



**Homeland
Security**

Improving the Processing of “Schedule A” Nurse Visas December 5, 2008

I. EXECUTIVE SUMMARY

The nursing shortage in the United States is becoming increasingly problematic and may adversely affect the health care industry. According to a U.S. Department of Health and Human Services (HHS) 2007 study, the United States will require 1.2 million new Registered Nurses (RNs) by 2014 to meet the nursing demand: approximately 500,000 RNs to replace nurses leaving the field, and “an additional 700,000 to meet growing demand for nursing services.”¹ Congress has passed legislation that recognizes the labor shortage for nurses. The U.S. Department of Labor (DOL) has taken steps to address the shortage by designating RNs as a Schedule A occupation.² Schedule A precertification is a determination that there are insufficient U.S. nurses who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of foreign nationals.³

In meetings with nursing organizations and stakeholders, the Citizenship and Immigration Services (CIS) Ombudsman heard concerns about the time it takes for a foreign nurse to be admitted to the United States to work. Visa availability continues to be the principal obstacle for many immigrants and non-immigrants seeking employment in the United States, and the number of visas available can only be addressed through legislation.

Apart from legislation, federal agencies can implement changes to facilitate the processing of immigration applications. For example, DOL has made adjustments to the normal procedures for Schedule A nurse employment-based immigrant applications by allowing employers seeking

¹ U.S. Department of Health and Human Services, “Toward a Method for Identifying Facilities and Communities with Shortages of Nurses, Summary Report” (Feb. 2007).

<http://bhpr.hrsa.gov/healthworkforce/nursingshortage/default.htm> (accessed Oct. 21, 2008). HHS cites to a 2006 Bureau of Labor Statistics report. Factors attributing to the increase in demand include an increase in population, a larger proportion of elderly population, medical advances, and a number of RNs older than 55 retiring. *Id.*

² 20 CFR § 656.5(a)(2). *See also* 20 CFR § 656.15 and U.S. Department of Labor, “Permanent Labor Certification” <http://www.foreignlaborcert.doleta.gov/perm.cfm> (accessed Oct. 24, 2008).

³ There are two groups within Schedule A. Group I consists of physical therapists and professional nurses. Group II consists of foreign nationals of exceptional ability. 20 CFR § 656.15.

to hire a foreign nurse to bypass the first step in the process.⁴ Likewise, USCIS should adjust its normal procedures for processing Schedule A nurse applications. Specifically, USCIS should separate and prioritize, as well as centralize, its process for these applications in accordance with Congress' expressed concern over the national nursing shortage and to ensure consistent adjudication of applications. In addition, USCIS may wish to consider establishing points of contact with DOL on the processing of Schedule A nurse applications as partners hoping to achieve the same goal: the expeditious processing of Schedule A nurse applications.

The CIS Ombudsman recommends that USCIS:

- **Separate and prioritize Schedule A green card nurse applications⁵ so that they can be expedited, without the requirement of a written request, upon immigrant visa availability; and**
- **Centralize Schedule A nurse applications at one designated USCIS service center to facilitate more efficient and consistent processing of Schedule A applications.**

Additionally, the CIS Ombudsman suggests that USCIS:

Regularly communicate with DOL and develop points of contacts at DOL to discuss concerns and direct inquiries regarding the processing of nurse immigration applications.

II. BACKGROUND

A. The Nursing Shortage and its Effects on Health Care and the Economy

RNs have a variety of employers, including public health facilities, long-term care facilities, and hospitals. They provide invaluable services to an aging U.S. population. The American Hospital Association (AHA) reported on the impact that hospitals alone have on the United States' health care and economy: there are over 35 million people admitted, nearly 118 million people treated in emergency rooms, over 4 million babies delivered, and over 481 million outpatients treated each year.⁶ Furthermore, hospitals are one of the largest private sector employers, employing more than five million people, and stimulating economic productivity.⁷ According to the report, "[w]hen also accounting for hospital purchases of goods and services from other businesses, hospitals support one of every 10 jobs in the [United States] and \$1.9 trillion dollars of economic

⁴ Employment-based immigrant applications usually involve three steps: 1) the employer files a Labor Certification with DOL. DOL checks the U.S. labor market and determines if there are any qualified and available U.S. workers for the position; 2) the employer files Form I-140 (Immigrant Petition for Alien Worker) with USCIS; and 3) the foreign worker applies for an immigrant visa if abroad or adjustment of status if already in the United States. Schedule A designation eliminates Step 1.

