

Special Immigration Alert: USCIS Releases Updated Guidance on H-1B Eligibility for Nurses

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On July 21, 2014, the U.S. Citizenship and Immigration Services ("USCIS") released a policy memorandum ("PM"), dated July 11, 2014, which provided the first new guidance on H-1B eligibility for nurses in 12 years!

Current U.S. immigration law^[1] recognizes that a position is H-1B eligible if, among other things, a specialized baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Traditionally, registered nurse ("RN") positions have not been considered H-1B eligible by the USCIS because they do not normally require at least a bachelor's degree in a specialized field or its equivalent.^[2]

The PM acknowledged a shift in employers' preference "for more highly educated nurses" and recognized that specialized RN roles that focus on a certain patient population may qualify as a specialty occupation. Examples of such RN roles include addiction nurses, cardiovascular nurses, and emergency room nurses. The PM also reiterated the USCIS position that Advanced Practice Registered Nurses ("APRN"), such as a Certified Nurse-Midwife, Certified Clinical Nurse Specialist, and Certified Nurse Practitioner, continue to be H-1B eligible because they require an advanced level of education and training. Finally, the PM indicated that, if a state requires at least a bachelor's degree to obtain a nursing license, an RN position in that state would be considered a specialty occupation. Currently, however, no state has such a requirement.

In adjudicating H-1B petitions for RNs, the USCIS applies a preponderance of the evidence standard that requires the employer to show why the proffered RN position satisfies the H-1B requirements for a specialty occupation. When assessing whether an RN position meets this standard, the USCIS takes into account several factors, including the nature of the employer's business, industry practices, duties to be performed, certification requirements, American Nurses Credentialing Center ("ANCC") Magnet Recognition status^[3], salary paid in relation to other nurses, and clinical experience requirements.

In light of this updated guidance, organizations interested in supporting H-1Bs for RN candidates must be mindful of the types of evidence that the USCIS will take into account and be prepared to provide such information and/or documentation to fully demonstrate that the RN role offered qualifies as an H-1B specialty occupation.

For more information, or if you have questions regarding how this situation might affect you, your employees, or your organization, please contact one of the following members of the Immigration Law Group at Epstein Becker Green:

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ENDNOTES

[1] See 8 C.F.R. 214.2(h)(4)(ii).

[2] According to the U.S. Department of Labor's *Occupational Outlook Handbook* (OOH), an associate's degree in nursing is commonly accepted to work as an RN.

[3] ANCC certification recognizes organizations that promote and institute policies to promote advances and high standards in nursing. Information on how to secure ANCC certification status can be found at:
<http://www.nursecredentialing.org/FunctionalCategory/FAQs/DEO-FAQ.html>.

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