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GT Business Immigration Newsletter

November 2002

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Observer

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In this issue:

CONGRESS PASSES THE HOMELAND SECURITY BILL ENSURING MAJOR CHANGES IN IMMIGRATION	3
GLOBAL IMMIGRATION SEMINARS	3
INS PROPOSED FINAL RULE ON CERTIFICATION OF FOREIGN HEALTH CARE WORKERS	4
THE "NO QUESTIONS ASKED" POLICY OF SENDING MONEY HOME HAS CHANGED	5
WHAT EXACTLY DOES THE NEW LANGUAGE ON 7TH YEAR EXTENSIONS MEAN?	5
NEW REGISTRATION REQUIREMENT FOR NONIMMIGRANTS ALREADY IN THE U.S.	6
THE HIRING OF FOREIGN HEALTH CARE WORKERS	7
UPDATE ON THE U.S. NURSING/HEALTHCARE WORKER SHORTAGE	10
RECENT ELECTIONS TO IMPACT IMMIGRATION POLICY?	11
GUEST WORKER ESSENTIAL WORKER IMMIGRATION	12

October 2002 RESOURCES

October 2002 State Department Visa Bulletin Link:
http://travel.state.gov/visa_bulletin.html

Service Center Processing Times
Vermont: http://immigration.gtlaw.com/processing/ins/vermont.htm

California: http://immigration.gtlaw.com/processing/ins/california.htm

Texas: http://immigration.gtlaw.com/processing/ins/texas.htm

Nebraska: http://immigration.gtlaw.com/processing/ins/nebraska.htm

Department of Labor Regional Processing Times:
http://immigration.gtlaw.com/processing/dol.htm

State Employment Agency Processing Times:
http://immigration.gtlaw.com/processing/sesa.htm

The GT Business Immigration Observer is published by the business immigration practice group at Greenberg Traurig. GT Of Counsel, Dawn M. Lurie serves as the Editor of the Observer. The newsletter contains information concerning trends and recent developments in immigration law. Moreover, the authors analyze and report on relevant immigration related issues as well as legislative issues.

Finally, the GT Observer serves as an invaluable resource to individuals, and human resource managers, recruiters and company executives who must keep current on these matters.

SPREAD THE WORD

If you have enjoyed reading this newsletter and have found useful information in it, we'd greatly appreciate your help in spreading the word about it. You can do this by forwarding a copy to your friends and professional peers and telling them about it.

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Congress Passes the Homeland Security Bill Ensuring Major Changes in Immigration

On November 25, 2002 President Bush signed the Homeland Security Bill into law, and with it, authorized the largest federal reorganization since the creation of the Defense Department in 1947. President Bush nominated Tom Ridge, his current homeland security advisor, to head up the department and selected current Navy Secretary Gordon England to be Ridge's deputy. Asa Hutchinson, the head of the Drug Enforcement Administration, was tapped by the President to be the agency's undersecretary of border and transportation security.

Following defeat of the amendment introduced by Senator Tom Daschle (D-S.D.) to strip the bill of certain special interest provisions, the Homeland Security Bill passed the Senate in a 90 - 9 vote on November 19, 2002. Thus, the Immigration and Naturalization Service (INS), an agency that has governed the U.S. immigration laws since 1891, was extinguished. The 484-page Homeland Security Bill moves twenty two agencies and 170,000 employees into a new Department of Homeland Security, the most extensive reorganization of federal bureaucracy since 1947. In a reorganization that may take months if not years to finish, the new Department will include the Coast Guard, Customs Service, Immigration and Naturalization Service, Border Patrol, Secret Service, Federal Emergency Management Agency, and the newly created Transportation Security Administration. The FBI and CIA will remain separate. Under the new Department two bureaus will be responsible for immigration matters, the Directorate of Border and Transportation Security, and the Bureau of Citizenship and Immigration Services. The Directorate of Border and Transportation Security will be responsible for securing the borders of the United States; carrying out the enforcement functions of immigration laws; establishing and administering rules governing the granting of visas or other forms of authorization to enter the U.S., including parole; establishing national immigration enforcement policies and priorities; administering the customs laws; and conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security. The Bureau of Citizenship and Immigration Services will be responsible for adjudicating immigrant visa petitions, naturalization petitions, asylum and refugee applications, all adjudications currently performed at service centers, and all other adjudications performed by the Immigration and Naturalization Service immediately before the effective date of the bill. The Homeland Security bill authorizes the Director of the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services to take over all of the functions of immigrations laws relating to unaccompanied alien children. The bill also establishes in the Department of Justice, the Executive Office for Immigration Review which will govern cases in the Immigration Court system; mandates various analyses, studies and reports to be conducted on a regular basis; and directs each House of Congress to review the committee structure.