⁵ The CIS Ombudsman notes that USCIS may wish to consider prioritization for other Schedule A categories with a recognized shortage. At this time, the CIS Ombudsman has not conducted enough research to make a recommendation.

⁶ American Hospital Association, "Hospital Facts to Know" (Mar. 2008)

<http://www.aha.org/aha/content/2008/pdf/08-issue-facts-to-know-.pdf>. (accessed Oct. 17, 2008).

⁷ *Id.*

activity.”⁸ RNs⁹ are a significant factor in the success of hospitals and the health care industry. The Bureau of Labor Statistics reported that RNs held approximately 2.5 million jobs in 2006¹⁰ with the majority of RN positions filled in hospitals.¹¹

According to an HHS study, 2006 estimates from the Bureau of Labor Statistics suggest that the United States will require 1.2 million new RNs by 2014 to meet the nursing demand: 500,000 RNs to replace RNs leaving the field, and another 700,000 to meet growing demand.¹² The current vacancy of RNs at the U.S. Department of Veteran Affairs is ten percent.¹³ Notably, the demand for nurses will continue to grow by two to three percent each year.¹⁴ Reports have indicated that this estimate will increase given inadequate domestic facilities to educate and train nurses, the low number of nursing students, the existing aging workforce, and the barriers in the immigration process for foreign nurses.

The shortage of RNs and an increased workload for current nurses is a threat to the quality of patient care. Looking at the impact of nurse staffing and how it relates to patient care, the American Association of Colleges of Nurses reported that an increase in RNs contributed to a decrease in hospital-related mortality and reduced lengths of patient stays, whereas inadequate staffing was reported to compromise patient safety.¹⁵ Furthermore, most RNs have voiced concerns that there is not enough time to “maintain patient safety, detect complications early, and

⁸ *Id.*

⁹ U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, 2008-09 Edition, defined Registered Nurse as: “regardless of specialty or work setting, treat patients, educate patients and the public about various medical conditions, and provide advice and emotional support to patients’ family members. RNs record patients’ medical histories and symptoms, help perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.” <http://www.bls.gov/oco/ocos083.htm> (accessed Oct. 20, 2008).

¹⁰ *Id.* Hospitals employ the majority of RNs at 59 percent, physician offices employed eight percent, home health care services employed five percent, nursing facilities employed five percent, employment services employed four percent, and outpatient care facilities employed three percent. *Id.*

¹¹ U.S. Department of Labor, “Quick Facts on Registered Nurses (RNs)” (2006) <http://www.dol.gov/wb/factsheets/Qf-nursing-06.htm>. (accessed Oct. 14, 2008). Three out of five RN positions are in hospitals. *Id.*

¹² U.S. Department of Health and Human Services, “Toward a Method for Identifying Facilities and Communities with Shortages of Nurses, Summary Report” (Feb. 2007). <http://bhpr.hrsa.gov/healthworkforce/nursingshortage/default.htm> (accessed Oct. 21, 2008). HHS cites to a 2006 Bureau of Labor Statistics report. The report notes a need to recruit new nurses to replace RNs older than age 55 who are expected to retire. *Id.*

¹³ Americans for Nursing Shortage Relief, “Testimony of the Americans for Nursing Shortage Relief (ANSR) Alliance Regarding Fiscal Year 2009 Appropriations for Nursing Workforce Development Programs” Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Committee on Appropriations; United States House of Representatives (Mar. 31, 2008). <https://www.ncsbn.org/FY2009CorrectedHouseTestimony.pdf> (accessed Oct. 17, 2008). According to the testimony, the U.S. Department of Veteran Affairs is the largest sole employer of Registered Nurses.

