The Visalaw.com Health Care Newsletter
June 2011

Published by Greg Siskind, partner at Siskind Susser, P.C. - Immigration Lawyers; telephone: 800-343-4890, 901-682-6455; facsimile: 901-273-8770; email: gsiskind@visalaw.com, WWW home page: http://www.visalaw.com/.

Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina and the People's Republic of China. To schedule a consultation with the firm by telephone or in-person, go to http://www.visalaw.com/intake.html.

Editor: Greg Siskind. Associate Editor: Esther Fridman

To receive a free e-mail subscription to VISALAW.COM Health Care Immigration News, fill out the form at http://www.visalaw.com/IMG/email.htm.

For our licensing charts by state, go to http://www.visalaw.com/IMG/charts.html.

****

1. Openers

2. Ask Visalaw.com for Healthcare Workers

3. Health Care News Bytes

4. The ABC's of Healthcare Immigration – Immigrant Visa Options for Nurses

5. USCIS Reverses Policy for Affiliation-Based H-1B Cap Exemption

6. Cuban Physicians Cannot Show Qualifications to Practice Medicine

7. FSBPT To Change Testing Options For Physical Therapy Graduates

8. Judge Rules NY Pharmacy Licensing Law Discriminates Against Nonimmigrants

9. Arizona Proposes Law Requiring Hospitals to Check Immigration Status

10. Transplant Patients Forced to Wait When Organ Donors Cannot Get Visas

11. Illegal Immigrant Kicked Out of Hospital

12. House Judiciary Committee Advances H-1C Nurse Bill

13. Chart Of Physical Therapist Licensing Requirements By State

14. State 30 Physician Waiver Chart

15. Physician National Interest Waiver Chart

---

1. Openers

Dear Readers:

While the Great Recession technically ended some time ago, few would argue that it feels like we're in a recovery. More than 9% of Americans are out of work, we're in a budget crisis, and people are still as gloomy as they were at the beginning of the downturn. But the health care jobs sector remains a bright spot. There are still severe shortages of doctors and most other health care professionals.

Despite the well documented need for foreign health care workers, immigration processing headaches go on and on. Whether it is because of poor training or a hostile attitude, USCIS still is making it a tough environment for immigration practitioners and their clients. For example, USCIS has been challenging the H-1B cap exemption status of non-profit hospitals around the country that have never had problems before. They are generally denying H-1B petitions for highly specialized nurses claiming that they don't require bachelors degrees for their jobs. They appear to be re-adjudicating J-1 waivers for doctors working in underserved areas after the State Department has approved the applications.

On the other hand, USCIS Director Mayorkas and others at headquarters do seem to be interested in opening more lines of communication with the public in order to improve processes. They have been holding regular stakeholder meetings on a variety of topics and the calls have been refreshingly candid and helpful. In a number of calls, issues surrounding health care workers have been discussed and we could start to see improvements in processing as a result. Next month, we'll have the first stakeholders meeting specifically devoted to physician issues.

We also are starting to see some action on Capitol Hill regarding health care worker issues. The H-1C visa for nurses expired some time back, but the House Judiciary Committee just passed a bill reviving it. It still has a long way to go, but this is definitely encouraging. We also have seen several skilled worker bills introduced recently which would help health care workers including making more visa numbers available in both the non-immigrant and immigrant visa categories. And we're probably going to see a J-1 waiver bill introduced soon by Senator Conrad that would extend the Conrad 30 program and also make other needed changes regarding physician immigration.

So hopefully in our next issue we'll have some more positive news to report based on these new developments.

*****

In firm news, the 2011 edition of Greg Siskind's J-1 Visa Guidebook has been published by LexisNexis. The book covers the gamut of issues faced by J-1 doctors as well as other J-1 visa holders. It can be purchased online at www.lexisnexis.com.

Several Siskind Susser lawyers have been named by Who's Who Legal to the annual rankings of top corporate immigration lawyers around the world. Greg Siskind was named the sixth best immigration lawyer in the world, Lynn Susser and Yvette Sebelist were ranked at the top of lawyers in Tennessee and Karen Weinstock made the list for Georgia. Who's Who Legal is the research arm of the International Bar Association and the American Bar Association's International Section.

Greg Siskind, Yvette Sebelist and Ari Sauer are all now serving on the Board of Governors of the American Immigration Lawyers Association. The three recently attended the AILA annual meeting in San Diego, California. Elissa Taub was named to the AILA Health Care Workers Committee.

