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001. list	Re: Foreign Health Care Meeting (partial, DOB, SSN) (1 page)	00/00/0000	b(6)

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FOLDER TITLE:

Cabinet Weekly Reports: Immigration Labor/Foreign Health Care Workers [1]

2017-1120-S

ry2217

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO <u>JULIE FERNANDES-DRC</u>	Take necessary action ☐
<u>STEVE MERTENS-OMB TCS</u>	Approval or signature ☐
<u>DEBRA BONO-OMB HEO</u>	Comment ☒
<u>BERNIE ASCHER-USTR</u>	Prepare reply ☐
<u>MIKE KOPELOUSKY-USTR</u>	Discuss with me ☐
<u>BILL MARSHALL-WHC</u>	For your information ☐
	See remarks below ☒
FROM <u>DAN CHENOK, OIRA</u>	DATE <u>5/6/98</u>
REMARKS (254951)	

ATTACHED IS THE INS INTERIM FINAL RULE,
"CERTIFICATE OF HEALTH CARE WORKERS" THAT
IMPLEMENTS SECTION 343 OF THE IMMIGRATION
REFORM ACT.

PLEASE PROVIDE ANY COMMENTS BY
FRIDAY, MAY 22. CALL IF YOU HAVE ANY
QUESTIONS. THANKS.

5/7/98

OK - outline

EXECUTIVE ORDER 12866 SUBMISSION**Important**

Please read the instructions on the reverse side before completing this form.

For additional forms or assistance in completing this form, contact the OIRA Docket Library, (202) 395-6880, or your OIRA Desk Officer.

Send three copies of both this form and supporting material (four copies if Economically Significant or an Unfunded Mandate) to:

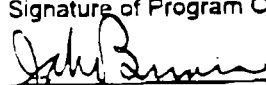
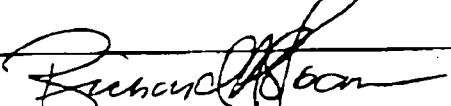
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1. Agency/Subagency originating request Department of Justice Immigration and Naturalization Service	2. Regulation Identifier Number (RIN) 1115 - AE73 <i>1115-AE73</i>
3. Title Certificate of Health Care Workers	
4. Stage of Development ☐ Prerule ☐ Proposed Rule ☒ Interim Final Rule ☐ Final Rule ☐ Final Rule - No material change ☐ Notice ☐ Other Description of Other _____	5. Legal Deadline for this submission a) ☐ Yes ☒ No b) Date ____/____/____ DD MM YYY c) ☐ Statutory ☐ Judicial 6. Designations a) Economically Significant (E.O. 12866) ☐ Yes ☒ No b) Unfunded Mandate (2 U.S.C. 1532) ☐ Yes ☒ No If either of the above is "Yes," submit four (4) complete packages to OIRA
7. Agency Contact (person who can best answer questions regarding the content of this submission) John Brown Phone (202) 514-5014	

Certification for Executive Order 12866 Submissions

The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E. O. 12866 and any applicable policy directives.

Signature of Program Official 	Date 4-22-98
Signature of Authorized Regulatory Contact  Richard A. Sloan, Director, Policy Directives and Instructions	Date 4/22/98

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 245

[INS 1879-97]

RIN 1115-AE73

Interim Procedures For Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule, which has been drafted in consultation with the U.S. Department of Health and Human Services (HHS), amends regulations of the Immigration and Naturalization Service (Service or INS) in order to implement, on a temporary basis, certain portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as they relate to prospective immigrants. Section 343, which was codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act), provides that aliens coming to the United States to perform labor in covered health care occupations (other than as a physician) are inadmissible unless they present a certificate relating to their education, qualifications, and English ability. This requirement is intended to ensure that aliens possess proficiency in the skills that affect the provisions of health care services in the United States. This rule establishes a temporary mechanism to allow

applicants for immigrant visas or adjustment of status in the fields of nursing and occupational therapy to satisfy the requirements of Section 343 on a provisional basis. In the near future, the Service will be publishing a proposed rule to implement the provisions of section 343 in full.

DATES:

Effective Date: This rule is effective [Insert the date 60 days from date of publication in the FEDERAL REGISTER].

Comment Date: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments, **in triplicate**, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1879-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3046 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility

Act (IIRIRA), Pub. L. 104-208. Section 343 of IIRIRA created a new ground of inadmissibility at section 212(a)(5)(C) of the Act for aliens coming to the United States to perform labor in certain health care occupations. Pursuant to section 343, any alien coming to the United States for the purpose of performing labor as a health care worker, other than as a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of HHS.

Under section 343, the certificate must verify that: (1) the alien's education, training, license, and experience are authentic and comparable with that required for an American health care worker, and, in the case of a license, the alien's license is unencumbered; (2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, 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 English; and, finally, (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the alien's success on the profession's licensing or certification examination the alien has

passed such an examination.

Section 343 raises a number of important and difficult issues as to its scope and proper implementation, and requires extensive coordination between the Service and other federal agencies. Prior to the publication of this rule, the Service met with representatives of the Department of Health and Human Services (HHS), as well as the United States Trade Representative, the Department of Labor, the Department of State, the CGFNS, the National Board for Certification in Occupational Therapy, various professional organization representing these occupations, and many other interested parties.

The Purpose Of The Interim Rule

The purpose of this interim rule is to establish temporary procedures which will: (1) allow the migration of certain health care workers into the United States on a permanent basis in order to prevent the disruption of critical health care services to the public; (2) to provide for the immigration of certain health care workers who were petitioned for on a permanent basis prior to the enactment of IIRIRA; and (3) to establish a temporary mechanism to ensure that nurses and occupational therapists immigrating to this country have education, experience and training which are equivalent to a United States worker in a similar occupation.

This interim rule provides a temporary mechanism for implementing section 343 with respect to immigrants in the two

occupations which have been shown to rely heavily on foreign health care workers. The Service has not extended this interim rule to other occupations because, based on available data, there does not at this time appear to be enough need, from a public health perspective, for the permanent services of foreign health care workers in those fields sufficient to justify foregoing the normal notice and comment requirements of the Administrative Procedures Act. The implementation of this interim rule on a limited basis also allows the Service additional time to obtain comment on a number of issues which extend beyond immigration to other policy concerns, such as the overall impact on the public health and the domestic labor market.

Given the complex nature of the requirements of section 343, the Service will publish a proposed rule in the near future which will, among other things, list all the occupations covered by section 343, further describe the procedures for obtaining and presenting the certificates, describe the standards required for an organization to obtain approval to issue certificates, and describe the procedure whereby an organization's authorization can be terminated by the Service. The Service believes that major issues such as the scope of covered occupations, the standards for obtaining authorization to issue certificates, and the procedure for termination of an organization's authority to issue certificates are better addressed through proposed rule making.

The Service's Temporary Policies and Their Effect

The Service has issued a number of temporary policy guidelines which will continue to apply while the Service develops a rule fully implementing section 343.

Occupations covered

The current policy of the Service is that section 343 is applicable only to the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference published in the Congressional Record of September 24, 1996, Nos. 132-133, page H10900. The seven occupations are: nursing, physical therapy, occupational therapy, speech language pathology, medical technology, medical technician, and physician's assistant.

Nonimmigrant health care workers

In order to ensure that health care facilities remain fully staffed and are able to continue to provide the same level and quality of service to the United States public pending promulgation of a final rule, the Service and the Department of State have agreed to exercise authority under section 212(d)(3) of the Act and temporarily waive the certification requirement of section 343 for aliens coming to the United States as nonimmigrant health care workers. Aliens coming to the United States under this temporary policy are admitted for a period of six months, which may be extended consistent with existing statute and regulations. This policy will continue until a final rule is published which fully implements section 343.

Immigrant Health Care Workers

Because the Service has no statutory authority to waive the requirements of section 343 for aliens coming to the United States permanently as immigrants to perform health care services in this country, it has adopted an interim policy whereby, instead of denying the applications for adjustment of status filed by uncertified aliens seeking to perform labor on a permanent basis in a covered health care occupation, the Service would instead hold such applications in abeyance pending promulgation of the implementing regulations. Similarly, the Department of State has no statutory authority to issue immigrant visas to such uncertified aliens, and has held visa applications from such persons in abeyance as well. As a result, the number of applications for adjustment of status which have been held in abeyance and the number of aliens unable to obtain immigrant visas has grown to significant proportions.

Who Is Affected By The Rule -- § 212.15(a), (b) and (c)

This interim rule will apply to aliens coming to the United States as immigrants and to aliens applying for permanent residency to perform labor in the occupations of nurse and occupational therapist. This interim rule does not apply to any other health care occupation. The applications of aliens seeking to engage permanently in any of the other five health care occupations listed in the Joint Explanatory Statement cited above will continue to be

held in abeyance, pending promulgation of a final regulation implementing section 343.

This interim rule does not affect the admission of nonimmigrant aliens coming to the United States to work temporarily in any health care field. Nonimmigrants in the fields of nursing, occupational therapy, physical therapy, speech language pathology, medical technology, medical technician, or physician's assistant will continue to be admitted consistent with the Service's waiver policy described above.

At this time, the Service has not extended the application of section 343 beyond the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference. The Service, in consultation with HHS, may include additional health care occupations in its forthcoming proposed rule and expects to seek public comment on whether such occupations should be affected by section 343. Until a final regulation implementing section 343 is promulgated, however, the Service (as well as the Department of State) will continue to deem both immigrants and nonimmigrants in occupations other than the seven listed above to be exempt from the requirements of section 343. Applications for permanent resident status filed by aliens to work in the occupations of speech language pathologist, medical technologist, medical technicians, physical therapists and physician assistants, however, will continue to be held in abeyance until a final rule is published. Further, the Department of State has notified the Service that it

will continue its policy of not issuing immigrant visas to aliens coming to the United States to perform labor in these four occupations until a final rule is published.

The Service has interpreted the term "performing labor as a health care worker" to mean providing direct or indirect health care services to a patient. Aliens coming to the United States to perform services in non-clinical health care occupations such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry, therefore, are not covered by the provisions of section 343. Individuals employed in these occupations do not perform patient care and, therefore, are not performing labor in a health care occupation as contemplated in the statute. Nevertheless, aliens who are indirectly involved in the performance of patient care, for example, supervisory nurses, must comply with the provisions of section 343.

