

This article is a summary of our presentation to international nursing students. It is intended as an overview of immigration options for nurses, and not as specific legal advice for a particular situation.

The nursing shortage in the United States has reached a level where hiring foreign nurses is no longer merely an option but an economic necessity. Here in Massachusetts, there was just a state referendum about nurse staffing levels, and the hospitals argued they could not find enough nurses to comply if the referendum passed.

Foreign nursing students in this country have more choices and more negotiating power with employers than they may realize. This article outlines specific visa options, both temporary and permanent, and considers a number of hypothetical situations to highlight the opportunities available to nurses and their employers.

Consider the case of Midori, a Japanese sophomore at a U.S. college who is trying to decide on her major:

Midori would like to stay in the United States after graduation, and has considered speech pathology and nursing as options. Her foreign student advisor explained that after she obtains her bachelor's degree, she will get one year of work authorization. After that, she must change to another type of visa or leave the country. She is concerned because she has heard about the H-1B lottery.

Although Midori may not realize it, her choice of major makes a tremendous difference in the immigration options available to her. As an RN, she may be able to avoid temporary visa categories and move straight to permanent residence (also called a "green card"). Midori can also avoid the cumbersome labor certification process (the usual path to a green card through employment) because the Department of Labor has "pre-certified" professional nurses as a shortage occupation.

The immigration advantages for nurses also apply to foreign-trained RNs whether they reside in the United States or abroad. Vanya is an example. He is currently visiting the United States, has a nursing license in Latvia, and has passed the National Council Licensure Examination (NCLEX exam):

Vanya is nervous about the immigration system, especially in this political climate, and is afraid to ask an employer for visa sponsorship.

Vanya may be able to take advantage of the same "fast track" to work authorization and permanent residence that was available to Midori. About three to five months after a green card is filed, the Work authorization and green card could also be available for his wife and children if he is married.

Does Hiring Foreign Nurses Hurt U.S. Citizens Working in the Field?

The hiring of foreign nurses in the United States has been controversial, particularly among U.S. citizen RNs who are already concerned about their pay and working conditions. However, foreign nurses who are armed with knowledge of the huge nursing shortage in this country and their visa options, are joining U.S. nurses to demand reasonable salaries and hours.

How Should Hospitals and Other Institutions Identify Appropriate Foreign Nurses and Visa Options?

Better understanding of the immigration system helps institutions (e.g., hospitals and nursing homes) as much as it helps nurses. In some cases, hospitals are so desperate for RNs that they turn to unscrupulous recruiting firms that may use improper or even fraudulent visas to get nurses into the United States. Consider the example of a hospital that has no understanding of the visa categories for RNs:

General Hospital is a large facility in an urban area with over 100 vacancies for RNs. The nurse recruiter in the HR department has had some limited success in traveling to nursing schools and "winning and dining" nursing students. However, she is intrigued by a proposal from a professional recruiting company to provide RNs in groups of 20 from abroad. They all have strong credentials on paper, and the company promises they will all arrive with work authorization in the form of H-1B and Q visas. The hospital signs on and agrees to pay \$6000 per nurse.

Until it reviews the proposal with an immigration professional, this hospital is playing with fire. Although it sounds tempting, the proposal from the recruiting company has a number of problems. For starters, an H-1B visa is only for specialized RN positions that require a bachelor's degree or the equivalent. Since many nursing programs abroad offer four-year degrees, some recruiters try to use the H-1B category for all nursing positions. We have seen recruiters classify every position in the hospital as a "charge nurse" and bring dozens of charge nurses at a time to fill regular staff nurse positions (that are generally filled by RNs with an associate's degree). In one even more egregious abuse of immigration policy, we have seen a recruiter like the one above use the Q cultural exchange visa category for nurses, arguing that their main purpose in the US was to share knowledge of their home country with the patients.