*****

We remind readers that we do not charge employers and recruiters of health care employees for consultations and that policy extends to individual physicians as well. Please feel free to call our office at 901-682-6455 to arrange for an appointment with me or one of my colleagues.

Kind regards,

Greg Siskind

---

2. Ask Visalaw.com for Healthcare Workers

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

Q - I am a physician in my third year of residency training and I am on an H-1B visa. My teaching hospital employer is exempt from the H-1B cap. I have gotten a job with an employer that is a for profit company. When I finish my residency training (June 30th) there will be no H-1B numbers available. Is there any way to begin working before new H-1B numbers open up on October 1st?

A- This is a tough question to answer since USCIS has never fully clarified the rules in this type of situation. There are a couple of things to consider. First, there is something called H-1B portability which says that if someone files a change of H-1B employer petition they are permitted to work for the new H-1B employer while the application is pending. The portability rule didn't really address what happens when someone is at an H-1B cap exempt employer and is switching to a cap subject employer during a time when visa numbers are not available. However, in a letter correspondence between a senior USCIS official and an immigration attorney that has been provided to the American Immigration Lawyers Association, the USCIS official took the position that H-1B portability was available even when a visa number was not. The portability rules also indicate that once a decision is reached on the case, portability ends. That's because it's assumed either the applicant was denied or that the H-1B employment would start at that point if the case was approved. The official said he was included to agree that employment should be able to continue until a visa number became available, but that USCIS had to address this in a future rulemaking (which has not yet come). In any case, the letter does not have the force of law and is simply a form of persuasive evidence that can be used in a case. The safest route might be to simply wait to start work until October 1st.

---

3. Health Care News Bytes

The House voted 407-17 in favor of HR 1933, a bill reviving the H-1C nurse visa, a visa category that lapsed in 2009. The bill was sponsored by Lamar Smith, the chair of the House Judiciary Committee. H-1C visas are available to up to 300 nurses per year being sponsored to work in shortage areas designated by the US Department of Health and Human Services. The number of nurses being admitted was slashed from 500, but nurses would now be able to stay for up to six years in two three year terms. The bill now moves on to the Senate Judiciary Committee for consideration.

To see the final vote results click here.

*****

The FSBPT has finalized a settlement agreement with three Philippines-educated candidates who applied for physical therapy licenses in Georgia. The three candidates filed a lawsuit on November 2, 2010 in the Superior Court of Fulton County Georgia against the FSBPT and the Georgia State Board of Physical Therapy challenging the FSBPT's decision to require candidates educated in the Philippines, Egypt, India and Pakistan to take the NPTE-i form of the National Physical Therapy Examination.

Candidates who graduated from physical therapy programs in the Philippines, Egypt, India and Pakistan will not be required to take NPTE-i in order to qualify for licensure in the state of Georgia. However, the settlement has no effect on those applying for licensure in another state or jurisdiction.

The FSBPT will be implementing fixed-date NPTE testing for all candidates on July 1; beginning on this date, there will no longer be a requirement for certain candidates to take the NPTE-i.

https://www.fsbpt.org/NewsAndEvents/FSBPTresolvesDispute/

*****

The U.S. Consulate in Manila, Philippines has been denying visitor visas to physical therapists and other health professionals seeking to enter the United States to take licensing examinations necessary to qualify for H-1B visas. The State Department has now amended the Foreign Affairs Manual to clarify for consular officers the rules regarding licensing. Under the rule, updated on March 31, 2011, "If a State permits aliens to enter the United States as a visitor to take a licensing exam, then USCIS will generally require a license before they will approve the H-1B petition…Therefore, a [visitor's] visa should not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States."

*****

The Educational Commission on Foreign Medical Graduates (ECFMG) announced that the number of first-year (PGY-1) residency positions increased for the ninth consecutive year. The 2011 National Residency Matching Program ("Match") had an increase of 612 positions, for a total of 23,421 first-year positions.

However, the number of foreign medical graduates (FMGs) who matched to first-year

positions decreased compared to 2010. Of the 6,659 FMG participants who were not U.S. citizens, 2,721 obtained first-year positions; this is a decrease of 160 compared to last year.