¹⁴ American Association of Colleges of Nurses, “Fact Sheet: Nursing Shortage” (updated Sept. 2008). <http://www.aacn.nche.edu/Media/FactSheets/NursingShortage.htm> (accessed Oct. 24, 2008). The fact sheet cited to Peter I. Buerhaus, PhD, RN, FAAN, Valere Potter, Douglas O. Staiger, PhD, John French, and David I. Auerbach, PhD, The Future of the Nursing Workforce in the United States: Data, Trends and Implications (Mar. 2008) for this information.

¹⁵ *Id.* The fact sheet cited to a comprehensive report initiated by the Agency for Healthcare Research and Quality, “Nursing Staffing and Quality of Patient Care” (Mar. 2007) for this information.

collaborate with team members.”¹⁶ Americans for Nursing Shortage Relief presented testimony before a House Subcommittee on the nursing crisis warning that the shortage could result in serious national security and health concerns if there is a pandemic flu or other man-made or natural disaster, and the United States does not have adequate health care resources to respond.¹⁷

One stakeholder provided the CIS Ombudsman with an example of patient safety concerns that can result from an inadequate nursing staff. A hospital located in a remote area received a call during the evening shift that 11 new patients were being assigned to the unit. However, the hospital only had one RN on duty in the unit at that time. The incident was immediately reported as a code violation. The stakeholder noted that the number of such incidents is increasing and the “nurse/patient ratios in many hospitals are no longer safe.”¹⁸

The shortage also makes it difficult for facilities to expand services or prepare for an emergency response.¹⁹ One hospital representative reported to the CIS Ombudsman that hospitals have been forced to close beds and wings to their hospitals due to the shortage.²⁰ In a public teleconference held by the CIS Ombudsman on May 30, 2008, a nurse recruiter commented that every time the vacancy rate for RNs goes up one percent, a hospital may lose as much as \$300,000.²¹

The nursing shortage is credited to a variety of factors, including the growth of the aging U.S. population and their associated health care needs, an inadequate supply of nursing educators, and an aging nurse workforce leaving the profession.²² The American Nurses Association (ANA), indicates that the nursing shortage is caused in part by high turnover rates, “dissatisfaction with the current work environment,” and a lack of funding for domestic nursing schools to educate U.S. workers.²³ Citing to the National League for Nursing’s 2005-2006 study, ANA reported, “88,000 qualified applications were denied due to lack of capacity in all three types of basic nursing programs.”²⁴

¹⁶ Dr. Peter Buerhaus, et al, “Hospital RNs’ and CNOs’ Perceptions of the Impact of the Nursing Shortage on the Quality of Care” *Nursing Economics* (Sept. – Oct. 2005).

¹⁷ Americans for Nursing Shortage Relief, “Testimony of the Americans for Nursing Shortage Relief (ANSR) Alliance Regarding Fiscal Year 2009 Appropriations for Nursing Workforce Development Programs” Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Committee on Appropriations; United States House of Representatives (Mar. 31, 2008). <https://www.ncsbn.org/FY2009CorrectedHouseTestimony.pdf> (accessed Oct. 17, 2008). Testimony also notes that nurses are on the front-line in natural disasters and provides examples, such as hurricanes Katrina and Rita.

¹⁸ Email provided to the CIS Ombudsman (Oct. 23, 2008).

¹⁹ Council on Physician and Nurse Supply, “Finding Solutions to the Healthcare Staffing Shortage” <http://www.physiciannursesupply.com/> (accessed Oct. 17, 2008).

²⁰ CIS Ombudsman conference call with nursing organizations and stakeholders, “The Nursing Shortage and the Current Immigration Process” (Aug. 12, 2008).

²¹ CIS Ombudsman Teleconference Call, “Visas for Nurses: How Does This Impact Your Medical Facility” (May 30, 2008) http://www.dhs.gov/xabout/structure/gc_1192724755499.shtm#7 (accessed Oct. 17, 2008).

²² Karl D. Yordy, M.P.A., “The Nursing Faculty Shortage: A Crisis for Health Care” (Spring 2006) <http://www.rwjf.org/files/publications/other/NursingFacultyShortage071006.pdf>.

