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Immigration Update - Latest Immigration News Concerning Registered Nurses

By Nancy-Jo Merritt

Immigration Reform May Pass Over Registered Nurses

Senator Arlen Specter has introduced his mark-up of the "Comprehensive Immigration Reform Act of 2006" to the Judiciary Committee. As Chair of the committee, Senator Specter's version will begin the debate and likely control elements of the final bill. Unhappily, the draft does not include a work authorization category for registered nurses. Since the sunset of the H-1C category for nurses, hospitals in need of nurses from other countries have had to rely upon the permanent resident (green card) process, which is not only cumbersome and lengthy, but is subject to the vagaries of the world-wide quota system. Currently, Schedule A nurses have access to a separate set of visa numbers but these are limited and will eventually be used up. It is not known when or if Congress plans to restore a work authorization category for nurses.

USCIS Updates Guidance for Schedule A Nurse and Physical Therapist Visa Petitions

Companies filing visa petitions on U.S. Citizenship and Immigration Services (USCIS) Form I-140 for nurses and physical therapists under the Schedule A process have received confusing responses from USCIS with respect to the posting requirements. Schedule A is the blanket waiver of the labor certification requirement for registered nurses and physical therapists, and when the labor certification process moved into the PERM application process last year, petitioning companies were subject to confusing pronouncements with respect to posting the required notices. On February 14, 2006, USCIS sent clarifying instructions to the regional adjudication centers as follows:

For Form I-140 petitions filed before March 28, 2005, the pre-PERM DOL regulations required that an employer provide notice of the position(s) it seeks to fill under Schedule A, to the employer's employees via a notice that must be posted for at least 10 consecutive days at the facility or location of the employment. In order to be in compliance with DOL's notification requirements, the notice...must contain a description of the job and rate of pay and state that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant position. The notice must also state that any person may provide documentary evidence bearing on the Schedule A labor certification application to the appropriate DOL certifying Officer of holding jurisdiction over the location where the alien beneficiary will be physically working.

In the absence of evidence supporting a petition filed before March 28, 2005, adjudicators should issue a request for evidence (RFE) that requests evidence of compliance with DOL's notification requirements in the form of a notice of posting that conforms to the conditions noted above. If all posting requirements are met and the notice has been posted the requisite 10 days

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prior to the date of the RFE response, the posting will be considered timely for adjudication purposes.

In order to apply for certification under Schedule A for petitions filed on or after March 28, 2005, the petitioner should complete and submit:

- *The Form I-140 petition, with appropriate filing fees;*
- *An uncertified Form ETA 9089, in duplicate, signed in the original by an authorized official of the petitioning organization, the alien, and the representative, if any;*
- *A wage determination issued by the State Workforce Agency (SWA) having jurisdiction over the proposed area where the job opportunity exists or by the SWA having jurisdiction over the petitioner's headquarters if the headquarters in the situation of roving employees;*
- *A copy of the notice sent to an applicable collective bargaining unit, or a copy of the notice posted with attestation of posting for at least ten consecutive business days within the period between 30 and 180 days preceding the petition filing;*
- *Copies of any and all in-house media, whether electronic or printed, in accordance with the normal procedures used in the employer's organization for the recruitment of similar positions to the position specified in the Form 9089; and*
- *Evidence of the alien's qualifications:*
 - *For petitions filed for registered nurses, a full unrestricted permanent license to practice nursing in the state of intended employment; CGFNS certificate issued by the Commission on Graduates of Foreign Nursing Schools; or evidence that the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN), administered by the National Council of State Boards of Nursing.*
 - *For petitions filed for physical therapists, a permanent license to practice in the state of intended employment or, a letter or statement, signed by an authorized state physical therapy licensing official, stating that the beneficiary is qualified to take that state's written licensing examination for physical therapists.*

Schedule A Posting Requirements for "Roving" Nurses and Physical Therapists

There has been additional confusion regarding the posting requirements where the actual place of employment is not yet defined, causing an informal hold on adjudication of those Schedule A petitions. The solution used by many employers has been to post at the employer's main or branch office, but that solution has not been approved by USCIS and it has not been clear what would be the eventual "cure" for the posting issue.

USCIS has now decided that the employer must post the required notice at the worksites of all of the employer's worksites, and publish the notice of filing internally using electronic and print media according to the normal internal procedures used by the employer to notify its employees of opportunities in the occupation in question.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A., (1974) J.D., (1978) from Arizona State University.



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