In spite of this, the total number of FMGs, which includes U.S. citizens educated outside the United States, filling PGY-1 positions in the 2011-2012 academic year will be higher than those obtaining positions through the 2011 Match. While a majority of PGY-1 positions in the U.S. are filled through the Match, a large number of FMG applicants obtain positions outside of the Match.

*****

Senator Kent Conrad (D-ND) announced that he is retiring from the Senate and will not seek reelection in 2012. Senator Kent Conrad has long championed J-1 waivers for physicians and the State 30 program is named in his honor. Senator Conrad will remain in office until the end of next year and is hoping to secure permanent authorization of the Conrad 30 program.

*****

According to a report by the Healthcare Association of New York State (HANYS), New York faces a growing shortage of physicians. While the state currently has a shortage of 1,000 physicians, the shortage is likely to continue due to the retirement of "baby boomers" and difficulties in recruiting physicians.

According to the report, 33% of hospitals stated they had to reduce and/or eliminate services in 2009 because of a shortage of physicians. Also, 69% of hospitals surveyed stated there were times their emergency departments did not have coverage for certain specialties.

The complete report can be viewed online at
http://www.hanys.org/communications/publications/2011/2011-01-10_physician_survey_results_2010_electronic.pdf

*****

A recent *HealthDay News* article reported that patients in hospitals where nurses work long hours are much more likely to die of pneumonia and heart attack.

Due to a nationwide nursing shortage, nurses are required to work 12-hour shifts in most U.S. hospitals. However, the long schedule, shift work, and not enough time off the job lead to sleep deprivation. Good nursing care requires alertness and vigilance. The long hours leading to sleep deprivation negatively impact the quality of nursing care and increase the potential for error.

The long hours worked by nurses are not only due to the nursing shortage; physician working hours have also contributed. Hospitals have reduced the number of hours a physician-in-training may work, causing nurses to have to compensate.

http://consumer.healthday.com/Article.asp?AID=648964

*****

The Centers for Disease Control and Prevention (CDC) found that office-based physicians are seeing an increase in older patients as the baby boom population ages. The report looked at a ten-year period, from 1998 to 2008. It found that during this period, 57% percent of patients visiting physicians in 2008 were 45 or older, while only 49% were 45 or older in 1998. During this period, the number of physician visits increased by 13% for patients who were 65 and older.

The report can be found at http://www.cdc.gov/nchs/data/databriefs/db41.pdf.

*****

The *New York Daily News* reported on The Welcome Back Center at LaGuardia Community College, which is helping immigrant health care workers return to their chosen fields by assisting them through the U.S. medical certification process. The program is part of the Welcome Back Initiative, which has eight centers across the United States.

The Welcome Back Center works with doctors, nurses, dentists and psychologists from 15 countries. Many of these medical professionals have been working in the U.S. as janitors and taxi drivers.

The center provides test prep classes and referrals for English language courses. The center also assists immigrant workers to find medical-related jobs such as medical assistants or technicians while they go through the certification process.

http://www.nydailynews.com/ny_local/queens/2010/12/14/2010-12-14_helping_immigrant_health_care_workers_return_to_work.html#ixzz186QGFKfz

---

4. The ABC's of Healthcare Immigration – Immigrant Visa Options for Nurses

The immigrant visa is normally the only option for nurses because most of the non-immigrant visa classifications are not available to the typical registered nurse seeking employment in the United States.

What are the basic requirements for a worker to qualify for a green card?

Employment-based immigrant visas typically involve three main steps. First, the employer files a Labor Certification application with the U.S. Department of Labor. The purpose of the application is to test the employer's local labor market for available workers. If no qualified and available workers are located, the position is certified as open for a foreign worker.

Second, the employer files an I-140 Alien Worker Petition with the USCIS. The purpose of this petition is to verify that the foreign worker has the minimum requirements to fill the open position, and serves to classify the foreign person as eligible for a particular visa category.

Third, on the basis of the Labor Certification and Alien Worker Petition, the foreign worker makes an application for an immigrant visa at a U.S. Consulate. If the foreign worker is legally present in the U.S., he or she may instead apply for permanent

resident status via a process called adjustment of status. A nurse in the US can simultaneously apply for the I-140 and for adjustment of status.

The entire process can take several years. Labor certifications can take months to be processed and the I-140 can take anywhere from a month to a year. And the ability to start the last stage depends on the availability of an immigrant visa which can vary depending on the nurse's nationality as well as the level of the position and the nurse's educational background. Waits of five to ten years are not unusual. And another year can be added for actual consular processing or adjustment of status once the visa is available.