The bill's changes are scheduled to become effective 60 days after President Bush signs the legislation. Lawmakers and White House officials have warned that consolidation of the agencies into the new Department of Homeland Security will likely take as long as one year. It is unclear as yet how the changes will impact the usual processing of immigration matters. Some practitioners are concerned that the Homeland Security bill now puts immigration services in a bureau that lacks its own under secretary, doesn't provide enough coordination between law enforcement and immigration processing, and does not protect the independence of immigration courts. Additionally, many are concerned about increasing delays. As the implementation of this new Department unfolds, Greenberg Traurig will continue to monitor the impact, if any, on immigration processing.

Global Immigration Seminars

Greenberg Traurig continues its tradition of providing complimentary presentations to companies on outbound immigration issues as well as discussions on money saving tax strategies for employees as well as employers. GT provides information, guidance and assistance to our clients on visa matters relating to the international relocation of personnel to, and between, countries outside of the United States.

Please contact Dawn M. Lurie at (703)903–7527 or luried@gtlaw.com for further information.

INS Proposed Final Rule on Certification of Foreign Health Care Workers

After more than six years since the enactment of legislation requiring certification of Foreign Health Care Workers for admission to the United States to work in their field, the INS has issued a proposed final rule governing such certification.

The law passed as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), added a ground of inadmissibility (a ground for denial of authorization to enter the United States) for foreign health care workers. This ground of inadmissibility is based on the foreign national's ability toprovide certification verifying that his or her education, training, licensing, experience, and English competency are comparable to that of American health care workers. The professions included in this certification requirement included nurses, physical therapists, occupational therapists, speech language pathologists, medical technologists, medical technicians, and physician assistants.

The new INS rule specifies the organizations already authorized to issue these certificates and establishes procedures for authorization of additional organizations. Significantly, the rule adds the requirement that non-immigrant and immigrant, workers coming to the United States primarily to work as health care workers must obtain the certification. Previously, a blanket waiver to this certification requirement was given by the INS to non-immigrant workers. These certificates, known as "visa screen" certificates, verify the applicant's education, training, license, and experience; competence in oral and written English, and (where applicable) passage of any tests for professions a majority of state licensing boards recognize as a good predictor of success on the profession's licensing exam. The proposed regulation lists the following organizations as authorized to issue the certificates: (1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) (authorized to issue certificates for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists, medical technicians, and physician assistants); (2) The National Board of Certification in Occupational Therapy (NBCOT) (authorized to issue certificates to occupational therapists); and (3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) (authorized to issue certificates to physical therapists). The new rule provides that the INS will issue interim rules to notify the public of additional credentialing organizations, and describes the procedure for additional organizations to apply and qualify for authorization. The rule also provides for periodic performance review of certifying organizations.

With respect to the English language requirements, the rule specifies the exemptions, and lists the applicable passing scores. The services approved for passing scores are the Michigan English Language Assessment Battery (MELAB) (though the MELAB English oral exam is being eliminated), Educational Testing Service (ETS), Test of English in International Communication (TOEIC), Service International, and International English Language Testing System (IELTS). Graduates from health profession programs in only Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language testing. The rule makes no exemption for graduates of programs in other English-speaking countries.

The greatest impactof this proposed rule on the employment of foreign nationals as health care workers will be elimination of the blanket waiver of certification for non-immigrants, as noted above. Specifically, as the regulations are now written, foreign health care workers currently in TN, H-1B, J or O status will be required to obtain the visa screen certificate prior to the filing of an application for extension of stay. This additional requirement should be taken into account when addressing the processing times for extensions. In addition, Health care workers outside the United States will now have to suffer the delays in organization processing of the visa screen certificate application before the sponsoring employer can even file a petition on their behalf. Also, foreign health care workers already in the United States in a nonimmigrant status, who travel outside of the U.S. for business or pleasure, may be denied entry upon return to the United States following their trip abroad, based on the fact that they do not have the visa screen certificate. One positive note is that the proposed rule exempts from the visa screen certificate requirement, a foreign national dependent accompanying a principal foreign health care worker to the United States, regardless of whether or not the dependent foreign national may intend to work in one of the specified health care occupations.

The "No Questions Asked" Policy of Sending Money Home Has Changed

The country is still adjusting and changing the way it does business in the wake of the September 11 terrorist attacks. One of the latest changes is the monitoring of financial transactions to foreign countries conducted by individuals. Many immigrants living in the U.S. routinely send money to their relatives in other countries. In an attempt to try to monitor and track funds sent from the U.S. to other countries that may be financing terrorist organizations, the Treasury Department has called for a change in the way these transactions take place.

