

THE HEALTH CARE CERTIFICATION REQUIREMENT

by Frank A. Novak*

INTRODUCTION

On July 25, 2003, U.S. Citizenship and Immigration Services (USCIS) issued the final rule implementing the health care certification requirement enacted into law nearly seven years earlier.¹ Unfortunately, Congress did not see fit to reconsider this burdensome requirement during this long period, in spite of the intensifying personnel shortages facing the health care industry. This article summarizes the final rule, which took effect September 23, 2003, and other related policy statements and events affecting U.S. immigration of health care workers.

THE HEALTH CARE CERTIFICATION REQUIREMENT

The health care certification requirement makes any foreign national seeking admission to the United States primarily to work in certain health care occu-

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¹ The health care certification requirement was established by §343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009, now codified at §212(a)(5)(C) of the Immigration and Nationality Act (INA). Section 4(a) of the Nursing Relief for Disadvantaged Area Act of 1999 (NRDAA), Pub. L. No. 106-95, 113 Stat. 1312, and now codified at INA §212(r), established an alternative to the health care certification requirement for certain nurses already licensed in the United States. The Department of Homeland Security (DHS) promulgated the final rule implementing both statutes at 68 Fed. Reg. 43901 (July 25, 2003), *published on* AILA InfoNet at Doc. No. 03072542 (*posted* July 25, 2003), and reproduced in this book at Appendix 3. The final rule was based on the proposed rule promulgated at 67 Fed. Reg. 63313 (Oct. 11, 2002). The final rule followed three interim rules promulgated at 63 Fed. Reg. 55007 (Oct. 14, 1998), 64 Fed. Reg. 23174 (Apr. 30, 1999), and 66 Fed. Reg. 3440 (Jan. 16, 2001). The final rule was followed by an interim rule promulgated at 69 Fed. Reg. 43729 (July 22, 2004), *published on* AILA InfoNet at Doc. No. 04072263 (*posted* July 22, 2004), and reproduced in this book at Appendix 2.

pations inadmissible unless the foreign national presents a certificate from an authorized credentialing organization.² The statutory language is as follows:

(C) 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 ...

(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 ... appropriate for health care work of the kind in which the alien will be engaged ... ; 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.³

Eligibility for the health care certificate thus requires that the foreign national's education, training, experience, and license are comparable to that required of an American health care worker; meet all legal requirements for entry into the United States under the requested visa classification; are authentic; and in the case of a license, unencumbered. Certificate eligibility is conditioned on the health care

² INA §212(r) provides an abbreviated alternative for certain nurses.

³ INA §212(a)(5)(C).

worker possessing a defined minimum competence level with spoken and written English. Also, because the only recognized test predicting success on a licensing exam is the Commission on Graduates of Foreign Nursing Schools (CGFNS) exam given as part of the CGFNS Certification Program, the statute's last element amounts to requiring that a registered nurse (RN) must pass the CGFNS exam or the National Council Licensure Examination for Registered Nurses (NCLEX-RN).⁴ The NCLEX-RN is the licensing exam for RNs.

Occupations Covered by the Health Care Certificate

The health care certification applies only to the following occupations: (1) licensed practical nurses, licensed vocational nurses, and RNs; (2) occupational therapists; (3) physical therapists (PTs); (4) speech language pathologists and audiologists; (5) medical technologists (clinical laboratory scientists); (6) physician assistants; and (7) medical technicians (clinical laboratory technicians).⁵ Physicians are statutorily exempt. Also, the certification requirement only applies to foreign nationals seeking admission *primarily* to work within these occupations.⁶ The requirement thus only applies to immigrants classified under INA §203(b). It does not apply to derivative beneficiaries, foreign nationals seeking admission for training (*e.g.*, F-1 practical training, J-1 training, H-3 training), or foreign nationals seeking admission to work in a nonclinical capacity, including medical teachers, medical researchers, medical consultants to the insurance industry, and managers of health care facilities.⁷ Positions within the covered occupations that have a direct effect on patient care—such as a supervisory PT—would be covered.