Since the statute specifically refers only to aliens who are seeking to enter the United States for the purpose of performing labor as health care workers, section 343 does not apply to the spouse and dependent children of a such aliens. Dependent aliens are admitted to the United States for the primary purpose of accompanying the principal alien. Therefore, the admissibility of dependent aliens is not affected by the provisions of section 343. For similar reasons, it is the position of the Service that an alien who has applied for adjustment of status under section 245 on

the basis of a family-sponsored immigrant petition pursuant to section 203(a) of the Act or on the basis of an employment-based immigrant petition in a non-health care occupation does not have to comply with section 343 of IIRIRA.

Additionally, an alien who applies for adjustment of status pursuant to sections 209, 210, 245a, 249 or any other section of the Act is not affected by the provisions of section 343. This distinction derives from the fact that section 343 applies only to aliens who are coming to the United States for the primary purpose of performing labor as a health care worker. Aliens applying for adjustment of status under these statutory provisions, regardless of their ultimate professional goal, will not be deemed to be adjusting status for the purpose of performing labor as a health care worker.

Organization Granted Temporary Approval To Issue Certificates For Nurses -- § 212.15(e) and (g)

This rule grants temporary authorization to the CGFNS to grant certificates to aliens coming to the United States on a permanent basis to work in the field of nursing. Under this rule, CGFNS is not authorized to grant certificates for any other occupation. The Service defers consideration of whether CGFNS may be authorized to issue certificates for other health care occupations until the promulgation of its forthcoming proposed rule.

Insofar as this interim rule addresses the certification

requirements for aliens seeking to immigrate to the United States, the Service has determined that it is unnecessary to require that the certificate issued by CGFNS be valid for a specific period of time beyond the date of admission or adjustment of status. The Service may nevertheless consider imposing such a validity period in the context of promulgating its proposed rule.

Organization Granted Temporary Approval To Issue Equivalent Documentation For Occupational Therapists -- § 212.15 (f)

This interim rule provides, on a temporary basis, that for the occupation of occupational therapy, the National Board for Certification in Occupational Therapy (NBOTC) certification is equivalent to the certification required in section 343 for the field of occupational therapy.

English Language Requirement -- § 212.15(h)

Pursuant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish the appropriate level of competence in oral and written English which is appropriate for the 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.

HHS has identified two testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The two testing

services are the Educational Testing Service (ETS) and the Michigan English Language Assessment Battery (MELAB). The new regulation at § 212.15(h) lists the tests and appropriate scores as determined by HHS for each occupation.

Under this interim regulation, an organization approved to issue certificates may use either of the above-named testing services. In addition, organizations authorized to issue certifications are encouraged to develop a test specifically designed to measure English language skills and seek HHS approval thereof. It should be noted, however, that HHS has determined that occupational therapists should only take the test administered by ETS.

The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores required by section 343. The Service initially suggested to HHS that it consider providing a waiver of the English language requirement for certain health care workers who received their training at an English language-speaking school or university or who are native English speakers. Both the Service and HHS have determined, however, that because the statute does not provide for any exceptions to the English language requirement, HHS lacks the authority to authorize such a waiver. Moreover, as noted by HHS, there is no guarantee that an alien trained in English or born in an English-speaking country has the ability to communicate orally and in writing as is required by the statute. For these reasons,

it is the position of the Service that Congress intended that all foreign health care workers satisfy the English test requirements as described in the regulation at § 212.15(h).

Presentation Of The Certificate Or Equivalent Documentation --

§ 212.15(d) and § 245.13

Section 343 of IIRIRA is codified in section 212(a) of the Act as new ground of inadmissibility. In general, grounds listed in section 212(a) are bars to admission to the United States which must be overcome when an alien applies for admission. This interim rule provides that the certificate or equivalent document must be presented to a consular officer at the time that the alien applies for an immigrant visa and to the Service at the time of admission or adjustment of status. The certificate, or the equivalent document, must be valid at the time the alien applies for an immigrant visa at a consular post abroad and seeks admission or adjustment of status to that of a permanent resident.

The Service and the Department of State will consider, in the context of the proposed rulemaking, whether it would be more efficient to review the certificate or equivalent documentation as part of the review of the alien's qualifications for classification at the time that a I-140 petition is adjudicated by the Service. In this regard, it should be noted that such a filing procedure has long been used with respect to labor certifications under section 212(a)(5)(A) of the Act.

Good Cause Exception

This interim rule is effective 60 days from the date of publication in the **Federal Register**. The Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. Although section 343 went into effect on September 30, 1996, due to the complexities of the requirements of section 343, and the need to coordinate the interests and concerns of a great number of federal agencies, the health care sector, as well as members of the affected public, the Service is still in the process of developing a proposed rule in order to solicit comment from the public. A continued delay in the implementation of this provision, however, could have a negative effect on the availability of health care in this country, particularly in medically under-served areas, and will create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small

entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. The health care workers who will be issued certificates are not considered small entities as the term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant

regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted and approved by the Office of Management and Budget (OMB).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

This interim rule contains information collections which are subject to review by OMB under the Paperwork Reductions Act of 1995 (Pub. L. 104-13). Therefore, the agency solicits public comments on the revised information collection requirements in order to: (1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden on the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this interim rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs (OMB) 725 17th Street, N.W., Washington DC 20503, Attn: DOJ/INS Desk Officer, Room 10235.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal

Regulations is amended as follows:

**PART 212 -- DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS;
ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.15 is added to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) Inadmissible aliens. With the exception of the aliens described in paragraph (b) of this section, any alien coming to the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible to the United States unless the alien presents a certificate as described in paragraph (g) of this section or a document determined by the Service to be equivalent to a certificate.

(b) Inapplicability of the ground of inadmissibility. The following aliens are not subject to this ground of inadmissibility:

(i) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one where the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include medical teachers, medical researchers,

managers of health care facilities, and medical consultants to the insurance industry;

(ii) The spouse and dependent children of any immigrant alien who is seeking to immigrate in order to accompany or follow to join the principal alien; and

(iii) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than an alien who is seeking to immigrate on the basis of an employment-based immigrant visa petition which was filed for the purpose of obtaining the alien's services in a health care occupation described in paragraph (c) of this subsection.

(c) Occupations affected by this provision. With the exception of the aliens described in paragraph (b) of this section, any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training, is subject to this provision:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Medical Technicians. (reserved)

(3) Medical Technologists. (reserved)

(4) Occupational Therapists.

(5) Physician Assistants. (reserved)

(6) Physical Therapists. (reserved)

(7) Speech Language Pathologist. (reserved)

(d) Presentation of the certificate. An alien described in paragraph (a) of this section who is applying for admission as an immigrant seeking to perform labor in a health care occupation as described in this section must present a certificate or equivalent documentation to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status. The certificate or equivalent documentation must be valid at the time of visa issuance and admission at a port-of-entry, or, if applicable, at the time of adjustment of status.

(e) Organizations approved by the Service to issue certificates for health care workers. The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized by the Service to issue certificates under section 343 for the occupation of nurse.

(f) Documentation equivalent to a certificate for the occupation of occupational therapist. The National Board for Certification in Occupational Therapy certification as an occupational therapist is equivalent to a certificate as described in paragraph (g) of this section.

(g) Contents of the certificate. A certificate issued under this part must contain the following:

- (1) The name and address of the certifying organization;
- (2) A point of contact where the organization may be contacted in order to verify the validity of the certificate;
- (3) The date the certificate was issued;
- (4) The validity date of the certificate;

- (5) The occupation for which the certificate was issued; and
- (6) The alien's name, and date and place of birth.

(h) English testing requirement. (1) An alien applying for a certificate, regardless of his or her nationality, place of birth, or place of education must meet certain English language requirements in order to obtain a certificate. The Secretary of Health and Human Services has determined that an alien must have a passing score on one of the two tests listed in paragraph (2) of this section before he or she can be granted a certificate or equivalent document.

(2) Approved testing services.

(i) Michigan English Language Assessment Battery (MELAB), English Language Institute, Testing and Certification Division, University of Michigan, 3020 North University Building, Ann Arbor, MI, 48109, Telephone: 313-764-2416.

(ii) Test of English as a Foreign Language, Educational Testing Service (ETS), P.O. Box 6151, Princeton, NJ, 08541-6151, Telephone: 609-771-7100.

(3) Passing scores for various occupations. (i) Occupational therapists. An alien seeking to perform labor in the United States as an occupational therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL) 560; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. Certifying organizations shall not accept the results of the MELAB for the occupation of occupational

therapists. Aliens seeking to obtain a certificate to work as an occupational therapist must take the test offered by the ETS. MELAB scores are not acceptable for these occupations.

(ii) Registered nurses. An alien coming to the United States to perform labor as a registered nurse must obtain the following scores to obtain a certificate: ETS: TOEFL: 540; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(iii) Licensed practical nurses and licensed vocational nurses. An alien coming to the United States to perform labor as a licensed practical nurse or licensed vocational nurse must have the following scores to be issued a certificate: ETS: TOEFL: 530; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

PART 245-ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

4. Section 245.13 is added to read as follows:

§ 245.13 Adjustment of status of certain health care workers. An alien applying for adjustment of status to perform labor in a health care occupation as described in 8 CFR 212.15(c) must present evidence at the time he or she applies for adjustment of status, and, if applicable, at the time of the interview on the

application, that he or she has a valid certificate issued by the Commission on Graduates of Foreign Nursing Schools or a document issued by another organization approved by the Attorney General as described in 8 CFR 212.15(f) determined to be equivalent to a certificate.

Dated:

Doris Meissner,

Commissioner,
Immigration and
Naturalization
Service.

