

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 212, 214, 245, 248 and 299

[CIS No. 2080-00]

RIN 1615-AA10

#### Certificates for Certain Health Care Workers

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department of Homeland Security (DHS) regulations to provide that organizations previously authorized to issue health care worker certifications will continue to be permitted to issue certifications for a temporary period of time, and to set up procedures for authorizing organizations to issue the certificates, including an appeals process in the event that requests for authorization are denied. In addition, this rule adds the requirement that all nonimmigrants coming to the United States for the primary purpose of performing labor as health care workers, including those seeking a change of nonimmigrant status, be required to submit a health care worker certification. Publication of this rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers. On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the DHS, pursuant to the Homeland Security Act of 2002 (Public Law 107-296). Accordingly, the Service's adjudications functions transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the DHS, and the Service's

inspections functions transferred to the Bureau of Customs and Border Protection (CBP). The DHS now has the authority to make revisions to what were previously Service regulations. For the sake of simplicity, this rule will no longer refer to the Service but rather DHS, even though meetings and publication of the previous interim rules, publication of the proposed rule, and receipt of comments took place under the Service prior to March 1, 2003.

**DATES:** This final rule is effective on September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mari F. Johnson, Adjudications Officer, Office of Adjudications, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353-8177.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the *Federal Register* on October 11, 2002, at 67 FR 63313. The rule proposed to implement section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208, 110 Stat. 3009, 636-37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(5)(C), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106-95, codified at section 212(r) of the Act, 8 U.S.C. 1182(r).

#### What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of IIRIRA created a new ground of inadmissibility. It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents 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 the Department of Health and Human Services (HHS), verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the

United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, 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

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 212(r) of the Act created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) Was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of