

PUBLICATION

USCIS Clarifies Licensing and Degree Requirements for H-1Bs Health Care Workers

Authors: Robert C. Divine

May 27, 2009

USCIS has clarified that a health care worker with an unrestricted license in the state of employment should be approved for H-1B status even if a Department of Labor manual suggests that the worker does not have a degree high enough to practice the profession.

On May 20, 2009, USCIS issued a memorandum clarifying its policy on licensing required in H-1B petitions for health care workers. In recent months, H-1B petitioners in the health care industry have received denials or delays based on the U.S. Bureau of Labor Statistics' Occupational Outlook Handbook (OOH) listing of several health care occupations as typically requiring at least a master's degree instead of only a bachelor's degree. The USCIS memo tells adjudicators to accept an unrestricted license to practice the profession, even if the OOH suggests that the profession requires a higher degree than what the foreign national possesses. While most states are increasing their requirements for new licensees, many states allow for licenses to be issued to therapists who only hold a bachelor's degree or some foreign equivalent of a masters degree. Even if the unrestricted license will expire before the end of the period of approval requested, the memo instructs approval for the maximum period.

If the worker shows that he has a restricted license or has applied for a license and cannot obtain an unrestricted license because the state requires a social security number or evidence of immigration status prior to issuing a license, the H-1B petition should be approved for one year. Employers should submit evidence of state licensure requirements to the adjudicator in these circumstances.

How We Can Help

In the current tight labor market, workers from other countries cannot be categorically ignored. Hiring them, however, often involves complex processes with serious employer obligations. At the moment, limits on visa numbers plague the medical industry. We know the rules concerning exemptions from H-1B numerical limits and can help providers take advantage of them. Experienced immigration counsel should be consulted before entering into any immigration process. We understand the options available in U.S. immigration law and the practical means by which to pursue them. We use state-of-the-art, efficient processes to prepare, track and report status on high volumes of cases that some medical providers need to manage. We care for the family members of immigrating workers. We represent large research hospitals, small rural hospitals (and the entities that own them), nursing home entities, non-profit medical clinics, HMOs, physician groups, and of course foreign national physicians, throughout the United States. When requested (i.e., when we have not been associated only as immigration counsel), we work with our firm's Health Law Group, one of the biggest in the U.S., on contractual, fraud and abuse compliance, and other issues that arise in physician-provider relationships.