Prior to September 11, individuals would send money home using local companies specializing in sending money abroad. These companies generally did not require a great deal of paperwork to be completed before sending the money and did not ask questions regarding the transfer. Individuals were not required to present identification or explain the source of large cash transactions. The companies were not concerned about the lack of record keeping. In fact, they thrived on the lack of formal procedures because very often they were able to provide a valuable service to illegal immigrants who lacked state issued identification documents. Illegal immigrants working and sending money back to their families were attracted to companies that did not ask questions. Generally those in the U.S. without proper documentation are very concerned that the more information they release about themselves, the higher the risk of being caught and deported. For this reason, these cash transfer companies are preferred over regulated transactions conducted through banks.

In light of this, the Treasury Department now wants such companies to maintain better records of the transfers in an attempt to identify transactions that may potentially fund terrorist organizations. The money transmitting companies are now required to ask for identification for every individual that transfers money abroad. In addition, the companies must check the identification against a government list containing suspected money launderers and terrorists. In addition, the companies must undergo training on how to spot dubious money transfers. The new procedures will result in these companies sharing information with the FBI, as banks are already doing, to aid in crime prevention.

Banking officials have also pressed the government to require the collection of personal information. Requests for such additional information will potentially scare illegal immigrants from sending money using these companies for fear of their names being cross referenced in other government databases. We anticipate this may place a strain on our relations with particular countries, especially in Latin America where funds sent from the U.S. generate a great source of income for the more impovrished countries.

As the regulations concerning the transfer of money are debated and analyzed, Greenberg Traurig will provide updates.

To view the entire article go to:
http://www.gtlaw.com/practices/immigration/newsletter/010/item03.htm

What Exactly does the New Provision for 7th Year Extension Mean for your Employees?

On November 2, 2002, the President signed into law the "21st Century Department of Justice Appropriations Authorization Act" (H.R. 2215). The new law contains provisions GT drafted and lobbied for that would enable extensions beyond the ordinary six-year limit to H-1B holders with labor certifications that have been pending for more than one year prior to the end of their sixth year in H status. The previous regulations allowed for a 7th year extension only in instances where the labor certification application had been pending for 365 days and the immigrant petition (Form I-140) had been filed with the INS service center.

What does this mean for employers and employees? The provision is intended to benefit those in H-1B status who have labor certification applications caught in extended agency backlogs. In the current economy, many large companies cannot file RIR (fast-track) labor certifications due to layoffs and hiring freezes. This has resulted in the increased filings of traditional labor certification applications, which take much longer to process than RIRs. These backlogs combined with the existing backlogs at most of the State Workforce Agency offices due to the voluminous filing of 245(i) applications in January 1998 and April 2001 created unreasonable waiting times in an already very artificial and tedious process.

The labor certification process is the first step in the permanent residence process and can take anywhere from one to four years, depending on the jurisdiction. Only after completing this process can a sponsoring employer and the foreign national

Continued on page 6

New Provisions for 7th Year Extensions (con't)

Continued from Page 5

proceed to the next two steps leading to employment authorization in the U.S. independent of an H-1B and finally to permanent resident status in the U.S. ("green card"). In the past, it was crucial for the H-1B applicant to get through the first step of obtaining certification from the Department of Labor and the second step of obtaining an INS approval of immigrant visa petition (Form I-140) prior to the 6th year of H-1B status in order to file the adjustment application and apply for work authorization. With the backlogs at INS and the Department of Labor to get to this final stage it can take anywhere from two to four years or more, in which case many people would "max out" on their allotted H-1B time.

These backlogs were forcing employers and employees to consider various costly and unfavorable options such as transferring employees to an overseas office prior to the "maxing" out of the H-1B. Fortunately, this new regulation allows companies to petition for and obtain extensions in one year increments, beyond the six year limit, while the employee completes his permanent residence process. This is very beneficial as it allows individuals who are awaiting the processing of their green cards to avoid any gaps in employment authorization or being forced to leave the U.S.

With this new regulation, it is important for both employees and employers to consider whether or not it is feasible and in the best interest of both parties to file a traditional labor certification in order for the employee to take advantage of the 7th year extension if required. This is particularly important for those who have less than 2 of the 6 years remaining on their H-1B. It is not expected that the processing times at the state workforce agencies to decrease over the next year. Therefore, we will continue to be faced with severe backlogs of the labor certification applications. Again, in order to take advantage of the 7th year extension, the applicant's labor certification must be pending for at least 365 days at the time of filing for the extension. Therefore, one must consider filing the labor certification no later than the 5th year of employee's H-1B status.

