

Memorandum issued October 20, 1999 from Michael Cronin, Acting Associate Commissioner, Programs through William Yates, Deputy Executive Associate Commissioner, Immigration Services Division, Field Operations

Reference: HQ 70/23.1PHQ 70/21.1.14-P
HQ 50/5.12 996 ACT.069

SUBJECT: Update on the Temporary Admission of Foreign Health Care Workers

The Service published an interim rule on October 14, 1998 that implemented portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The rule addressed only aliens applying for immigrant visas or adjustment of status to a permanent resident coming to the United States to perform services in a limited number of health care occupations. The Service's prior instructions, dated January 28, 1997, June 6, 1997, August 27, 1997, and April 30, 1998, relating to the temporary admission of health care workers will remain in effect until the publication of a final rule implementing section 343 of IIRIRA in full.

This office expects to publish a final rule within 1 year that will implement the provisions of section 343 of IIRIRA in full. In view of this time frame, the Service, in conjunction with the Department of State (DOS), has now determined that foreign health care workers affected by section 343 of IIRIRA may be admitted to the United States for a period of 1 year, not 6 months as previously instructed. Of course, the alien must meet all other regulatory and statutory requirements for admission. Again, Service officers should continue to apply the instructions contained in the prior memoranda, other than the length of admission for a nonimmigrant alien. The following represents a summary of the instructions contained in the four previous memoranda.

The Service and the DOS agreed to exercise discretion pursuant to section 212(d)(3) of the Immigration and Nationality Act in granting a blanket waiver of inadmissibility under section 212 (a)(5)(C) for nonimmigrant health care workers lacking the required certificate until such time as appropriate certification procedures have been put in place. The Service also waived 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 TN's. The waiver should be granted without the filing of a formal application or fee.

An 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 for a period of 1 year. 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. An alien admitted to the United States under these circumstances may make application for admission to the United States during the validity period of the previously issued I-94 without requesting a new waiver. TN nonimmigrant aliens are not required to pay the admission fee described in 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued I-94. There is no limit to the number of waivers that a nonimmigrant alien can be granted under section 212(d)(3) of the INA. Aliens admitted to the United States under this blanket waiver policy are eligible for extensions of stay in increments of 1 year. The total period of temporary stay for specific nonimmigrant classifications as described in regulation and statute is not affected by this policy.

For further information, please contact Adjudication Officer John W. Brown at 202-616-7435.