

**Instructions on the Processing of Certain
Foreign Health Care Workers: IIRIRA Section 343**

June 6, 1997

All District Directors
 All Officers-in-Charge
 All Service Center Directors
 All Regional Directors
 Office of Field Operations
 All Regional Counsels
 All District Counsels
 Director of Training- Artesia
 Director of Training- Glynco

Office of Examinations
 (HQEXM)

The purpose of this memorandum is to provide you with additional information with respect to the processing of foreign health care workers affected by section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). As you know, this office published a memorandum dated January 28, 1997, which provided initial guidance with respect to the implementation of section 343. This memorandum updates certain portions of the January 28 memorandum.

Affected Occupations

Effective immediately, the only health care occupations covered by 212(a)(5)(C) of the Act, as added by section 343 of IIRIRA are the following: nurses, physical therapists, occupational, therapists, speech language pathologists, medical technologist, medical technicians and physician assistants. An alien coming to the United States to perform health care services in any other occupation, either as an immigrant or a nonimmigrant, is not subject to a determination of admissibility under INA 212(a)(5)(C). You will be notified as additional occupations are added to this listing. This is a significant change from the January 28 memorandum which applied the statutory provision to all health care workers. This memorandum limits the applicability of the statutory provision to the occupations listed in the conference report.

Nonimmigrants-Waiver of Inadmissibility

The January 28 memorandum indicated that the INS and the Department of States (DOS) had agreed to a blanket waiver of inadmissibility under section 212 (a)(5)(C) for nonimmigrant health care workers lacking the required CGFNS certificate or other certification pursuant to section 212(d)(3)(A) until such time as appropriate certification procedures have been put in place. The Service will also waive inadmissibility under section 212(a)(5)(C) pursuant to section 212(d)(3)(B) for aliens already in possession of nonimmigrant visas or who are visa-exempt aliens, including Canadians applying for admission as TNs. Under this blanket waiver, Service officers at U.S. Ports-of-Entry and foreign pre-clearance sites may accept applications for waivers. Any otherwise admissible nonimmigrant health-care worker who receives a waiver for section 212(a)(5)(C) inadmissibility shall be authorized admission into the United States with a single-entry Form 1-94 with a validity date of six (6) months. Otherwise admissible dependents covered by the blanket policy will also be authorized admission into the United States for a time coinciding with that of the principal alien.

Field Offices are hereby notified that this waiver should be granted without the filing of a formal application or fee. Further, any otherwise admissible nonimmigrant health-care worker granted a waiver of this provision shall be authorized admission into the United States with a single-entry Form 1-94 valid for six (6) months except in the case of aliens who reside in and commute from contiguous territories. These aliens shall be issued a multiple-entry Form 1-94 valid for six (6) months.

This procedure will be effective until further notice.

Nonimmigrants-Change of Status or Extensions of Temporary Stay

Applicants for a change of nonimmigrant status or for an extension of temporary stay under a nonimmigrant visa category involving a health care occupation may also be granted a waiver of 212(a)(5)(C) inadmissibility, without form or fee, and may be granted an extension of stay of 1 year or for the requested period of the extension of time if less than 1 year.

Immigrants-General

Service officers are reminded that the waiver procedures discussed above relate solely to nonimmigrant aliens and do not-apply to immigrant aliens. The statutory authority to grant waivers under 212(d)(3) of the Act applies to aliens seeking classification/admission as nonimmigrant aliens. Pursuant to the instructions contained in the January 28 memorandum with respect to the processing of immigrant health care workers, applications-for adjustment of status filed by aliens who are the beneficiaries of approved employment-based immigrant petitions to work as health care workers must be held-in abeyance until further notice.

An interagency task force has been established for the purpose of devising a procedure to implement section 343. The Service will issue a rule in the near future to implement section 343 of IERIRA. You will be advised of any further developments as soon as they occur.

Nurses

In part M of the January 28 memorandum, the INS discussed the certification requirements for registered nurses. The memorandum implied that a nurse could adjust status in the United States if the nurse obtained a certification from the Commission on Foreign Nursing Schools (CGFNS). Unfortunately, the certification contemplated in the memorandum has not been developed by the CGFNS. The current CGFNS certificate is not equivalent to the certification discussed in section 343 of IIRIRA. There are at least two differences between the two certifications. As a result a nurse may not adjust status in the United State or be admitted to the United States on an immigrant visa until such time as the nurse obtains a certificate issued under the provisions of section 343 of IIRIRA. Nurses seeking entry into the United States as nonimmigrant aliens should be processed pursuant to the instructions contained in the section of this memorandum discussing waivers.

Service officers should not advise an alien to obtain a certificate from CGFNS since the current certificate does not overcome this ground of inadmissibility. This provision applies to both aliens educated in the United States and abroad.

For further information, please contact Adjudications Officer John W. Brown at 202-514-3240.

Louis D. Crocetti, Jr.
Associate Commissioner