

**Special Advisory to Employers of Foreign National Health Care Workers:
New Health Care Worker Certificate Requirement
for Nonimmigrants Takes Effect July 26, 2004**

June 25, 2004

Summary

Effective July 26, 2004, foreign health care workers – except physicians – must obtain a certificate verifying their training and English language proficiency in order to be approved for temporary nonimmigrant visas to work in clinical care positions in the United States.

The rule applies to all foreign national workers employed on temporary visas, including those workers holding appropriate state licenses. The affected occupations are nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory technologists), medical technicians (also known as clinical laboratory technicians) and physician assistants.

Currently there is only one organization authorized to issue the new health care worker certificate. That organization, the Commission on Graduates of Foreign Nursing Schools (CGFNS), issues a certificate called VisaScreen™. The new rule affects new visa petitions, petitions for extensions of nonimmigrant status, and nonimmigrant applications for visa-exempt Canadians. In addition, starting July 26, 2004, foreign health care workers will be required to present the health care worker certificate at the time they apply for admission at a land, air or sea port of entry.

Background

In July 2003, the U.S. Department of Homeland Security (DHS) issued a final rule implementing section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208). Under section 343, any foreign national coming to the United States for the purpose of working as a nurse, physical therapist, speech-language pathologist, medical technologist, medical technician, occupational therapist or physician assistant is inadmissible unless the foreign national presents a certificate issued by CGFNS or another DHS-approved credentialing body.

The certificate's purpose is to ensure that the foreign national health care professional's education is equivalent to that received through a U.S. program and that the individual has an unencumbered license and is proficient in English. Although the underlying law was enacted in 1996, this rule was previously applied only to individuals seeking permanent residence – a "green card." A blanket waiver had been in effect for nonimmigrant health care workers. Under the new rule, however, the

waiver of the section 343 health care worker certification that had been in effect since passage of the law will expire on July 26, 2004.

The New Regulation

Beginning July 26, 2004, any health care worker seeking to enter the United States, or applying for a change of status or extension of status, must present a health care certificate, regardless of licensure status in the United States. In addition, as of July 26, 2004, any nonimmigrant health care worker subject to the rule (including those on TN, H-1B, H-2B and H-1C visas) must present a VisaScreen™ certificate from CGFNS (or a similar certificate from another credentialing organization) as a prerequisite to entry into the United States for employment as a health care professional. An applicant for a certificate in the field of nursing must also successfully complete either the CGFNS Qualifying Examination or the National Council Licensure Examination for Registered Nurses or a predecessor exam.

The regulation applies even if the alien health care professional holds a valid U.S. license. The regulation also applies in the case of a foreign national health care professional who is educated in the United States. Under the regulation, a foreign national health care professional entering the United States on a temporary employment visa, including a Canadian who crosses the border, must present a health care certificate upon entering the United States.

The new certificate is not required for petitions filed before July 26, 2004; however, those petitions will be approved for no more than one year. The rule continues to apply to green card applicants as well, who must present a health care worker certificate at the time of adjusting status or obtaining an immigrant visa on an employment-based immigrant visa petition. Certificates are *not* required for family-based immigrant petitions.

Starting July 26, 2004, a foreign national health care worker must present the new health care certificate when reentering the United States following international travel, even when in possession of a valid visa or petition. The new requirement is of particular significance to foreign national employees who plan to travel after July 26, 2004. Foreign health care workers returning from vacations, business meetings, or other international travel will not be admitted into the United States without a new health care worker certificate. This applies to subject individuals with valid and unexpired visas, including Canadian nationals who apply for admission at land border ports of entry.

For more information on the VisaScreen™ certificate issued by CGFNS, visit www.cgfns.org.

For additional information on the effects of the new health care certification requirement, please contact:

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