

How can we hire foreign-born nurses?

With the severe shortage throughout the US of qualified registered nurses, many Human Resource professionals and nursing recruiters are turning to the pool of available foreign-born nursing professionals. However given the stringent and ever changing requirements imposed by the Citizenship and Immigration Services (CIS), most employers recognize that they are ill equipped to handle immigration issues while successfully managing all the other tasks associated with staffing a modern medical facility.

To begin answering some of the questions nursing recruiters ask daily, we have assembled this short introductory paper that we trust you will find helpful. It is our goal to provide you with general information, not specific legal advice. After a careful reading of this material, we fully expect that you may have remaining questions and we encourage you to call us (800-437-7313) to discuss your specific situation and special needs.

First steps

One of the first questions you may ask is "How do we find qualified nurses in a foreign country?" Since it is difficult if not impossible for many employers to have on staff a full time nursing recruiter familiar with foreign nursing schools and graduates, this is the place for a qualified external nursing recruiter. We are able to provide you with a list of experienced recruiters but we do not suggest specific recruiters nor do we provide nursing candidates as part of our service.

Nonetheless, as you might expect, foreign nurses visit our web site regularly and we provide them with the opportunity to submit their resume on-line. As part of this process, we ask each one to select one or more regions of the country in which they would prefer to work. If you register with us, we will gladly forward these resumes to you and you may then contact those candidates you believe may meet your needs. It is important to remember that we do not provide the candidates with your name nor the name of your facility. It is entirely up to you to make contact with the candidates you choose.

Next you may ask, "What are the educational qualifications, experience level and examination requirements for these nurses?" First they must be formally trained as a Registered Nurse from a qualified nursing school. Many will have additional clinical or educational experience. Fortunately the CIS stipulates that foreign-trained nurses must meet the minimum requirements established by the Commission on Graduates of Foreign Nursing Schools (CGFNS). The standards established are rigorous and meeting these requirements of the largest hurdle foreign nurses must cross. Nurses who meet these requirements are well positioned to pass the NCLEX exam.

[CGFNS](#) maintains an active web site and we have extracted from that web site pertinent information concerning CGFNS, its [Certification Program](#) and the [exam dates](#) and placed that on our web site. In short the CGFNS Certification program evaluates the foreign nursing candidate's education, current registration and licensure, prospects for obtaining licensure in the US, English language proficiency and nursing knowledge

Deciding which of the four appropriate visas types best meets your specific requirements is the next step. Clearly it is beyond the scope of this informational paper to present all the factors that may weigh on your eventual decision. It is for that reason that you may wish to read the following basic description of visa

types and then call us and ask to speak to an attorney to discuss them in greater detail. By the way there is no charge for the call or the consultation.

There are four (4) primary ways US medical facilities can employ foreign-born registered nurses. Each alternative has advantages and limitations with which a potential employer should be familiar. It is our hope that this short, information paper will provide you with initial information to assist you in assessing your options.

Overview

Alternatives Click the Visa name to go directly to the pertinent section.	Selected Limitations	Time to obtain the visa
TN-1	Employee must be a Canadian citizen with a 4-year nursing degree (BSN), or state/provincial registered nursing license. Good for 1 year, renewable annually.	Generally 2 to 3 weeks
H-1B	Employee must have at least a BSN (4-year degree) plus be CGFNS qualified. Valid for up to 6 years. The position must qualify as a "specialty occupation". It is very difficult to get an H-1B for an RN.	4 to 5 months
Green Card	Employee must be licensed to practice nursing in the State where they will work or possess CGFNS certification. Employee cannot work in the US until the Green Card is issued.	Approximately 12 to 18 months
H-1C	Only 500 issued each year. No more than 25 per State.	6 months

TN-1

Canadian citizens are granted special privileges under the terms of the North American Free Trade Agreement (NAFTA). If a prospective employee has a 4-year nursing degree or a registered nursing license, they are eligible to enter the US simply by presenting appropriate documents at the border crossing or at the airport prior to flying to the US. It normally takes less than a week to prepare all the necessary documents.

The TN visa is issued for one year and can be renewed annually thereafter. If qualified a TN-1 holder can "upgrade" to an H-1B. TN holder cannot apply for a Green Card from TN status without substantial interruptions in work authorization. Therefore most nurses first obtain a valid H-1B before applying for permanent residence status.