The statute provided USCIS with the authority to apply the certification requirement to all health care workers. It chose, however, through informal notice and comment rule-making proceedings to limit the reach of the requirement to the above seven referenced

occupations. USCIS adjudicators, thus, are without discretion to apply the requirement to any other health care occupation. The following occupations, for example, are not covered: chiropractors, dentists, optometrists, dietitians, nutritionists, pharmacists, recreational therapists, respiratory therapists, cardiovascular technologists and technicians, dental hygienists, electroneurodiagnostic technologists, emergency medical technicians and paramedics, nuclear medicine technologists, pharmacy technicians and assistants, radiologic technologists, magnetic resonance imaging technologists, sonographers, and surgical technologists. These are all well-defined health care occupations distinct from those occupations covered by the health care certification requirement.⁸

Organizations That Have Been Authorized to Issue Health Care Certifications

USCIS has currently authorized three organizations to issue health care certifications. CGFNS is authorized to issue certificates for health care workers seeking admission to work in any of the covered occupations.⁹ The statute enacting the health care worker certification requirement specifically designated CGFNS as an organization authorized to issue the health care certifications. CGFNS was not required to submit an application for authorization to issue health care certifications. However, USCIS has established standards that all credentialing organizations must meet, including CGFNS, and it has required that CGFNS submit information relating to its program to USCIS. The regulations contemplate that

⁴ See legacy Immigration and Naturalization Service (INS), Proposed Rule on Certificates for Certain Health Care Workers, 67 Fed. Reg. 63313, 63319 (Oct. 11, 2002), *published on* AILA InfoNet at Doc. No. 02101141 (*posted* Oct. 11, 2002).

⁵ 8 CFR §212.15(c).

⁶ 68 Fed. Reg. 43901, 43904 (July 25, 2003), *published on* AILA InfoNet at Doc. No. 03072542 (*posted* July 25, 2003), and reproduced in this book at Appendix 3.

⁷ *Id.* at 43906.

⁸ The U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (OOH) lists each of these as separate occupations distinct from those occupations covered by the health care certificate. When determining whether a specific job falls under a covered occupation, an attorney may consider whether an accredited certifying organization provides a certification for the specific job different from that provided for a covered occupation. For example, the National Credentialing Agency for Clinical Laboratory Personnel provides separate certifications for clinical laboratory scientists and clinical laboratory specialists in cytogenetics. The attorney may thus argue that the cytogeneticist is not working in a covered occupation based on the separate certification provided for that job.

⁹ See the Commission on Graduates of Foreign Nursing Schools (CGFNS) website for a wealth of information on the health care certification at www.cgfn.org. Note that CGFNS has named the health care certification that it issues the VisaScreen Certificate.

USCIS will monitor the ongoing compliance of all authorized organizations, including CGFNS.¹⁰

USCIS granted interim authorization to the National Board for Certification in Occupational Therapy (NBCOT)¹¹ to issue certificates covering occupational therapy.¹² USCIS also granted interim authorization to the Foreign Credentialing Commission on Physical Therapy (FCCPT)¹³ to issue certificates covering physical therapy.¹⁴ The final rule established the procedure by which an organization may obtain government authorization to issue health care certificates. Because NBCOT and FCCPT had been authorized to issue certificates pursuant to interim regulations, their authorization to issue certificates was continued, but with the condition that they file applications to obtain continuing approval to issue certificates.

Validity of a Health Care Certificate

The final rule provides that the certification must be used for any admission into the United States, change of status within the United States, or adjustment of status within five years of the date that it was issued.¹⁵ This is interpreted to mean that the health care certificate expires five years after the issuance date, and the practice of the approved certifying organizations is to issue certificates valid for five years. The rationale for the expiration date is that the certification validates a certain level of English competence and over time, that competence may deteriorate. Also, the certification certifies that the beneficiary's licenses are unencumbered, but this also may change over time.

In cases where the health care certificate expires, the certifying organization may reissue the certificate. In doing so, it may only consider and update information on (1) licensure to determine the existence of any adverse actions on the license, and (2) English competency.¹⁶

As noted, the final rule provides that the certification must be used for any admission into the

United States, change of status within the United States, or adjustment of status within five years of the date that it was issued. Also, as noted, this language has been interpreted to mean that the health care certificate expires five years after the issuance date. However, this interpretation is not obvious. The final rule also provides that any certifying organization "shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual *first seeks admission* (emphasis added) to the United States or applies for adjustment of status.¹⁷ This provision requires that the certifying organization has a renewal policy for cases only where a health care worker did not seek admission to the United States or adjustment of status before the health care certificate expired. If the individual has once sought admission or adjustment of status during the initial five-year validity period, no renewal policy would be necessary. The strong implication here is that the health care certificate would not expire if the individual once sought admission or adjustment of status during the initial five-year validity period.

