

Department of Homeland Security Responds to Questions Raised by CGFNS

October 6, 2004

In a teleconference held on September 13, 2004, U.S. Citizenship and Immigration Services of the Department of Homeland Security provided answers to several questions posed by CGFNS regarding issues raised by the Final Rule regarding certification of foreign health care workers. Those questions and answers are summarized below.

1. **Q:** Is the validity of the VisaScreen and similar certificates limited to five years, or does the Rule require only that the certificate be used within five years after its issuance?

USCIS Answer: The validity of the certificate is limited to five years from the date of its issuance.

2. **Q:** Does this five-year validity apply only to certificates issued after September 23, 2003, the effective date of the rule, or does it apply to all certificates, including those issued before September 23, 2003?

USCIS Answer: The validity period applies to all certifications issued, regardless of the date of issuance.

3. **Q:** If an immigrant or temporary worker uses the VisaScreen certification for admission, change of status, or adjustment of status within the 5-year period, is there a renewal obligation? For instance, will an H-1B nonimmigrant health care worker who presented the requisite certification initially and again at the time of extension be required to renew his or her certificate during his or her 6th year of H-1B time if he or she travels and seeks admission to the U.S. after the certificate has expired? Would the same requirement apply to an adjustment of status applicant who re-enters the U.S. on advance parole (after the certificate has expired) rather than on a H-1B visa?

USCIS Answer: In the example described above, yes, there would be a renewal obligation because a valid certification is required for admission, change of status, extension of stay, or adjustment of status.

CGFNS Comment: CGFNS has raised with USCIS what the standards should be for the renewal of a VisaScreen or similar certificate. We have asked in particular what the requirement, if any, should be for demonstrating English-language proficiency upon renewal. USCIS has responded that it will address these issues and will be in further contact with CGFNS on this matter.

4. **Q:** What is USCIS's position with regard to an H-1B nonimmigrant who is "porting" to a new employer where there is no request for an extension of status? Will your Service Centers approve the I-129 petition for the change in employment without the certification?

USCIS Answer: In the example above, since the beneficiary would be porting to a new employer, this would be a new position and a new adjudication for USCIS. If the new position requires certification then it would be required. It is also possible that in the beneficiary's previous position he or she did not have the certification or it was not yet required but it would now be required in the new position.

5. **Q:** How does USCIS define Medical Technologists (Clinical Laboratory Scientists) and Medical Technicians (Clinical Laboratory Technicians)? CGFNS has suggested that Medical Technologists and Medical Technicians are generalists in the laboratory and not specialists. CGFNS has proposed that many professions are not covered by the Final Rule. Will your Service Centers use the CGFNS definition in adjudicating these kinds of cases?

USCIS Answer: In the Final Rule, we declined to include a specific definition of each health care occupation subject to certification. As a practical matter, we will look to the Occupational Outlook Handbook for guidance.