor has predetermined to have a well-known shortage of employees. This Schedule A designation is beneficial in that it allows the employer to bypass the typical first part in the normal three-part green card process. In essence, the employer is relieved of the burden of recruiting for the position and showing that it is unable to find qualified workers in the USA. Thus, the foreign national nurse goes through a two-step process: the first step involves the filing of an I-140 Immigrant Petition with the INS; and the second step involves the nurse appearing for a personal interview at the consulate of their home country and submitting to a background check and medical exam.

It typically takes between 10 and 14 months to obtain the green card and obtain the services of a professional foreign nurse. In the past, some health-care institutions have been reluctant to use the green card option because of processing times and the burden of travelling overseas to recruit foreign workers. However, many institutions are realizing that they will have the same need for nurses a year from now if they do not begin to take proactive steps to solve the problem.