The final rule's language uses a rather peculiar locution to address the health care certificate's expiration. As noted, it does not specifically state that the health care certificate expires five years after the issuance date. Rather it states that the certificate "must be used" during the initial five-year period. This peculiar language makes more sense when viewed in context of the renewal language above. In that context, the phrase "must be used" signifies that as long as the health care certificate is used for any admission, change of status, or adjustment of status during the initial five-year validity period, it remains valid after the initial five-year period.

For these reasons it would be reasonable to treat the health care certificate as valid without limit as long as it was used once during the initial five-year validity period. This is not the operative interpretation, however. The health care certificate expires for all purposes five years after its issuance date.

During the health care certificate's validity, a nonimmigrant applying for a visa or admission to the United States must present the health care certificate to a consular officer at the time of visa issuance or a Department of Homeland Security (DHS) officer at the time of admission. The nonimmigrant must present the health care certificate each time he

¹⁰ 8 CFR §212.15(j).

¹¹ See the National Board for Certification in Occupational Therapy's (NBCOT) website at www.nbcot.org.

¹² 63 Fed. Reg. 55007 (Oct. 14, 1998).

¹³ See the Foreign Credential and Commission on Physical Therapy's (FCCPT) website at www.fccpt.org.

¹⁴ 64 Fed. Reg. 23174 (Apr. 30, 1999).

¹⁵ 8 CFR §212.15(n)(4).

¹⁶ 8 CFR §212.15(k)(4)(viii).

¹⁷ *Id.*

or she applies for a nonimmigrant visa and admission to the United States. A visa exempt nonimmigrant must present the certificate each time the nonimmigrant applies for admission.

Health care certificates may be revoked if the certifying organization learns that the health care worker is no longer eligible for the health care certification.¹⁸

U.S.-Educated Foreign National Health Care Workers Subject to the Health Care Certification Requirement

Unfortunately, health care workers in occupations covered by the health care certification requirement are not exempt from the requirement, even if they possess a U.S. state license or receive their health care education in the United States.¹⁹ Foreign nationals with U.S. state licenses are not exempt from the certification requirement because the state license screening process does not always measure English proficiency and it does not always discover encumbrances and restrictions on the license. Foreign nationals, however, who received their health care education in the United States may receive streamlined processing from the authorized certifying organizations even though they remain subject to the certification requirement.

As previously noted, the health care certificate requires that the education, training, experience, and license of the foreign national health care worker are comparable to that required of a United States health care worker in the same occupation. In addition, the health care certificate requires English proficiency. It makes little sense, however, to require review of an individual's education to ensure that it was comparable to a U.S. education when, in fact, the education was in the United States. The same is true of the English proficiency requirement. The final regulation thus provides an exemption from the education comparability review and the English proficiency review for foreign nationals working in certain occupations graduating from certain accredited U.S. institutions.

Specifically, foreign national nurses graduating from an entry-level program accredited by the National League for Nursing Accreditation Commission of the Commission on Collegiate Nursing Edu-

cation are exempt from both the educational comparability review and the English language proficiency testing. Foreign national occupational therapists graduating from programs accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association are exempt from review of educational comparability and English proficiency.

Similarly, foreign national PTs graduating from a program accredited by the Commission on Accreditation and Physical Therapy Education of the American Physical Therapy Association are exempt from review of educational comparability and English proficiency. Lastly, foreign national speech language pathologists and audiologists graduating from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology of the American Speech-Language Hearing Association are exempt from review of educational comparability and English proficiency.

