

# Immigration and Health Care

The 2003  
New Hampshire

## law hand book

**H**ospitals and clinics are able to hire foreign nationals on a temporary basis in a multitude of health care positions such as physicians, dentists, registered nurses, medical laboratory technicians, dieticians, and occupational and physical therapists. Whether trying to place a physical in an underserved area or addressing the nursing shortage, employers face a complicated immigration process.

### COMMONLY USED NONIMMIGRANT VISAS

Professional health care workers and physicians are commonly employed using the H-1B Nonimmigrant Temporary Worker visa. The process can take several months and involves a prevailing wage requirement, a Labor Condition Application filed with the U.S. Department of Labor (DOL), and the H-1B petition filed with the U.S. Immigration and Naturalization Service (INS). Additionally, if a foreign physician completes medical training in the U.S. while in J-1 status, she is subject to return to her home country for two years before applying for an H-1B visa or immigrant visa. However, if the physician can find employment in a medically underserved area, she may request a waiver of this requirement as long as she commits to working three years in an underserved area. The waiver process takes several months due to processing times for medical licensure and review by the NH Division of Public Health Services, the U.S. Department of State (DOS), and the INS.

A less complex alternative is available to Canadian professionals. Canadian citizens who are registered nurses, medical laboratory technicians, occupational, physical or recreational therapists, and physicians for teaching or research purposes may qualify for the TN (Trade NAFTA) visa. The TN allows a hospital or clinic to employ Canadian professionals for up to one year as long as the employee is engaged in one of the occupations listed in NAFTA. Although issued for one-year periods, a TN professional can reapply yearly.

### PROPOSED INS RULES WHICH WILL AFFECT NONIMMIGRANT HEALTH CARE WORKERS

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included a provision that required immigrant or nonimmigrant foreign nationals who

would be employed as health care workers to obtain a "VisaScreen" certificate that verifies that their education, training, licensing, experience and English competency are comparable to U.S. health care workers. Up to now, the INS has exempted nonimmigrant health care workers from obtaining certification prior to working in the U.S. because regulations had not been written.

Six years later, the INS published proposed final rules in the October 11, 2002 Federal Register (Vol. 67, No. 198, Page 63313-63327). The proposed rules would require that all nonimmigrant health care workers obtain certification prior to working in the U.S. The proposed rules apply to both immigrants and nonimmigrants who seek to enter the U.S. for the purpose of performing labor as a health care worker. Currently nonimmigrant health care workers in H-1B and TN status are exempt from this requirement and only those applying for immigrant visas (the "green card") are required to submit certification.

Seven categories of health care workers will be subject to the health care certification requirements: nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists, clinical laboratory technicians, and physician assistants. Three organizations are authorized to issue VisaScreen certificates: the Commission on Graduates of Foreign Nursing Schools (CGFNS), the National Board for Certification in Occupational Therapy (NBCOT), and the Foreign Credentialing Commission on Physical Therapists (FCCPT).

### WHAT DOES THIS MEAN TO HEALTH CARE FACILITIES?

In the future, all foreign workers employed in one of the above categories will require VisaScreen certification before they can obtain either a nonimmigrant or an immigrant visa. This will delay the employment of all health care professionals when they apply for a visa despite the fact they already possess the same licensing requirements as other U.S. health care workers.

While it's not known when the final rules will go into effect, it would be prudent for RNs, PTs, etc. to start applying for certification because whether they remain as a nonimmigrant or pursue the green card, it will be a requirement in either event.



Robin Vermette

*Robin Vermette is the Immigration Services Manager at Orr & Reno, a law firm in Concord, NH. Prior to joining the firm in 1993, she served as Special Assistant and Immigration Specialist for former U.S. Senator Warren Rudman. As a member of the firm's Employment & Immigration Practice, she focuses on the employment of foreign national professionals. Robin can be reached at 603-223-9111.*

Website Resources:  
INS Proposed Rules:  
<http://www.ins.usdoj.gov/graphics/lawsregs/tr101102.pdf>; NAFTA Professions:  
[http://travel.gov/tr\\_visas.html](http://travel.gov/tr_visas.html);  
[www.cgfn.org](http://www.cgfn.org); [www.nbcot.org](http://www.nbcot.org);  
[www.fccpt.org](http://www.fccpt.org)

**Orr&Reno**  
Professional Association

One Eagle Square, Concord, NH 03301  
603-224-2381  
[www.orr-reno.com](http://www.orr-reno.com)