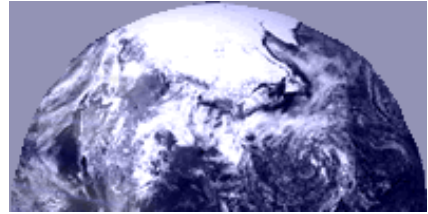


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Providing U.S. & Global Immigration Solutions
to Businesses Around the World



U.S. Immigration For Foreign Nurses and Other “VisaScreen” Healthcare Workers

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1 INTRODUCTION TO U.S. IMMIGRATION FOR FOREIGN HEALTHCARE WORKERS

The United States has one of the most structured and detailed immigration laws in the world, with many government agencies regulating various parts of the immigration process. The healthcare field is probably the most highly regulated area of all.

Every physician and many other healthcare providers have special credentialing requirements they must comply with before they can enter the United States to work. While these credentialing requirements slow down the overall immigration process, they also help ensure that a foreign healthcare worker has the equivalent credentials as a U.S. trained healthcare worker. They also establish a more objective system that allows foreign healthcare workers and potential U.S. employers the ability to know more definitively determine whether a particular foreign healthcare worker will qualify for a work visa or green card.

1.1 “CREDENTIALING” VERSUS “LICENSING”

To understand how the U.S. immigration system is applied to foreign healthcare workers, two concepts must be distinguished - credentialing and licensing.

- “Credentialing” refers to a process *established solely for immigration purposes* that must be completed before a foreign healthcare worker may obtain a U.S. work visa or green card. This credentialing process is designed to ensure that a foreign healthcare worker’s education is equivalent to that received in the United States; that their license to practice in their country of origin is unrestricted and unencumbered; and that the foreign healthcare worker has passed both English language and technical competency examinations.
- “Licensing” is a set of requirements established by each State in the United States as a prerequisite for most healthcare professionals (both foreign and U.S. citizens) to practice in that State.

A foreign healthcare worker must, therefore, comply with more requirements in order to work than a U.S. citizen. In fact, it is possible for a foreign healthcare worker to be fully licensed in the State where they intend to work, yet still be unable to obtain a work visa or green card because they have not met all of their credentialing requirements.

Not all foreign healthcare workers are subject to immigration credentialing requirements. Only foreign physicians and those healthcare workers covered by the “VisaScreen” credentialing program need to comply with extra credentialing requirements. All other foreign healthcare workers must only comply with the licensing requirements established by the State in which they intend to work.

2.1 THE REGISTERED NURSE DEBATE

No position has generated more interest or more conflict than the employment of foreign registered nurses within the United States. Failure of the U.S. government to allow for the employment of foreign registered nurses seems to make no sense. However, there are policy considerations that impact the political debate within the United States on this issue.

For example, the U.S. Department of Labor has designated only two positions, registered nurses and physical therapists, as the only positions within the entire United States where a shortage of qualified applicants has been accepted as a fact. However, Congress has consistently refused to create a new working visa category for registered nurses. Because of this, only Canadian and Mexican registered nurses can obtain a work visa and work in the United States. All other registered nurses must enter the United States on immigrant visas (*i.e.*, as green card holders).

However, other than for a short period a few years ago, Congress has so far not failed to expand the number of immigrant visas that are available for registered nurses, or create a new employment category for registered nurses. Instead, Congress has grouped registered nurses into the same employment category as all foreign nationals who have either a bachelor's degree or two years of experience in their field of expertise. This employment category consistently has a large backlog of applications. This makes it so any U.S. employer who wishes to sponsor a registered nurse for a green card must wait 5-7 years (at a minimum) after filing a green card application before the registered nurse may enter the United States. Very few U.S. employers are willing to invest in a potential employee who they may not see for 5-7 years, if ever. Because of this, the sponsorship of foreign registered nurses – one of only two positions which the U.S. government has designated as a shortage occupation -- has almost completely stopped within the United States.

