



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.8

Office of the
Adjudications

425 1 Street NW
Washington, DC 20536

Sylvia J. Boecker, P.C.
2 The Palisades
Williamsburg, VA 23185

FEB 27 2003

Dear Ms. Boecker:

Thank you for your letter of February 12, 2003, regarding a recently issued Immigration and Naturalization Service (INS) memorandum titled "Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses."

The memorandum summarizes the statutory and regulatory requirements that must be met in order for an individual to be found eligible for H-1B nonimmigrant classification. It should be noted that the article you submitted as an attachment to your letter incorrectly characterizes the nature and intent of the memorandum. The new memorandum does not establish or implement new policy; however, it does clarify that under the current statutory and regulatory requirements, some nurses may be eligible for H-1B classification.

You questioned whether an alien who is seeking, H-1B classification as a nurse must be licensed before he or she is petitioned by an employer. The INS regulations at 8 CFR 214.2(h)(4)(iii)(C)(3) require an alien to hold an unrestricted state license, registration or certification which authorizes the alien to fully practice in the specialty occupation and be immediately engaged in that specialty in the state of intended employment. If an alien who is eligible for H-1B classification must possess a state license in order to fully practice and be immediately engaged in that specialty, the alien must possess the license at the time the H-1B petition is filed. As discussed in the attached November 20, 2001 memorandum, if the only barrier to licensure is the lack of a social security number and the petition is otherwise approvable, the INS may approve the H-1B petition for a period of one year. If there are other barriers to licensure, such as the alien not having taken or passed the NCLEX-RN examination, then the H-1B petition is not approvable.

We hope that this information has been useful to you. If you have further questions concerning this matter, please do not hesitate to contact this office at the above address.

Sincerely

Efrén Hernández III
Director, Business and Trade Branch