Taking such a step should be reviewed on a case by case basis, heavily considering the employer's ability to attest to the lack of U.S. workers able to fill the position should the alien be forced to leave the U.S. GT is attempting to apprise employers when employees are nearing the 4th year in H-1B status in order to ensure that there is sufficient time to consider if the permanent residence process should commence.

On a final note, if an application for a labor certification or adjustment of status or a petition for an immigrant visa petition is denied, the extended H-1B status ends at that point. Please contact your human resource rep or GT should you have any questions or clarifications regarding this regulation or how it affects your personal situation.

New Registration Requirements for Nonimmigrants Already in the U.S.

On Friday November 22, 2002, the United States Department of Justice (DOJ) abruptly announced a second phase of the new special INS registration requirement. This second phase requires all males born on or before December 2, 1986 who are citizens or nationals of ***Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, the United Arab Emirates, or Yemen*** and who have entered the United States on or before September 30, 2002 as non-immigrants and will remain in the United States at least until January 10, 2003, to submit to special registration procedures with the Immigration and Naturalization Service (INS). Individuals who fit the criteria must register between December 2, 2002, and January 10, 2003.

On November 6, 2002 the DOJ had dramatically expanded special registration provisions, by requiring males aged 16 or older from the 5 countries designated for Special Registration, who were ***already present*** in the U.S. on or before September 10, 2002 and will remain in the U.S. until at least December 16, 2002, to appear before INS for registration **on or before December 16, 2002**. The regulation became effective on November 15, 2002. ***Nonimmigrants from Iran, Iraq, Libya, Sudan and Syria are listed as individuals automatically subject to special registration and fingerprinting requirements upon entry.***

This applies to anyone who is not a U.S. Citizen or Permanent Resident, A or G visa holders, or an individual who has applied for asylum. In spite of recent news reports and press releases from the Department of Justice (DOJ), Canadian citizens ARE subject to the registration if they were born in one of the countries listed. This regulation expands the registration requirements to citizens or nationals of these countries who entered the U.S. before the special registration requirements were instituted in September 2002.

Continued on page 7

New Registration Requirements (con't)

Continued from Page 6

This regulation is also inconsistent with the DOJ's previous policy disclosed in a DOJ press release which GT reported on October 11, 2002. In contrast to the press release which stated that nonimmigrant visitors who have previously been admitted into the United States without being registered by INS immigration officials, are not required to follow special registration procedures, this new regulation has expanded the Entry Exit Registration System (NSEERS) instituted earlier this year to include individuals who entered the U.S. prior to the institution of NSEERS.

The Federal Register notice provides a list of locations where individuals who are subject to this new requirement can appear before an immigration officer. Generally individuals should appear at their local INS office for instructions. At the time of registration, individuals are required to present all travel documents (passport, I-94 card, visa etc.), and provide proof of their residence, employment or school. The individual will also be fingerprinted and photographed at that time. Once an individual has been registered, he will be required to register annually within 10 days of each anniversary with the INS as long as he remains in the U.S., and also upon every entry from abroad. Change of address requirements continue to apply during this time (FAQ on Change of Address).

If you are required to register, have labor certification pending at the Department of Labor but are currently "out of status" it is imperative that you speak with your immigration attorney immediately.

GT will continue to provide updates on changes in these regulations.

Recruiting and Employing Foreign National Health Care Workers

This article is intended to provide some basic information about the recruitment of foreign health care workers and compliance with immigration laws. It is not intended to be exhaustive, but is an example of issues that human resource specialists need to consider when hiring foreign workers.

Several visa types are common when companies are recruiting foreign nationals for employment. Three instances arise most frequently that would trigger a human resource specialist to consider the following visa types: 1) the desire to hire a foreign national student who is already in the U.S. in F-1 status, 2) the desire to hire a foreign national who is already in the U.S. in H-1B, H-1C or TN status and 3) the desire to hire a foreign national who is outside the U.S.

As a general rule, an employer can ask in its application process whether an individual is authorized for employment in the U.S. or will require sponsorship, such as H-1B. If a person says he/she needs sponsorship, an employer can ask questions about current immigration status and determine what would need to be done to employ him/her. Questions regarding the individual's citizenship or nationality at this point should be avoided to ensure that the individual does not claim national origin discrimination should a dispute arise in the future.