DTE

TALKING POINTS NAFTA CHAPTER 16

Certification of Foreign Health Care Workers

- ◆ **ISSUE:** Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) created a new ground of inadmissibility at §212(a)(5)(C) of the Immigration and Nationality Act for "any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools (CGFNS) or a certificate from an equivalent credentialing organization. The certificate shall verify the alien's training, licensing, experience and competency in the English language. This ground of inadmissibility applies both to immigrants (aliens coming permanently) and nonimmigrants (aliens coming temporarily) to the United States and is effective as of September 30, 1996, the date of enactment of IIRIRA.
- ◆ **EFFECT ON TRADE AGREEMENTS:** The Conference Report includes a statement clarifying that the provision applies to immigrant or nonimmigrant healthcare workers "...notwithstanding any international trade agreements or treaties..."
- ◆ **NAFTA IMPLICATIONS:** Under the NAFTA, Chapter 16, Temporary Entry of Business Persons, Annex 1603 Sections B and C, no Party may, as a condition for temporary entry, require labor certification tests or other procedures of similar effect. Under Annex 1603, Section D, applicable to NAFTA professionals, no Party may, as a condition for temporary entry, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect. GOC and GOM may assert that the new immigration provision is not consistent with Annex 1603.
- ◆ In November 1996 at the Chapter 16 Temporary Entry Working Group meeting in Ottawa, the U.S. delegation advised formally GOC and GOM of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 summarizing key provisions including section 343.
- ◆ Post-enactment legislative history was sent to the Commissioner of INS in a letter dated November 5, 1996, signed jointly by the Chairman of the House Subcommittee on Immigration and Claims and the Chairman of the Senate Committee on Immigration and Refugee Affairs. The letter states that section 343 applies to both immigrants and nonimmigrants (temporary entrants) seeking entry to engage in healthcare occupations. [copy attached]
- ◆ **GATS IMPLICATIONS:** Aliens seeking temporary entry to provide health care services under GATS may be subject to the new immigration provision.
- ◆ **COMPLEXITIES:** Implementation of section 343 requires considerable interagency coordination. The Attorney General shall consult with the Secretary of Health and Human Services to determine which health care occupations are covered and which independent entities may qualify to certify foreign health care workers. The Attorney General shall consult with the Secretary of Education to determine the appropriate level of English language proficiency required of foreign health care workers. Inasmuch as the provision applies to nonimmigrant health care workers without regard to existing trade obligations, the Office of the United States Trade Representative is interested in the Administration's implementation approach. The new provision amends the labor certification provisions of the Immigration and Nationality Act, provisions administered by the Secretary of Labor.

- **IMPLEMENTATION:** The INS, in consultation with HHS, is drafting a proposed rule to regulate this provision. The INS held two interagency meetings (DOS, DOL, USTR, HHS, DoE) prior to the drafting of the proposed regulation.
- The Service and the Department of State agree to exercise statutory discretion to waive this requirement for nonimmigrant health care workers (including those seeking temporary entry under NAFTA) until the necessary certification mechanisms are in place. However, no waiver authority exists for immigrants. Consequently, DOS has no authority to grant visas and INS has no authority to adjust the status of immigrant alien health care workers until the certification process is established.
- The INS has received inquiries from three senators about the implementation of section 343. Each inquiry urges that the Commissioner of INS work with Congress and the affected parties to address the many issues which have arisen since enactment of section 343.

Congress of the United States
House of Representatives
Washington, D.C. 20515

November 6, 1996

Honorable Doris M. Meissner
Commissioner, Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Dear Madam Commissioner:

We are concerned about a report that the Immigration and Naturalization Service may not correctly interpret section 343 of H.R. 3610, the Department of Defense Appropriations Act, 1997. We understand that some within INS may apply this provision only to immigrants and not to nonimmigrant healthcare workers. This provision requires certification of the qualifications of all aliens, both immigrants and non-immigrants, seeking to enter the United States for the purpose of performing labor as a health-care worker, other than a physician.

This requirement was drafted to protect consumers from the possibility of admitting unqualified health care practitioners. There are no exceptions to this requirement, by statute, treaty, administrative practice or otherwise.

It has been reported to us that some uncertainty was caused by the fact that section 343 amends section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(5)) ("Labor certification and qualifications for certain immigrants"). We understand that some persons may have suggested that the placement of the new prescreening requirement in section 212(a)(5) would somehow limit prescreening to applicants for immigrant visas only. This suggestion, if it was made, would be incorrect, with respect to both the language of the amended statute and congressional intent.

The placement of the prescreening requirement in section 212(a)(5) was not intended to limit the broad language of the statute. As you will see from the enclosed amended statutory language, the limitation to immigrants in section 212(a)(5)(D) refers only to the existing subparagraphs (A) and (B), not the prescreening requirement, which is new subparagraph (C). (See, for example, page 2, line 19 of the enclosure.) Given the absence of any limitation in its language, subparagraph (C) applies to both immigrants and non-immigrants.

In addition, our conference report language on this section was clear that new section 212(a)(5)(C) would apply to both immigrants and non-immigrants. (See pages 226-227 of

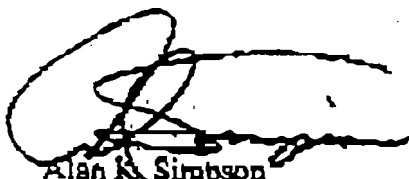
Letter to Commissioner Meisner
November 6, 1996

Report 104-828). This conference report language applies to the identical language in H.R. 3610, as was made clear by statements in the Congressional Record by both the House and Senate floor managers. (H12104-5 of the Congressional Record for September 28, 1996 and S11839 of the Congressional Record for September 30, 1996)

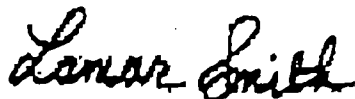
We intend that this new prescreening requirement be effective immediately. We do not want patients put at risk any longer than necessary. The use of sweeping and all-inclusive terms in section 343 was deliberate. The section was not intended to be limited by any administrative procedures, interpretations, or terms of art.

Thank you for your prompt attention to this matter.

Sincerely,



Alan R. Simpson
Chairman
Subcommittee on Immigration
And Refugee Affairs
Senate Committee on the Judiciary



Lamar Smith
Chairman
Subcommittee on Immigration
and Claims
House Committee on the Judiciary

Jose.

This is the
USTR/foreign health
and worker issue I've
been mentioning.

I've spoken w/
Steve - I would be
happy to work w/him
to set up a mtg. I
think we should do this
soon. Thanks
Lianne

TEMPORARY ENTRY CERTIFICATION OF FOREIGN HEALTH CARE WORKERS

Issue:

U.S. immigration law in force since September 30, 1996 requires certification for non-physician health workers "...notwithstanding any international trade agreements or treaties..." This requirement may be inconsistent with our commitments under Annex 1603 of the NAFTA.

Talking Points:

- The United States takes its commitments seriously. We will do everything possible to ensure the United States is in compliance with all the provisions of the NAFTA.
- The legislation is as yet not fully implemented. The Immigration and Naturalization Service and the Department of State have agreed to exercise statutory discretion to waive the requirement for non-immigrant health care workers, including those seeking temporary entry under the NAFTA, until the necessary certification mechanisms are in place.
- The Immigration and Naturalization Service, in coordination with the Department of Health and Human Services is drafting the implementation regulations required by the law. During this process, INS consults frequently with other government agencies, including this office.

Background:

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act created a new ground of inadmissibility (Section 212(a)(5)(C) of the Immigration and Nationality Act). It applies to "any alien who seeks to enter the United States for the purposes of performing labor as a health care worker other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools or from an equivalent credential-providing organization. The Conference Report includes a statement clarifying that the provision applies "...notwithstanding any international trade agreements or treaties..." The Act came into effect on September 30, 1996

Under Annex 1603, Sections B and C of the NAFTA, no Party may, as a condition of temporary entry, require labor certification tests or other procedures of similar effect. Under Annex 1603 Section D of the NAFTA (applicable to professionals), no Party may, as a condition for temporary entry, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect. Minister Marchi may assert the new immigration provision is not consistent with Annex 1603.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Re: Foreign Health Care Meeting (partial, DOB, SSN) (1 page)	00/00/0000	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 17174

FOLDER TITLE:

Cabinet Weekly Reports: Immigration Labor/Foreign Health Care Workers [1]

2017-1120-S

ry2217

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

The Foreign Health Care Meeting will be held in room 211 OEOB
Hosted by Jose Cerda III
Contact: Essence Washington 6-7732
Time: 11:00 a.m
Date: Sept 25th

John Frasier - Labor

DOB (b)(6)
SS (b)(6)

Dana Hyde - DOJ

DOB (b)(6)
SS (b)(6)

[001]

Marcia Eugenio - Labor

DOB (b)(6)
SS (b)(6)

John Brown - INS

DOB (b)(6)
SS (b)(6)

Irene Bueno - HHS

DOB (b)(6)
SS (b)(6)

Stephen Fischel - State

DOB (b)(6)
SS (b)(6)

Jackie Bednarz - INS

DOB (b)(6)
SS (b)(6)

Michael Koplosky - USTR

DOB (b)(6)
SS (b)(6)

Allyson Senie - NAFTA

DOB (b)(6)
SS (b)(6)

Geri Wood - NAFTA

DOB (b)(6)
SS (b)(6)

Richard O'Brien - State

DOB (b)(6)
SS (b)(6)

Edward Odom - State

DOB (b)(6)
SS (b)(6)

John Lynch - DOJ

DOB (b)(6)
SS (b)(6)

Certification of Foreign Health Care Workers
Illegal Immigration Reform and Immigrant Responsibility Act, §343

ISSUE: Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) created a new ground of inadmissibility at §212(a)(5)(C) of the Immigration and Nationality Act for "any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician" unless the alien has a certificate from the Commission on Foreign Nursing Schools (CGFNS) or a certificate from an equivalent credentialing organization. The certificate shall verify the alien's training, licensing, experience and competency in the English language. This ground of inadmissibility applies both to immigrants (aliens coming permanently) and nonimmigrants (aliens coming temporarily) to the United States and is effective as of September 30, 1996, the date of enactment of IIRIRA. The Service and the Department of State agree to exercise statutory discretion to waive this requirement for nonimmigrant health care workers until the necessary certification mechanisms are in place. However, no waiver authority exists for immigrants. Consequently, DOS has no authority to grant visas and INS has no authority to adjust the status of immigrant alien health care workers until the certification process is established.