This is not to say that the U.S. Congress is not addressing this issue. In fact, opening up additional immigrant visas for foreign registered nurses is one of the few "professional" immigration categories Congress has been willing to seriously consider.

The main policy reason why many nursing (and other) organizations oppose opening up the U.S. market to more foreign registered nurses is the fact that there is a shortage of registered nurses in all parts of the world. So if the U.S. allowed more foreign registered nurses to enter the United States, we would be depriving other, less developed countries from having enough registered nurses to meet their needs.

Whether one agrees with this position or not, it must be remembered that of all the "professional" positions that foreign nationals are needed to fill in this country, foreign registered nurses are, in our opinion, on the top of the list when it comes to Congress addressing and resolving the issue of how to meet this countries' shortage of qualified candidates.

2.2 CREDENTIALING AND LICENSING REQUIREMENTS

2.2.1 CREDENTIALING REQUIREMENTS

In 2003, the U.S. Citizenship and Immigration Services ("USCIS") finalized regulations addressing the certification of many healthcare workers through the VisaScreen certification process. For nurses, these regulations covered:

- Licensed Practical Nurses;
- Licensed Vocational Nurses; and
- Registered Nurses.

For nurses, this certification program is administered by the Commission on Graduates of Foreign Nursing Schools (<http://www.cgfns.org>).

The VisaScreen process addresses three areas:

1. Whether the foreign nurse has the necessary educational and licensure credentials; specifically:
 - a. They have completed all educational requirements to practice in the country in which their education was received;
 - b. That such requirements are comparable to those of a person trained in the United States for the same position; and
 - c. They have an unrestricted and unencumbered license in the country in which they received their education.
2. Whether the foreign nurse is competent in both oral and written English; and
3. Whether the foreign nurse has passed the necessary technical competency examinations.

All foreign nationals who enter the United States on or after July 26, 2004, who are working in a clinical setting in a VisaScreen occupation must have a VisaScreen Certificate. This includes both immigrants (*i.e.*, green card holders) and nonimmigrants, and includes foreign nationals who were educated in the United States. However, a VisaScreen Certificate is not required for a foreign nurse who enters the United States or who changes their status within the United States as a dependent of a nonimmigrant foreign national, a U.S. citizen or permanent resident.

The English language proficiency requirement may be fulfilled either through the Test of English as a Foreign Language ("TOEFL"), which is administered by the Educational Testing Service (<http://www.ets.org>).

IMPORTANT: A VisaScreen certificate is not the same as a CGFNS certificate. Even if a foreign nurse has already obtained a CGFNS Certificate, they will still need to obtain a VisaScreen Certificate. This is because a CGFNS Certificate is used for many purposes, only one of which is for U.S. immigration purposes. However, because the VisaScreen process is administered by a division of the CGFNS, obtaining a VisaScreen Certificate after obtaining a CGFNS Certificate is really just an administrative process.

2.2.1.1 ALTERNATIVE TO THE VISASCREEN CERTIFICATE

A foreign nurse is also admissible to the United States if the foreign nurse presents a CGFNS certified statement in lieu of the VisaScreen Certificate. CGFNS is, again, currently the only approved credentialing organization authorized to issue such a certificate. A foreign registered nurse is eligible for the certified statement if:

1. They have an unrestricted RN license in the State of intended employment, and that State verifies that foreign licenses are authentic and unencumbered as part of the licensing process;
2. They have passed the NCLEX-RN exam, which is administered by the National Council of State Boards of Nursing (<https://www.ncsbn.org/nclex.htm>);
3. Their nursing program language of instruction was English;
4. The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom or the United States, or any other country designated by CGFNS (such as Trinidad and Tobago); and
5. The nursing program was in operation before November 12, 1999, or has been approved by CGFNS.