Other occupations covered by the health care certification requirement may also be designated for such exemptions from the review of educational comparability in English proficiency, but at this time, accrediting programs for specific educational programs in the United States with respect to these occupations have not been presented to USCIS for consideration.²⁰

Alternatives to the Health Care Certification Requirement for Any of the Covered Occupations

Under INA §212(r), certain nurses are eligible to submit a certified statement in lieu of the health care certificate. CGFNS is currently the only approved credentialing organization authorized to issue such a certificate. A nurse is eligible for the certified statement if: (1) the nurse has a valid, unrestricted license in the state of intended employment and that state verifies that foreign licenses of alien nurses are authentic and unencumbered; (2) the nurse has passed the NCLEX-RN exam; (3) the foreign national nurse's entry-level nursing program language of instruction was English; (4) the entry-level nursing program was located in Australia, Canada (except Québec), Ireland, New Zealand, South Africa, the United Kingdom, the United States, or any other country designated by CGFNS; and (5) the nursing program was in operation before November 12, 1999, or has been approved by CGFNS. CGFNS has designated Trini-

¹⁸ 68 Fed. Reg. 43901, 43912 (July 25, 2003), published on AILA InfoNet at Doc. No. 03072542 (posted July 25, 2003), and reproduced in this book at Appendix 3.

¹⁹ *Id.* at 43905.

²⁰ *Id.*

dad and Tobago, Jamaica, and Barbados as additional INA §212(r)-eligible countries. Although the final rule specifically excludes nursing programs located in Québec, CGFNS has designated the following schools in Quebec as INA §212(r) eligible: McGill University, Dawson College, Vanier College, John Abbott College and Heritage College.

Currently, CGFNS is the only credentialing organization authorized to designate countries providing INA §212(r)-eligible nursing programs.²¹ The same is true for programs that may be designated as INA §212(r)-eligible programs initiating operation on or after November 12, 1999. CGFNS has indicated that the following materials are required in support of an application for a certified statement: a letter from the nursing school verifying graduation with seal, signature, and a statement that English was the language of instruction and textbooks; a license validation directly issued by the state of intended employment; and passage of the NCLEX-RN exam. CGFNS does not require a transcript, an Academic Records Form or foreign license validations.

Pursuant to the statute, the U.S. attorney general (now the secretary of homeland security), in consultation with the secretary of health and human services, may designate other organizations in addition to CGFNS as organizations authorized to issue both health care certificates and certified statements. If any other such organizations are ever designated, then CGFNS and those additional organizations must unanimously agree on designating additional countries as countries providing nursing programs eligible for INA §212(r) treatment. The same is also true of any nursing programs beginning operation after November 12, 1999. Lastly, note that although the regulation provides that INA §212(r) eligibility extends to aliens holding an unrestricted license as a nurse in the state of intended employment where that state verifies that foreign licenses are authentic and unencumbered, CGFNS currently only issues certified statements for nurses with unrestricted licenses in the following states: Florida, Georgia, Michigan, New York, and Illinois.²² U.S. state designation re-

quires a resource expenditure by CGFNS, and CGFNS will, therefore, not designate a state as INA §212(r) eligible unless the state requests such designation and qualifies for such designation.

Demonstration of English Language Proficiency

Health care certificate applicants demonstrate English language proficiency by taking certain designated standardized tests. Currently, only the three following testing services are listed in the regulations as approved for testing English competence: Educational Testing Services (ETS), Test of English for International Communication (TOEIC) Service International, and International English Language Testing System (IELTS). CGFNS, FCCPT, and NBCOT also accept the ETS Internet-based TOEFL iBT exam. The required scores on each exam vary depending on the foreign national's intended occupation.

Occupational and physical therapists must obtain the following scores: paper-based TOEFL 560 or computer-based TOEFL 220; Test of Written English (TWE) 4.5; and Test of Spoken English (TSE) 50. If the TOEFL iBT is taken, a total score of 89 and a speaking score of 26 are required. Occupational and physical therapists may not use TOEIC or IELTS.

RN nurses and bachelor's degree-level occupations require the following scores: paper-based TOEFL 540 or computer-based TOEFL 207; TWE 4.0; and TSE 50. In the alternative, they may present TOEFL iBT total and speaking scores of 83 and 26 respectively or a TOEIC 725, TWE 4.0, and a TSE 5.0. As another alternative, they may present IELTS 6.5 overall with a spoken band score of 7.0. The academic module is required.

Occupations requiring less than a bachelor's degree may present one of the following combinations: paper-based TOEFL 530 or computer-based TOEFL 197; TWE 4.0; and TSE 50. In the alternative, they may present TOEFL iBT total and speaking scores of 79 and 26 respectively or a TOEIC 700, TWE 4.0, and TSE 50. As another alternative, they may present IELTS 6.0 overall with a spoken band score of 7.0. Both the Academic and General module are acceptable.