COMPLEXITIES: Implementation of section 343 requires considerable interagency coordination. The Attorney General shall consult with the Secretary of Health and Human Services to determine which health care occupations are covered and which independent entities may qualify to certify foreign health care workers. The Attorney General shall consult with the Secretary of Education to determine the appropriate level of English language proficiency required of foreign health care workers. Inasmuch as the provision applies to nonimmigrant health care workers without regard to existing trade obligations, the Office of the United States Trade Representative is interested in the Administration's implementation approach. The provision amends existing immigration statutes governing which aliens are inadmissible on labor certification grounds which is historically the jurisdiction of the Secretary of Labor. The Secretary of State solely is authorized to issue visas to immigrants and nonimmigrant aliens and to recommend waivers for nonimmigrants.

In addition to the necessary synthesis of these six agencies' views and exigencies caused by effectiveness of the provision upon enactment, the Service is confronted with proposals from CGFNS seeking authorization to begin issuing interim certifications in advance of rulemaking. The CGFNS raises the specter of critical shortages in certain health care occupations in the United States caused by the inability to import immigrant health care workers while the agencies consider implementation. No evidence of such shortages has been presented.

The Service also has received representations from other entities expressing interest in obtaining approval as an "equivalent credentialing entity" to CGFNS for purposes of section 343.

AGENCY ACTIONS: Since enactment, the Service convened two interagency meetings at which CGFNS made presentations recommending an implementation approach. The agencies have considered a common set of threshold issues for implementation and provided preliminary agency positions for each issue. At present, there is no consensus on these issues.

MISCELLANEOUS: Clearly, CGFNS was instrumental in seeking this statutory provision and successfully sought post-enactment clarification of statutory intent jointly from the chairs of the Senate and House Subcommittees on Immigration. The Service understands that Senator Specter (R-PA) sponsored this provision.

RECOMMENDATION: The Service recommends that decisions associated with implementation of section 343 be coordinated by the Domestic Policy Council to ensure proper consideration is given to all Administration objectives regarding health care, immigration, and labor market.

"(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996.

SEC. 342. INCITEMENT OF TERRORIST ACTIVITY AND PROVISION OF FALSE DOCUMENTATION TO TERRORISTS AS A BASIS FOR EXCLUSION FROM THE UNITED STATES.

(a) **IN GENERAL.**—Section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) by redesignating subclauses (III) and (IV) of clause (i) as subclauses (IV) and (V), respectively;

(2) by inserting after subclause (II) of clause (i) the following new subclause:

"(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;" and

(3) in clause (iii)(III), by inserting "documentation or" before "identification".

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to incitement regardless of when it occurs.

SEC. 343. CERTIFICATION REQUIREMENTS FOR FOREIGN HEALTH-CARE WORKERS.

Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) **UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.**—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;

"(iv) 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

"(v) 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."

SEC. 344. REMOVAL OF ALIENS FALSELY CLAIMED UNITED STATES CITIZENSHIP.

(a) **EXCLUSION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section

212(d)(6)(C) (8 U.S.C. 1182(a)(6)(C)) is amended—

(1) by redesignating clause (ii) as clause (iB), and

(2) by inserting after clause (i) the following new clause:

"(ii) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE FALSELY CLAIMED UNITED STATES CITIZENSHIP.**—Section 241(a)(3) (8 U.S.C. 1251(a)(3)) is amended by adding at the end the following new subparagraph:

"(D) **FALSELY CLAIMING CITIZENSHIP.**—Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to representations made on or after the date of the enactment of this Act.

SEC. 345. WAIVER OF EXCLUSION AND DEPORTATION GROUND FOR CERTAIN SECTION 274C VIOLATORS.

(a) **EXCLUSION GROUNDS.**—Section 212 (8 U.S.C. 1182) is amended—

(1) by amending subparagraph (F) of subsection (a)(6) to read as follows:

"(F) **SUBJECT OF CIVIL PENALTY.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is inadmissible.

"(ii) **WAIVER AUTHORIZED.**—For provision authorizing waiver of clause (i), see subsection (d)(12)." and

(2) by adding at the end of subsection (d) the following new paragraph:

"(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

"(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

"(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a),

if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph."

(b) **GROUND OF DEPORTATION.**—Subparagraph (C) of section 241(a)(3) (8 U.S.C. 1251(a)(3)), before redesignation by section 305(a)(2) of this division, is amended to read as follows:

"(C) **DOCUMENT FRAUD.**—

"(i) **IN GENERAL.**—An alien who is the subject of a final order for violation of section 274C is deportable.

"(ii) **WAIVER AUTHORIZED.**—The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 274C and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause."

SEC. 346. INADMISSIBILITY OF CERTAIN STUDENT VISA ABUSERS.

(a) **IN GENERAL.**—Section 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by adding at the end the following new subparagraph:

"(G) **STUDENT VISA ABUSERS.**—An alien who obtains the status of a nonimmigrant under sec-

tion 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(i) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act after the end of the 60-day period beginning on the date of the enactment of this Act, including aliens whose status as such a nonimmigrant is extended after the end of such period.

SEC. 347. REMOVAL OF ALIENS WHO HAVE UNLAWFULLY VOTED.

(a) **EXCLUSION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 212(a)(10) (8 U.S.C. 1182(a)(10)), as redesignated by section 301(b) of this division, is amended by adding at the end the following new subparagraph:

"(D) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is excludable."

(b) **DEPORTATION OF ALIENS WHO HAVE UNLAWFULLY VOTED.**—Section 241(a) (8 U.S.C. 1251(a)), before redesignation by section 305(a)(2) of this division, is amended by adding at the end the following new paragraph:

"(6) **UNLAWFUL VOTERS.**—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to voting occurring before, on, or after the date of the enactment of this Act.

SEC. 348. WAIVERS FOR IMMIGRANTS CONVICTED OF CRIMES.

(a) **IN GENERAL.**—Section 212(h) (8 U.S.C. 1182(h)) is amended by adding at the end the following: "No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective on the date of the enactment of this Act and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date.

SEC. 349. WAIVER OF MISREPRESENTATION GROUND OF INADMISSIBILITY FOR CERTAIN ALIENS.

Subsection (i) of section 212 (8 U.S.C. 1182) is amended to read as follows:

"(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

"(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1)."

SEC. 350. OFFENSES OF DOMESTIC VIOLENCE AND STALKING AS GROUND FOR DEPORTATION.

(a) **IN GENERAL.**—Section 241(a)(2) (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following:

H12104

CONGRESSIONAL RECORD—HOUSE

September 28, 1996

LENDER LIABILITY

This continuing resolution also incorporates lender liability provisions which I strongly support and have advocated for 7 years. I introduced the first lender liability bill in 1989 in response to a small business in my district whose efforts to develop property were held up, not because of lack of interest or need, but by bank concerns about environmental liability.

In 1980, the Superfund law was passed after the well-known problems at Love Canal, located in my district, came to light. As part of that law, we recognized that not everyone with a tie to polluted property should be held liable. Lenders, who hold a mortgage or security interest in property, could potentially be construed as "owners or operators," so the 1980 statute carved them out from liability if they didn't take part in the management of the vessel or facility.

However, court cases in 1985, culminating in the well-known *Fleet Factors* decision of 1990, eroded the certainty of the Superfund exemption. As a result, we witnessed a serious contraction in lending to certain types of borrowers and to certain parts of communities because of bank concerns about potential environmental liability.

After hearings in the House and co-sponsorship by some 280 members of a bill I introduced to clarify secured party and fiduciary liability, the Environmental Protection Agency promulgated a rule for lenders. That rule was overturned on procedural grounds and the clarity provided by the rule was lost.

Today, this bill provides the certainty sought for so long. The legislation effectively codifies elements of the 1992 EPA rule into statutory language to provide clarity and certainty regarding the liability of secured parties and fiduciaries for contaminated properties. These provisions will spur lending to borrowers and encourage the clean-up and redevelopment of hundreds of unused properties across the country. This is done without any expenditure of taxpayer dollars and without any weakening of current EPA liability standards.

The bill does not alter a lender's potential liability, in cases where liability is warranted; it does provide clarity and certainty on how to avoid liability. The bill restores elements of the EPA rule to protect Government agencies, notably the Federal Deposit Insurance Corporation, in the role of receiver or conservator of property. It provides certainty for fiduciaries, such as trustees, executors of estates, universities, pension fund managers and those involved in a trust role for securities. Finally, the bill provides reinforcement for the EPA rule on lender liability under the Solid Waste Disposal Act, a rule that is limited to petroleum underground storage tanks.

The beneficiaries of this bill will be banks, insurers, guarantors, and others in the business of extending or supporting credit and those to whom they will now be able to lend without artificial constraint. But the ultimate beneficiary should be our environment. With lenders and fiduciaries free to undertake their responsibilities, they may be better able to support environmental cleanup of damaged properties. All lenders, at large or small institutions, will have a clear blueprint on how to be involved with properties with environmental damage and to help restore these properties to use. Fiduciaries, who frequently acquire properties in trust after they assume their du-

ties, will be able to make decisions on properties without fear that simply taking real property could trigger personal liability.

I am pleased that this measure, after so many years of effort, has finally been adopted. I must note that it was a pleasure to work with Congressman DOUG BERENUTER and Congresswoman MARGE ROUKEMA in the House Banking Committee to produce a version of this legislation not unlike the package that is before us today.

I also want to acknowledge the many industry groups and individual firms who have worked for years to see this resolution attained. I would note in particular the work of the Environmental Lender Liability Coalition with some 100 companies, trade groups, State officials and others in remaining a constant source of support, information and expertise on this important subject.

This small provision will have major ramifications for secured parties, fiduciaries, communities and the environment across the country and, I believe, all for the good.

Ms. MOLINARI. Mr. Speaker, I rise to support and explain an amendment in the Continuing Resolution which clarifies the effective date provision for Rules 413 through 415 of the Federal Rules of Evidence. The immediate enactment of this amendment is necessary to prevent the reversal of the convictions of rapists and child molesters, and the supervision of relevant evidence in pending sex offense prosecutions.

