

## 9 FAM 40.53 UNCERTIFIED FOREIGN HEALTH-CARE WORKERS

*(CT:VISA-1380; 12-01-2009)*  
*(Office of Origin: CA/VO/L/R)*

### 9 FAM 40.53 RELATED STATUTORY PROVISIONS

*(CT:VISA-1380; 12-01-2009)*

See INA 212(a)(5)(C) (8 U.S.C. 1182(a)(5)(C)) and INA 212(r) (8 U.S.C. 1182(r)).

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

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

(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(r)**

#### r. Exception for certain alien nurses

Subsection (a)(5)(C) of this section shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) of this section by the Attorney General in consultation with the Secretary of Health and Human Services) that—

- (1) The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;
- (2) The alien has passed the National Council Licensure Examination (NCLEX);
- (3) The alien is a graduate of a nursing program—
  - (A) In which the language of instruction was English;
  - (B) Located in a country—
    - (i) Designated by such commission not later than 30 days after November 12, 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who

- complete such programs in that country, justify the country's designation; or
  - (ii) Designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection; and
- (C)
- (i) Which was in operation on or before November 12, 1999; or
  - (ii) Has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection.

## **9 FAM 40.53 RELATED REGULATORY PROVISIONS**

*(CT:VISA-1380; 12-01-2009)*

See 22 CFR 40.53.

### **40.53 Uncertified Foreign Health-Care Workers.**

- (a) Subject to paragraph (b) of this section, a consular officer must not issue a visa to any alien seeking admission to the United States for the purpose of performing services in a health care occupation, other than as a physician, unless, in addition to meeting all other requirements of law and regulation, the alien provides to the officer a certification issued by the Commission On Graduates of Foreign Nursing Schools (CGFNS) or another credentialing service that has been approved by the Secretary of Homeland Security for such purpose, which certificate complies with the provisions of sections 212(a)(5)(C) and 212(r) of the Act, 8 U.S.C. 1182(a)(5)(C) and 8 U.S.C. 1182(r), respectively, and the regulations found at 8 CFR 212.15.
- (b) Paragraph (a) of this section does not apply to an alien:
  - (1) Seeking to enter the United States in order to perform services in a non-clinical health care occupation as described in 8 CFR 212.15(b)(1); or
  - (2) Who is the immigrant or nonimmigrant spouse or child of a foreign health care worker and who is seeking to accompany or

follow-to-join as a derivative applicant the principal alien to whom this section applies; or

- (3) Who is applying for an immigrant or a nonimmigrant visa for any purpose other than for the purpose of seeking entry into the United States in order to perform health care services as described in 8 CFR 212.15.

(67 FR 77159, Dec. 17, 2002), as amended by 71 FR 34519 (6/15/06).