Generally if the person says he/she is authorized for employment and does not need sponsorship, a prospective employer should not request to see documentation proving authorization for employment until the employee starts employment and completes an employment verification form, Form I-9. An employer may want to send the I-9 employment verification form to individuals who have been offered a position and indicate that the form will need to be completed on the first day of employment and the individual must be able to provide the proper documentation.

Useful Nonimmigrant Categories

F-1 Status – Students

When a student is studying pursuant to an F-1 visa they are allowed employment authorization under limited conditions. Two of these options are curricular practical training and optional practical training.

Curricular Practical Training

This type of employment is available to a student as long as it is related to the student's course of study, such as an internship/externship coordinated between the school and the employer, or is mandated by the school in order to fulfill the degree requirements. In order to be eligible for curricular practical training, the student must have completed nine months of study at the undergraduate level. There is no such eligibility requirement for a graduate student.

The employment opportunity must qualify for academic credit and be listed in the course description book as employment with a purpose of promoting hands-on experience where a faculty member monitors the progress of the student. While there is no limit to the time a student may be employed in curricular practical

Continued on page 8

Recruiting and Employing...(con't)

Continued from Page 7

training, if the student remains in curricular practical training full time for more than twelve months he/she will later be ineligible for optional practical training.

The student may be authorized for curricular practical training by the designated school official who writes the authorization on the back of the student's I-20 form. The student does not need to apply for an employment authorization document from the INS in order to start curricular practical training. This annotation on the back of the Form I-20 is a work authorization document for purposes of List C of the I-9 form.

Optional Practical Training

This type of employment of a student is more common than curricular practical training. As with curricular practical training, optional practical training should relate to the course of study. Unlike curricular practical training, the school does not have to approve of or monitor the student's progress while employed. The student must have pursued a full-time course of study for nine consecutive months prior to obtaining optional practical training and is limited to one year of employment.

Optional practical training may only be pursued at the following four times during a course of study: 1) during the school year while classes are in session (part-time only), 2) during the times when school is not in session (i.e. summer vacations or other regularly scheduled vacations), 3) after all course requirements are completed if the student is pursuing a bachelor's, master's or doctoral degree and 4) after the degree is obtained.

The student must apply to the INS for an employment authorization document. S/he must have the EAD in hand before starting work – the notice from the INS confirming receipt of the application for the EAD is not enough. The EAD would be a List A document for I-9 purposes. An important item to remember with optional practical training is that if the INS grants work authorization for optional practical training and the student decides not to work or cannot find employment they have lost their opportunity to pursue optional practical training in the future and they will not be able to apply later. In addition, the employment should be related to the student's field of study.

H-1B Status - Temporary Specialty Worker

The H-1B visa is available to those individuals whose services are sought by a U.S. employer in a "specialty occupation." To qualify for an H-1B temporary worker status, the foreign national must have at least a bachelor's level degree, the foreign equivalent or have the equivalent of a degree in professional work experience in a field which is regarded by the INS as professional.

Nurses generally do not qualify for H-1B unless the position requires a person who has a four year university degree in nursing. As most hospitals do not require their RNs to possess a Bachelors degree, requesting one would be restrictive. However, there are some supervisory/ managerial and teaching positions which would qualify for H-1B status. Common medical professions for H-1B status include physician, physical therapist, occupational therapist, and nutritionist, among others.

The I-94 showing entry in H-1B status for employment with the sponsoring employer plus the foreign passport would together be the List A document for purposes of completing the I-9 form. In order to qualify for H-1B status, when a profession requires a license, the individual must have a license to practice the profession in the state of intended employment. Medical professionals including nurses have very specific licensing requirements and certificates required for state licensing and visa issuance that are outside the scope of this article but should be addressed by anyone considering the H-1B program for nurses.

TN – Trade NAFTA

The North American Free Trade Agreement provides that Canadian and Mexican citizens can apply to enter the U.S.. for employment in certain professional occupations listed in a NAFTA appendix. The individual must meet the requirements for the listed occupation in which he/she is being employed in the U.S. Generally a bachelors degree in a field related to the occupation is required. The TN designation is employer specific. If someone presents an I-94 designated for TN status for another employer, he/she cannot work for a second employer.

Canadian citizens can be processed at the U.S. border. So a Canadian with an offer letter from the employer could apply for TN status at the border and start work quickly. Mexican citizens are required to go through a process very similar to the H-1B, which can take several months (paying an extra $1,000 premium processing fee to the INS will expedite this process resulting in a wait of several weeks instead of several months).