²³ American Nurses Association, “Statement for the Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on Registered Nurse Immigration” (June 12, 2008).

²⁴ *Id.* Testimony noted that 20 percent of applicants were not accepted into bachelor’s programs and 32.7 percent from associate degree programs. *Id.*

B. Immigration Options for Nurses

Many health care employers are forced to look to foreign nurses as a solution to address the nursing shortage. Foreign RNs may enter the United States on a limited basis with non-immigrant or immigrant visas. Non-immigrant visas provide a temporary period for foreign RNs to work in the United States, while immigrant visas allow foreign nurses to remain indefinitely as legal permanent residents, commonly referred to as “green card” holders, and to eventually obtain citizenship.

1. Limited Non-immigrant Visa Options for Nurses

There are generally three non-immigrant visa options for nurses: H-1C, TN, and H-1B. These options are limited due to statutory visa allotments as well as eligibility requirements defined by law, regulations, and policy.

a. The H-1C Non-immigrant Visa

The 1999 “Nursing Relief for Disadvantaged Areas Act” (NRDAA), which Congress reauthorized in 2005, created the H-1C visa for nurses to work for up to three years in designated shortage areas.²⁵ The H-1C visa is available to 500 nurses per year and each state is limited to 25 H-1C nurses a year.²⁶ The facilities²⁷ interested in applying for foreign nurses must submit an employer attestation showing their eligibility to employ H-1C nurses. DOL initially identified fourteen hospitals that qualified as a facility.²⁸ The CIS Ombudsman held a teleconference in August 2008 inviting the qualifying fourteen hospitals and learned that some hospitals on the list no longer qualify as a facility, other hospitals were interested in joining but were unfamiliar with the H-1C program, and others that qualified discontinued the program because it proved unsuccessful.²⁹ Stakeholders have commented that the definition of facility and the 500 annual limit are too restrictive to make an impact on the nursing shortage.³⁰ The number of H-1C visas approved by USCIS each year does not come close to the 500 visas allotted to the visa category.

²⁵ “Nursing Relief for Disadvantaged Areas Act of 1999” Pub. L. No. 106-95, 113 Stat. 1312 (Nov. 12, 1999). The NRDAA expired on June 13, 2005. It was reauthorized by Congress on December 20, 2006 and extended until December 20, 2009. Pub. L. No. 109-423, 120 Stat. 2900.

²⁶ *Id.* For states with populations of 9,000,000 or more, the state can receive 50 H-1C visas annually. For example, Illinois and Texas are each allotted 50 H-1C visas. In the 4th Quarter, unused visas can go to states that have already reached the cap. *Id.*

²⁷ The definition of “facility” is defined in 20 CFR § 655.1111.

²⁸ The hospital must be located in a “Health Professional Shortage Area” as of March 31, 1997, have “at least 190 acute care beds,” at “least 35 [percent] of [the facility’s] acute care inpatient days reimbursed by Medicare,” and “at least 28 [percent] of [the facility’s] acute care inpatient days reimbursed by Medicaid.” *Id.* Other hospitals may be eligible; however, the list of the 14 hospitals that qualify has not been updated in recent years. In a meeting with USCIS and CIS Ombudsman (Oct. 28, 2008), USCIS indicated that, to date, only one hospital that is not on identified on the list of 14 HPSA hospitals has applied for an H-1C nurse and that case is currently pending additional review.

²⁹ CIS Ombudsman conference call with nursing organizations and stakeholders, “The H-1C Visa and the Current Immigration Process” (Aug. 14, 2008). All 14 qualifying hospitals were invited to participate. Hospitals and representatives of hospitals interested in applying for H-1C nurses also joined the call.