The English language testing requirements do not apply to nurses presenting a certified statement under INA §212(r) or any foreign nationals who graduated from a college, university, or professional training school in Australia, Canada (except Québec), Ireland, New Zealand, the United Kingdom, or the United States. Please note that even though the

²¹ 8 CFR §212.15(h); *see also* www.cgfns.org (for the Trinidad and Tobago, Jamaica, and Barbados designations) (last visited June 6, 2009).

²² Minutes of AILA Teleconference with CGFNS (Feb. 17, 2004), *published on* AILA InfoNet at Doc. No. 04060864 (*posted* June 8, 2004), and reproduced in this book at Appendix 22; *see also* CGNFS/ICHP VisaScreen Applicant Handbook at www.cgfns.org (last visited June 6, 2009).

final regulation extends the language testing exemption to any foreign national who has simply graduated from a college, university, or professional training school in one of the listed countries, the preface to the regulation states that the Department of Health and Human Services advised that graduates of *health profession programs* in these countries are deemed to have met the English language requirements.²³ Furthermore, CGFNS has commented that, for example, an RN seeking an exemption based on education in one of these countries must have completed the health profession program for an entry-level RN in order to be eligible for the exemption.²⁴

The Health Care Certification Requirement Applies to Both Immigrants and Nonimmigrants

The final rule applied the health care certification requirement to nonimmigrants effective July 26, 2004. Previously, USCIS and the U.S. Department of State (DOS) had exercised their discretion under INA §212(d)(3) to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of the final rule implementing the regulations. The final rule was effective September 23, 2003, but to avoid disruption in the U.S. workforce, USCIS and DOS extended the INA §212(d)(3) waiver until July 26, 2004.

USCIS, by an interim rule on July 22, 2004, again exercised its discretion under INA §212(d)(3) to waive the foreign health care worker certification requirement, but this time with respect to a more limited class of foreign nationals: health care workers who, before September 23, 2003, were employed under the Trade NAFTA (TN) or Trade Canada (TC) classifications and held valid licenses from a United States jurisdiction.²⁵ The interim rule did not require physical presence in the United States by such TN and TC foreign nationals on September 23, 2003, nor did its language require any employment in the United States immediately prior to that date. The interim rule extended the blanket waiver for this limited class of foreign nationals until July 26, 2005.

²³ 68 Fed. Reg. 43901, 43913 (July 25, 2003), published on AILA InfoNet at Doc. No. 03072542 (posted July 25, 2003), and reproduced in this book at Appendix 3.

²⁴ Minutes of Feb. 17, 2004, AILA Teleconference with CGFNS, *supra* note 22.

²⁵ 69 Fed. Reg. 43729 (July 22, 2004), published on AILA InfoNet at Doc. No. 04072263 (posted July 22, 2004), and reproduced in this book at Appendix 2.

Thus, any nonimmigrant covered by the interim blanket waiver and seeking admission to the United States or any decision on an application to extend stay or change status was not subject to the health care certification requirement until July 26, 2005. Before or on that date, admission of such nonimmigrants could have been for a period not longer than one year. After that date, the health care certification was required. In addition, the interim rule carried forward language from the final rule stating that such nonimmigrants would not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if they had not obtained the health care certification one year after the initial date of admission, change of status, or extension of stay as a health care worker.²⁶

HEALTH CARE CERTIFICATION NOT REQUIRED WITH INITIAL SUBMISSION OF ADJUSTMENT APPLICATION

Neither the health care certification nor the certified statement need to be included initially with an adjustment of status application. Historically, this had been the practice of the service centers. However, USCIS issued a September 22, 2003, Memorandum for Service Center Directors stating that either the health care worker certificate, or certified statement for eligible nurses, must be submitted along with the initial adjustment of status application.²⁷ Upon further consultation, however, USCIS reversed itself and decided to continue the existing practice of allowing post-filing submission of the health care certificate or certified statement.²⁸ Attorneys should carefully consider whether to file the adjustment application without the health care certification or certified statement, however. Obtaining the certification or statement can take many months, and USCIS will not extend a Request for Evidence (RFE) to allow an applicant additional time to obtain the certification or statement. Therefore, prematurely filing the adjustment without the certification or statement could result in a denial.