Common medical occupations for TN status are registered nurse, physical therapist, occupational therapist, medical laboratory technologist, pharmacist, psychologist, and physician (teaching or research only). Nurses must have a license to practice nursing in the state of intended employment prior to entry. The I-94 stamped for TN for the employer plus the Canadian or Mexican passport together would be the List A document for I-9 purposes.

Continued on page 9

Recruiting and Employing...(con't)

Continued from Page 8

H-1C Category – Nurses

The H-1C visa was established to provide registered nurses with an opportunity to work in health professional shortage areas for a period of 3 years. This is a non-immigrant visa that is currently limited to 500 nurses annually. It is limited to 50 nurses per state with a population of more than 9 million and 25 nurses per state with a population less than 9 million.

The Immigration and Naturalization Service (INS) will determine who receives an H-1C visa based on the following requirements. A nurse must:

- have a full and unrestricted license to practice professional nursing in the country where they obtained their nursing education or home country
- have passed an appropriate examination (CGFNS), or have a full and unrestricted license to practice as a registered nurse in the state of intended employment; and
- be fully qualified and eligible under the state laws and regulations of the state of intended employment to practice as a registered nurse immediately upon admission to the United States.

Certification requirements for all foreign nationals seeking employment in the U.S. as health care workers

On October 11, 2002, INS proposed a regulation that would require nonimmigrants, as well as immigrants, coming to the U.S. to act as health care workers, including those seeking a change of status, to submit a certification. Previously, the certification requirement was limited to those health care workers applying for permanent residence in the U.S. The proposed rule establishes a procedure for obtaining certification and designates organizations that can issue certification for particular occupations. Those medical occupations currently covered include nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists, medical technicians and physician assistants.

Lawful Permanent Residence – Immigrant Categories for Medical Professionals

Nurses and Physical Therapists

Generally, before an employer can offer a position to a foreign national on a permanent basis, the local labor market must be tested to see if there are any Americans willing, qualified, available and able to take the position. If not, the position can be certified by the U.S. Department of Labor. This process is called "alien labor certification". Because of the documented shortage of nurses and physical therapists in the U.S., the Department of Labor in regulations has waived the labor certification requirement for these two occupations, so there is a shortened process. For physicians, this process can be bypassed if the physician will be employed in an underserved area and petitions for a National Interest Waiver on that basis.

For nurses, the following must be shown when filing the immigrant visa petition with the INS on Form I-140, the first step of the process:

- The prospective employee will be working as a professional nurse.
- Documentation that the applicant has passed the Examination of the Commission on Graduate of Foreign Nursing Schools (CGFNS) or that the applicant holds a full and unrestricted license to practice professional nursing in the state of intended employment.
- Nursing diploma or degree
- Nursing registration from country where the nurse received nursing education if educated outside the U.S.

For physical therapists, the following must be shown:

- The prospective employee will be working as a physical therapist.
- The applicant has all of the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy. The application must include a letter from the authorized state physical therapy licensing official stating that the alien is qualified to take the state's written licensing examination for physical therapists.

Once the immigrant petition is approved, if the applicant is in the U.S., he/she can apply to adjust status from nonimmigrant to lawful resident. If the applicant is not in the U.S., which is the case for most nurses, the applicant will be processed for an immigrant visa at a U.S. consulate or embassy overseas. As indicated above, medical professionals in seven occupations are required to have certification before they can be approved for permanent residence or green card status. These occupations include nurses and physical therapists but exclude physicians.

Before the immigrant visa is granted by the consulate or adjustment of status approved by the INS, the VisaScreen certificate or certified statement must be obtained for nurses from the International Commission on Healthcare Professionals (ICHP), which is part of CGFNS. Physical therapists must obtain the Visa Screen from the Foreign Credentialing Commission on Physical Therapy (FCCPT). Visa Screen reviews educational credentials, licensure documentation and English language skills assessment and predictive examination.

Continued on page 10

Recruiting and Employing (con't)

Continued from Page 9

The examination that must be passed for nurses is the CGFNS Qualifying Examination or the National Council Licensure Examination (NCLEX-RN). There is an exception to the VisaScreen requirement for nurses who complete their nursing education in English. CGFNS may issue a certified statement for nurses who completed their education in Australia, Canada (except Quebec), Ireland, New Zealand, the U.K. and the U.S. The certified statement by CGFNS can only be issued if the nurse is licensed in the state of intended employment and has passed the NCLEX.

Most lawful resident cases for nurses are processed using consular processing. Upon approval of the immigrant visa petition, the INS notifies the National Visa Center (NVC). The NVC sends the immigrant visa application forms to the foreign national or his/her attorney. The forms are submitted to the NVC or the consulate and the foreign national is then scheduled for a visa interview. At the interview, the nurse must present the final application forms, police certificates, medical examination results, birth certificate and marriage certificate, if married, passport, photographs, job letter, filing fees, and VisaScreen certificate.

