

Immigration options for health-care workers

By John R. Wilson

The use of foreign health care workers to address critical shortages in the work force will remain a fixture of health-care delivery systems for at least 10 years.

Before a health-care provider employs a foreign worker, the employer must secure work authorization from the Immigration and Naturalization Service. The type of employment and whether a temporary or permanent position is sought will determine the immigration process and the type of visa to be utilized.

When attempting to secure permanent residency, or green card status, on behalf of RNs or physical therapists (PTs), the INS has developed a streamlined process that saves many months in processing time, as well as substantial cost.

Because the Department of Labor has predetermined that there are insufficient numbers of U.S. citizens or resident aliens in the United States qualified and willing to accept positions as RNs or PTs, the process begins with an application submitted to the INS. In New England, all applications would be filed with the INS office in Vermont. The INS processes the application, and depending on the country where the health-care worker resides, the next step is an approved application submitted to a U.S. consulate abroad. The RN/PT then presents proof of passing scores on substantive examinations as well as English language skills, following which the U.S. consulate is in a position to issue an immigrant visa to the health-care worker.

With the visa, the foreigner and family would then be able to enter the U.S. and begin working. Family members do not receive work authorization. The total time period for this process is currently about 10 months.

If the foreign RN/PT is already in the United States in legal status, such as a visitor or student, there is a much faster procedure, and assuming the RN/PT has passed all appropriate examinations, he or she would be able to start employment within two or three months and would secure a green card within about a year.

An immigrant visa also may be obtained for other health-care professionals, such as physicians, but first there must be a determination by the Labor Department that there are no U.S. workers willing to assume the employment. This will require advertising and certifi-

cation by the department. Due to delays in processing, a health-care employer can expect this stage of the process to add at least six months to the overall time period, resulting in an approximate total time of 18 months.

Of course, if a U.S. worker is found who can accept the employment, then the foreign worker would not receive a green card.

As with the previous example, if there are foreign physicians or radiologists already in legal status in the United States, the process can be shortened substantially, saving many months and substantial costs.

Health-care workers also may be employed on a temporary basis as non-immigrants. The most widely used temporary non-immigrant classification is the H visa, which is valid initially for a period of three years and renewable for a maximum of six years. The threshold requirement for the H visa is that the position must require at least a bachelor's degree.

Another temporary visa under NAFTA is called the "trade national," or TN, visa. There are a limited number of professionals who may enter the country with this type of visa, but it does include RNs, and is an excellent alternative.

The TN visa application is made at the border (for Canadians), and takes about 15 minutes to adjudicate. The cost is less than \$100, and the health-care worker may enter the United States for a period of up to one year, renewable indefinitely. Often, a foreign health-care worker will enter the United States in TN status, convert to H status and then process for their green card.

This is a lengthy way to achieve green card status, but can be successful.

There also are other less commonly used temporary classifications for employing foreign health-care workers to consider, such as the O visa, or Optional Practical Training, for students.

It is important for employers to recognize that the employment of foreign workers can be beneficial to them for alleviating the severe lack of qualified U.S. workers, but it's advised that an employer consult counsel to learn all options available in this field. **NHR**

John R. Wilson, of the Goff and Wilson law firm, with offices in Concord, N.H., and Paris, France, represents U.S. employers throughout the United States in immigration-related matters. For more information, call 228-1277 or e-mail, jwilson@goffandwilson.com. This is the second of two articles.

Before a health-care provider employs a foreign worker, work authorization must be obtained from the INS