³⁰ *Id.*

Recommendation from the CIS Ombudsman to the Director, USCIS
December 5, 2008
Page 6 of 11

According to USCIS, no H-1C visas were approved in FY 2006,³¹ 49 were approved in FY 2007, and, approximately 110 were approved in FY 2008.³²

b. The TN Non-immigrant Visa

A TN visa is available under the North American Free Trade Agreement (NAFTA) to Canadian and Mexican citizens for a limited group of specialty occupations. The RN occupation is one of the 63 professions that qualify for a TN visa. RNs applying for a TN visa must provide a permanent state license, a temporary state license, or other temporary authorization to work as a RN. A TN is authorized to work and enter the United States for a maximum period of three years and allowed to receive extensions of stay in increments up to three years.³³

Canadian nurses can apply by bringing the required documentation to a port of entry to be examined by a Customs and Border Protection (CBP) official. Mexican nurses must first apply for a visa at a consulate before bringing the required documentation to a port of entry. TN visa holders must also provide evidence of their intention to leave the United States once they have completed their business purpose.³⁴

It is difficult to capture accurate figures for the number of registered nurses who enter as TNs. Many TN occupations for entry into the United States are processed through CBP.³⁵ Separate from CBP processing, USCIS approved 194 nurse visas under the TN category in FY 2006, and 356 in FY 2007.³⁶

c. The H-1B Non-immigrant Visa

The H-1B visa is only available for RNs who qualify for “specialty occupation” nurse positions. To qualify for an H-1B visa, the employer must demonstrate that a bachelor’s or higher degree is the minimum requirement for entry into the position, or that the degree is common to the industry.³⁷ USCIS issued policy guidance in 2002 on the adjudication of H-1B petitions filed for nurses, “Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses.” The policy memorandum clarifies that “nurses in certain specialized occupations are more likely than typical

³¹ NRDA expired on June 13, 2005. “The Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005,” Pub. L. No. 109-423, did not take effect until December 20, 2006, which helps explain the low number of filings in 2006.

³² Data provided in CIS Ombudsman meetings with USCIS (July 31, 2008 and Oct. 28, 2008).

³³ USCIS Update, “USCIS Increases Period of Stay for Trade-NAFTA Professional Workers from Canada or Mexico” (Oct. 14, 2008). “This final rule changes the initial period of admission for TN workers from one to three years, making it equal to the initial period of admission given to H-1B professional workers.”

http://www.uscis.gov/files/article/tn_nonimmigrant_changes_update.pdf (accessed Oct. 17, 2008). “There is no specific limit on the total period of time an alien may remain in TN status.” 8 CFR § 214.6(h).

³⁴ 8 CFR § 214.6.

³⁵ CGFNS FY 2007 Annual Report, “Certification of Certain Health Care Workers” (Dec. 2007). From October 1, 2006 through September 30, 2007, 632 TN Registered Nurses entered with a Visa Screen Certificate.

³⁶ Data provided in CIS Ombudsman meeting with USCIS (July 31, 2008).

³⁷ 8 CFR § 214.

RNs to be eligible for H-1B status.”³⁸ In effect, the vast majority of RNs cannot qualify for an H-1B visa because most of them do not meet the requirements set forth by statute. Stakeholders reported to the CIS Ombudsman that the H-1B process is not a viable route for nurses³⁹ as most employers do not require a bachelor’s degree or the equivalent for a RN position. The few RNs who qualify for an H-1B visa typically hold a supervisory or very specialized nurse position.⁴⁰ USCIS approved only 38 RNs for H-1B visas in FY 2006, 66 in FY 2007, and 136 in FY 2008.⁴¹ The low numbers of H-1B nurse visas issued each year indicate that this route has not alleviated the nursing shortage.

2. Immigrant Visa Options for Nurses

Given the limitations on non-immigrant visas for foreign nurses, the most common method to bring a foreign nurse to the United States is by applying for permanent legal residence (meaning, to obtain a “green card”). In an anomaly of immigration law, it appears that even some of those who wish to only work in the United States temporarily as a nurse must apply for lawful permanent residence since the use of temporary visa pathways are relatively limited.

