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Coming to America

Feature

How to apply for nursing jobs in the United States

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It is generally believed that the national shortage of nurses which occurred in the late 1980s no longer exists in the United States. But local shortages still occur in many areas of the country. Fortunately, registered nurses in Canada can easily obtain temporary, non-immigrant status to work in the United States.

TN status for Canadians

Registered nurses with Canadian citizenship have a distinct advantage in obtaining temporary employment in the United States. Under the North American Free Trade Agreement (NAFTA), they need only follow a simple procedure to qualify for eligibility as a temporary worker.

The most appropriate category for Canadian registered nurses is the Trade NAFTA (TN) category specified in the Agreement. To qualify, the applicant must possess a provincial licence to be considered a professional under the TN category. The applicant must also possess a licence to practice as a registered nurse in the state of intended employment, if required in that state. A temporary or interim licence should be sufficient to permit entry under the TN category.

A presumption of immigrant intent applies to TN workers. This means the TN worker has the burden of proving that she or he does not intend to remain permanently in the United States. The worker needs to show an unrelinquished Canadian residence or other significant ties to Canada.

The concept of dual intent does not apply to the TN category. This means a TN worker cannot intend to work temporarily in the United States but also seek to remain permanently if his or her petition for permanent residence is approved.

The mere filing of a petition for permanent residence may, therefore, result in a denial of a TN application.

Registered nurses can expect to pay up to \$1,500 Cdn. for the preparation of a detailed TN application, depending upon the complexity of the case. The application for TN status can be submitted at a port of entry just prior to entering the United States. A properly prepared TN application takes only a few minutes to adjudicate. Once admitted, a TN worker is granted an initial stay of one year. Thereafter, a TN professional may request extensions in one-year increments. There is currently no limit on the number of extensions that may be granted.

H-1 status for non-Canadians

Registered nurses who are not Canadian citizens are not eligible for TN status and must apply for an H-1 visa. The preparation of an H-1 status application can cost as much as \$3,000 Cdn. depending upon the complexity of the case.

Before Sept. 1, 1990, nurses with a bachelor's degree in nursing applied as professionals under the H-1B category. After Oct. 1, 1990 registered nurses were barred from obtaining H-1B status and were required to apply under the H-1A category. Although filing an application under the H-1A category was a cumbersome process, registered nurses were not required to possess a bachelor's degree.

On Sept. 1, 1995 the five-year program which established the H-1A category expired. Because Congress did not act to extend the program before that date, registered nurses are, once again, eligible to apply as professionals under the H-1B category, although they will require a bachelor's degree in nursing to qualify.

The H-1B category is open to aliens seeking entry into the United States to work in a specialty occupation. However, it must first be shown that the job requires some-

one in a specialty occupation.

The term specialty occupation is defined as an occupation that requires theoretical application of a highly specialized body of knowledge and the attainment of at least a bachelor's degree (or its equivalent) in the relevant specialty field. (Pending legislation seeks to impose a new requirement of two years experience in the field of nursing in addition to a bachelor's degree). If the position is a specialty occupation, the H-1B worker must show that he or she is qualified to fill the position.

To determine equivalency to a bachelor's degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of university level education the H-1B applicant lacks.

Labour laws

In order to hire an H-1B worker, a U.S. employer must comply with several labour requirements. The employer must attest that it will pay the greater of the actual wage paid to all other individuals with similar experience and qualifications at the place of employment and the prevailing wage for the occupation in the area of intended employment.

Approval of an H-1B petition can take up to two months. While landed immigrants having a common nationality with Canadian citizens — for example, British citizens — do not require a visa, all other landed immigrants must obtain a visa from a U.S. consulate prior to entering the United States.

Obtaining a visa from a consulate can take an additional week. Currently, pending legislation proposes to exempt all landed immigrants of Canada from the need to obtain a visa at a U.S. consulate.

An H-1B visa is initially valid for up to three years. Extensions of up to three years at a time may be requested for a maximum stay of six years. (Pending legislation may require a three-year limit on H-1B

status). The H-1B worker must then remain outside the United States for at least one year before becoming eligible for H-1B status again.

