

## 9 FAM 40.52 UNQUALIFIED PHYSICIANS

*(CT:VISA-1220; 05-27-2009)*  
*(Office of Origin: CA/VO/L/R)*

### 9 FAM 40.52 RELATED STATUTORY PROVISIONS

*(CT:VISA-1220; 05-27-2009)*

See INA 101(a)(41) (8 U.S.C. 1101(a)(41)) and INA 212(a)(5) (8 U.S.C. 1182(a)(5)).

#### **INA 101(a)(41)**

(41) The term “graduates of a medical school” means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

*NOTE: Added by Sec. 601(e), Health Professions Educational Assistance Act of 1976, Public Law 94-484, 90 Stat 2302, and amended by sec. 602(c) [Sec. 602 of such Act of 1976 having been added by sec. 302(q)(3), Act of August 1, 1977, Public Law No. 95-83, 91 Stat.383].*

#### **INA 212(a)(5)(A)(i)**

(5) Labor certification and qualifications for certain immigrants.-

(A) Labor certification.-

(i) In general.-

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) There are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

- (II) *The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.*

***INA 212(a)(5)(A)(ii)***

- (ii) Certain aliens subject to special rule.-

For purposes of clause (i)(I), an alien described in this clause is an alien who-

- (I) *Is a member of the teaching profession, or*
- (II) *Has exceptional ability in the sciences or the arts.*

***INA 212(a)(5)(A)(iii)***

- (iii) Professional Athletes-

- (I) In general.-

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for certification.

- (II) Definition.-

For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by-

- (aa) *A team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or*
- (bb) *Any minor league team that is affiliated with such an association.*

***INA 212(a)(5)(A)(iv)***

- (iv) Long Delayed Adjustment Applicants-

A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the

individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

**NOTE:** Clause (iv) added by sec. 106 (c)(2), title I [American Competitiveness in the Twenty-first Century Act of 2000], Public Law No. 106-313, act of Oct. 17, 2000, 114 Stat. 1251.

**INA 212(a)(5)(B)**

(B) Unqualified *Physicians*-

An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

**INA 212(a)(5)(C)**

(C) Uncertified *Foreign Health-Care Workers*-

Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that-

(i) *The alien's education, training, license, and experience-*

(I) *Meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;*

- (II) *Are comparable with that required for an American health-care worker of the same type; and*
- (III) *Are authentic and, in the case of a license, unencumbered;*
- (ii) *The alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and*
- (iii) *If a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.*

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

### **INA 212(a)(5)(D)**

- (D) Application of *Grounds-*

The grounds of inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

## **9 FAM 40.52 RELATED REGULATORY PROVISIONS**

*(CT:VISA-967; 06-11-2008)*

See 22 CFR 40.52

### **40.52 Unqualified physicians.**

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(b) (2) or (3).

[61 FR 1835, Jan. 24, 1996, as amended at 62 FR 67567, Dec. 29, 1997]