Generally, an employer applies for a Labor Certification with DOL to sponsor a foreign national for an employment-based green card. The Labor Certification tests the local labor market for available and qualified U.S. workers. If no qualified and available worker is located, the position is open for a qualified foreign worker. However, because RNs have been designated as a Schedule A occupation, an occupation for which a labor shortage has been recognized, no labor market test is required. The employer files a Form I-140 (Immigrant Petition for Alien Worker) with USCIS. USCIS adjudicates Form I-140 to determine if the RN has the minimum requirements to fill the position and is eligible for the visa category.⁴² If the petition is approved, the RN applies for an immigrant visa at a U.S. Consulate, or, if legally present in the United States, applies with USCIS for adjustment of status (“green card”). Most nurse applicants reside

³⁸ USCIS Memorandum, “Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses” (Nov. 27, 2002). http://www.uscis.gov/files/pressrelease/NurseMemo_112702.pdf. (accessed Oct. 28, 2008). The memorandum provides the four criteria necessary for a RN to qualify for an H-1B: 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 similar position); 3) the employer normally requires a degree or its equivalent for the position; and 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).”

³⁹ CIS Ombudsman conference call with nursing organizations and stakeholders, “The Nursing Shortage and the Current Immigration Process” (Aug. 12, 2008).

⁴⁰ *Id.*

⁴¹ Data provided in CIS Ombudsman meeting with USCIS (July 31, 2008).

⁴² According to USCIS’ Adjudicator’s Field Manual Chapter, 22.2(b)(4)(B), applications filed on or after March 28, 2005 should include: Form I-140 with appropriate filing fee, Form ETA-9089, wage determination issued by the State Workforce Agency, a copy of the posted notice, copies of all in-house media used for recruitment, “a full unrestricted permanent license to practice nursing in the state of intended employment; CGFNS certificate issued by the Commission on Graduates of Foreign Nursing Schools or evidence that the [foreign national] has passed the National Council Licensure Examination for Registered Nurses,” and satisfaction of the English language requirement.

abroad and go through consular processing at the U.S. Department of State.⁴³ Final visa issuance is dependent upon visa availability.

While Schedule A immigrant processing is the most common way for RNs to pursue employment in the United States, the current numbers do not rise to the level necessary to alleviate much of the nursing shortage. According to the Commission on Graduates of Foreign Nursing Schools (CGFNS) International's FY 2007 Annual Report, CGFNS issued only 9,689 Visa Screens to RNs pursuing legal permanent residence.⁴⁴

3. Barriers to the Immigration Process

Many hospitals, organizations, and stakeholders have expressed frustration with the immigration process for nurses. Non-immigrant visa options are very restricted and do not adequately address the nursing shortage. The most common route for foreign nurses, the green card option, is hampered by the limited number of immigrant visas and long wait times. Generally, RNs qualify for immigrant status under the employment-based third preference (EB-3) visa category.⁴⁵ For many months, no visas were available for any professions that qualified under the EB-3 category for any nationality. Recently, visa numbers for the EB-3 category became available,⁴⁶ and limited numbers will become available throughout the fiscal year. Stakeholders have indicated that it can take many years to complete the entire immigration process (e.g., visa numbers just became available for EB-3 Indian nurses who filed seven years ago). Nursing organizations advised the CIS Ombudsman that, as a result of the delays, many nurses choose to work in countries that offer shorter waiting times to obtain their permanent residency, such as Australia, Canada, and the United Kingdom.⁴⁷ Proposed legislation in Congress has suggested recapturing previously unused employment-based visa numbers, including EB-3 numbers.⁴⁸

Apart from visa limitation issues, procedural concerns include inconsistencies in processing times and adjudications at USCIS service centers. For example, in September 2008, USCIS'

⁴³ Data provided to the CIS Ombudsman by USCIS (Sept. 23, 2008). USCIS indicated to the CIS Ombudsman that 95 percent of Schedule A nurse applications go through consular processing: the employer files Form I-140 with USCIS and then the nurse beneficiary files for an immigrant visa with a U.S. Consulate.

⁴⁴ CGFNS FY 2007 Annual Report, "Certification of Certain Health Care Workers" (Dec. 2007). According to USCIS data, USCIS approved 343 I-140 Schedule A nurse petitions in FY 2005, 6,834 in FY 2006, and 2,559 in FY 2007. USCIS approved 983 I-485 Schedule A nurse petitions in FY 2005, 2,763 in FY 2006, and 364 in FY 2007. Data provided to the CIS Ombudsman by USCIS (Nov. 21, 2008).

