

# **Frequently Asked Questions on the Extension of Deadline for Presentation of *VisaScreen* Certificate by Certain Canadian and Mexican TN Health Professionals**

July 2004

On July 19, 2004, the Bureau of U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) announced the extension of the deadline for certain "Trade NAFTA" ("TN") health care workers from Canada and Mexico to obtain and present certification of their qualifications to work in the United States (<http://uscis.gov/graphics/publicaffairs/Certification19Jul04.pdf>). On July 22, the interim rule formally extending the deadline from July 26, 2004 to July 26, 2005 was published in the Federal Register (<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-16709.pdf>).

The Final Rule which established the original July 26, 2004 deadline was published in the Federal Register on July 25, 2003, and took effect on September 23, 2003. This extension of the deadline represents a modification of that Final Rule.

Here is a description of the important elements of the extension of the deadline in a question and answer format.

## **Who are the "certain foreign health care workers" covered by the extension?**

The extension announced and published in July 2004 applies only to (1) health care workers from Mexico and Canada (2) who have been admitted to the United States in TN status, (3) to work in one the seven specified health care occupations, (4) who were licensed in the United States before September 23, 2003, and (5) who were employed in the United States before September 23, 2003. The seven covered occupations include: nurses, registered nurses and licensed practical (vocational) nurses; physical therapists; occupational therapists; medical laboratory technicians (clinical laboratory technicians); medical technologist (clinical laboratory scientists); speech language pathologists and audiologists; and physician assistants.

## **What health care workers are not covered by the extension of the deadline?**

Mexican and Canadian TN's whose initial admission as a health care worker occurred on or after September 23, 2003 are not covered by the extension, and must meet the requirements of the original July 26, 2004 deadline. Other health professionals in the seven occupations who are not Mexican or Canadian TNs, or who were admitted after September 23, 2003, are not covered by the extension.

## **What if I meet all the criteria for coverage, but my profession does not require licensure?**

The rule and the preceding announcement all state that the health care worker must have "held

a valid license from a U.S. jurisdiction before September 23, 2003.” Some occupations, however, such as medical technologists and medical technicians, do not require licensure in order to practice in the U.S. CGFNS has requested clarification of the status of these two occupations from DHS.

**What if I was not physically present in the United States on September 23, 2003?**

The interim rule states, “DHS understands that many of these TN nonimmigrants actually live in Canada or Mexico, and regularly travel to their jobs in the United States or to other regions outside the United States. Because many of the aliens to be protected by this interim rule are regular travelers, it is not necessary for them actually to have been physically present in the United States on September 23 in order to benefit from this extended transition period.”

**How can I establish that I qualify for this extension of the deadline?**

A TN worker must provide evidence that his or her initial admission to the U.S. as a TN (or TC, in the case of some Canadians) occurred before September 23, 2003 and he or she was licensed and employed in the U.S. as a health care worker before September 23, 2003. Evidence may include copies of TN or TC approval notices, copies of Form I-94 Arrival/Departure records, employment verification letters and/or pay stubs or other employment records, and state health care worker licenses.

**Does the extension allow qualifying Mexican and Canadian TNs to depart the United States after July 26, 2004 and to return without having to obtain and present a *VisaScreen* or similar certificate?**

Yes. Those Mexican and Canadian TNs who qualify under the terms of the extension may depart the United States (go home, for example, to Canada or Mexico) and return to their employment in the United States prior to July 26, 2005, without having to present to the U.S. immigration officer at the border a *VisaScreen* or similar certificate in order to be re-admitted.

**What if a qualifying Canadian or Mexican TN is outside the United States before July 26, 2004, and will not return until after July 26, 2004?**

If the TN meets all the qualifications listed above for inclusion among those covered by the extension of the deadline, then he or she will be able to return to the U.S. after July 26, 2004, without having to present a *VisaScreen* or similar certificate.

**How will this extension of the deadline work after July 26, 2004?**

DHS will continue to admit TN workers covered by the extension – or grant change of status or extension of stay -- without requiring presentation of the *VisaScreen* or similar certificate until July 26, 2005, on the following conditions:

1. The admission, extension of stay or change of status may not be for longer than 1 year, even if [admission] regulations would normally permit a longer period;
2. The alien must obtain the certification (i.e., *VisaScreen* or 212(r) statement) within one year of the date of decision to admit, extend stay or change alien’s status; and
3. Any entry to the United States, or petition to extend stay or change status made after July 26, 2005 must include proof that the worker has obtained the required certification, if alien seeks to work in a health care profession.

--TNs covered by the extension should be aware that while they will continue to be admitted for a customary period of one year, each time they depart the United States (to return home, for example), they will be regarded as requesting a new admission to the United States when they seek to return to the U.S. to resume work. That is true even if they return home daily: each re-entry constitutes a new admission.

--If a covered TN health professional departs the United States after July 26, 2005, he or she will be required to present the VisaScreen or similar certificate upon return to the U.S.

--If a covered TN health care worker was admitted to the U.S. on July 20, 2005, for example, he or she would have until July 20, 2006, in which to obtain the required certificate. But that one year period applies only while the TN remains in the United States. As soon as the TN worker departs the U.S., he or she loses the one-year grace period and, if he or she attempts to return after July 26, 2005, will be required to present the required certification upon re-entry.

After July 26, 2005: DHS will retain and will have authority to exercise waiver authority on a case-by-case basis. That authority is expected to be used sparingly.

#### **What health care occupations are not covered by the certification requirement at all?**

This requirement does not apply to foreign-educated physicians, health care workers seeking admission to work in a non-clinical health care occupation, including medical teachers, medical researchers, pharmacists and managers of health care facilities; to trainees in H-3, F or J status; to the spouse and dependent children of any non-immigrant (temporary); and to any health care worker seeking admission as the spouse or child of a principal alien, or as a family based immigrant, or in an uncovered profession.

#### **What organizations are authorized to issue the required Section 343 certification?**

CGFNS is authorized to certify all the named health care workers. CGFNS provides the *VisaScreen* certification mandated under the law through its division named the International Commission on Healthcare Professions (ICHP).

In addition, the Foreign Credentialing Commission on Physical Therapy is authorized to certify physical therapists only and the National Board for Certification in Occupational Therapy is authorized to certify occupational therapists only. Following is a chart of the professions requiring certification, and the authorized credentialing organizations as of July 25, 2003 (the date of the issuance of the final rule).

*Following is a List of Authorized Credentialing Organizations as of July 22, 2004:*

1. Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses: Commission on Graduates of Foreign Nursing Schools (CGFNS/ICHP)
2. Occupational Therapists: CGFNS/ICHP and National Board for Certification in Occupational Therapy (NBCOT)
3. Physical Therapists: CGFNS/ICHP/ICD and Foreign Credentialing Commission on Physical Therapy (FCCPT)
4. Speech Language Pathologists and Audiologists: CGFNS/ICHP

5. Medical Technologists (Clinical Laboratory Scientists): CGFNS/ICHP
6. Physician Assistants: CGFNS/ICHP
7. Medical Technicians (Clinical Laboratory Technicians): CGFNS/ICHP