Do nurses receive any sort of special treatment in green card processing that makes the green card application process faster or easier?

In 2005 Congress signed a bill that made 50,000 extra green cards available to nurses. However, once these 50,000 green card applications were processed, this accelerated green card program was concluded.

Currently, there is no priority for nurse LPR applications, but some nurses can get "special" treatment under Schedule A.

As noted above, most employment immigration cases require the employer to first recruit and test the labor market for qualified citizens or permanent residents. After this test is complete, the Department of Labor will certify that no qualified American worker is immediately available to fill the position. Only then will the employer be able to sponsor a foreign worker. While these labor certifications are often successful, they can be time intensive and do not reflect the immediate needs of the business world.

In 1996, Congress passed legislation that retained nurses on a very short list of pre-certified occupations for which a labor shortage was recognized. The list is included in Schedule A of the labor certification regulations and these types of green card cases are called "Schedule A labor certifications". The Department of Labor (DOL) has already determined that there are not enough American workers who are able, willing, qualified, and available to fill all of the openings for professional nurses. Therefore, no test of the labor market is required and the case can be directly filed with the USCIS. This does not necessarily mean that all cases are approvable or will be handled quickly. The importance of nursing being pre-certified is that it skips the first and most time consuming part of the employment based immigration process. Note that this pre-certification is limited in scope. It only applies to "professional nurses". Schedule A is not available to Licensed Practical Nurses, Nurse Assistants, or other nursing aides. Professional Nursing is defined as a course of study in professional nursing resulting in a diploma, certificate, baccalaureate degree, or associate degree. More specifically, an acceptable course of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine. Whatever training the nurse has received should result in licensure in the country in which the training occurred. This coursework may have been completed at a U.S. nursing school or an approved foreign nursing program. For an immigrant visa, it is not required that a nurse have a bachelor's degree in nursing, only that he or she completed a professional program in nursing and have subsequently been licensed.

What is the first step in filing for a green card for a nurse?

The initial step in a Schedule A case is to file a Form I-140 application package and the appropriate supporting documentation to the USCIS service center. There are four regional USCIS service centers. They are located in Vermont, Texas, Nebraska, and California and each service center has jurisdiction over a section of the country. A case is properly filed in the service center having jurisdiction over the place of employment or in the service center covering the region where the employer's office is located. Note that USCIS changes which service centers handle which types of cases from time to time. As of the writing of this article, only the Nebraska Service Center and the Texas Service Center handled I-140 cases.

If a nurse does not qualify under Schedule A, the employer will have to file labor certification application, known as PERM. This requires testing the job market to show that there are no U.S. citizen or legal permanent resident workers who are qualified to fill the position. Once the PERM application has been certified by the U.S. Department of Labor, the employer can go ahead and file the I-140 application at a USCIS Service Center.

What kind of documentation must be submitted with an I-140 employment-based immigrant petition?

Supporting documentation must be submitted with the I-140 as prescribed in 20 C.F.R. 656.22(c)(2). This supporting evidence includes the following:

1. Completed PERM labor certification forms (the recruiting process under PERM need not, however, be completed);
2. A posted notice of the job opening. This notice must include a job description, work hours, and rate of pay. The notice must be posted at the worksite for a minimum of ten business days;
3. Evidence that the petitioning employer has the financial ability to pay the salary offered to the nurse. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. If the U.S. employer employs 100 or more workers, the USCIS may accept a statement from a financial officer of the organization;
4. CGFNS certificate or nurse license from state where the nurse will be working or proof of passing the NCLEX licensing exam and evidence that the nurse cannot obtain a license because he or she cannot obtain a social security number;
5. Nursing diploma or degree;
6. Nursing registration/licensure from the country where the degree was obtained.
7. A Prevailing Wage Determination issued by the Department of Labor

The CGFNS certificate provides evidence that the nurse has complied with a three step review of their nursing skills: 1. a credentials evaluation; 2. passage of an English language proficiency exam; and 3. passage of the CGFNS qualifying exam. Once these requisites have been met, the Commission on Graduates of Foreign Nursing Schools will issue the nurse a CGFNS certificate. The purpose of this certification program is to serve as a predictive evaluation process to accurately judge which nurses will be able to meet the requirements for U.S. licensure once admitted to the country. If the nurse has already passed the NCLEX-RN exam, they are exempted from the requirement of obtaining a CGFNS certificate.