SPECIFIC VISA OPTIONS:

Under U.S. immigration law nurses may seek a variety of different types of immigration classifications. The right option will often depend on both the U.S. employer's interests and the nurse's education, experience, country of origin and interest in returning to his or her country. The following briefly explains the main visa options for professional nurses in three areas: nonimmigrant visas, immigrant visas, and teaching positions.

Nonimmigrant Visas (Temporary Options)

The immigration laws require most people coming to the United States on a temporary visa to have temporary "intent." In other words, they must have a home abroad and plan to return there after their visa expires. Temporary intent is highly subjective, but extremely important. Probably the most common reason for denial of a temporary visa is that the consular officer believes that the person is planning to stay in the United States permanently.

Considering that Vanya is here on a tourist visa, he may have trouble applying for permanent residence in the United States. The tourist visa requires temporary intent, and he would have had to provide a clear temporary purpose for his trip to the U.S. consulate in Latvia that issued his visa. Vanya will have to make a decision about whether to seek permanent residence in the United States or to return to Latvia for the final processing.

At this time, the temporary visa options for nurses are severely restricted by the temporary intent requirement. Efforts to improve the situation by creating temporary visa subcategories just for nurses, such as the old H-1A, or the current H-1C categories, have not made much of an impact. The H-1A no longer exists, and the H-1C (as discussed

below) is so restricted that only a few hospitals in the country have been able to take advantage of it.

Although applying for permanent residence directly (and skipping the temporary visa categories) is often the best option for a professional nurse, it is useful to be aware of specialized visas that may help RNs in certain situations. Specifically, a TN visa is available to Canadian or Mexican citizens. An H-1B visa is available for a nursing position that requires a bachelor's (as opposed to an associate's) degree. And an H-3 visa is useful for providing extended practical training.

Healthcare professionals need certification of their credentials, and that can take time, so important to plan ahead - see <https://www.uscis.gov/working-united-states/temporary-workers/health-care-worker-certification>.

F-1 Practical Training (OPT or CPT): Most foreign students in the United States are eligible for 12 months of work authorization after they graduate to receive training in their chosen field of study. This is called Optional Practical Training or OPT.

With OPT, the nurse can obtain work authorization without a job offer and can change employers easily. Note that OPT must be approved by CIS, and can take 90 days or more to obtain. Also, the nurse cannot have more than 90 days of unemployment in a row, or 120 days cumulatively during OPT.

Nursing students may also be able to work full-time or part-time before graduation, as long as the work is a part of the required curriculum or if course credit is offered. This is called Curricular Practical Training (CPT). There is no limit on use of CPT while in school. However, use of more than 12 months full-time of CPT results in the loss of OPT. Note that USCIS has started to argue that students are eligible for 12 months total of CPT and OPT - this is being challenged, and conflicts with ICE guidance and long-standing policy on practical training.

TN Visa: The TN visa is a product of the North American Free Trade Agreement (NAFTA) for citizens of Canada and Mexico. TN status is valid for three years at a time. To obtain a TN visa, an applicant must show, among other things, proof of citizenship, a letter from a prospective employer, and evidence of licensing and educational credentials. Spouses and dependent children may obtain a TD status, which does not come with employment authorization.

H-1B Visa: The H-1B visa may be available for registered nurses working in a position that requires a bachelor's degree. In general, an RN job does not require a bachelor's in nursing. However, USCIS may approve an H-1B petition for an RN if the nurse has added responsibilities or occupies a position requiring specialized training

USCIS has recently given detailed guidance on the kinds of nurse positions that qualify for an H-1B, and has identified certified advanced practice RNs (APRNs), nurse managers, and specialists (such as rehab nurses, school care nurses, and critical care nurses) as H-1B eligible. See https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015-0218_EIR_Nursing_PM_Effective.pdf. The H-1B visa is valid for three years and can be renewed for an additional three years. Spouses and dependent children can get an H-4 visa, which allows them to study but not work.

H-1B visa holders are not required to show temporary intent (a major advantage of this visa category), and can change employers by having a new H-1B petition filed.

