



## USCIS Provides Guidance on H-1B Visas for Health Care Practitioners

US Citizenship and Immigration Services (USCIS) recently clarified its standards for adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in a health care specialty occupation. According to the May 20, 2009 memorandum, individuals employed in occupations that require a license, such as registered nurses (RNs), physical and occupational therapists (PTs and OTs), speech language pathologists, physician assistants and medical technicians/technologists (clinical laboratory technicians/technologists), are eligible for H-1B visas. This memo was apparently issued to correct prior USCIS practices whereby adjudicators erroneously interpreted requirements listed in the Department of Labor's Occupational Outlook Handbook and denied H-1B petitions filed on behalf of OTs and PTs who did not possess an advanced degree (i.e., master's or doctoral degree) but did possess a license.

The recent memorandum clarifies the standards USCIS examiners are to use when adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in health care specialty occupations. The memo instructs adjudicators to not look beyond the license and to approve the petition if evidence is presented that the H-1B beneficiary has a valid license to practice in the state to which the petitioner seeks to employ the beneficiary and the position is in a specialty occupation. The memo further states that "[t]his guidance applies regardless of whether the beneficiary is in possession of a bachelor's degree, master's degree, or doctoral degree in the health care occupation." As such, we expect to see USCIS adjudicate H-1B petitions filed on behalf of RNs more liberally.

If the beneficiary has an unrestricted license the examiner should approve the petition for the full H-1B period requested, up to three years. The license's renewal date (even if less than three years) should not be considered when the examiner is determining the

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approval period. If the beneficiary has a restricted license, the examiner should approve the petition for only one year or for the duration of the restricted license, whichever is longer.

For beneficiaries who do not have a license (e.g., because the beneficiary needs to obtain a Social Security card or a valid work authorization document), the examiner must determine the requirements for obtaining a license and whether the beneficiary is qualified to perform the specialty occupation. The petitioner will also have to show, in the form of a letter from the State Board, that the beneficiary has filed an application for a license and cannot obtain a full unrestricted license due to the requirements of possessing a Social Security card, valid immigration document and/or physical presence in the United States. Assuming the petition can be approved under the standards outlined above, it should be approved for one year. Subsequent requests for extension must include evidence that the beneficiary has been granted a valid unrestricted license to practice in the health care specialty occupation.

It should also be noted that this memorandum does not change the VisaScreen certificate requirements for certain foreign national health care workers. The VisaScreen certificate must be issued by an appropriate credentialing organization (as specified by the applicable immigration regulations) which verifies the foreign national health care worker's education, training, license and experience are comparable to those of a US health care worker in the same field and that the foreign national meets certain English language requirements.

USCIS announced that, as of May 29, 2009, it has received approximately 45,800 H-1B petitions counting toward the Congressionally-mandated 65,000 annual cap. For more information regarding filing an H-1B petition on behalf of a beneficiary in a health care specialty occupation, or for information regarding immigration compliance practices generally, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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