2.2.1.2 EXEMPTION FROM THE ENGLISH PROFICIENCY REQUIREMENT AND EDUCATIONAL COMPARABILITY REVIEW

As previously discussed, the VisaScreen Certificate requires that the education, training, experience and licensure of a foreign healthcare worker be comparable to that required of a U.S. nurse in the same occupation. In addition, the VisaScreen Certificate requires English proficiency. However, the following foreign nurses educated in the United States are exempt from the education comparability review and the English proficiency requirements:

1. Nurses graduating from programs accredited by the National League for Nursing Accreditation Commission (www.nlnac.org) or the Commission on Collegiate Nursing Education (<http://www.aacn.nche.edu>); and
2. Nurses who graduated from a college, university or professional training school in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom or the United States.

2.2.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements. These requirements are tracked by the National Council of State Boards of Nursing (<https://www.ncsbn.org/515.htm>).

2.3 NONIMMIGRANT VISAS FOR FOREIGN NURSES

2.3.1 TN VISAS(FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or "Trade NAFTA") visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement ("NAFTA"). For a registered nurse, the required credentials include a state, provincial, federal license, or a baccalaureate (Canada) or licenciatura (Mexico) degree. The foreign nurse must also meet all of the credentialing and language requirements under the VisaScreen Certificate program.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

2.3.2 H1B VISAS FOR REGISTERED NURSES (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. To qualify for an H1B visa, both the foreign national and the position being sponsored must qualify for an H1B visa. Specifically:

- A foreign national must have a U.S. bachelor's degree or foreign equivalent, plus any certifications and licenses required for the position; and
- The position being sponsored must also typically require a U.S. bachelor's degree.

Unfortunately, registered nursing positions in the United States typically only require an Associate's degree. Therefore, even if a registered nurse qualifies for an H1B visa, the position for which they are being sponsored will not qualify for an H1B visa.

2.3.3 NURSING POSITIONS THAT QUALIFY FOR H1B VISAS

There are some specialized nursing positions that do typically require the equivalent of a U.S. bachelor's degree or higher as the minimum requirement for entry into that specialized field. These positions require training or certifications that go beyond a typical RN position. Of course, this also assumes that the sponsoring employer requires all prospective employees to hold an advanced practice certification for the position being sponsored. For example, if an APRN position requires that the employee be certified in that practice, then the nurse will be required to possess an RN or at least a BSN and some additional graduate level education (such as a master's degree).

The following nursing occupations (clinical and non-clinical) may qualify for an H1B visa:

1. Advanced Practice Registered Nurses ("APRN").
2. Clinical Nurse Specialists in such fields as acute care, adult, critical care, gerontology, family, hospice and palliative care, neonatal, pediatric, psychiatric, mental health and women's health.
3. Nurse Practitioners in such fields as acute care, adult, gerontology, family, neonatal, pediatric, psychiatric, mental health and women's health.

4. Certified Registered Nurse Anesthetists.
5. Certified Nurse-Midwives.
6. Certain specialized nursing positions that require a higher degree of knowledge and skill than a typical registered nurse. For example, those positions for which certification examinations may be available to registered nurses who are not advanced practice nurses. Such certifications demonstrate that the RN possesses additional clinical experience in certain areas, such as:
 - a. School health nurses.
 - b. Occupational health nurses.
 - c. Rehabilitation nurses.
 - d. Emergency room nurses.
 - e. Critical care nurses.
 - f. Operating room nurses.
 - g. Oncology nurses.
 - h. Pediatric nurses.
7. Certain administrative nursing positions, such as "Nurse Managers" or "Nursing Service Administrators" that are supervisory level positions that require an RN and a graduate degree in nursing or health administration.

2.3.4 H1C VISAS

The H1C visa category was specifically designed for registered nurses. However, this visa applies only to hospitals that are located in disadvantaged areas. Currently, there are less than 20 hospitals that qualify for H1C status within the United States. In addition, the number of H1C visas is limited to 500 per year, with each State being limited to sponsoring 25 H1C nurses each year. In addition, the H1C category does not recognize nursing education received in Canada. Because of these limitations, the H1C visa category is not a viable option for most foreign nurses or U.S. hospitals.

