

**1. H-1B & I-485** - Foreign nationals who were on student (F1) visa when they submitted their 485 application now use EAD or Advance Parole based on their I-485 application. Can these individuals apply for H1B visa and, if so, will applying for the H1B visa nullify their I-485 application? This is an issue as the April deadline for H1Bs approaches.

- **USCIS Response on April 15, 2008:** There are no detrimental consequences if the customer with F-1 status files a Form I-129 nonimmigrant petition to change his/her status to H-1B during the pendency of an I-485 Application to Adjust Status.

**2. FBI Name Check Pending More Than 180 Days** - What can applicants do when their I-485 application has been delayed due to a pending FBI name check and it has been over 180 days since the application was filed?

- **USCIS Response on April 15, 2008:** Customers should first check the posted processing time for the office having jurisdiction over the pending I-485 application by navigating to the "Processing Times" section of [www.uscis.gov](http://www.uscis.gov). If the application is past the posted processing time, customers who have been previously informed that their case is pending due to the FBI name check may inquire with the USCIS customer service line at 1-800-375-5283.

**3. H-1B Visa Process** - Is there a different process for issuing visas to H1-B applicants who are already in the United States, for example, individuals on an F-1 visa?

- **USCIS Response on April 15, 2008:** It is possible to file for a change of status from F-1 to H-1B at any time that the cap has not been reached for a particular fiscal year, provided you:
  - are in valid F-1 status,
  - have met the requirements for a specialty occupation, and
  - have satisfied the criteria for eligibility of H-1B status.

In order to receive a change of status to any category that requires an employer to submit a petition, the individual must be the beneficiary of a Form I-129, Petition for Nonimmigrant Worker, filed with the Service Center having jurisdiction over his or her residence. The Form I-129 serves both as the employer's petition and the nonimmigrant's request for the new status. The new status is not effective until the change of status has been approved.

## Visas for Nurses: "How Does This Impact Your Medical Facility?" May 30, 2008

### Comments

**1. Streamline the Process** -- One caller said that it can take more than 3 ½ years from the start of the process until the nurse arrives in the United States to work. Many foreign nurses cannot afford to wait that long and will abandon the U.S. immigration process to go to Ireland, Dubai, Canada, Australia, or other countries where the process is much faster. The process is long and expensive in the United States.

**2. Cost to the Hospital** – One caller in charge of recruiting nurses at a hospital stated that every time the vacancy rate goes up 1 percent, the hospitals lose \$300,000.

### Questions

**1. USCIS 2002 Policy Memo** -- One caller noted that USCIS does not appear to be following the 2002 USCIS policy memorandum on nurses. It is not clear whether USCIS accepts a two-year degree because it seems different offices apply different standards. Will USCIS clarify the status of this memo? Is USCIS considering training to ensure that there is more consistent adjudication relating to nurses?

**2. Inconsistencies in Adjudication Times and Processing** -- A caller noted that the Vermont Service Center is inconsistent in adjudicating H-1C visas. Some cases take very little time and other cases take a very long time. It was noted that USCIS does not publish the processing times on-line, but the National Customer Service Center can provide processing times. Does USCIS plan to post processing times for the H-1C? Another caller said that

his company filed three cases that contained essentially the same information about the employer but one was denied, one received a RFE, and the other was approved.

**3. Numerical Limits--** The H-1C visa for nurses has a numerical limit of 500 per year. Is each service center limited to a certain number of H-1C cases a year? How does USCIS allocate the visas?

**4. Registered Company** – One caller suggested that USCIS allow certain medical facilities to register to make it easier on the companies that often file for foreign nurses. Would USCIS consider such a program?

**5. Possible Extensions?** --Would USCIS allow nurses to file for additional extensions, similar to Optional Practical Training (OPT) extensions?

#### **Question Received Prior to the Call:**

**1. Tip Sheet on Nurses** – Question from CIS Ombudsman's Office – Do you have a tip sheet that would clarify USCIS' role in the process for obtaining nurse visas?

- **USCIS Response:** USCIS will consider adding a tip sheet to its website.

**2. Explanation re Delays for Foreign Nurses** -- From USCIS' perspective, why does it take so long to get an international nurse to the United States when our country is in a national healthcare crisis?

- **USCIS Response:** Sections 212(a)(5)(C) and 212(r) of the Immigration and Nationality Act provide important safeguards designed to ensure that foreign nursing graduates actually possess the educational background and skills needed to practice as professional nurses in the United States. Moreover, the statute sets numerical limits on the admission of aliens as permanent residents on the basis of their intended employment.

**3. Separate Visas for Schedule A Occupations** -- Why are there not separate visas available for Schedule A occupations, which would allow USCIS to be more fluid in meeting the country's needs?

