

H-1C Visas for Nurses

My law firm frequently receives inquiries from foreign nationals and U.S. employers concerning the availability of certain visas for foreign-trained healthcare professionals. In the case of registered nurses, the inquiries often seek guidance concerning immigrant visa petitioning for U.S. lawful permanent residency, H-1B professional employee visas and H-1C nurse employee visas. This article generally discusses the often misunderstood H-1C visa option.

The Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 (the “Act”), which took effect December 20, 2006, reauthorized the H-1C nonimmigrant nurses program, a program originally created by the Nursing Relief for Disadvantaged Areas Act of 1999. Under the Act, up to 500 nurses per year can get the visa, but each state is limited to 25 H-1C nurses a year. Each nurse may work for up to three years in health professional shortage areas. Under the law, facilities interested in sponsoring nurses for H-1C visas must submit a document containing a number of attestations regarding the employment of H-1C nurses.

The regulations for the H-1C program became effective in September 2000. One of the most surprising elements when the U.S. Department of Labor (“USDOL”) released its regulations was a finding that, based on the restrictive definition of “facility” Congress put in the statute, only fourteen hospitals in the country could be initially determined to qualify to apply for H-1C visas. However, that was incorrect at the time and there are many more facilities that now meet the H-1C regulatory requirements.

H-1C employers must meet various attestation requirements. The attestation process is administered by the Employment and Training Administration at the USDOL. Enforcement of the attestations is overseen by the Employment Standards Administration’s Wages and Hours Division.

The 1999 law is very similar to a 1989 law that created the H-1A visa for nurses. That visa category expired many years ago, after unsuccessful efforts to extend its life. The key differences between the two programs are that a much smaller number of H-1C visas have been allocated and that the facility where the nurse will work must be in a health professional shortage area.

Certain attestations and filings must be completed by the sponsoring employer in order to secure H-1C visa classification for its prospective employee nurse(s). The paperwork must also be accompanied by a filing fee. After the attestation is approved by the USDOL, and used in support of an H-1C petition approved by USCIS, the employer is required to send a copy of the H-1C petition and USCIS approval to the USDOL. Also, the employer must create a public access file that includes the attestation and its supporting documentation.

The H-1C visa option is a viable strategy for certain foreign nurses and U.S. employers. However, it is not the most reasonably available option for many. Immigrant

visa processing remains the most common method for foreign nurses to work and reside in the U.S. But, unfortunately, the unavailability of certain employment-based immigrant visas for many foreign nationals continues to create multi-year backlogs.

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