To ensure that all possible nonimmigrant and immigrant options are considered and the best strategy developed, human resource professionals in this field should consider consulting with immigration counsel.

Update on the Nursing/HealthCare Worker Shortage

The shortage of qualified health care professionals is becoming critical in the U.S. While current regulations attempt to alleviate the problem by preserving Registered Nurses on Schedule A, Group I, as pre-certified by the DOL as a shortage occupation, this has proven to be less than adequate in relieving the crisis. While, RNs are exempt from the individual labor certification process., the United States is in the midst of a nursing shortage that is projected to intensify as baby boomers age and the need for health care grows and our existing programs are not likely to accommodate the expected impact on the demand for health care workers. Also aggravating the problem, is the fact that the number of new nurses is decreasing with enrollments at nursing colleges and universities still in decline.

- According to the American Hospital Association's June 2001 TrendWatch, 126,000 nurses are currently needed to fill vacancies at our nation's hospitals. Today, fully 75% of all hospital personnel vacancies are for nurses. www.aha.org
- According to the National Council of State Boards of Nursing, the number of first-time, U.S. educated nursing school graduates who sat for the NCLEX-RN®, the national licensure examination for all entry-level registered nurses, decreased by 28.7% from 1995-2001. A total of 27,679 fewer students in this category of test takers sat for the exam in 2001 as compared with 1995. www.ncsbn.org

Hospitals, long term care facilities, nursing homes and other health care providers across the nation are having difficulty finding experienced nurses who are willing to work in their facilities. Nurses are also reporting that understaffing is jeopardizing patient care. Job burnout is prevalent in hospitals due to mandatory overtime and this itself leads the average American nurse to leave hospital employment after only four years. In addition, projections show that these current shortages are just a minor indication of the universal shortages that will soon confront our health care system. That said, more and more health care employers are looking overseas to foreign nurses to subdue the shortage. However, the immigration system and the current regulations make the influx of nursing professionals to the U.S. more and more difficult. New INS proposed regulations discussed elsewhere in this newsletter will tighten things even further.

Additionally, there is a shortage of skilled workers including CNAs and LPNs which is becoming progressively more critical. At present there are no temporary visas available for this group of essential workers and the permanent residence process is unreasonably lengthy. GT and other advocates are working vigorously to make necessary legislative and statutory changes on behalf of our clients to address these issues.

Bringing in foreign healthcare workers is a complex process but when employers are guided by professionals the process can be somewhat simplified. The immigration and employment law groups at GT offer counseling to employers throughout the entire course of action.

Recent Elections to Impact Immigration Policy

For only the second time since 1934, one party will control the White House and Congress. As a result of the November 5th elections, control of the House and Senate and Presidency now rest in the hands of the Republican party. Although the majority is only by a thin margin, it could affect the direction of immigration policy in the U.S. In particular, the election will cause the shifting of leadership positions in parties, committees and subcommittees.

Specifically, the Republicans increased their control over the House of Representatives. They now have a 227 to 206 majority with one independent member and one race left to be decided. As a result of the Democrats losses, Dick Gephardt (D-MO) resigned his position of Democratic Minority Leader in the House and this position was assumed by Rep. Nancy Pelosi (D-CA). This is the highest Congressional leadership position a woman has held in either party. Rep. Tom DeLay (R-TX) is expected to move up the ranks of the Republican party due to the retirement of Rep. Dick Armey (R-TX) and J.C. Watts (R-OK). In addition, more closely linked to the direction of immigration policy, was the defeat of Rep. George Gekas (R-PA) by Tim Holden (D-PA). Rep. Gekas had served as the Chairman of the Subcommittee on Immigration and Claims, and his defeat now leaves this position open. We will watch closely in the coming months to see who succeeds Rep. Gekas. Thus far there is no clear indication who the House Republicans will choose.

In the Senate, the Republicans also took control of the Senate with a 51-47 majority with one independent member and a run-off election to be held on December 7th in Louisiana to determine the final member. In terms of the Senate Leadership, with the Republicans gaining control, Trent Lott (R-MS) will go from being the Minority Leader to the Majority Leader of the Senate. On the other side, Tom Daschle (D-SD) retains leadership of the Senate Democrats but lost his position as Majority Leader and will now act as the Minority Leader in the Senate. The loss of the Senate by the Democrats will also cause a flip in the leadership of the Senate Judiciary Subcommittee on Immigration as the Chair of the subcommittee will now be held by a Republican. At this point, it is expected that Ted Kennedy (D-MA) will continue to be the ranking Democrat for that subcommittee and act as the Ranking Member. However, it is less clear if Sam Brownback (R-KS) will move to the Chair position from his position of Ranking Member for the Republicans. It is important to remember that although the Republicans gained control of the Senate and won leadership positions in committees and subcommittees, their majority is based only on a few votes. With such a small majority in the Senate, the Republicans are not guaranteed to pass all their initiatives and bills without some deal-making and partisan politics are expected to continue to play a major role.