Note that the employer must still be able to show it is paying the prevailing wage in the area when it files the I-140 even if Schedule A processing is used.

When does the health care workers credentialing certificate (the "VisaScreen") come into the picture?

The VisaScreen certificate must be presented to the USCIS prior to adjustment of status and a US consulate prior to issuance of a permanent residency visa. The certificate is NOT required at the start of adjustment application or prior to an I-140 application's approval.

What steps are required aside from submitting the I-140 and getting the VisaScreen certificate?

Upon approval of the I-140 and receipt of the VisaScreen certificate, a nurse is eligible to obtain their immigrant visa through consular processing. If they are in the United States in a lawful status they may adjust their status to that of permanent resident. Adjustment of status applications can be submitted at the same time as an I-140 application or at any time after the I-140 is submitted or approved. See the discussion below for more information on adjustment of status.

Nurses are also required to adhere to licensing requirements of the state in which they intend to work. Licensing requirements for registered nurses are maintained on a state-by-state basis, and each state has slightly different requirements for licensing. To demonstrate eligibility and preparedness for the NCLEX exam, most states require a combination of materials be submitted with the license application. The documents may include CGFNS certification, copies of foreign academic credentials with certified translations, an education/credentials evaluation and a demonstration of proficiency in English (e.g. TOEFL exam results).

All states permit an individual to obtain a license through examination, and some state permit licensing by endorsement, or acceptance of a registered nurse license from another state or country as evidence of the person's credentials.

Consult the license chart at http://www.visalaw.com/IMG/nursechart.pdf for more information on requirements in each of the states.

How does a nurse in the US adjust status?

If a nurse is legally in the United States and a visa number is available, then processing via adjustment of status will typically be easier and it will be possible to get authorization to work much more quickly than through consular processing.

A nurse's employer must file an I-140 for a nurse in the United States just like a nurse residing abroad. If the nurse can pass the NCLEX exam, then it is not necessary to take the CGFNS examination. Otherwise, the nurse would still need to present a CGFNS certificate or proof that the nurse has a full and unrestricted license as an RN. A nurse can file an adjustment of status application as well as an application for an employment authorization document at the same time they submit the I-140 application. Once the nurse is licensed by a state and the nurse is in possession of an employment authorization document, the nurse can begin work.

License processing times vary between the states. USCIS regional service centers are required to process employment authorization documents in less than 90 days (applicants have the right to request an interim employment document at a local USCIS office if 90 days pass after applying). Adjustment applications typically take 8-12 months at USCIS regional service centers. A nurse must present a VisaScreen Certificate with the adjustment of status application.

Conclusion

The immigration process may seem somewhat like a maze. However, with proper guidance and some practical experience, it should not discourage a potential employer from pursuing prospective employees. Those who have been successful in obtaining international employees often find them to be very dedicated staff members. Given the current labor crisis in the healthcare industry, the international labor market should not be discounted.

---

5. USCIS Reverses Policy for Affiliation-Based H-1B Cap Exemption

U.S. hospitals that train doctors in residency and fellowship programs, which are run in coordination with a U.S. medical school, have long been considered exempt from the H-1B cap. However, a recent USCIS policy challenged the affiliations American teaching hospitals have with American medical schools. After receiving numerous complaints, USCIS announced it will revert back to previous policy, pending issuance of a permanent rule.

On March 16, 2011 USCIS announced that it is reviewing its policy on H-1B cap exemptions for non-profit entities that are related to or affiliated with an institution of higher education, such as a medical school. As of this date, USCIS will give deference to determinations made since June 6, 2006, that a non-profit entity that is related to or affiliated with an institution of higher education is exempt from the H-1B cap.

The petitioner must show that the organization previously received H-1B exemption as a non-profit organization that is related to or affiliated with an institution of higher education. Petitioners should provide USCIS with evidence such as copies of previously approved cap-exempt petitions issued by USCIS since June 6, 2006, and any documentation that was submitted in support of the claimed cap exemption.

The USCIS announcement, which was updated on March 18, can be found here.

---

6. Cuban Physicians Cannot Show Qualifications to Practice Medicine

A recent Fox News report found that Cuban physicians are having a difficult time obtaining accreditation so they can practice medicine in the United States.