- **USCIS Response:** The listing of professional nursing as a "Schedule A" occupation in 20 CFR 656.5(a)(2) establishes *only* that the labor certification requirement in section 212(a)(5)(A) of the Act is satisfied with respect to professional nurses. That is to say, the listing in Schedule A reflects only the Department of Labor's determination there is a shortage of professional nurses, and the employment of an alien as a professional nurse will not generally have an adverse impact on wages and working conditions in the United States. The individual nurse must still, however, be eligible for classification for an employment-based immigrant visa. The number of employment-based immigrant visas that is available each fiscal year is set by statute. Congress has not created a separate immigrant visa classification for professional nurses, thus, they must use the existing employment-based visa, generally a "skilled worker" visa under the Third Employment Based preference. Any change to the employment-based visa categories to create a separate immigrant visa for nurses would require new legislation.

**4. Interpretation of H-1B Visas for Nurses** – An email asked if USCIS would take a broader interpretation of the requirements for H-1B visas so that more nursing positions can qualify. The email explained that many hospitals are exempt from the H-1B annual quota due to their non-profit status and affiliation with institutions of higher education, but cannot sponsor nurses for H-1B visas because of USCIS' view that most nursing positions do not require a bachelor's degree.

- **USCIS Response:** The H-1B nonimmigrant visa is available to aliens in "specialty occupations," which, generally, require at least a bachelor's degree in a specific field as a minimum employment qualification. No state in the United States currently limits RN licensure to individuals who hold a bachelor's degree in nursing. Thus, except for aliens who will be employed to practice in certain nursing specialties that do actually require at least a bachelor's degree or higher as a minimum employment qualification, the H-1B nonimmigrant visa is not generally available to RNs. Any change to the current H-1B visa requirements must be made through Congress.

In 1989, Congress enacted the H-1A nonimmigrant visa category as a response to a sustained shortage of registered nurses (RNs). Although originally intended to end on September 30, 1995, the program was extended through legislation until September 1997.

On November 12, 1999, President Clinton signed into law H.R. 441, the "Nursing Relief for Disadvantaged Areas Act" (Public Law 106-095). This law repealed the H-1A visa for nurses and created a new nonimmigrant visa category, the H-1C visa, for nurses who will work in areas designated as "Health Professional Shortage Areas by the Department of Health and Human Services." The H-1C visa, which is more restrictive in its application than the H-1A visa, has been extended until December 20, 2009.

The H-1A and H-1C visas were specifically created for RNs. So far, Congress has not sought to reenact those or a similar nurse-oriented classification. For the reasons stated above, all nurses do not fit under the H-1B classification.

**5. Adjustment of Status for Nurses** -- Is adjustment of status an option right now given the visa limitations at the Dept of State?

- **USCIS Response:** The limitations on the availability of immigrant visas apply to adjustment applicants, just as they do to immigrant visa applicants. For this reason, if no immigrant visa numbers are available for purposes of issuing an immigrant visa, adjustment of status is also unavailable. Registered nurses will generally file for adjustment of status, or for immigrant visas, under the employment-based third preference (EB3) visa category. At this time, there are no visas current for the EB3 category, and this situation applies to adjustment applicants as well as to immigrant visa applicants. Please check the Department of State's monthly Visa Bulletin for visa availability: [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1770.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html).

**6. Priority for Nurses?** – One email noted that priority dates are based on date of filing and not on type of occupation. With shortages in certain industries, such as nursing and pharmacy, is USCIS doing anything differently in the adjudication process to address occupational shortages?

## USCIS Summer 2007 Application Surge: "How Is It Affecting You Now?" May 30, 2008

The following are questions from the teleconference and the answers received from USCIS.

- 1. I-140 Prolonged Processing Times** -- One caller noted that the processing times for I-140s have not moved in the last year. What is the reason for the prolonged processing times for the I-140s?
- 2. Inconsistent Processing Times** – A caller asked why the Vermont Service Center (VSC) is so far behind in processing the I-140 applications compared to the other service centers? Do service centers have different priorities?
- 3. Pre-adjudication** -- Can USCIS provide further clarification on whether there is pre-adjudication of I-140s?
- 4. Medical Examination Requirement** -- USCIS suspended the physical exam requirement during the surge and noted that it could be forwarded later upon request. When will the applicant be notified regarding the medical exam? What if the applicant travels and cannot respond timely?
- 5. AC21 Portability** – A caller asked if USCIS will allow flexibility in AC21 portability because of the delays related to the surge?
- 6. Fingerprints Notices** -- Several callers noted that they have not yet received fingerprint notices and are concerned that their case is further delayed. When should an applicant expect to receive a fingerprint notice?
- 7. Inconsistent Information with Customer Service Avenues** -- One caller noted that he filed an I-140/I-485 petition with the Nebraska Service Center (NSC). The case was transferred to the VSC and later to the Texas Service Center (TSC). USCIS' National Customer Service Center indicated that the case was at the VSC, but USCIS' Case Status Online indicated that the case was at the TSC. The receipt notices for the I-140 and I-485 note different service centers. Does USCIS split up I-140 and I-485 petitions that are concurrently filed? How can