2.3.5 H2B VISAS

The H2B visa category allow U.S. employers to bring both skilled and unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States. However, this visa is only available to fill an employer's temporary need, which is designated as a position that will last less than one year. The U.S. government has taken the position that all U.S. nursing positions constitute permanent (*versus temporary*) employment. Because of this, the H2B visa category is not a viable option for foreign nurses.

3 OTHER "VISASCREEN" HEALTHCARE WORKERS

3.1 CREDENTIALING AND LICENSING REQUIREMENTS

3.1.1 CREDENTIALING REQUIREMENTS

In 2003, the U.S. Citizenship and Immigration Services ("USCIS") finalized regulations addressing the certification of many foreign healthcare workers through the VisaScreen certification process. In addition to nurses, these regulations covered:

- Occupational Therapists;
- Physical Therapists;
- Speech-Language Pathologists and Audiologists;
- Medical Technologists (also known as Clinical Laboratory Scientists);
- Physicians' Assistants; and
- Medical Technicians (also known as Clinical Laboratory Technicians).

The following organizations administer the VisaScreen program:

- The Commission on Graduates of Foreign Nursing Schools (<http://www.cgfns.org>):
 - Physical Therapists;
 - Occupational Therapists;
 - Speech-Language Pathologists;
 - Audiologists;
 - Medical Technologists;
 - Physicians' Assistants;
 - Medical Technicians.
- The National Board for Certification and Occupational Therapy (<http://www.nbcot.org>):
 - Occupational Therapists.
- The Foreign Credentialing Commission on Physical Therapy (<http://www.fcctp.org>):
 - Physical Therapists.

The VisaScreen process addresses three areas:

1. Whether the foreign healthcare worker has the necessary educational and licensure credentials; specifically:
 - a. They have completed all educational requirements to practice in the country in which their education was received;
 - b. That such requirements are comparable to those of a person trained in the United States for the same position; and
 - c. They have an unrestricted and unencumbered license in the country in which they received their education.
2. Whether the foreign healthcare worker is competent in both oral and written English; and

3. Whether the foreign healthcare worker has passed the necessary technical competency examinations.

All foreign nationals who enter the United States on or after July 26, 2004, who are working in a clinical setting in a VisaScreen occupation must have a VisaScreen Certificate. This includes both immigrants (*i.e.*, green card holders) and nonimmigrants, and includes foreign nationals who were educated in the United States. However, a VisaScreen Certificate is not required for a foreign nurse who enters the United States or who changes their status within the United States as a dependent of a nonimmigrant foreign national, a U.S. citizen or permanent resident.

The English language proficiency requirement may be fulfilled either through the Test of English as a Foreign Language ("TOEFL"), which is administered by the Educational Testing Service (<http://www.ets.org>).

IMPORTANT: A VisaScreen certificate is not the same as a CGFNS (or equivalent) certificate. Even if a foreign healthcare worker has already obtained a CGFNS Certificate, they will still need to obtain a VisaScreen Certificate. This is because a CGFNS Certificate is used for many purposes, only one of which is for U.S. immigration purposes. However, because the VisaScreen process is administered by a division of the CGFNS, obtaining a VisaScreen Certificate after obtaining a CGFNS Certificate is really just an administrative process.

3.1.1.1 EXEMPTION FROM THE ENGLISH PROFICIENCY REQUIREMENT AND EDUCATIONAL COMPARABILITY REVIEW

The following foreign healthcare workers who were educated in the United States are exempt from the education comparability review and the English proficiency requirements of the VisaScreen process:

1. Occupational therapists graduating from programs accredited by the Accreditation Counsel for Occupational Therapy Education of the American Occupational Therapy Association (<http://www.aota.org>);
2. Physical therapists graduating from programs accredited by the Commission on Accreditation and Physical Therapy Education of the American Physical Therapy Association (<http://www.htpa.org>);
3. Speech-language pathologists and audiologists graduating from programs accredited by the Counsel on Academic Accreditation and Audiology and Speech Language Pathology of the American Speech-Language-Hearing Association (<http://www.asha.org>); and
4. Healthcare workers who graduated from a college, university or professional training school in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom or the United States.