A major legislative priority of President Bush and the Republicans was to get the Homeland Security bill passed. The Republicans actually managed to push this bill through Congress during the lame duck session. This bill will impact immigration directly as it includes the demise of the U.S. Immigration and Naturalization Service as well as a focus on immigration as a function of national security. Please see the article in this issue discussing the passage of the bill and its expect effects for more in-depth information.

Guest Worker Essential Worker Immigration

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled ("essential worker") labor. Greenberg Traurig Shareholder Laura Reiff is a co-chair of the coalition. In light of continuing talks between President Bush and President Fox we hope to see some movement on this front before the end of the year.

The following article appeared in *AILA Washington Update, Volume 6, Number 16*, November 8, 2002

Immigration Reform and U.S./ Mexico Discussions

At the end of October, President Bush and Mexican President Vicente Fox met during the Asia-Pacific Economic Cooperation meeting held in Baja, California. While the issue of terrorism dominated their conversations, many are urging the resumption of migration discussions. The Mexican government is continuing its efforts to urge the U.S. to reform migration laws, with President Fox facing difficult congressional elections next year due to, among other issues, rising criticism in Mexico that he has achieved nothing despite his efforts to work closely with the United States.

Just Prior to the Baja meeting, Senator Tom Daschle (D-SD) and Representative Dick Gephardt (D-MO) sent a letter to President Bush urging the President to re-energize efforts to "develop policies on immigration, economic development and counter-narcotics." Both reiterated their support for "comprehensive immigration reform that improves national security while recognizing the contributions hard-working immigrants have made to this country."

National Security Advisor Condoleeza Rice indicated in late October that the two Presidents "continue to keep (migration) on the agenda." Secretary of State Colin Powell weighed in on the issue during a November 4 State Department press conference. Acknowledging that September 11 has made it a more difficult issue, and that the U.S. needed to "needed a pause" to take a look at visas and border control, he stated that the U.S. "remains committed to immigration reform, remains committed to safe travel back and forth across our border and minimizing the risk to Mexicans who come into our country. We remain committed to finding a way to move forward with worker access and with regularization and all the other migration issues." He further noted that "there is an understanding in the United States political system that we have to do something about migration."

AILA strongly supports comprehensive immigration reform that includes three components: a regularization (or earned legalization) for hard-working people living in the U.S., a new temporary worker program, and the opening up of legal channels for family- and business-based immigration. "Posted on AILA InfoNet at Doc. No. 02110841 (Nov. 8, 2002) ."

For more information see www.EWIC.org

Immigration News

Business Immigration Group:

Mahsa Aliaskari 703.749.1385	Tysons Corner aliaskarim@gtlaw.com	**Elissa McGovern** 703.749.1343	Tysons Corner mcgoverne@gtlaw.com	**Brenda Supple** 305.579.0734	Miami suppleb@gtlaw.com
Kristina Carty-Pratt 703.749.1345	Tysons Corner prattk@gtlaw.com	**Mary Pivec** 202.452.4883	Washington pivecm@gtlaw.com	**Cora Tekach** 703.749.1391	Tysons Corner tekachc@gtlaw.com
Craig A. Etter 703.749.1315	Tysons Corner etterc@gtlaw.com	**Laura Foote Reiff** 703.749.1372	Tysons Corner reiffl@gtlaw.com	**Shana Tesler** 202.331.3144	Washington, D.C. teslers@gtlaw.com
Oscar Levin 305.579.0880	Miami levino@gtlaw.com	**John Scalia** 703.749.1380	Tysons Corner/D.C. scaliaj@gtlaw.com	**Carol Williams** 703.749.1376	Tysons Corner williamsc@gtlaw.com
Elizabeth Lewis 703.749.1321	Tysons Corner lewise@gtlaw.com	**Elliot Scherker** 305.579.0579	Miami scherkere@gtlaw.com		
Dawn Lurie 703.903.7527	Tysons Corner luried@gtlaw.com	**Martha Schoonover** 703.749.1374	Tysons Corner schoonovermgtlaw.com		

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