For years, Cuba has sent its physicians on goodwill missions abroad to provide free health care in poor countries. In 2006, the United States created a special visa program, the Cuban Medical Professional Parole Program, specifically for these

physicians to defect from Cuba. Over 1,500 Cuban physicians, dentists and other medical professionals have used these visas.

However, many of these Cuban physicians are facing the problem of obtaining their educational transcripts and degrees in order to demonstrate their qualifications for a US visa. Cuba, which pays for its doctors' education, considers those who defect to the US to be traitors, and has therefore refused to release the physicians' educational transcripts. According to the Educational Commission for Foreign Medical Graduates (ECFMG), the US organization which must approve foreign physicians' qualifications, at least 20 Cuban physicians have asked for waivers because of problems obtaining documents.

Due to the United States' "wet-foot, dry-foot" policy, any Cuban who makes it to American shores can remain in the country. This means that the Cuban physicians can remain in the US even if they do not practice medicine. However, this leaves the physicians without a way to support themselves, since they cannot practice medicine without providing their medical qualifications to the ECFMG and passing all three parts of the US Medical Licensing Examination (USMLE).

ECFMG has tried to find ways to help defecting Cuban physicians demonstrate their medical qualifications. Physicians can submit affidavits from other doctors who attended medical school with them or request a waiver from the commission's executive board.

http://latino.foxnews.com/latino/health/2011/03/26/cuban-doctors-accepted-face-problems-practicing-medicine/#

---

7. FSBPT To Change Testing Options For Physical Therapy Graduates

The Federation of State Boards of Physical Therapy (FSBPT) has announced that it will stop using continuous testing and will begin a fixed-date administration for the National Physical Therapy Examination (NPTE).

Continuous testing will be available for Physical Therapy graduates until June 30, 2011. After this time, the FSBPT will administer the NPTE on three dates in 2011:

- September 7, 2011
- October 20, 2011
- December 5, 2011

In 2012, there will be five testing dates:

- January 30, 2012
- March 29, 2012
- July 2, 2012
- July 31, 2012
- October 23, 2012

The purpose of offering the NPTE on a limited number of fixed dates is so the FSBPT can ensure that the NPTE given on a particular date will not contain previously compromised items. This change will reduce or eliminate candidates' ability to gain a

score advantage by having advance access to previous NPTE questions.

The change in procedure is a result of a Georgia court decision. Physical therapy graduates in Georgia filed a lawsuit challenging the FSBPT's decision to develop a version of the NPTE for physical therapy graduates from Egypt, India, Pakistan and the Philippines, known as the NPTE-i. This version of the exam was instituted due to evidence of sharing test questions by and among graduates from these countries.

On February 9, 2011, a Georgia Superior Court judge granted an injunction to three graduates of physical therapy programs in the Philippines against the Georgia State Board of Physical Therapy and the FSBPT. The injunction prohibited the Georgia State Board and the FSBPT from requiring physical therapy graduates from Egypt, India, Pakistan and the Philippines to take the NPTE-i.

For more information, visit https://www.fsbpt.org/NewsAndEvents/index.asp.

---

8. Judge Rules NY Pharmacy Licensing Law Discriminates Against Nonimmigrants

The U.S. District Court for New York ruled on September 29, 2010, that a New York education law was unconstitutional because it violates the rights of nonimmigrants under the Equal Protection Clause of the U.S. Constitution. Twenty-six qualified pharmacists with temporary authorization to work in the United States filed a lawsuit against the New York State Department of Education who had refused them licenses because they did not have lawful permanent resident (LPR) status or U.S. citizenship.

The controversial law, New York Education Law § 6805(1)(6), states that "[t]o qualify for a pharmacist's license, an applicant shall...be a United States citizen or an alien lawfully admitted for permanent residence in the United States." The law excludes all nonimmigrants.

Twenty-two of the plaintiffs had obtained H-1B visas and the other four has TN visas. All twenty-six had complied with immigration law. Twenty-two of them had applied for lawful permanent residence and sixteen had EADs. Each of the plaintiffs had secured "limited licenses" to practice pharmacy in New York under a previous version of § 6805(1)(6), which permitted a three-year waiver of the citizenship or green card requirement for otherwise qualified pharmacists, plus a one year extension of that waiver. The plaintiffs' limited licenses were set to expire in 2009, and could not be renewed. The Court had ordered that all twenty-six licenses be extended pending the outcome of this case. Therefore, all twenty-six were able to keep practicing pharmacy for the duration of the case.