Congress enacted Rules 413 through 415 in the 1994 Crime Act. These rules broaden the admissibility of evidence that the defendant, in a sexual offense case, has committed offenses of the same type on the other occasions. At that time, Congress agreed to a deferred effective date provision when the rules were enacted, to accommodate procedural objections raised by opponents of the reform. Everyone understood that this would defer the application of the rules for at most 3000 days, and that they would be fully in effect after the end of that period. Under this effective date provision, the rules went into effect on July 10, 1995.

Recently, a problem has arisen in the cases where the indictment was filed before July 10, 1995, but the trial in the case has occurred, or will occur, after the date. Some judges have properly interpreted the effective date provision to make the rule apply in all cases in which the relevant proceeding—the trial—commenced on or after the effective date of July 10, 1995, even though the case would be tried after that date. In *United States v. Hollis Earl Roberts*, 88 F.3d 572 (10th Cir. 1996), the Tenth Circuit Court of Appeals recently adopted this erroneously restrictive interpretation of the effective date language for the new rules.

This decision may result in the suppression of relevant similar crimes evidence in pending cases, like *Roberts*, in contravention of our judgment that evidence of this type should be admissible. It may also result in the reversal of convictions of rapists and child molesters that have already occurred in cases indicted before July 10, 1995, where the trial court admitted evidence under Rule 413 or 414.

The following are just a few of the cases that will be affected:

In the *Roberts* case, the defendant is charged with sexually abusive crimes against three women. Several other women are prepared to testify that he raped or at-

tempted to rape them as well. The trial court has already made a preliminary ruling that evidence of the defendant's other crimes will not be admitted independently of the new rules.

In *United States versus David Kee Mann*, a case in New Mexico, the defendant was convicted of molesting an 11-year-old girl, following a trial in which evidence was admitted under the new rules. There was testimony at the trial concerning similar crimes by another 11-year-old victim, and by a woman whom the defendant had sexually abused throughout her childhood and adolescence.

In *United States versus Calvin Dean Peters*, another New Mexico case, the defendant was convicted of a rape offense. He had previously been convicted of two other rapes, and evidence of these earlier crimes was admitted under the new rules.

When Congress enacted the new evidence rules, these were precisely the kinds of cases in which we wanted to be sure that the jury would have the basis for an informed decision, including information about the defendant's history of similar crimes. However, unless Congress acts immediately, it is predictable that important evidence will be suppressed, and the convictions of sexual predators will be overturned. This is an unnecessary injustice because Congress has already made the decision that evidence of this type should be admissible by enacting rules 413 and 414.

While some might argue this amendment presents a constitutional problem, this is not true. The Constitution's rule against ex post facto laws only prohibits criminalizing or increasing the penalty for conduct after it occurs. It does not limit the application of changes in evidence rules in pending cases. The Supreme Court has so held, most recently in *Collins v. Youngblood*, 497 U.S. 37, 43 n.3 (1990).

As a general proposition, changes in evidence rules apply to pending cases, as well as to those indicated after their enactment. The amendment I am proposing is necessary to correct the harmful effects of the Tenth Circuit's misunderstanding of our intent on this point in relation to rules 413 through 415.

It is essential that Congress enact this legislation immediately—before the end of this session—because of the effect of the *Roberts* decision on pending cases. The amendment will ensure that relevant, probative evidence will not be suppressed, and that convictions will not be pointlessly reversed. In the cases I have described and others like them, if we do not act, we will have to explain to the present and future victims of these sexual predators why we have handed the keys to the jailhouse door to their victimizers. I do not believe that any member of this chamber wants to be in that position. I strongly urge the enactment of this measure.

Mr. SMITH of Texas. Mr. Speaker, division C shall be considered as the enactment of the conference report (Rept. 104-828) on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, with certain modifications to title V of the conference report.

The legislative history of division C shall be considered to include the joint explanatory statement of the committee of conference in Report 104-828, as well as the reports of the Committee on the Judiciary, Agriculture, and Economic and Educational Opportunities of the House of Representatives on H.R. 2202.

September 28, 1996

CONGRESSIONAL RECORD—HOUSE

H12105

(Rept. 104-469, parts I, II, and III), and the report of the Committee on the Judiciary of the Senate on S. 1664 (Rept. 104-249).

The following records the disposition in division C of the provisions in title V of the conference report. (The remaining titles of the conference report have not been modified.) Technical and conforming amendments are not noted.

Section 500. Strike.

Section 501. Modify to amend section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) to insert the provisions in section 501(c)(2) of the conference report relating to an exception to ineligibility for benefits for certain battered aliens. Strike all other provisions of section 501.

Section 502. Modify to authorize States to establish pilot programs, pursuant to regulations promulgated by the Attorney General. Under the pilot programs, States may deny drivers' licenses to illegal aliens and otherwise determine the viability, advisability, and cost effectiveness of denying driver's licenses to aliens unlawfully in the United States.

Section 503. Strike.

Section 504. Redesignate as section 503 and modify to include only amendments to section 202 of the Social Security Act, and new effective date. Strike all other provisions.

Section 505. Redesignate as section 504 and modify to amend section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide that the Attorney General shall establish a procedure for persons applying for public benefits to provide proof of citizenship. Strike all other provisions.

Section 506. Strike.

Section 507. Redesignate as section 506.

Section 508. Redesignate as section 506 and modify. Strike subsection (a) and modify requirements in subsection (b) regarding report of the Comptroller General.

Section 509. Redesignate as section 507.

Section 510. Redesignate as section 508. Modify subsection (a) and redesignate as an amendment to section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (b).

Section 511. Redesignate as section 509. Modify to change references to "eligible aliens" to "qualified aliens" and make other changes in terminology.

Section 531. No change.

Section 532. Strike.

Section 551. Modify to reduce sponsor income requirement to 125 percent of poverty level. Strike subsection (e) of Immigration and Nationality Act (INA) section 213A as added by this section. Make other changes to conform INA section 213A as added by this section to similar provision enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Strike subsection (c).

Section 552. Modify to amend section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to include the provisions in section 552(d)(1) and 552(f). Strike all other provisions.

Section 553. Strike.

Section 554. Redesignate as section 553.

Section 561. No change.

Section 562. Strike.

Section 563. Redesignate as section 562.

Section 584. Redesignate as section 563.

Section 565. Redesignate as section 564.

Section 586. Redesignate as section 585 and modify to strike (4).

Section 571 through 576. Strike and Insert sections 221 through 227 of the Senate amendment to H.R. 2202, as modified.

Section 591. No change.

Section 592. Strike.

Section 593. Redesignate as section 592.

Section 594. Redesignate as section 593.

Section 596. Redesignate as section 594.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I'd like to thank the gentlemen for yielding. Mr. Speaker, I want to commend the Members of both Houses for the yeoman's job of putting together this omnibus bill and meeting the numerous funding priorities in this tough fiscal environment.

Many of us take for granted and do not recognize the arduous task this body faces each time they are asked to balance fiscal responsibility with our obligation to provide and our duty to govern effectively.

I would also like to thank the Chairman and the members of the committees on Transportation and Infrastructure, Appropriations, and the Subcommittee on Transportation Appropriations for having the vision to provide the funding for the Alameda corridor, to support the \$400 million in direct loans, as requested by the President through the Federal Highway Administration.

While I was disappointed that unforeseen circumstances caused the Alameda corridor project to be removed from a previous funding bill, I am pleased to see that the conflict was resolved and that this most important infrastructure project will be funded this year.

The Alameda Corridor will provide this country with a fast and efficient gateway to Pacific rim trade and will bolster our ability to compete in the burgeoning economic area.

Once completed the Alameda Corridor will generate more than 70,000 local jobs and close to 200,000 new jobs nationwide. The expanded trade, created by the construction of the corridor, through the ports, will create new jobs related to manufacturing, production, and the shipping and trucking of goods.

Today's funding environment requires a strong public-private partnership to finance projects of this nature. With over 75 percent of the cost of the project funded by State and local sources, the Alameda Corridor truly exemplifies the kind of public-private partnership that this Congress has long urged States and localities to pursue for important infrastructure projects.

I would like to thank the members of the California delegation for working together in a bipartisan manner to effectively move the project through this body and to bring to fruition plans and blueprints that were conceived long before many of us were sworn into office.

Let history reflect that the success of the Alameda Corridor is rooted in the bipartisanship that has helped to bring us to this point. I look forward to continuing to work with my colleagues from both parties and with President Clinton to see the Alameda Corridor through to its completion.

I yield back the balance of my time.

Mr. McHUGH. Mr. Speaker, I rise in support of H.R. 3610, the Omnibus Appropriation bill for fiscal year 1997. There are many good provisions in this measure and I am pleased that the Congress and the administration could

work together in producing this necessary spending measure while avoiding a shutdown of government services.

Contained in this measure are specific provisions affecting the structure of the United States Postal Service. Specifically, section 662 of title I provides for the creation of an independent Office of Inspector General, a long needed and important postal reform. This provision is similar in scope to provisions contained in my legislation H.R. 3717, the Postal Reform Act of 1996. H.R. 3717 has been the subject of four legislative hearings this term and a proposal for creating an independent Office of Inspector General received House support during the 103d Congress. Through this omnibus package, this important measure will be seen through to fruition.

The need for an independent Office of Inspector General was highlighted by the General Accounting Office in its recent report to my Subcommittee on the Postal Service. Specifically, the GAO found that the current structure compromised the ability of the Postal Service Inspector General with respect to investigations and audits of the Postal Inspection Service. Current law provides that the Postal Service Inspector General and the Chief Postal Inspector are one and the same. This system is the product of the 1988 amendments to the inspector general statutes when the Postal Service first fell under the purview of the Inspector General Act.

The General Accounting Office found that

The Inspector General Act of 1978, as amended (IG Act), requires that IGs conduct audits in accordance with generally accepted government auditing standards. These standards require IGs to be organizationally independent of the operations they audit. Because the Postal IG is the Chief Postal Inspector and therefore not organizationally independent of law enforcement operations, the Postal IG can not audit these operations in accordance with the required standards.

Section 662 of title I of H.R. 3610 corrects this systemically flawed structure by mandating an independent Office of Inspector General. The Postal Service currently enjoys revenue fast approaching the \$60 billion mark. It touches each and every one of us 6 days a week and provides universal mail service in order to bind together our geographically diverse country. The Postal Service is far too important for Congress and our constituents to leave the important role of agency watchdog to be compromised by a flawed management structure.