Note that H-1Bs are given out in a lottery each year, and the chance of success has been under 40%. Colleges or universities, or nonprofits that are affiliated with them, can avoid the H-1B lottery. For example, a nonprofit teaching hospital can generally sponsor H-1B status without going through the H-1b lottery.

For citizens of Australia, Chile and Singapore, free trade visas may be an alternative to the H-1B that avoids the H-1B lottery. These free trade categories, like the H-1B, are only for jobs that require a bachelor's degree or higher in nursing. See for Australia (<https://www.uscis.gov/working-united-states/temporary-workers/e-3-certain-specialty-occupation-professionals-australia>) and for Chile/Singapore (<http://www.ustraveldocs.com/sg/sg-niv-typeh1b1.asp>).

H-1C Visa: There used to be a separate temporary visa for nurses, but that category expired in 2009. See <https://www.uscis.gov/working-united-states/temporary-workers/h-1c-registered-nurse/h-1c-registered-nurse-working-health-professional-shortage-area-determined-department-labor>.

H-3 Visa: Registered nurses may also obtain H-3 status. The H-3 is designed for temporary workers to secure training or instruction in the United States that is unavailable in the nurse's home country. The training program must have a set schedule and emphasize training over productive employment. Moreover, the program cannot be used to recruit nurses for long term hire. Nurses already possessing substantial training and experience are generally not eligible for H-3 visas. H-3 status is for two years and cannot be renewed.

Immigrant Visas for Registered Nurses (Permanent visa Options)

An employer may also file green card petition for a nurse. For most jobs, the process (known as "labor certification") is divided into three parts. First, the employer asks the Department of Labor (DOL) to certify that there are no qualified U.S. citizens or permanent residents for the position. Second, the employer files an immigrant visa petition with evidence that it has the ability to pay the alien and that the alien qualifies for the position. Third, the employee (and any dependent family members)

demonstrate that he or she is admissible to the United States (including a security check, medical exam, and review of visa history).

Because of the shortage of registered nurses in the United States, the Department of Labor has pre-certified this position. Thus, employers wishing to hire qualified foreign nurses may can skip labor certification and immediately file an immigrant visa petition.

Nurses seeking to qualify for an immigrant visa must possess a valid nursing license in the country of nationality, a diploma from a nursing school, a full and unrestricted nursing license in the U.S. state of intended employment, evidence of passing the National Council Licensure Examination for Registered Nurses (NCLEX-RN, see <https://www.ncsbn.org/nclex-faqs.htm>) and a VisaScreen Certificate (see <http://www.cgfns.org/services/certification/visascreen-visa-credentials-assessment/>).

If the nurse is present in the United States in valid immigration status, he or she may also be able to take advantage of concurrent filing. If the nurse qualifies for an immigrant visa, he or she may *simultaneously* file applications for permanent residence and interim work authorization. Thus, a nurse may become authorized to work in a matter of months.

When applying through a job offer, professional nurses have the fastest track to permanent residence. That is the way most foreign nurses obtain green cards. However, all nurses should consider other categories of permanent residence if they qualify, such as having a family member sponsor them, playing the green card "diversity lottery," or applying for political asylum.

Teaching Positions

The shortage in the nursing industry applies both to nurses and to nursing faculty. Nursing faculty who are chosen after a national search that carefully considers any U.S. citizen applicants are eligible for an expedited kind of labor certification called "special handling." While they cannot skip certification through the Department of Labor entirely, they can complete this process significantly more easily. Most, if not all, nursing faculty jobs are bachelor's level, so the H-1B visa is an appropriate and useful temporary option as well.

Conclusion

U.S. hospitals need RNs, and many foreign nurses want to work in the United States. By better understanding the U.S. immigration categories available to nurses, both hospitals and international RNs can benefit. You should consult with an immigration professional as you proceed, particularly because the laws and procedures are complex and changing.