In contrast to the TN category, the concept of dual intent is recognized for H-1B workers. That means a registered nurse may apply for an H-1B visa while a petition for permanent residence is pending. A registered nurse in H-1B status is also not required to show significant ties to Canada.

Landed immigrants of Canada who are eligible for Canadian citizenship should consider acquiring their citizenship before seeking temporary employment as registered nurses in the United States. Otherwise, they may lose their landed immigrant status while working outside Canada. Alternatively, landed immigrants can seek permanent resident status in the United States, although they will have to remain outside the country until they obtain their immigrant visas.

Case studies

• The Canadian citizen

Tamara was born in Canada. She has a licence to practice as a registered nurse but has no job experience as a registered nurse and she does not have a bachelor degree in nursing. Tamara has been offered a job in California for at least two years and wants to start right away. However, she does not currently have a licence to practice as a registered nurse in California. She is also interested in seeking permanent U.S. residency in the future and her employer is willing to file a petition on her behalf.

As a Canadian, Tamara is eligible for TN status because she has a provincial licence as a registered nurse. However, Tamara will require a licence (a temporary licence should be sufficient) to practice as a registered nurse in California before being granted TN status, unless she can prove the work she will perform is not something which requires licensure in California.

TN status is good for only one year at a time. Therefore, Tamara can only obtain a one-year visa. She needs to obtain one-year extensions as long as she wishes to work in the United States.

Since Tamara wants to apply for permanent residence, timing is important. Because dual intent is not recognized, she should file her petition for permanent residence as soon as she is admitted or immediately after receiving an extension. Filing a petition for permanent residency may be grounds for refusing TN status, since the worker must not have an intention to remain permanently in the United States. Therefore, if she leaves the United States and attempts to re-enter after filing her petition, the Immigration and Naturalization Service may refuse her entry at the border if they find out about the petition.

As registered nurses are currently pre-approved for labour certification by the U.S. Department of Labor, Tamara's employer is not required to obtain a labour certificate. She can, therefore, obtain permanent residence in less than a year. As long as she remains in the United States and her status does not expire before her petition is approved, she should be able to avoid problems. (However, she should act quickly since pending amendments will impose a requirement of up to five years experience in the field of nursing as a prerequisite to qualifying for permanent residence).

• The landed immigrant

Yvonne is a landed immigrant of Canada and a citizen of the Philippines. She has a bachelor's degree in nursing from a Canadian university and a licence to practice nursing in both Ontario and California. Yvonne has worked in Ontario as a registered nurse for five years. She has been offered a job as a registered nurse in California. The U.S. employer normally requires a bachelor's degree for the position. She also wants to apply for permanent residence and her employer is willing to file a petition on her behalf.

Yvonne must apply under the H-1B category. As she has a bachelor's degree in nursing from a Canadian university, it should not be difficult to establish that she has the equivalent of a U.S. bachelor's degree. She must also prove the proposed job requires a worker with a bachelor's degree. Since her U.S. employer can document that a bachelor's degree is normally

required for the position, the job should qualify as a specialty occupation for H-1B purposes. She also has a licence to practice as a registered nurse in the state of intended employment, which is a requirement for this category.

The U.S. employer must comply with various labour requirements, including attesting to the fact that it is paying the greater of the actual wage paid by the employer to all other individuals with similar experience and qualifications at the place of employment and the prevailing wage for the occupation in the area of intended employment. The employer must submit a labour condition application which will take several weeks to obtain. The employer must then file a petition for an H-1B worker which will take about one month to approve.

Since Yvonne does not have a common nationality with Canadian citizens, she must obtain a visa from the U.S. Consulate General in Toronto once her petition is approved.

Yvonne wants to apply for permanent residence. Since the current pre-approved labour certification of professional nurses applies to her, she will not have to obtain labour certification. However, as Yvonne was born in the Philippines (one of the few countries subject to a country-specific waiting list for immigrant visas), she will have to wait about one-and-a-half years after her petition is approved before an immigrant visa is available.

This should not be a serious problem since dual intent is recognized for the H-1B category. She will not have her H-1B extension refused merely because she has filed a petition for permanent residence. In any event, her initial H-1B petition will be approved for a period of three years. Although she can only maintain H-1B status for six years, her immigrant visa should be approved before that time.

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