⁴⁵ INA § 203 prescribes the allotment for immigrant visas. Employment-based preference third category consists of skilled workers, professional, and other workers: 28.6 percent of the worldwide level, plus any number not required by first and second preferences, not more than 10,000 of which go to other workers.

⁴⁶ Check the U.S. Department of State's website for visa availability.

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html. The November 2008 visa bulletin for employment-based third preference included: May 1, 2005 for all chargeability areas and Philippines; February 1, 2002 for China-mainland born; October 1, 2001 for India; and September 1, 2002 for Mexico.

⁴⁷ CIS Ombudsman Teleconference, "Visas for Nurses: "How Does this Impact your Medical Facility?" May 30, 2008. http://www.dhs.gov/xabout/structure/gc_1192724755499.shtm#7 (accessed Oct. 14, 2008).

⁴⁸ For example, H.R. 5924 "Emergency Nursing Supply Relief" was introduced to the House Judiciary Committee and the Committee on Energy and Commerce on April 29, 2008 and referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Health on June 3, 2008.

posted processing times for the Nebraska and Texas Service Centers differed by four months.⁴⁹ According to participants in a recent CIS Ombudsman teleconference, another concern in the adjudication of nurse applications is the disparity in the number of Requests for Evidence (RFEs)⁵⁰ issued at the two different USCIS service centers.

One stakeholder informed the CIS Ombudsman how the processing delays will affect a new hospital that is scheduled to undergo construction and open in 2009. A nurse supply contract that was signed along with the agreement for the commissioning and opening of this hospital is dependent on the ability of the hospital to staff nurses and retain them at safe levels. In a recent conference call regarding the status of the contract, the biggest concern for the parties involved was whether the 85 foreign nurses, waiting in the immigration process, would be able to start employment on schedule. Without the nurses, the hospital would have limited services meaning that certain patients would not receive the necessary support and care.⁵¹

4. USCIS Efforts to Streamline the Schedule A Process

In 2005, President Bush signed into law the Emergency Supplemental Appropriations Package⁵² which provided for the recapture of 50,000 unused employment-based immigrant nurse visas. USCIS manually sorted and separated Schedule A applications to expeditiously process and adjudicate 50,000 recaptured visas.⁵³ When USCIS concluded processing the 50,000 applications, this expedited process for nurse applications was terminated.⁵⁴ Currently, USCIS does not prioritize Schedule A applications for processing.

III. ANALYSIS

A. Expeditiously Process Schedule A Nurse Applications

The nursing shortage detrimentally affects the health care industry by decreasing the quality of health care. Hospitals, employing the majority of RNs, have a substantial impact on the U.S. economy and are facing adverse effects due to the shortage. Furthermore, DOL has recognized nurses as a labor shortage occupation. In making this determination, employers are considered pre-certified when applying for foreign nurses (i.e., no Labor Certification is needed). Noting all of these factors, USCIS should make efforts to facilitate the processing of green cards by reinstating a process to separate and prioritize nurse visa applications, similar to the process used in the 2005 recapture.⁵⁵

⁴⁹ USCIS posted processing times. <https://egov.uscis.gov/cris/jsps/ptimes.jsp> (accessed Oct. 10, 2008).

⁵⁰ USCIS issues a Request for Evidence (RFE) when evidence or supporting documentation is missing from the application package.

⁵¹ Email provided to the CIS Ombudsman (Oct. 23, 2008).

⁵² Pub. L. No. 109-13, 119 Stat. 231.

⁵³ Data provided to the CIS Ombudsman by USCIS (Oct. 17, 2008).

⁵⁴ *Id.*

⁵⁵ Both the Texas and Nebraska Service Centers indicated that prioritizing Schedule A nurse applications is a feasible option in their operations. Information provided by the TSC to the CIS Ombudsman (Oct. 17, 2008) and by the NSC (Sept. 23, 2008).

In light of the nursing shortage, the CIS Ombudsman recommends that USCIS expands procedures within its control to streamline the processing of Schedule A applications. This recommendation would not involve any changes to the current adjudicatory review process or the statutorily defined visa allocation process.