The State of New York contended that the purpose of the law was to protect the health and safety of the state's residents by monitoring, regulating and enforcing compliance with professional disciplinary rules and ensuring the availability of malpractice actions against pharmacists. According to the State, pharmacists without U.S. citizenship or LPR status, i.e., nonimmigrants without permanent ties to the United States, are less likely to remain in the state, and therefore less likely to comply with state disciplinary regulations and be available for malpractice actions.

The State further argued that LPRs "share essential benefits and burdens of citizenship" since they pay taxes, they can be in the army, and can live and work in the United States indefinitely, while nonimmigrants do not have as much in common with U.S. citizens. According to the State's position, nonimmigrants have a distinct "constitutional status" that is not protected under the Equal Protection Clause.

However, the Court disagreed with the State's position. Both LPRs and nonimmigrants have foreign citizenship and can choose to leave the United States permanently for their country of citizenship in the future. Also, both have the choice to remain in the United States permanently: a nonimmigrant can apply for and obtain LPR status, and an LPR can stay by exercising his or her right to permanent residence. According to the Court, the difference between the two statuses is that a nonimmigrant may not be able to remain in the United States if he or she wishes. The differences between LPR and nonimmigrant status come down to the fact that nonimmigrants have not yet obtained permission to reside in the United States permanently. (The Court also recognized that there are some other minor differences between nonimmigrants and LPRs, such as the fact that nonimmigrants are barred from the United States military, some of them do not pay taxes on foreign income, they can be denied certain federal benefits, and they are usually admitted for a single purpose, such as practicing a particular profession, like pharmacy).

Because the issue at hand was the fact that nonimmigrants can pick up and leave the state or the country because they cannot permanently stay in the United States, the Court found the law to be unconstitutional. This is because the law does not address the possibility that U.S. citizen and LPR pharmacists can also leave the state or country to avoid malpractice decisions and disciplinary actions. The law singles out nonimmigrants, who can become LPRs when the federal government processes their pending green card applications. Therefore the law is unconstitutional under the Equal Protection Clause.

---

9. Arizona Proposes Law Requiring Hospitals to Check Immigration Status

Bloomberg.com recently reported on a proposed Arizona law, Senate Bill 1405, which would require hospitals to check whether patients are legally present in the United States. Arizona is the first state to propose this measure, which is part of a state-wide effort to crack down on illegal immigrants.

Medical professionals state that the law would discourage sick undocumented immigrants from seeking medical treatment at hospitals, which could lead to mass outbreaks of contagious diseases. This would put them and the American public at great risk.

Proponents of the law say it is necessary because hospitals lose millions of dollars each year treating illegal immigrants in emergency rooms. Arizona Senate President Russell Pearce, who was the main sponsor of Senate Bill 1070 which would require Arizona policemen to check the immigration status of individuals during a "lawful stop, detention, or arrest", argued that the law would not prevent people from getting medical treatment, but would place the obligation on hospitals to check the immigration status of those seeking treatment.

The law would require hospitals to confirm that an individual being admitted to the hospital in a non-emergency case is either a U.S. citizen or legally present in the United States. If the individual is an illegal immigrant, the hospital would be required to contact immigration authorities. In emergency cases, if the patient is an illegal immigrant, the hospital would be required to call immigration authorities after the medical treatment is completed.

http://www.bloomberg.com/news/2011-02-15/ariz-may-require-hospitals-to-check-citizenship.html

---

10. Transplant Patients Forced to Wait When Organ Donors Cannot Get Visas

The *New York Times* recently published an article on the difficulties organ donors from outside the United States face when trying to enter the United States to give the organ to a relative. These difficulties have forced sick relatives in the U.S. to languish on transplant lists for months or years. When patients need a transplant, the most likely match for an organ donor is a relative. For those with family members outside the United States, the process becomes more complicated.

These complications include visa denials and the costs for the donor to travel to the U.S. and undergo organ removal operations requiring weeks of recovery in the hospital. According to transplant directors, it has become harder for foreign organ donors to enter the U.S. under the visa restrictions imposed after 9/11. Also, the current economic situation has caused insurance companies to cut back on reimbursing organ donors expenses, such as travel and hospital stays.