Pursuant to these provisions, the Inspector General will be appointed by the Governors of the Postal Service and may only be removed, for cause, upon the written concurrence of seven of the Governors. Following appointment by the Governors, the bill directs the IG to submit a 5 year strategic plan outlining the goals and staffing requirements for this new office. The transfer of authorities from the Postal Inspection Service to the IG will include all specific IG authorities as contained in the Inspector General Act of 1978. Importantly, the position of Chief Postal Inspector will remain a statutory position within section 204 of title 39. The amendment directs that the Chief Postal Inspector will report to, and be under the supervision of, the Postmaster General. The PMG will be required to notify the Governors and both Houses of Congress should he remove or transfer the Chief Postal Inspector to another position within the Postal Service. Further, these provisions will not require

CONGRESSIONAL RECORD—HOUSE

September 24, 1994

H10990

Controlled Substance Import and Export Act (21 U.S.C. 889).

Section 294—Senate recedes to House section 257. House recedes to Senate amendment section 146(b). This section instructs the Sentencing Commission to promptly promulgate amendments to the sentencing guidelines to reflect the amendments made in section 10001 and 10002 of the Violent Crime Control and Law Enforcement Act of 1994.

SUBTITLE C—REVISION OF STATUTES FOR EXCLUSION AND DEPORTATION

Section 341—Senate recedes to House section 301(f). This subsection amends INA section 212(a)(1)(A) by adding a new clause (ii), making inadmissible any alien who seeks admission as an immigrant who does not present evidence of vaccination against mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices. This subsection also provides that this new ground of inadmissibility may be waived if the alien receives the required vaccination, if a civil surgeon or similar official designated in 42 CFR 24.2 certifies that the vaccination would not be medically appropriate, or, if the vaccination would be contrary to the alien's religious or moral beliefs. It is anticipated that this waiver authority would be exercised in appropriate cases to permit admission of aliens where, for example, an alien has been unable to receive a safe dosage or vaccine in the alien's country of nationality, the alien is a child who is required to complete a series of vaccinations over a course of time and has not had a reasonable opportunity to complete that course, or the alien is an active member of a religious faith that prohibits the Attorney General that such vaccinations would contradict the fundamental tenets of such religion.

Section 342—House recedes to Senate section 155. This section amends the terrorist exclusion ground, section 212(a)(3)(B), to make inadmissible an alien who, with the intent to cause death or serious bodily harm, has incited terrorist activity.

Section 343—House section 311 recedes to Senate amendment section 156. This section amends section 212(a)(3) to make inadmissible to the United States any alien seeking admission for employment as a health-care worker unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization (approved by the Attorney General in consultation with the Secretary of Health and Human Services) verifying the alien's training, licensing, and experience, as well as a level of competency in English appropriate to the position in which the alien will be employed.

Notwithstanding any international trade agreements or treaties, a "health care worker" subject to processing under this section should include any alien seeking an immigrant or nonimmigrant visa as a nurse, physical therapist, occupational therapist, speech-language pathologist, medical technologist and technician, physician assistant, or other occupations designated in regulations. The Attorney General should not approve a credentialing organization unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa. The organization also should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession and the results of examinations for proficiency in English appropriate for the health care of the kind in which the alien will be engaged, and maintain comprehensive and current information

on foreign educational institutions, institutions of health and foreign health care licensing jurisdictions. In addition, because this provision contemplates that alien health-care workers be screened before they arrive in the United States, such organizations should demonstrate an ability to conduct examinations outside the United States.

Section 344—House recedes to Senate amendment section 216. This section amends INA section 212(a)(6)(C) and 212(a)(3), to create new grounds of inadmissibility and deportability in the case of an alien who falsely represents himself to be a citizen of the United States.

Section 345—Senate recedes to House section 353, with modifications. Subsection (a) of this section amends subparagraph 212(a)(6)(F) and adds a new paragraph 212(a)(13), to provide that an alien who is inadmissible for having been subject to a final order for a violation of section 214C (civil document fraud) may have the ground of inadmissibility waived if the alien is a lawful permanent resident or an alien seeking admission as a family-sponsored or employment-based immigrant, and if no civil money penalty had been imposed, the final order resulted from an offense that was committed solely to assist an individual who at the time of the document fraud offense was the alien's spouse or child (and not another individual). This statutory language makes clear that the family relationship must exist at the time of the civil document fraud offense, not merely at the time the application for the waiver is filed.

Subsection (b) amends subparagraph 212(a)(3)(C) (prior to redesignation as section 237(a)(3)(C)) to provide a similar waiver for an alien who is deportable due to a section 214C violation. The same limitations on family relationship are to apply. No court shall have jurisdiction to review a decision whether or not to grant a waiver under either of these subsections.

Section 346—House recedes to Senate amendment section 216(b), with modifications. This section amends INA section 212(a)(8) to add a new subparagraph (G), making inadmissible for 5 years any alien who obtains a visa as a nonimmigrant student under section 101(a)(15)(F)(i) and who violates a term or condition of the nonimmigrant status.

Section 347—House recedes to Senate amendment sections 217(b) and 217(c). This section adds new sections 212(a)(10)(F) and 212(a)(7) creating, respectively, new grounds of inadmissibility and deportability in the case of an alien who has voted in an election in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

Section 348—Senate recedes to House section 301(h), with modifications. This section amends INA section 212(h) to limit waivers granted under that provision in the case of an immigrant previously admitted to the United States. An alien is ineligible for such a waiver if since admission as a lawful permanent resident, the alien has been convicted of an aggravated felony, or if the alien has not lawfully resided in the United States for a continuous period of 7 years prior to notification to the alien of proceedings to remove the alien from the United States. The managers intend that the provisions governing continuous residence set forth in INA section 210A as enacted by this legislation shall be applied as well for purposes of waivers under INA section 212(h).

Section 349—Senate recedes to House section 301(i), with modifications. This subsection revises INA section 212(i) to provide that the ground of inadmissibility under section 212(a)(6)(C) (fraud and misrepresenta-

tion) may be waived in the case of a son or daughter of a United States citizen or a lawful permanent resident, if the refusal of admission would result in extreme hardship to the citizen or lawful resident spouse or parent. No court shall have jurisdiction to review a decision regarding waiver.

Section 350—House recedes to amendment section 218 with modifications. This section amends INA section 211(a) (prior to redesignation as section 237(a)(2)) to provide that an alien convicted of a domestic violence, stalking, or child deportable. The crimes of rape, abuse of a minor are elsewhere classified aggravated felonies under INA section 101(a)(43), thus making aliens convicted those crimes deportable and ineligible for most forms of immigration benefits or relief from deportation.

Section 351—This section amends INA sections 212(a)(11) and 212(a)(1)(X)(II), regarding waivers, respectively, of grounds of deportability in the case of an alien who engaged in alien smuggling if the alien smuggling was solely to aid certain family members. The amendment clarifies that the family relationship must exist at the time of the act of smuggling. Thus, an alien does not qualify for the waiver if approval or parent-child relationship is established after the offense, but prior to the time of application for the waiver. The managers specifically disapprove of and intend to override the recent contrary holding of the 9th Circuit, *Int. Dec. 2999 (ILA 1993)*.

Section 352—Senate recedes to section 301(e), with modification to make ground of inadmissibility applicable to an alien who renounces citizenship after enactment.

Section 353—This section identifies sections of this Act that make grounds of inadmissibility or deportability.

SUBTITLE D—REMOVAL OF ALIEN TERRORISTS

Section 354—Senate recedes to section 321, with modifications. This section amends INA section 504, as enacted by title 401 of AEDPA (Public Law 104-132) provide, among other things, that the deportation procedures employed of an alien terrorist may be used against the alien if event that no summary of classified evidence being used against the alien is provided to the alien without disclosing classified information. In such circumstances, an attorney shall be appointed to represent the alien in the proceedings. The special attorney shall be entitled to review the classified information that is not disclosed or summarized to the alien, but may not disclose that information to any other person, including to the alien.

Section 355—Senate recedes to House section 351, with modifications. This section amends INA section 212(a)(3)(B)(i)(IV) inserted by section 411(i)(C) of AEDPA to clarify that when a member of an organization which engages in or actively supports terrorism is removed from the U.S.

Section 356—Senate recedes to section 351, with modifications. This section amends section 212(b), as added by 302(a) of AEDPA, to clarify judicial review of a designation of an organization as a terrorist organization.

Section 357—Senate recedes to section 352. This section clarifies that under INA section 244(a)(2) (voluntary departure) is not available to an alien in proceedings under Title V of the INA, as amended by AEDPA.

Section 358—This section provides effective dates for the provisions in this title shall be effective as if in

Canadian Embassy



Ambassade du Canada

501 Pennsylvania Avenue, N.W.
Washington, D.C. 20001

July 21, 1997

The Honourable Janet Reno
Attorney General of the United States of America
Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Madam Attorney General,

I am writing to express Canada's concern about article 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and its negative impact on the entry of Canadian health care workers into the U.S. under the North American Free Trade Agreement (NAFTA).

Article 343 denies admission to aliens seeking entry for employment as health care workers, unless a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent credentialing organization approved by the Attorney General, is presented, verifying the person's training, licensing and experience, as well as a level of competency in English. The provision applies notwithstanding any international agreement or treaty.

We understand that in order to allow sufficient time to develop implementation procedures and select certifying organizations, a waiver of inadmissibility was put into place for aliens already in possession of non immigrant visas or who are visa exempt, including Canadian health care workers applying for admission as professionals under the NAFTA. Unfortunately, the manner in which this waiver is applied by U.S. port of entry officials has created confusion and has affected a significant number of Canadian health care workers and their U.S. employers.

We believe that Article 343 is inconsistent with the principles of facilitation and liberalization of the movement of business persons and with the specific obligations to grant

.../2

- 2 -

temporary entry under Chapter 16 of the NAFTA. Any denial of temporary entry to health care professionals based on competency tests, usually applicable to the right of professional practice, would not conform to the requirements applicable to temporary entry permitted by Chapter 16.

