

QUESTIONS AND ANSWERS

7/29/03

DHS Implements Statutory Requirements for Health Care Workers

Q. What are the statutory and regulatory requirements under sections 212(a)(5)(C) and 212(r) of the Act?

A. Under section 212(a)(5)(C) of the Act, an alien who seeks admission to the United States for the primary purpose of performing labor as a health care worker, other than a physician, is inadmissible unless he or she presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. Section 212(r) of the Act provides an alternate certification process for nurses. Any equivalent credentialing organizations must have been approved by the Secretary of DHS in consultation with the Secretary of Health and Human Services.

Q Which health care occupations require certification under section 212(a)(5)(C) of the Act?

A. The health care occupations requiring certification are nurses (registered nurses, licensed practical nurses, and licensed vocational nurses), physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. Those occupations are required to present certificates indicating that they have been found to meet the requirements of sections 212(a)(5)(C) of the Act. Nurses also may establish that they meet the alternate certification requirements of section 212(r) of the Act.

Q. How was section 212(a)(5)(C) of the Act previously implemented with respect to nonimmigrants?

A. The DHS (legacy INS) and the Department of State jointly exercised discretion under section 212(d)(3) of the Act to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. This has allowed nonimmigrants to enter the United States for the purpose of employment as health care workers without having to obtain the health care worker certification. The DHS and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public.

Q. Are immigrants currently required to present health care worker certificates or certified statements?

A. Yes. The publication of this rule has no effect on adjudication and processing of immigrant worker petitions because immigrant health care workers are currently required to present such documentation. Immigrants coming to the United States for the primary purpose of working as nurses, physical therapists, occupational therapists, speech-language pathologists and

audiologists, medical technologists (clinical laboratory scientists), medical technicians (clinical laboratory technicians) and physician assistants, are required to obtain certification indicating that they have been found to meet the requirements of sections 212(a)(5)(C) of the Act. They must present the certification to a consular officer at the time of visa issuance or to the DHS's Bureau of Citizenship and Immigration Services (BCIS) at the time of adjustment of status.

Q. Will this rule require certificates or certified statements for all nonimmigrants?

A. Yes. The rule states that certain nonimmigrant health care workers, predominantly those in the H, J, O, and TN visa classifications, will now be subject to certification requirements. Accordingly, nonimmigrants seeking admission to the United States and changing status and/or requesting an extension of stay must obtain health care worker certification if their primary purpose for coming to the United States is employment in one of the above seven health care occupations.

Q. When will this rule be effective?

A. This rule will be effective on September 23, 2003. Pursuant to its discretion authority under section 212(d)(3) of the Act, the DHS will waive the ground of inadmissibility for nonimmigrants for a period of one year after date of publication of this rule. This will allow all nonimmigrants currently working within the United States or seeking admission into the United States, sufficient time to complete all required testing and certification requirements. This will allow them to continue working without causing an immediate and significant disruption to the United States health care system. At the same time, this will also provide authorized credentialing organizations sufficient time to review and certify the qualifications of this additional population in need of certification. One year after the date of publication of the final rule, nonimmigrant health care workers in certain occupations will be required to present the requisite certification each time they apply for admission to the United States, and if they are applying for an extension of stay or changing status in order to work in one of the covered occupations.

Q. What other changes are taking place as a result of this rule?

A. This rule also describes the English language requirements the workers must meet in order to obtain certification in their respective occupations, and lists the acceptable testing organizations. Certain health care workers will be required to present the certification each time the alien seeks admission to the United States, applies for extension of stay, applies for change of nonimmigrant status, or at the time of adjustment of status. This rule lists the process under which an organization may apply for authorization to issue health care worker certification, what it must do to retain its authorization, the procedure by which its authorization may be reviewed and/or terminated by the DHS, and the appellate process available to the organization if its application for authorization is denied. Finally, this rule specifies the information that must be contained on each health care worker certification issued by an authorized organization.

Q. Is there a form that is to be used to apply for authorization to issue health care worker certification?

A. Yes. The DHS has designed Form I-905, Application for Authorization to Issue Health Care Worker Certificates. The instructions on the Form I-905 list the standards that an organization

must meet in order to receive authorization to issue health care worker certificates. On or after September 23, 2003, the effective date of the rule, any credentialing organization seeking authorization to issue certificates must submit a completed Form I-905 with evidence that the organization meets the required standards. The form must be submitted, with fee, to the Nebraska Service Center. The DHS, in consultation with HHS, will review the completed application and determine whether or not an organization meets the eligibility requirements necessary for authorization to issue certificates. For more information, please contact the BCIS National Customer Service Center at 1-800-375-5283.

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