

OUR PRACTICE

Non-Physicians (Immigration)

Because of shortages of U.S. workers at different times and places in several occupations, particularly physicians, nurses, and physical and occupational therapists, immigration of alien health care workers has been significant and has received special attention by Congress and regulators for many years. The immigration of alien physicians is an extraordinarily complex topic discussed separately. Here we cover the practical prospects and procedures for arranging temporary and/or permanent immigration status for non-physician alien health care workers. The situation changes with the vacillating winds of labor shortages, regulatory rearrangements, labor representative initiatives, and congressional action.

Temporary Options

Usually an employer wishes the alien to come to work promptly, and a temporary status can often be obtained more quickly than permanent residence, even if that is pursued later. All of the temporary options below are subject to the relatively new certification requirements discussed further below.

H-1B. The best temporary classification to pursue is usually "H-1B," which is only available when the position requires at least a bachelor's degree in a specific field and the alien possesses that degree or equivalent plus immediate eligibility for any required license to practice the profession in the state of intended employment. U.S. Citizenship & Immigration Services ("USCIS") has recognized that positions for chiropractors, dietitians, medical records librarians, medical technologists, nutritionists, pharmacists, physical and occupational therapists, and supervisory registered nurses (if a four year degree is actually required by the employer) usually meet these requirements.

The complex procedures and special rules for H-1B are discussed on a separate page. The biggest challenge at the moment is obtaining one of the 65,000 slots for new H-1B workers available each federal fiscal year. In true shortage occupations, it is manageable to maintain H-1B status for as long as it takes to obtain permanent residence which normally will be several to many years.

Trade NAFTA ("TN"). More streamlined processing is available to certain occupations for Canadian citizens under the North American Free Trade Agreement (NAFTA), which allows "TN" status to work for a specific employer on an annual basis for the following occupations when the candidate has the correct degree and/or license: dentist, dietitian, medical laboratory technologist, nutritionist, occupational or physical therapist, pharmacist, psychologist, recreational therapist, registered nurse, and veterinarian. The worker may obtain this status by entering the U.S. with evidence of Canadian citizenship, professional credentials such as degree or license, and a well-drafted letter from the employer describing the situation. Alternatively, the employer may file with USCIS a petition to change the status or employer of a worker already in the U.S. For details, see a separate discussion of TN.

H-2B. If the position is the subject of a truly temporary need and an unavailability of minimally qualified U.S. workers, "H-2B" status may be possible, after 3-6 months of processing, on an annual basis with a three year maximum. Proper use of the H-2B program is costly and difficult for the employer even when appropriate. It would only be appropriate for a facility whose census regularly fluctuates, such as a retirement home in South Florida whose census is high in the Winter and low in the Summer. Many recruiters claiming to use the H-2B program to bring in foreign health care workers have been unable to deliver. The bi-annual limit on the number of H-2B workers is routinely reached and requires careful planning as discussed separately.

Students on Practical Training. Many people who come to study in the U.S., and in some cases their family members, may obtain work authorization during or after their graduation. Persons in F-1 student status must obtain a USCIS employment authorization document (I-766) to work off-campus, and their dependents cannot work in F-2 status at all. Persons in J-1 status may present an I-94 card (reflecting validity until D/S), unexpired IAP-66 form, and letter from the program sponsor authorizing the employment with the named employer. J-2 dependents must obtain a USCIS employment authorization document (I-766). The employer technically does not become involved in obtaining work authorization for a student, who deals directly with school and USCIS officials as necessary. More details are available in a separate discussion.

Other temporary visa classifications may be available in special situations, but they should be discussed specifically with immigration counsel if they arise.

Permanent Solutions

When the employer is sponsoring a worker for permanent residence, it is usually through labor certification, which requires a recruitment process to show that no minimally qualified U.S. workers are available. Registered nurses and physical therapists are exempt from that requirement, because the government recognizes they are in a chronic shortage nationally. Nevertheless, efficiently bringing even nurses and physical therapists to the U.S. from abroad requires a careful coordination of immigration, credentialing, licensing and other processes. In any event, the permanent process cannot be used to bring a medical worker to the U.S. until a visa number becomes available, typically five or more years after the first filings are made. The lack of temporary options for nurses severely complicates foreign nurse recruiting.

Sometimes an alien health care worker could be authorized to work while pursuing permanent residence other than through the employer's sponsorship, such as through family sponsorship, visa lottery, refugee or asylum designation, or cancellation of removal. In that case the worker would present a USCIS employment authorization document (I-766). It is possible in some cases to employ an alien worker being sponsored for permanent residence by another employer, but experienced immigration counsel should be consulted about the many potential complications.

Certification Requirement. An alien who is seeking to gain temporary or permanent status for direct or indirect clinical work as a nurse, physical therapist, occupational therapist, speech-language pathologist, medical technologist/technician, or physician assistant must obtain a new type of certification comparable to CGFNS' "VisaScreen". The certification basically includes a combination of substantive tests, confirmation and equivalency evaluation of educational credentials, and a written and spoken English language test.

The English test is not required for graduates of health professional programs in Australia, Canada (except Quebec), Ireland, New Zealand, the U.K., and the U.S. In addition, graduates of certain nursing programs in those countries (plus South Africa) who have a U.S. license may be able to skip the substantive and English exam in obtaining the CGFNS certification. Graduates of programs with certain accreditations can allow exemption from the English language and educational comparability review.

Any alien who wants to receive temporary visa approval for more than a year at a time, or be able to proceed to permanent residence, should be encouraged to seek the certification for purposes of "INA section 212 (1)(5)(C)" from the following:

- **Commission on Graduates of Foreign Nursing Schools** (www.cgfns.org): nurses, physical therapists, speech-language pathologists, medical technologists and technicians, and physician assistants.
- **Foreign Credentialing Commission on Physical Therapy** (www.fccpt.org): physical therapists.

- **National Board for Certification in Occupational Therapy** (www.nbcot.org): occupational therapists.

For the English language exam, the alien should pursue the TOEFL, TWE and TSE (see www.toefl.org); the TOEIC (www.toeic.com), TWE and TSE; or the IELTS without need of TWE or TSE. The TSE (Test of Spoken English) has proven quite difficult for many foreign nurses to pass with sufficient score for certification, particularly from the Philippines, so that the availability of the TOEIC and IELTS is increasingly helpful.

How We Can Help

In the current tight labor market, workers from other countries cannot be categorically ignored. Hiring them, however, often involves complex processes with serious employer obligations. At the moment, limits on visa numbers plague the medical industry. We know the rules concerning exemptions from H-1B numerical limits and can help providers take advantage of them. Experienced immigration counsel should be consulted before entering into any immigration process. We understand the options available in U.S. immigration law and the practical means by which to pursue them. We use state-of-the-art, efficient processes to prepare, track and report status on high volumes of cases that some medical providers need to manage. We care for the family members of immigrating workers. We represent large research hospitals, small rural hospitals (and the entities that own them), nursing home entities, non-profit medical clinics, HMOs, physician groups, and of course foreign national physicians, throughout the United States. When requested (i.e., when we have not been associated only as immigration counsel), we work with our firm's Health Law Group, one of the biggest in the U.S., on contractual, fraud and abuse compliance, and other issues that arise in physician-provider relationships.

Important Links

- [USCIS Guide for Hiring Foreign Nurses](#)
- [USCIS Guide to Employment-based Permanent Residence](#)
- [USCIS Guide to Sponsoring Employee for Permanent Residence](#)