INTERIM MEMO FOR COMMENT
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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 11, 2014 **PM-602-0104**

Policy Memorandum

SUBJECT: Adjudication of H-1B Petitions for Nursing Occupations

Purpose

This policy memorandum (PM) provides guidance on the adjudication of H-1B petitions for nursing positions. Specifically, this PM assists U.S. Citizenship and Immigration Services (USCIS) officers in determining whether or not a nursing position meets the definition of a specialty occupation. This PM supersedes any prior guidance on the subject.

Scope

This PM applies to and is binding on all USCIS employees, unless specifically exempted.

Authorities

- INA 101(a)(15)(H)(i)(b) – H-1B nonimmigrant defined
- INA 214(i) – Specialty occupation defined
- 8 C.F.R. Part 214.2(h) – H regulations

Background

The H-1B visa classification allows a U.S. employer to petition for a temporary worker in a specialty occupation. Most registered nurse (RN) positions do not qualify as a specialty occupation because they do not normally require a U.S. bachelor's or higher degree in nursing (or its equivalent) as the minimum for entry into those particular positions. There are some situations, however, where the petitioner may be able to show that a nursing position qualifies as a specialty occupation. For example, certain advanced practice registered nurse (APRN) positions normally require a U.S. bachelor's or higher degree in a specific specialty as the minimum for entry into these particular positions.

Approximately twelve years have passed since USCIS issued guidance on determining whether or not a nursing position is a specialty occupation.[1] Because of changes in the nursing industry,

[1] The former Immigration and Naturalization Service issued a memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication of H-1B Petitions filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002).

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USCIS is issuing this PM to provide updated guidance on the adjudication of H-1B petitions for nurses.

Guidance

I. Requirements for H-1B Classification in a Specialty Occupation

The H-1B visa classification allows U.S. employers (petitioners) to petition to hire employees (beneficiaries) to work in specialty occupations. The term "specialty occupation" means an occupation that requires: (1) theoretical and practical application of a body of highly specialized knowledge; and, (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum requirement for entry into the occupation in the United States.[2]

To qualify as a specialty occupation, the regulations require that the petitioner demonstrate that the position meets at least one of the following criteria:[3]

- A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;[4]
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the duties [is] so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

For an H-1B petition to be approved, the petitioner must establish that the offered position meets all of the applicable statutory and regulatory provisions.

II. Registered Nurses

Registered nurses generally do not qualify for H-1B classification.[5] This is because most RN positions do not normally require a U.S. bachelor's or higher degree in nursing (or its equivalent) as the minimum for entry into these particular positions and thus are unable to qualify as specialty occupations. According to the U.S. Department of Labor's *Occupational Outlook Handbook* (OOH), RNs usually take one of three education paths: a bachelor's of science degree

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[2] INA 214(i)(1) and 8 C.F.R 214.2(h)(4)(ii).
[3] 8 C.F.R. 214.2(h)(4)(iii)(A).
[4] 8 C.F.R. 214.2(h)(4)(iii)(A)(1). The degree must be in the specific specialty that is directly related to the H-1B position, unless the petitioner demonstrates that an alternative, closely related specialty degree applies to the position.
[5] According to the National Council of State Boards of Nursing (NCSBN) an RN is an individual who has graduated from a state-approved school of nursing, passed the NCLEX-RN Examination and is licensed by a state board of nursing to provide patient care. *See* NCSBN's website at https://www.ncsbn.org/2731.htm. Standard RN positions provide and coordinate patient care, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members. *See* the online version of Department of Labor's *Occupational Outlook Handbook* (OOH) at http://www.bls.gov/ooh/healthcare/registered-nurses.htm.

in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program.[6] Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level RN positions. Although the ADN is still the most common degree people pursue to become an RN, nursing candidates are increasingly pursuing BSN degrees.[7] In addition, RNs with an ADN or diploma may return to school to earn a bachelor's degree through an ADN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field.[8]

The private sector is increasingly showing a preference for more highly educated nurses. The American Nurses Credentialing Center (ANCC) Magnet Recognition Program recognizes health care organizations that advance nursing excellence and leadership. In this regard, achieving Magnet status indicates that the nursing workforce within an institution has attained a number of high standards relating to quality and standards of nursing practice.[9]

Registered nurses' duties and titles often depend on where they work and the patients with whom they work. Their work can focus on specific areas, including the following examples:[10]

Position	**Duties**
Addiction nurses	Care for patients who need help to overcome addictions to alcohol, drugs, tobacco, and other substances.
Cardiovascular nurses	Care for patients with heart disease and people who have had heart surgery.
Critical care nurses	Work in intensive care units (ICU) in hospitals, providing care to patients with serious, complex, and acute illnesses and injuries that need very close monitoring and treatment.
Emergency room nurses	Work as part of a team with physicians, other nurses and healthcare

