



U.S. Department of Justice
Immigration and Naturalization Service



HQISD 70/6.2.8-P

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

November 27, 2002

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DIRECTOR, ADMINISTRATIVE APPEALS OFFICE
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES DIVISION

FROM: Johnny N. Williams /S/
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses

The purpose of this memorandum is to provide field offices with guidance on adjudication of H-1B petitions when the beneficiary is a registered nurse (RN). This memorandum clarifies that while typical RNs generally do not meet the requirements for H-1B classification, aliens in certain specialized RN occupations are more likely than typical RNs to be eligible for H-1B status.

A. General Requirements for H-1B Classification in a Specialty Occupation

The Service will approve an H-1B nonimmigrant worker petition filed on behalf of certain foreign nurses if the statutory and regulatory requirements for H-1B classification are met. An individual is eligible for H-1B nonimmigrant classification if he or she is in a specialty occupation. Under section 214(i)(1) of the Immigration and Nationality Act (Act), a specialty occupation “means an occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” Under section 214(i)(2) of the Act, the specialty occupation requirement is met by “(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation¹, (B) completion of the degree described in paragraph (1)(B) for the occupation, or

¹ An H-1B petition filed for an alien who does not have a valid state license shall be approved for a period of one year provided that the only obstacle to obtaining state license is the fact that the alien cannot obtain a social security card from the Social Security Administration. See attached Service memorandum, *Social Security Cards and the Adjudication of H-1B Petitions*, November 20, 2001.

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.”

An employer may submit evidence that the alien has the required degree (or its equivalent) by submitting:

1. a copy of the alien’s U.S. bachelor’s or higher degree in the specialty occupation,
2. a copy of the foreign degree determined to be equivalent to the U.S. degree, or
3. evidence that the alien’s education and experience are equivalent to the required U.S. degree.

In order to be licensed as an RN, an individual must graduate from an approved nursing program and pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN) exam. The minimum requirement for entry into the field of nursing as a registered nurse is a two-year associate degree in nursing (A.D.N.), meaning a typical RN would not likely be eligible for H-1B classification. (See Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, 2002-2003 edition, p.269.) Accordingly, RN positions do not generally require a bachelor’s or higher degree. In order to qualify an RN position as H-1B, the petitioning employer can meet the existing regulatory requirements by showing that:

1. a bachelor’s or higher degree (or its equivalent) is normally the minimum requirement for entry into the position;
2. the degree requirement is common to the industry for parallel nursing positions (*i.e.*, employers in the same industry require their employees to hold the degree when they are employed in the same or a similar position);
3. the employer normally requires a degree or its equivalent for the position; or
4. the nature of the position’s duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree (or its equivalent).

In determining degree equivalencies, the Service uses a formula that requires the beneficiary to have three years of specialized training and/or work experience for each year of college-level training that the beneficiary is lacking. 8 CFR 214.2(h)(4)(iii)(D)(5). The Service will be issuing more detailed technical guidance on this subject in the near future.

Accordingly, a registered nurse will be eligible for H-1B classification if the petitioner can demonstrate that the position and the individual alien meet the requirements for establishing that the position is H-1B as outlined above.

B. Advanced Practice Nurses

In contrast to most general RN positions, certain specialized nursing occupations are likely to require a bachelor’s or higher degree, and accordingly, be H-1B equivalent. Positions that require nurses who are certified advanced practice registered nurses (APRN) will generally

be H-1B equivalent due to the advanced level of education and training required for certification. An employer may require that the prospective employees hold advanced practice certification as one of the following: clinical nurse specialist (CNS), certified registered nurse anesthetist (CRNA), certified nurse-midwife (CNM), or certified nurse practitioner (APRN-certified). If the APRN position also requires that the employee be certified in that practice, then the nurse will be required to possess an RN, at least a Bachelor of Science in Nursing (BSN), and some additional graduate level education.

The following list describes certain advanced practice occupations that will generally be H-1B equivalent if the position requires, and the alien has obtained, advanced practice certification:

- **Clinical Nurse Specialists (CNS):** Acute Care, Adult, Critical Care, Gerontological, Family, Hospice and Palliative Care, Neonatal, Pediatric, Psychiatric and Mental Health-Adult, Psychiatric and Mental Health-Child, and Women's Health
- **Nurse Practitioner (NP):** Acute Care, Adult, Family, Gerontological, Pediatric, Psychiatric & Mental Health, Neonatal, and Women's Health.
- **Certified Registered Nurse Anesthetist (CRNA);** and
- **Certified Nurse-Midwife (CNM).**

C. Nurses in Administrative Positions

Certain other nursing occupations, such as an upper-level "nurse manager" in a hospital administration position, may be H-1B equivalent since administrative positions typically require, and the individual must hold, a bachelor's degree. (*See* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 269.) Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (*See* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 75.)

D. State Requirements

As stated earlier in this memo, a general RN position does not qualify as H-1B. However, the National Council on State Boards of Nurses (NCSBN) has confirmed that the state of North Dakota is the only state that requires that an individual possess a BSN in order to be licensed as an RN in that state. This applies to individuals who enrolled in a nursing program after January 1, 1987. In a situation in which the BSN is a prerequisite to practicing in the field, the position will qualify as an H-1B position. Thus, a petition for an RN position in the state of North Dakota will generally qualify as an H-1B position due to the degree requirement for licensure. The Service will issue updated field guidance if it becomes aware of other states that adopt this requirement.

E. Nursing Specialties

An increasing number of nursing specialties, such as critical care and peri-operative (operating room), to name two examples, require a higher degree of knowledge and skill than a typical RN or staff nurse position. Further, certification examinations are available to registered nurses who are not advanced practice nurses, but who possess additional clinical experience. Examples of these types of certification examinations are school health, occupational health, rehabilitation nursing, emergency room nursing, critical care, operating room, oncology and pediatrics. In such nursing specialties, the petitioner may be able to demonstrate that the H-1B petition is approvable by demonstrating that the position meets the requirements outlined in Section A above, and by demonstrating that the individual nurse meets the requirements. For example, for certain critical care nurses the employer must demonstrate, through affidavits from independent experts or other means, that the nature of the position's duties are sufficiently specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree (or its equivalent). As always, each petition must be adjudicated on a case-by-case basis and a decision to approve or deny the petition must take into account the totality of the requirements for the position, (*i.e.*, educational requirements, additional training in the specialty, and the experience), and the individual's qualifications for the position.

Questions regarding this memorandum may be directed to the Office of Adjudications through appropriate channels.