²⁶ *Id.* at 43732.

²⁷ USCIS Memorandum, W. Yates /s/ J. Sposato, "Final Regulation on Certification of Foreign Health Care Workers: Adjudicator's Field Manual Update AD 03-31" (Sept. 22, 2003), published on AILA InfoNet at Doc. No. 03092641 (posted Sept. 26, 2003).

²⁸ USCIS HQ Provides Written Responses to Issues Raised in Liaison (Oct. 1, 2003), published on AILA InfoNet at Doc. No. 03112547 (posted Nov. 25, 2003).

It should also be noted that a covered health care worker, with a pending adjustment application and advance parole, may return to the U.S. using the parole even if the applicant lacks the health care certification.²⁹

THE HEALTH CARE CERTIFICATE VS. THE CERTIFICATION PROGRAM

The health care certificate differs from the CGFNS certification program and both meet different immigration requirements. Confusion between the two arises because only CGFNS issues the certification program certificates and CGFNS issues most health care certificates. Also, both the certification program and the health care certification involve a credentials review, an exam and language testing.

The health care certificate, however, addresses a ground of inadmissibility for covered health care occupations, whereas the CGFNS certification program applies only to RNs, and is one way for RNs to qualify for I-140 Schedule A classification. Because the health care certificate and the certification program meet different regulatory requirements, the distinction between the two is important to keep in mind.

THE NCLEX-RN EXAM IS OFFERED OUTSIDE THE UNITED STATES AND ITS OUTLYING POSSESSIONS

The National Council of State Boards of Nursing, Inc. (NCSBN) now authorizes the NCLEX-RN examination outside the United States and its outlying possessions.³⁰ In addition to the United States, including the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and its outlying possessions of American Samoa, and the Northern Mariana Islands, the exam is now also given in Australia, Canada, Germany, Hong Kong, India, Japan, Mexico, the Philippines and Taiwan. International NCLEX-RN examinations are a significant benefit to foreign national nurses seeking to immigrate to the United States because it alleviates the travel

costs to the United States for those nurses seeking to immigrate based on the NCLEX-RN exam.

Even though an RN may qualify for a health care certification based on passing the NCLEX exam, the RN may still often need to complete the CGFNS certification program exam as well. RNs sit for the NCLEX pursuant to U.S. state authorization, and many U.S. states require completion of the CGFNS certification program before they will authorize a nurse to sit for the NCLEX-RN exam.

CONCLUSION

The average annual number of nurses admitted for permanent residence from 1991 to 1996 was 8,564.³¹ The average annual number of nurses admitted for permanent residence from 1997 until 2000 dropped to 4,815. CGFNS reports that it issued 8,945 VisaScreen certificates in 2003, 17,026 in 2004, 16,656 in 2005, 17,470 in 2006, 12,503 in 2007, and 9,130 in 2008.³² Processing of the health care certificate has improved over time, but that requirement still poses a significant hurdle to nurses and other health care workers seeking to move to the United States for employment. In effect, it establishes a national standard for foreign nationals working in health care occupations where previously states had been primarily responsible for regulating eligibility for professional practice. Legal reform is clearly required to mitigate the growing shortages of health care workers in the United States. It is unclear why the states are not competent to decide whether to authorize individuals to work in health care occupations within their borders.

²⁹ Minutes from CBP Liaison Meeting (3/16/05, with updates) (Mar. 16, 2005), published on AILA InfoNet at Doc. No. 05081667 (posted Aug. 16, 2005).

³⁰ A listing of non-U.S. locations authorized by the National Council of State Boards of Nursing, Inc. to hold NCLEX exams is available online at www.ncsbn.org/1267.htm. (last visited on June 6, 2009).

³¹ R. Paral, "Health Worker Shortages and the Potential of Immigration Policy," *Immigration Options for Physicians* 5 (AILA 2d Ed.); also available at 3 American Immigration Law Foundation's (AILF) *Immigration Policy In Focus* (Feb. 2004).

³² Statistical information about CGFNS VisaScreen issuance is available at www.cgfns.org/sections/tools/stats/vs.shtml. (last visited on June 6, 2009).