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[6] For more information on registered nurses, *see* the online version of Department of Labor's *Occupational Outlook Handbook* (OOH) at http://www.bls.gov/ooh/healthcare/registered-nurses.htm. USCIS recognizes the OOH as an authoritative source on the duties and educational requirements of the occupations that it addresses.
[7] Institute of Medicine. *The Future of Nursing: Leading Change, Advancing Health.* Washington, DC: The National Academies Press (2011) *at* http://www.nap.edu/catalog.php?record_id=12956.
[8] *See* http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4 (last visited *March 24, 2014*).
[9] For example, as of January 1, 2013, 100% of nurse managers of individual units/wards/clinics must have at least a baccalaureate degree in nursing upon submission of the Magnet application. Additionally, to apply for Magnet designation, the organization must show what plans are in place to achieve the recommendation of having an 80% baccalaureate prepared registered nurse workforce by 2020. *See* ANCC (American Nurses Credentialing Center (ANCC) *Magnet Recognition Program® FAQ: Data and Expected Outcomes* at http://www.nursecredentialing.org/FunctionalCategory/FAQs/DEO-FAQ.html.
[10] *See* Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition*, Registered Nurses, http://www.bls.gov/ooh/healthcare/registered-nurses.htm (last visited *April 21, 2014*).

	professionals to provide care, monitor health conditions, plan long-term care needs, administer medicine, use medical equipment, perform minor medical operations, and advise patients and their families on illness, care and continued care after a hospital stay.
Genetics nurses	Provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis.
Neonatology nurses	Take care of newborn babies.
Nephrology nurses	Care for patients who have kidney-related health issues stemming from diabetes, high blood pressure, substance abuse, or other causes.
Oncology nurses	Combine their scientific knowledge, technical skills, and caring to help people living with cancer and their families throughout the cancer journey – from diagnosis and treatment to survivorship and end-of-life care.
Pediatric nurses	Work with patients from infancy to young adulthood, giving developmental screenings, immunizations, and treating common illnesses.
Peri-Operative (Operating Room) nurses	Have a hands-on role, directly assisting surgeons during a procedure. For instance, they may help to suction the incision site or suture a wound.
Rehabilitation nurses	Care for patients with temporary or permanent disabilities.
Other nurses	Have jobs in which they do not work directly with patients, but must still have an active registered nurse license.

Depending on the facts of the case, some of these RN positions may qualify as specialty occupations.

III. Advanced Practice Registered Nurses

Advanced practice registered nurse defines a level of nursing practice that utilizes extended and expanded skills, experience and knowledge in assessment, planning, implementation, diagnosis and evaluation of the care required.[11] Positions that require nurses who are certified APRNs will

[11] APRNs provide and coordinate patient care and they may provide primary and specialty health care. APRNs who work with patients typically perform many of the same duties as RNs, gathering information about a patient's

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generally be specialty occupations due to the advanced level of education and training required for certification.

However, having a degree is not, by itself, sufficient for the position to qualify for H-1B classification. A critical factor remains whether a baccalaureate or higher degree in a specific specialty (or its equivalent) is normally required for these particular positions. It must be noted that a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. USCIS is required to follow long-standing legal standards and determine whether the proffered position qualifies as a specialty occupation, and whether a beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed.[12]

Each state legislature and Board of Nursing decides on the title it will use for APRNs and regulates licensure, scope, and standards of practice. While the burden is on the petitioner to establish eligibility for the benefit sought, generally, the following is a non-exhaustive list of APRN occupations that may satisfy the requirements for a specialty occupation:[13]

- Certified Nurse-Midwife (CNM);
- Certified Clinical Nurse Specialist (CNS);
- Certified Nurse Practitioner (CNP); and
- Certified Registered Nurse Anesthetist (CRNA).

IV. State Licensing Requirements and the Nurse Licensure Compact

The nursing profession is regulated at the state level. In all states, the District of Columbia, and U.S. territories, RNs must have a nursing license. To become licensed, RNs must graduate from an approved nursing program and pass the National Council Licensure Examination (NCLEX). Other requirements for licensing vary from state to state.

If a state requires at least a bachelor's degree in nursing to obtain a nursing license, an RN position in that state would generally be considered a specialty occupation. At this time, no state requires a bachelor's degree in nursing for licensure. However, state licensure requirements are subject to change.

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condition and taking action to treat or manage the patient's health. However, APRNs are also trained to perform many additional functions, including ordering and evaluating test results, referring patients to specialists, and diagnosing and treating ailments. APRNs focus on patient-centered care, which means understanding a patient's concerns and lifestyle before choosing a course of action. http://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm#tab-2 (visited *April 16, 2014*).