We seek your assistance in addressing our concerns with this new measure. Most pressing is the need for the Immigration and Naturalization Service (INS) to ensure the consistent application of the waiver with their port of entry officials so that no new requirements are imposed on Canadian health care workers. Our ultimate concern is the need to ensure that the United States fully respects its NAFTA obligations concerning the movement of temporary workers.

Yours sincerely,

Best Regards



Raymond Chrétien
Ambassador

Congress of the United States
House of Representatives
Washington, D.C. 20515

November 6, 1996

Honorable Doris M. Meissner
Commissioner, Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Dear Madam Commissioner:

We are concerned about a report that the Immigration and Naturalization Service may not correctly interpret section 343 of H.R. 3610, the Department of Defense Appropriations Act, 1997. We understand that some within INS may apply this provision only to immigrants and not to nonimmigrant healthcare workers. This provision requires certification of the qualifications of all aliens, both immigrants and non-immigrants, seeking to enter the United States for the purpose of performing labor as a health-care worker, other than a physician.

This requirement was drafted to protect consumers from the possibility of admitting unqualified health care practitioners. There are no exceptions to this requirement, by statute, treaty, administrative practice or otherwise.

It has been reported to us that some uncertainty was caused by the fact that section 343 amends section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(5) "Labor certification and qualifications for certain immigrants"). We understand that some persons may have suggested that the placement of the new prescreening requirement in section 212(a)(5) would somehow limit prescreening to applicants for immigrant visas only. This suggestion, if it was made, would be incorrect, with respect to both the language of the amended statute and congressional intent.

The placement of the prescreening requirement in section 212(a)(5) was not intended to limit the broad language of the statute. As you will see from the enclosed amended statutory language, the limitation to immigrants in section 212(a)(5)(D) refers only to the existing subparagraphs (A) and (B), not the prescreening requirement, which is new subparagraph (C). (See, for example, page 2, line 19 of the enclosure.) Given the absence of any limitation in its language, subparagraph (C) applies to both immigrants and non-immigrants.

In addition, our conference report language on this section was clear that new section 212(a)(5)(C) would apply to both immigrants and non-immigrants. (See pages 226-227 of

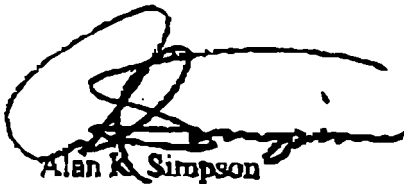
Letter to Commissioner Meissner
November 6, 1996

Report 104-828). This conference report language applies to the identical language in H.R. 3610, as was made clear by statements in the Congressional Record by both the House and Senate floor managers. (H12104-5 of the Congressional Record for September 28, 1996 and S11839 of the Congressional Record for September 30, 1996)

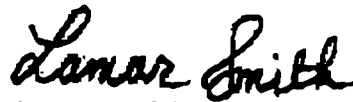
We intend that this new prescreening requirement be effective immediately. We do not want patients put at risk any longer than necessary. The use of sweeping and all-inclusive terms in section 343 was deliberate. The section was not intended to be limited by any administrative procedures, interpretations, or terms of art.

Thank you for your prompt attention to this matter.

Sincerely,



Alan K. Simpson
Chairman
Subcommittee on Immigration
And Refugee Affairs
Senate Committee on the Judiciary



Lamar Smith
Chairman
Subcommittee on Immigration
and Claims
House Committee on the Judiciary

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PORTLAND, ME 04101
(207) 774-5019



Congress of the United States
House of Representatives
Washington, DC 20515-1901

June 30, 1997

Mr. Allen Erenbaum
Acting Director/Cong. Relations
Immigration and Naturalization Service
U.S. Department Of Justice
Room 7030
425 Eye St., N.W.
Washington, D.C. 20536

Dear Mr. Erenbaum:

I am writing on behalf of the Maine Health Care Association, which has contacted my office with concerns about implementation of a provision of the 1996 immigration bill regarding foreign-educated health care workers, which would require that these workers obtain a certificate in order to qualify for certain occupational visas.

Members of the Association are concerned that the law will impact Canadian nurses who work in Maine, and thus have a negative impact on the quality of care in our hospitals. I understand that the State Department has given notification to these workers that it will no longer issue immigrant visas, and that INS has not yet promulgated regulations on how the certification process is to be handled. They are also concerned about the frequency and location of such certification exams, since travel from Maine can often be burdensome and cause disruptions from work.

Specifically, I am inquiring as to (1) the status of INS's establishment of a review and approval process for application for certification by foreign-educated health care workers, (2) what is being done to ensure that these workers, despite their desire to renew their visas under the new law, do not lose their visas because of bureaucratic delays.

I would appreciate it if you could send a response to Paula R. Valente of the Maine Health Care Alliance (317 State Street, Augusta, ME, 04330) as well as to me, care of my legislative assistant Todd Stein, in my Washington office.

Thank you for your assistance on this matter.

Sincerely,

Tom Allen
Member of Congress

THA/ts

CD EXS DOC #28593/28594

RECEIVED
JUL 10 1997
COMMITTEE ON NATIONAL SECURITY
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REFORM AND OVERSIGHT
SUBCOMMITTEES:
DISTRICT OF COLUMBIA
HUMAN RESOURCES
COMMISSIONER'S OFFICE
DEMOCRATIC STEERING AND POLICY
COMMITTEE

United States Senate

WASHINGTON, DC 20510

May 19, 1997

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I St. N.W., Room 7100
Washington, D.C., 20536

Re: 8 U.S.C. § 1182(a)(5)(C) ("Uncertified foreign health-care workers")

Dear Madame Commissioner:

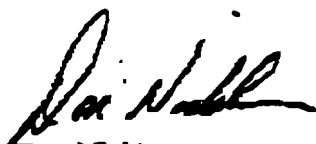
This letter expresses our concerns regarding the operation of certain provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Specifically, Section 343 of that Act (amending Section 1182 of Title 8) unfairly delays or prevents qualified foreign health care workers from providing a greatly needed service in our country. We ask that the Immigration and Naturalization Service work with members of Congress to arrive at a mutually beneficial method of addressing this problem.

Section 1182 of Title 8 requires that health-care workers wishing to enter the country present a certificate from a private association, the Commission on Graduates of Foreign Nursing Schools (CGFNS), verifying his or her educational background and other abilities. The effective monopoly obtained by CGFNS results in unnecessary delays in processing health care workers who wish to enter the country.

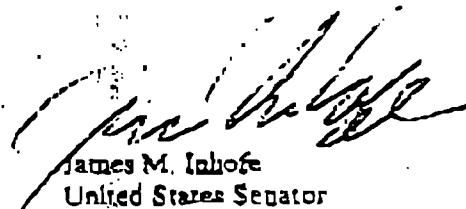
An Oklahoma constituent, who expends significant resources in locating well-trained health care workers in Great Britain, Ireland, Australia, New Zealand, and South Africa, brought this issue to our attention. The provisions of the 1996 Act cause his and other businesses to lose many opportunities to place workers within a reasonable time in places of great need. Furthermore, the law results in a lack of workers to fill positions in many remote parts of the country, where domestic health care workers do not desire to practice.

Thank you for your consideration of our concerns. We look forward to working with you to resolve this issue.

Sincerely,



Don Nickles
Assistant Majority Leader



James M. Inhofe
United States Senator

141/BJW

JOHN EDWARD PORTER
16TH DISTRICT OF ILLINOIS

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE

FOREIGN OPERATIONS

LABOR, HEALTH AND HUMAN SERVICES
AND EDUCATION
CHAIRMAN

MILITARY CONSTRUCTION

COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

CONGRESSIONAL HUMAN
RIGHTS CAUCUS
CO-CHAIRMAN



Congress of the United States

House of Representatives

Washington, DC 20515-1310

July 25, 1997

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(847) 883-3101

115 ARLINGTON HEIGHTS ROAD
SUITE 104
ARLINGTON HEIGHTS, IL 60004-3102
(847) 382-0202

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Dear Commissioner Meissner:

I am writing to express my concerns regarding the implementation of Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Unless Congress clarifies its intentions in enacting Section 343, implementation of this provision could seriously impair Americans' access to health care. For example, requiring foreign health care workers already possessing state certificates and licenses to re-certify would create a shortage of health care workers. I strongly urge you to delay implementing Section 343 so that Congress has an opportunity to reconsider this issue.

I also request that the regulations written to implement Section 343 maximize the number of organizations approved as credentialing agencies by the Attorney General, in consultation with the Department of Health and Human Services. The process by which a credentialing organization may seek approval should also be set forth. Without such regulations, a monopoly on the certification process would exist for the only organization named in Section 343, the Commission on Graduates of Foreign Nursing Schools (CGFNS). This organization was singularly named, despite the fact that its experience is limited to the evaluation of nurses. Occupational Therapists have their own certification organization -- the National Board for Certification in Occupational Therapy -- and the National Association for Credential Evaluation Services (NACES) also has specific experience and expertise in many of the professions covered by Section 343. However, these organizations were not named in Section 343.

The construction of fair and appropriate regulations for the implementation of Section 343 is imperative. Without them, we could experience a shortage of workers needed to fill positions in remote parts of the country, where domestic health care workers do not desire to practice. I join several of my colleagues, including Senators Inhofe, Nickles, and Kennedy, in urging you to take additional time (24 months) to work with the affected parties and Congress to sort through these problems prior to issuing any interim or final regulations.

I appreciate your attention to this matter and thank you in advance for working to address these concerns.

Sincerely,

John Edward Porter
Member of Congress

JEP:ajk

cc: The Honorable Donna Shalala, Secretary of Health and Human Services
The Honorable Franklin Raines, Director, Office of Management and Budget

06/27/97 FRI 17:07 FAX

ORRIN G. HATCH, UTAH, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 26, 1997

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, DC 20536

Dear Commissioner Meissner:

As you know, section 343 of the 1996 immigration law establishes certification requirements for the admission of foreign health care workers. In light of the many implementation issues that have arisen since this provision became law, I urge that INS take additional time to work with the affected parties and with Congress to sort through these problems prior to proceeding with final regulations.

