

alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien would not have been required to again present the foreign health care worker certificate to the DHS, with an application for extension of status to perform labor in that particular health care occupation.

The DHS received no comments on this proposal. However, after considering the impact of this provision, the DHS has determined that it will only accept a valid health care worker certificate or certified statement as evidence that the alien is admissible. Currently, an alien is generally required to surrender the departure stub of Form I-94 upon departure from the United States. Controlling the departure of aliens is consistent with the DHS's efforts to fulfill a congressional mandate to implement a comprehensive entry-exit program by 2005. As a result, many aliens will not be able to present a departure stub from a previously issued Form I-94 as evidence of their continuing admissibility under section 212(a)(5)(C) of the Act. In addition, it is noted that information on a Form I-94 does not always include the occupation for an alien nonimmigrant. For this reason, even in exceptional instances where the alien is permitted to retain the departure stub of the Form I-94 when departing the United States, the DHS would not necessarily be able to use the departure stub of the Form I-94 to verify that a particular alien was previously admitted as a health care worker. Accordingly, the DHS has determined that it is in the best interest of affected aliens to require that they present valid health care worker certificates or certified statements each time they seek admission into the United States. Lawful permanent residents will not be required to present this evidence.

#### *Implementation of the Certification Requirement*

This rule adds a new 8 CFR 248.3(i) to outline the procedure for submitting the certificate to the DHS when an application is made to change nonimmigrant status within the United States.

The proposed rule also provided that, on the effective date of the final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the DHS only if, at any point in the future, they file an application for an extension of stay, or

apply for admission to the United States, whichever event occurs first.

The DHS received 13 comments in response to this provision. All 13 commenters suggested that the DHS delay the implementation of this provision for a period of time in order to ensure that the foreign health care workers already in the United States would not be adversely affected. The commenters noted that some health care workers may be required to travel outside of the United States and would not be able to obtain a certification prior to their departure. Other commenters noted that some health care workers who require an extension of their temporary stay would not be able to obtain a certification in a timely fashion and would be forced to terminate their employment at the health care facility.

The DHS believes that these comments are well-founded. The DHS is concerned about the possibility that health care facilities and the United States public will be adversely affected by an immediate implementation date. In addition, DOS also has recommended that the DHS continue to exercise its waiver authority under section 212(d)(3) of the Act for foreign health care workers for at least one year subsequent to the publication of this rule.

If this rule were effective upon publication, potentially every nonimmigrant working in one of the covered health care occupations and seeking admission into the United States would be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classifications. This would result in a serious disruption to the United States health care system, and is contrary to the intent of the rule. While the DHS does not have precise figures for the number of nonimmigrant health care workers within the United States, health care workers in general comprise a significant portion of the United States workforce. According to the 2001 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics, there are approximately 9,241,840 health care workers in the United States. Of these, approximately 2,217,990 are registered nurses; 683,790 are licensed practical nurses and licensed vocational nurses; 126,450 are physical therapists; 77,080 are occupational therapists; 94,150 are speech language pathologists and audiologists; 292,320 are medical technologists and technicians; and 56,200 are physician assistants.

Further, were this rule to be effective upon publication, there is no evidence that organizations authorized to issue health care certifications will be able to

issue certifications to this potentially large group of workers within a reasonable amount of time. Not only are potentially affected health care workers required to apply for and obtain the actual certifications, but most workers would also be required to pass certain standardized English language tests as a minimum requirement to obtain certification. As discussed in this rule, one of the currently authorized English language testing organizations advised HHS and the DHS that it will no longer provide testing services to foreign health care workers because it cannot meet the demands placed upon it by foreign health care workers seeking health care certificates, and can no longer provide fair access or guarantee testing security.

In addition, health care workers abroad may be required to travel to remote locations in order to take certain tests and will require sufficient time to schedule testing and make any necessary travel arrangements. Although the tests may be offered several times a year, not all required tests are offered in one location. For example, the TSE is not always offered at the same location as the TOEFL, so a health care worker may have to go through several testing cycles in order to obtain a combination of test scores needed for certification. Finally, it should be noted that this rule is implementing the requirement that all approved credentialing organizations obtain evidence of candidate education and licensure directly from the issuing authorities. Thus, once a candidate has passed the requisite tests and submitted an application for certification, there will be additional delays while the authorized credentialing organization obtains and reviews documents such as educational transcripts and licensure materials.

After consideration of these factors, the DHS believes that it must continue the provision for temporary admission under section 212(d)(3) of the Act for a period of 1 year in order to allow for any potential delays in issuance of health care worker certification and to ensure that the United States public is not adversely affected when nonimmigrant health care workers currently employed in the United States are required to obtain certification. Therefore, the DHS has added language at 8 CFR 215.15(n) that continues in force the First Interim Rule's standing provision for temporary admission under section 212(d)(3) of the Act. An alien qualifies for this special provision only if the alien was admitted on or before July 26, 2004. Moreover, any petition or application to extend the alien's period of authorized stay or change the alien's status will be denied unless the alien obtains the required