The rationale to automatically expedite (i.e., the applicant is not required to submit the standard written expedite request) Schedule A applications can be found in USCIS' memorandum on "Service Center Guidance for Expedite Requests on Applications and Applications."⁵⁶ Three of the criteria listed in the memorandum, "extreme emergent situation," "humanitarian situation," and "compelling interest of the Service," apply to Schedule A nurse applications.

The nursing shortage is a continuing "extreme emergent situation" and "humanitarian situation" because it has been directly linked to the decrease in quality care for American patients and makes the United States vulnerable in emergency preparedness. It is a "compelling interest of the Service" to be aligned with DOL's determination that there is a critical nursing shortage in the United States. Furthermore, the U.S. Department of Homeland Security's mission is to protect critical infrastructure (including health care resources) and to strengthen preparedness for emergency response capabilities (including health care response for potential disasters). Therefore, USCIS should expedite the immigration process to address the critical shortage of RNs.

For these reasons, the CIS Ombudsman recommends that USCIS: Separate and prioritize Schedule A green card nurse applications, so that they can be expedited, without the requirement of a written request, upon immigrant visa availability.

B. Centralization of the Schedule A Nurse Visa Process

Centralization of Schedule A applications may result in more efficient processing times and improved consistency in the adjudications. The teams designated at the two service centers, which presently adjudicate Schedule A nurses, do not communicate on a regular basis,⁵⁷ which may, in part, explain inconsistencies in the number of RFEs and the longer processing times. One designated service center could establish a specialized team for adjudicating nurse applications. Designating one service center to configure, process, and maintain these applications will result in a more uniform, faster, and more efficient adjudication process and possibly a reduction in the RFE issuance rate. If trends are identified in the RFEs, the service center could respond more efficiently and develop methods that may minimize the delays, such as creating filing tip sheets or conducting outreach to nursing organizations. USCIS has noted the benefits of centralizing other application types. According to USCIS, "the centralization of application handling, case processing, and subsequent staging of the N-400s will result in cost saving to the government and faster, more efficient processing times for USCIS customers."⁵⁸

⁵⁶ USCIS Memorandum, "Service Center Guidance for Expedite Requests on Applications and Applications" (Nov. 30, 2001).

⁵⁷ Information provided by USCIS to the CIS Ombudsman. (Oct. 17, 2008).

⁵⁸ USCIS Press Release, "Frequently Asked Questions: Direct Mail Program Adds Form N-400, Application for Naturalization" (Sept. 15, 2008). <http://www.uscis.gov/files/article/n-400-spet-15-08-faqs.pdf> (accessed Oct. 23, 2008).

Recommendation from the CIS Ombudsman to the Director, USCIS
December 5, 2008
Page 11 of 11

USCIS' decision to centralize certain applications types has proven successful in the past and, in this instance, may facilitate with the prioritization of Schedule A applications.⁵⁹

For these reasons, the CIS Ombudsman recommends that USCIS: Centralize Schedule A nurse applications at one designated USCIS service center to facilitate more efficient and consistent processing of Schedule A applications.

C. Interagency Cooperation

USCIS and DOL both play roles in the determination of employment-based immigration visas. USCIS adjudication officers have suggested that a regular meeting with DOL or a point of contact at DOL who could provide clarification regarding immigration issues for Schedule A nurse applications would be helpful.⁶⁰ Inter-agency cooperation and coordination would also improve customer service.

For these reasons, the CIS Ombudsman suggests that USCIS regularly communicate with DOL and develop points of contacts at DOL to discuss concerns and direct inquiries regarding the processing of nurse immigration applications.

IV. CONCLUSION

The United States faces a nursing shortage crisis that negatively impacts the quality of patient health care. USCIS should make efforts to process Schedule A nurse applications as expeditiously as possible.

⁵⁹ For example, USCIS has centralized the U/T/VAWA application process at the Vermont Service Center. EB-5 investor visa applications will be centralized at the California Service Center in the near future.

⁶⁰ Information provided by USCIS to the CIS Ombudsman (Sept. 23, 2008).