When the Senate Judiciary Committee considered this provision last year, I supported the need to ensure that the foreign health care workers who come to work in the United States are qualified. I believe strongly that we need such a requirement in our immigration laws in order to ensure the public health.

Since passage of section 343, however, a number of issues have arisen which should shape implementation of this provision. For example, many foreign nurses already possess full and unrestricted state nursing licenses and speak fluent English. These nurses should not be required to undergo testing in order to be certified for entry into the United States. Additionally, occupational therapists have their own credentialing body -- the National Board on Certification of Occupational Therapists. It may be more appropriate for this organization to screen foreign occupational therapists. These are only two examples of the kinds of issues that must be addressed thoughtfully in implementing this new provision.

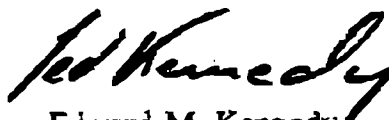
Again, I believe strongly that our immigration laws and procedures should ensure that only qualified foreign health care workers are admitted for employment, and I supported this provision when it was considered by the

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Senate Judiciary Committee. But I believe that these additional issues must be taken into account in implementing this important provision.

With best wishes,

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Kennedy", written in a cursive style.

Edward M. Kennedy
Ranking Member
Subcommittee on Immigration

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August 28, 1997

Via Facsimile and U.S. Mail

Paul W. Virtue, Esq.
Acting Executive Associate Commissioner
Programs
Immigration & Naturalization Service
425 Eye Street, N.W.
Washington, DC 20536

Dear Mr. Virtue:

Thank you for meeting with Barbara Nichols, Valerie Winnick and myself yesterday regarding INS's response to CGFNS's notice of August 18, 1997, that it will commence receiving applications for certification pursuant to section 343 of the 1996 immigration act on August 25, 1997.

The purpose of this letter is to confirm that CGFNS interprets the INS Memorandum of August 27, 1997, in which field officers are instructed not to accept any certifications issued by CGFNS prior to the promulgation of INS regulations implementing section 343, as final agency action pursuant to the Administrative Procedures Act that is subject to judicial review.

As we stated in the meeting, CGFNS does not anticipate issuing any certifications under section 343 before October 1, 1997. Therefore, in order to avoid possible litigation, we agree that it would be productive to discuss this matter in greater detail in the coming weeks.

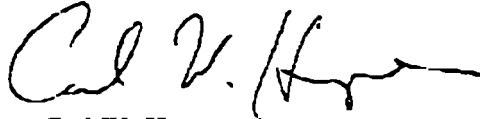
PAUL. WEISS. RIFKIND. WHARTON & GARRISON

Paul W. Virtue, Esq.

2

Thank you for your attention and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl W. Hampe".

Carl W. Hampe

cc: Ms. Jackie Hednarz
Mr. John Brown
Mr. Stephen K. Fischel
Mr. Lyman Van Nostrand
Mr. Stephen G. Tise
Mr. Bernard Ascher

Memorandum



96 ACT #056
HQIRT 50/5.12

Subject IIRIRA Section 343: Reaffirmation of
Immigration and Naturalization (INS) Policy

Date August 27, 1997

To

All Regional Directors
All District Directors (Including Foreign)
All Officers in Charge (Including Foreign)
All Port Directors
All Service Center Directors
All Training Academies (Glynco and Artesia)
All Regional Counsels
All Asylum Directors

From

Office of Programs
(HQPGM)

The purpose of this memorandum is to reaffirm INS policy with respect to section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which amends section 212(a)(5)(C) of the Immigration and Nationality Act.

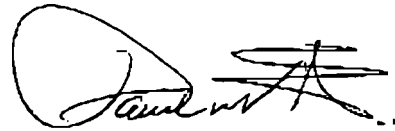
The Commission on Graduates of Foreign Nursing Schools (CGFNS) has informed INS of its intention to begin issuing certifications pursuant to section 343 of IIRIRA on August 25, 1997.

The INS will not accept any certifications issued by CGFNS or any equivalent independent credentialing organization prior to the promulgation of INS regulations implementing section 343 of IIRIRA. Additional INS instructions will be provided at such time as the appropriate certification procedures have been put in place.

Accordingly, instructions contained in INS memorandum 96ACT #041 (HQ 70/23.1-P, HQ 70/21.1.14-P and HQ 50/5.12 dated June 6, 1997) remain in effect. See also 96 ACT #014 dated January 28, 1997 for background about section 343 of IIRIRA.

Page 2
See Distribution

For further information, please contact Adjudications Officer John W. Brown at (202) 514-3240.

A handwritten signature in black ink, appearing to read "Paul W. Virtue", with a stylized flourish at the end.

Paul W. Virtue
Acting Executive Associate
Commissioner

FEDERAL ASSOCIATES, LLC

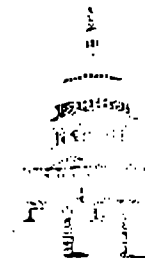
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**August 21, 1997**

Mr. Paul W. Virtue
Acting Executive Associate Commissioner
Programs
Immigration & Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Dear Mr. Virtue,

I am registered to lobby on behalf of the Association of International Healthcare Recruiters and Employers (AIHRE). AIHRE is an association which serves the American consumer and healthcare industry by working to assure ethical recruitment and employment of well qualified internationally educated healthcare workers. This industry has businesses in nearly every state and several foreign countries. You will receive communiques directly from AIHRE's President and from individual members.

Accordingly, I am taking the liberty to comment on a letter you received dated August 18, 1997 addressed to you and signed by Carl Hampe, Esquire, lobbyist for the Commission on Graduates of Foreign Nursing Schools (CGFNS) regarding Section 343, 8 U.S.C. 1182 (a) (5) ("Uncertified foreign health-care workers").

Please excuse the bluntness of this communique. But, many familiar with the history of Section 343 are in disbelief at the arrogance of the CGFNS' position as outlined in their August 18, 1997 letter. Section 343 is a classic example of special interest legislation created without input from the industry and consumers it directly impacts. Indeed, when one Senator offers a legislative fix favorable to one constituent without debate or a hearing record of any kind, controversy and confusion are sure to follow. That is exactly what has happened with Section 343!

This provision must be scrutinized and interpreted by Immigration & Naturalization Service (INS) for appropriate rulemaking in consultation with the other federal agencies responsible for its implementation. It is a very serious matter to claim, as the CGFNS has claimed, that they will begin to "screen and certify foreign healthcare workers ... effective August 25, 1997." when they have no such authority. Indeed, several legal experts believe that implementation of CGFNS's claim would constitute fraud.

It is important to note here that AIHRE wrote Section 343's author, United States Senator Arlen Specter, on March 7, 1997 stating that, "The ambiguity of Section 343 is creating problems for United States employers of healthcare workers, healthcare recruiters and healthcare facilities in regional areas where there is a shortage of healthcare workers. Equally as important is the lack of an effective date. This has caused the Immigration and Nationalization Service to cease adjudicating all healthcare workers adjustment of status applications and the Department of State from issuing immigrant visas to healthcare workers."

AIHRE further stated in their letter that, "We hope it was not your intention to create a monopoly for one credentialing organization (CGFNS) at the expense of other credentialing organizations". The CGFNS should not be allowed to monopolize the screening of all foreign health care workers particularly in areas which they have no experience or expertise. Indeed, occupational therapists have their own certification organization - the National Board for Certification in Occupational Therapy (NBCOT) - which has been in the certification business very successfully for over twenty years. We and others believe it is far more appropriate for the NBCOT to screen occupational therapists. This is just one major example of the many flaws within Section 343.

In fairness to Senator Specter, he did not know the impact his amendment would have and has now instructed his staff to seek remedies fair to all interested parties. For the time being, INS policies and procedures should continue to be what they were prior to passage of Section 343, especially with relation to green cards. We are confident that when Senator Spencer Abraham, Chairman of the Senate Subcommittee on Immigration, holds the oversight hearings he has announced regarding the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the issue will be satisfactorily resolved.

In summary, the CGFNS has no expertise nor experience to proceed in the manner they intend, much less the authority they claim. The membership of AIHRE respectfully requests INS to inform the CGFNS accordingly.

Your immediate attention to this vital matter will be greatly appreciated by hundreds of small businesses throughout the United States. Because of the urgency of this matter I am also taking the liberty of sending a copy of this communique to various government officials responsible for Section 343 including numerous members of the United States Senate and House of Representatives who are working with their respective constituents to resolve the flaws in Section 343.

Respectfully yours,



Albert A. Fox, Jr.

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August 18, 1997

Via Facsimile and U.S. Mail

Paul W. Virtue
Acting Executive Associate Commissioner,
Programs
Immigration & Naturalization Service
425 Eye Street, N.W.
Washington, DC 20536

RE: Section 343 of the IIRIRA of 1996

Dear Mr. Virtue:

As counsel to the Commission on Graduates of Foreign Nursing Schools ("CGFNS"), I am writing to inform you of the intention of CGFNS to initiate its statutory role to screen and certify foreign health care workers under section 212(a)(5)(C) of the Immigration and Nationality Act, effective August 25, 1997.

As you are aware, section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added a new provision to § 212(a)(5) which specifically designated CGFNS to verify (and if appropriate, to certify) that a foreign health care worker: (1) possesses appropriate, comparable and authentic education, training, licensure, and experience; (2) has a level of competence in oral and written English that is appropriate for health care work of the kind in which the alien will be engaged, and (3) if applicable, has passed an appropriate licensing predictor test or licensing examination.

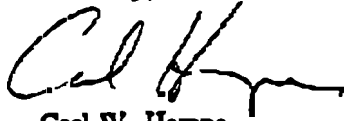
Pursuant to the authority granted to it by section 343, CGFNS will begin accepting certification applications on August 25, 1997, and will make determinations on these applications (and where appropriate, issue certifications) in a timely manner thereafter.

PAUL. WEISS, RIFKIND, WHARTON & GARRISON
Paul W. Virtue

2

Please do not hesitate to contact me if I may provide you with any further information.

Sincerely,



Carl W. Hampe

cc: Ms. Jackie Bednarz
Mr. John Brown
Mr. Stephen K. Fischel
Mr. Lyman Van Nostrand
Mr. Stephen G. Tise
Mr. Bernard Ascher