[12] *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

[13] Examples of APRN duties are available on the OOH in the chapter entitled "Nurse Anesthetists, Nurse Midwives, and Nurse Practitioners." *See* http://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm (visited *March 24, 2014*). Advanced Practice Psychiatric Nurses (APPN) is an example of how different states or employer may use the same title for different positions. For example, in New Jersey, APPNs with CNS or NP credentials in psychiatric mental health nurse are called nurse practitioners by the state. *See* http://www.apna.org/i4a/pages/index.cfm?pageid=3866.

Additionally, states allow for licensure by endorsement which means that once a nurse is granted a valid license in his or her home state, he or she can apply and pay applicable fees in any other state and be granted a license in the new state. There are several publically available databases where state requirements and nurse licensures can be verified, including the National Council of State Boards of Nursing (NCSBN), Nursys Licensure Quick Confirm, and Nursys Licensure Verification.[14]

Many states also participate in a licensure compact, which enables multistate licensure for nurses. The Nurse Licensure Compact (NLC) allows an RN and licensed practical/vocational nurse (LPN/VN) to have one multi-state license in a primary state of residency (the home state) and to practice in other compact states (remote states), while subject to each state's practice laws and discipline.[15] Under the NLC, foreign nurses applying for licensure in a compact state may declare either the country of origin or the compact state as the primary state of residency.[16] If the foreign country is declared the primary state of residency, a single-state license will be issued by the compact state.[17] To date, APRNs are not included in this compact. Therefore, APRNs must apply in each state in which they practice, unless exempted when employed in a federal facility.

V. Evidence to Establish a Position Qualifies as a Specialty Occupation

When submitting an H-1B petition, the petitioner must show by a preponderance of the evidence that the proffered position qualifies as a specialty occupation. As in other visa classifications administered by USCIS, the preponderance of the evidence standard requires that a petitioner show that what it claims is more likely the case than not. This is a lower standard of proof than both the standard of "clear and convincing evidence," as well as the "beyond a reasonable doubt" standard that applies to criminal cases.[18]

In determining whether a petitioner meets the preponderance of the evidence standard, adjudicators will consider all of the evidence in the record of proceeding. Such documentation submitted by petitioners often includes evidence regarding:

- The nature of the petitioner's business;
- Industry practices;

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[14] Currently, approximately 24 states participate in the Nurse Licensure Compact (NLC), allowing for mutual recognition of a nurse's license. The remaining 26 noncompact states allow for reciprocity, but a nurse must have a license specific to practice in any noncompact state. This will require an application for licensure by endorsement and completion of any of the new state board's regulations and provision of all of the requested documentation. The NCSBN website provides a map of which states require a master's or higher degree to practice in an advanced role. *See* https://www.ncsbn.org/2567.htm. Nursys Licensure Quick Confirm provides online nursing reports for employers, nurses and the general public at https://www.nursys.com/LQC/LQCSearch.aspx. Nursys License Verification hosts online verification for nurses requesting to practice in another state at https://www.nursys.com/NLV/NLVSearch.aspx.

[15] For illustrative examples and additional information, *see* the National Council of State Boards of Nursing website at https://www.ncsbn.org/nlc.htm#moving. Additionally, individual state licensing boards provide information about individual licensees as a public service.

[16] A compact state is any state that has adopted the NLC.

[17] Applying for reciprocity is not the same as applying for a license. Nurses need to have a valid license in their current state before applying for transfer to another.

[18] *See Matter of Chawathe*, 25 I&N Dec. 369, 375, 376 (AAO 2010).

- A detailed description of the duties to be performed within the petitioner's business operations;
- Advanced certification requirements;[19]
- ANCC Magnet Recognized status;
- Clinical experience requirements;
- Training in the specialty requirements; and
- Wage rate relative to others within the occupation.

Officers must review each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence to determine whether the proffered position more likely than not qualifies as a specialty occupation. The duties of the position should be evaluated against the four regulatory criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(A) with the understanding, again, that the required degree must be one in a specific specialty. While USCIS recognizes the OOH as one authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, the OOH is not always determinative. Other authoritative and/or persuasive sources provided by the petitioner will also be considered.

Use

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Business and Foreign Workers Division.

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[19] There are many advanced certifications available to nurses, including certifications for Critical Care Registered Nurse, Progressive Care Certified Nurse, Critical Care Registered Nurse e-ICU, Critical Care Clinical Nurse Specialist, Acute Care Nurse Practitioner, Certified Nurse Manager and Leader, Cardiac Medicine Sub-Specialty Nurse, and Cardiac Surgery Sub-Specialty Nurse.