Mexican citizens are also covered under NAFTA, but TN-2 requirements are identical to the H-1B requirements listed below.

Please call us (1-800-437-7313) to discuss specific procedures and methods for applying for a TN-1 visa.

H-1B

BASIC INFORMATION ABOUT THE H-1B VISA CATEGORY:

The H-1B category is limited to aliens coming to the United States to perform services in a “specialty occupation”. A specialty occupation means an occupation that **requires**:

- Attainment of a bachelor's degree or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States; and
- Theoretical and practical application of a body of highly specialized knowledge.
- The CIS has established that within the nursing profession this applies only to those nursing positions that industry standards establish as **requiring** a 4-year bachelor's degree (BSN). Typically this means ICU, CCU, Charge or Supervising nurses, nurse midwives, or other nursing sub-specialties where a 4-year degree or higher is **required** at the facility where the alien will work **and** throughout the industry. Since most standard nursing positions typically only require an RN license (and it is possible to obtain an RN without obtaining a 4-year nursing degree; e.g. BNS) these standard positions do **not** qualify for an H-1B.

The initial period of stay is three (3) years in length. The visa may be extended for an additional three (3) year period, for a total maximum stay of six (6) years in the H-1B category.

EMPLOYER REQUIREMENTS:

- The employer must be a U.S. company; and
- The employer must make an offer of employment; and
- The employment position offered must qualify as a specialty occupation (requiring the employee have a 4-year bachelor's degree); and
- The employer must offer to pay the "Prevailing Wage" for the employment position as determined by a current Dept. of Labor approved salary survey.
- If the employer chooses to release the H-1B employee prior to the expiration of the H-1B visa and the employee does not obtain new employment, the employer must offer one-way return transportation to the alien's home country. (As a practical matter, this rarely occurs since most H-1B visa holders are eager to stay in the US and often find other employment or simply refuse the employer's offer of return transportation.)

EMPLOYEE REQUIREMENTS:

The Employee must have sufficient qualifications for the H-1B Visa category

- Employee must have at least a 4-year bachelor's degree in nursing or directly related field (or sufficient relevant and progressive work experience in the field to equal a bachelor's degree.)
- Employee must possess full State licensure to practice in the occupation and have certification from the Commission on Graduates of Foreign Nursing Schools (CGFNS).
- Employee must be in compliance with current visa requirements
- If currently in the US, the Employee must be in valid nonimmigrant status

It is very difficult to obtain an H-1B for a nursing position due to the “specialty occupation” requirement. While not impossible the onus of proof is on the employer to demonstrate that the position qualifies for the H-1B visa.

Please call us (1-800-437-7313) to discuss specific procedures and methods for applying for a H-1B visa.

GREEN CARD

As opposed to non-immigrant visas (TN-1, H-1B or H-1C) that expire after a defined time period, a Permanent Resident Visa (Green Card) confers on its holder the right to live and work in the United States on a permanent basis.

Permanent Resident status is a complex and potentially time-consuming (approximately 12 to 18 months) process. Given the complexity of a Green Card petition, it is beyond the scope of this summary document to outline each of the specific requirements of this visa. It is important to note however that registered nurses are included in Schedule A and therefore are automatically pre-certified for their Labor certification. This fact alone reduces the Green Application time from a typical 3 years to 18 months or less for nurses. For those employers who can project nursing needs 18 months into the future, this option provides significant advantages.

Retrogression for EB-3 Green Cards

The Department of State has announced that beginning January 1, 2005, the visa numbers in the employment-based third preference (EB-3) category (professional and skilled workers) for persons born in **India**, mainland **China** and the **Philippines** will retrogress three years.

This retrogression is a result of the combination of two factors: 1) the numerical limits the government imposes on the number of persons allowed to immigrate into the United States each year, and 2) the backlog reduction plan instituted by the CIS in order to get rid of long pending applications at the Service Centers.

Each year the government allots approximately 140,000 visas to employment-based preferences and approximately 226,000 visas to family-based preferences. Within each preference category there are also additional numerical limitations placed. One single country cannot obtain more than 7% of the total visas available for the employment-based or family-based quotas.

Therefore, when the number of green card approvals for a particular country of chargeability (usually country of birth) begins to approach the numerical limit, the Department of State updates the Visa Bulletin to show those applicants whose priority date is "current" and can obtain a green card.

