



January 23, 2003

David R. Howell  
Acting Executive Associate Commissioner  
Policy & Planning  
Immigration and Naturalization Service  
425 "I" Street, NW, Room 4034  
Washington, D.C. 20536

Stephen K. Fischel, Director  
Office of Legislation, Regulations and  
Advisory Opinions  
Bureau of Consular Affairs  
U.S. Department of State  
Visa Office, SA-12401 "E" Street, N.W.  
Washington, D.C. 20522

Lyman G. Van Nostrand  
Deputy Director  
Office of Planning, Room 14-45  
Health Resources and Services Administration (HRSA)  
Department of Health and Human Services  
5600 Fishers Lane  
Rockville, MD 20857

**RE: Proposed Rule Certificates for Certain Health Care Workers  
(INS 2080-00): Acceptance of English Language Test Results  
from TOEIC and IELTS**

Dear Messrs. Howell, Fischel and Van Nostrand:

As Chief Executive Officer of the Commission on Graduates of Foreign Nursing Schools ("CGFNS"), I am writing to inform you of a plan by CGFNS to alleviate the current serious shortage of English language proficiency tests available to foreign health care workers seeking certification to perform health care services in the United States. CGFNS believes that this plan is fully consistent with section 212(a)(5)(C) of the Immigration and Nationality Act ("INA"), and with current and proposed rules under 8 C.F.R. 212.15, and intends to implement it in 30 days.

As you are aware, the proposed rule referenced above would approve two new English language tests for use by foreign health care workers, namely, the Test of English

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in International Communication ("TOEIC") and the International English Language Testing System ("IELTS"). CGFNS and others commenting on the proposed rule noted the serious shortage in English language testing systems, as the offeror of the Michigan English Language Assessment Battery ("MELAB") as of November 27, 2002 effectively ceased offering that test to foreign health care workers.

Section 212(a)(5)(C) of the INA grants to the Secretary of Health and Human Services ("HHS"), in consultation with the Secretary of Education, the sole authority to determine which "*nationally recognized, commercially available, standardized assessments*" of English language proficiency are "*appropriate*" for foreign health care workers, and what the required passing scores will be. Because the HHS determination is explicitly not subject to administrative or judicial review, there is no requirement that the determination be published in an interim or a final rule. The proposed rule has thus announced the determinations made by the Secretary of Health and Human Services in consultation with the Secretary of Education, together with the appropriate passing scores.

CGFNS will therefore begin accepting test scores from both TOEIC and IELTS effective Monday, February 24, 2003, for foreign health care workers seeking certification under section 212(a)(5)(C), unless you, or the organizations you represent, specifically object by letter received by CGFNS prior to that date. CGFNS will evaluate test results based on the passing scores for various occupations specified in 8 C.F.R. 212.15(g)(4) of the proposed rule.

Thank you for your attention to this matter.

Sincerely,



Barbara L. Nichols,  
Chief Executive Officer

cc: Test of English in International Communication (TOEIC)  
International English Language Testing System (IELTS)  
National Board for Certification in Occupational Therapy  
Foreign Credentialing Commission on Physical Therapy