According to the United Network for Organ Sharing, the organization that manages the nation's organ transplant system, there are currently over 120,000 people on organ transplant waiting lists across the United States.

Over 60,000 of those on the list are black, Hispanic, Asian, American Indian, Pacific Islander or describe themselves as multiracial, according to the organ sharing network. Of those, over 6,000 are resident aliens in the United States. Illegal immigrants are not allowed on the transplant list.

Since there is no medical visa category, organ donors must qualify for a B-1/B-2 visa, also known as a tourist visa. According to the U.S. Department of State, U.S. embassies and consulates try to expedite these visas for life or death situations, such as an organ transplant.

For the last five years, the State Department has required foreign donor candidates to get preliminary testing done in their home country. Blood-collection tubes are mailed to the prospective donor, and once filled, they are mailed back for testing. If the testing shows that a prospective donor could be a match with the patient, the State Department will take that into consideration when reviewing the visa application. However, even if the blood test shows that a prospective donor could be an organ match, the visa still may be denied.

If the organ donor cannot get to the U.S., the transplant patient then goes on the organ transplant list to receive an organ from someone who has died.

http://www.nytimes.com/2011/01/21/us/21transplants.html?_r=1

---

11. Illegal Immigrant Kicked Out of Hospital

Maria Sanchez, a cancer patient, was forced to leave the hospital just before her surgery to remove a tumor from her spine because she is an illegal immigrant, reported the *Houston Chronicle*. Ms. Sanchez was admitted as a surgery patient at the University of Texas Medical Branch's John Sealy Hospital. Six days after her admission, a Spanish-speaking doctor informed her she had to immediately leave the hospital because of her illegal immigration status. He added that she should go to Mexico for the surgery. According to the hospital, Ms. Sanchez was told to leave because she had no health insurance.

There is currently no law in the United States that prohibits or requires hospitals to accept illegal immigrants as patients outside the emergency room. However, a hospital is ethically obligated to provide medical treatment after accepting a patient regardless of immigration status or ability to pay. Texas state law requires hospitals to have a charity policy prominently posted in waiting rooms.

Ms. Sanchez was first admitted to the emergency room at Clear Lake Regional Medical Center. The following day, she was transferred to UTMB because Clear Lake doctors did not have the neurosurgical skills required for her surgery.

According to Ms. Sanchez, her tumor not only causes her pain, but has caused her to lose the use of her arms and legs. Her doctors say that if left untreated, the tumor will continue to grow and will make it impossible for her breathe.

After being evicted from UTMB, Ms. Sanchez tried gaining admission to at least five hospitals and three clinics. She finally moved with her family to Houston, where her husband, a U.S. citizen, could qualify for care at Ben Taub General Hospital, where she was finally treated.

http://www.chron.com/disp/story.mpl/metropolitan/7416070.html

---

12. House Judiciary Committee Advances H-1C Nurse Bill

The House of Representatives Judiciary Committee has approved HR 1933, a bill that would reauthorize the H-1C visa program that expired in December 2009. The H-1C visa is available to nurses being employed by hospitals in medical shortage areas. HR 1933 was sponsored by Lamar Smith, the Republican Chairman of the House Judiciary Committee.

According to Congressman Smith:

"A number of American hospitals have great difficulty attracting nurses. These include hospitals that serve mostly poor patients in inner-city neighborhoods and some hospitals in rural areas.

"For example, St. Bernard Hospital in Chicago is the only remaining hospital in an area of over 100,000 people and almost all of its patients live in poverty. St. Bernard almost closed its doors in 1992, primarily because of its inability to attract registered nurses.

"I introduced H.R. 1933 to help St. Bernard and other similar hospitals. The bill reauthorizes the H-1C program for an additional three years. Just as nurses ensure care for the sick, the H-1C program ensures continued care for patients in inner-city and rural communities."

The bill must now advance to the House floor and a companion bill must also pass in the Senate. At that point, if the bills are identical, or the two Houses can agree on changes to make the bills identical, it would go to President Obama for signature.

---

13. Chart of Pharmacist Licensing Requirements By State

Linked at http://www.visalaw.com/IMG/charts.html.

---

14. State 30 Physician Waiver Chart

Linked at http://www.visalaw.com/IMG/state30.html.

---

15. Physician National Interest Waiver Chart

Linked at http://www.visalaw.com/IMG/NIW.html.