As a result, beginning on January 1, 2005, persons from **India**, mainland **China**, or the **Philippines** in the EB-3 category who wish to obtain an immigrant visa cannot do so unless their priority date is January 1, 2002 or earlier. Typically, a priority date is established by the date of filing of a Labor Certification Application with the State Workforce Agency (SWA). In some cases, for those who are exempt from Labor Certification requirements such as Registered Nurses, their priority date is established by the date of filing of the I-140 Immigrant Petition.

EMPLOYEE REQUIREMENTS

The employee must be a Registered Nurse and must have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or must have a full, unrestricted license to practice nursing in the State of the intended employment. The employee must also have a VisaScreen[®] certificate

If you believe that this alternative would meet your requirements, please call us (1-800-437-7313) to discuss your specific situation. More detailed information will be provided at that time.

H-1C

Due to the very limited number of H-1C visas issued annually and the other restrictions that apply to this visa classification, this option will apply to only a small minority of employers.

Late in 1999, Congress passed the Nursing Relief for Disadvantaged Areas Act, which calls for the creation of a new H-1C visa for nurses going to work for up to three years in health professional shortage areas. Up to 500 nurses per year can get the visa, but each state is limited to 25 H-1C nurses a year. Under the law, facilities interested in sponsoring nurses for H-1C visas must submit a document containing a number of attestations regarding the employment of H-1C nurses.

As with most immigration laws, the statute itself provides very little guidance on how the law will be applied, leaving it to the CIS (and in most employment visa cases the Department of Labor as well) to develop regulations. The regulations for the H-1C program were released by the Department of Labor last summer, and became effective in September 2000. While the regulation is currently effective, because it was released as an interim regulation, parts of it could change after the Department of Labor reviews the public comments that it received in response.

One of the most surprising elements of the Labor Department's regulations is a DOL finding that based on the restrictive definition of "facility" Congress put in the statute, only fourteen hospitals in the country could be initially determined to qualify to apply for H-1C visas. Contact us for a list of approved facilities.

The attestation process is being administered by the Employment and Training Administration at the Department of Labor. The Employment Standards Administration's Wages and Hours Division oversee enforcement of the attestations.

The 1999 law is very similar to a 1989 law that created the H-1A visa for nurses. That visa category expired several years ago after unsuccessful efforts to extend its life. The key differences between the two programs are that a much smaller number of H-1C visas have been allocated and that the facility where the nurse will work must be in a health professional shortage area. There are also new requirements limit a facility's dependence on H-1C nurses (something that is hard to imagine given that only 500 H-1C nurses permitted into the country each year, with no more than 25 allowed to work in a single state).

The Department of Labor has created a new attestation form called the ETA 9081. Contact us for a complete list of the attestation required of employers.

The paperwork must also be accompanied by a \$250 filing fee. At this point, while a facility can be approved to use the H-1C visa program, because the CIS has not yet released its regulations for the program, the visas are not yet being issued.

Please call us (1-800-437-7313) to discuss specific procedures and methods for applying for a H-1C visa.

What are the costs involved in the entire process? Are these costs fixed so that we know the total cost before we begin?

Costs vary depending on the specific visa classification that meets your particular needs. Moreover, employers may pass along some, if not all, these costs to the nursing candidates. The proportion of visa costs paid by the employer is usually a matter of policy established by each employer and the market forces in effect at the time you are seeking certain candidates.



800-437-7313

In any case, with Immigration Support Services, the costs are fixed and known in advance. We are pleased to provide “per visa” fees and costs as well as substantial volume discounts, depending on the visa classification being sought.

Since there are many factors that can impact the total cost of obtaining a visa for a given candidate, we strongly encourage you to call us (1-800-437-7313), for a complete breakdown of costs. You can obtain a comprehensive chart of the fees and costs on our web site at www.immigrationsupport.com.

Is there any assistance available to minimize our HR department’s time commitment?

Immigration Support Services’ sole function is to provide employers a “total outsourced service” that covers all aspects of employment-based immigration. This includes no-cost consultation, complete CIS petition preparation, assistance with consular processing, and legal advice on all immigration matters. Simply call (1-800-437-7313) or email (info@immigrationsupport.com) us and we can begin to provide you with answers to your immigration questions.