3.1.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements, which are too varied for the number of positions covered by the VisaScreen program to be outlined here.

3.2 NONIMMIGRANT VISAS FOR “OTHER” FOREIGN HEALTHCARE WORKERS

3.2.1 TN VISAS (FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or "Trade NAFTA") visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement ("NAFTA"). A TN visa uses an objective system to determine whether an applicant qualifies for the visa. This is done by listing the specific requirements each healthcare professional must meet to qualify for a visa. Specifically, a TN visa is available for the following healthcare professionals with the following credentials:

- Dentist: D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license.
- Dietitian: Baccalaureate or licenciatura degree; or state/provincial license.
- Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States): Baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate and three years experience.
- Nutritionist: Baccalaureate or licenciatura degree.
- Occupational Therapist: Baccalaureate or licenciatura degree; or state/provincial license.
- Pharmacist: Baccalaureate or licenciatura degree; or state/provincial license.
- Physiotherapist/Physical Therapist: Baccalaureate or licenciatura degree; or state/provincial license.
- Psychologist: State/provincial license; or licenciatura degree.
- Recreational Therapist: Baccalaureate or licenciatura degree.
- Registered Healthcare worker: State/provincial license; or licenciatura degree.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

3.2.2 H1B VISAS (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. To qualify for an H1B visa, both the foreign national and the position being sponsored must qualify for an H1B visa. Specifically:

- A foreign national must have a U.S. bachelor's degree or foreign equivalent, plus any certifications and licenses required for the position; and
- The position being sponsored must also typically require a U.S. bachelor's degree.

It is oftentimes hard to determine whether a particular position will qualify for an H1B visa. For example, Radiation Therapists historically have not been able to qualify for an H1B visa. However, with more and more hospitals requiring specialized training in this field, it is now more common for a Radiation Therapist to qualify for an H1B visa. Other positions, such as Physical Therapists, routinely qualify for H1B visas.

3.2.3 H2B VISAS

The H2B visa category allow U.S. employers to bring both skilled and unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States. However, this visa is only available to fill an employer's temporary need, which is designated as a position that will last less than one year. It is unlikely that the U.S. government will accept that a pharmacist position could be a temporary (*versus permanent*) position. Because of this, the H2B visa category is not a viable option for foreign healthcare workers.

4 IMMIGRANT VISAS (“GREEN CARDS”) FOR FOREIGN HEALTHCARE WORKERS OTHER THAN PHYSICIANS

All foreign healthcare workers (*other than registered nurses and physical therapists*) must apply for an employment-based green card through the “PERM” labor certification green card process. This three-step process involves:

1. Testing the local labor market and then filing a “PERM” labor certification application with the U.S. Department of Labor (“DOL”);
2. Filing an I-140 immigrant visa petition with the U.S. Citizenship and Immigration Services (“USCIS”); and
3. Filing an I-485 adjustment of status application with the USCIS.

The first step in this process is not required for registered nurses or physical therapists. This is because the U.S. Department of Labor has designated registered nurses and physical therapists as “shortage occupations”. As such, an employer is not required to prove that there is shortage of qualified U.S. workers by testing the local labor market.

4.1 THE “PERM” LABOR CERTIFICATION APPLICATION PROCESS

Under the PERM process, before a U.S. employer may sponsor a foreign national for a green card, it must prove to the U.S. Department of Labor that there are no U.S. workers “ready, willing and able” to perform the job for which the foreign national is being sponsored. This is done through the PERM recruitment process.

There are several mandatory recruitment steps for all PERM applications. There are also additional steps required for “professional” positions. All recruitment in preparation for filing a PERM application must be performed for at least 30 days. The recruitment must be started no earlier than 180 days before a PERM application is filed, and must be completed at least 30 days before a PERM application is filed. However, for “professional” positions, one of the additional recruitment steps may be performed within 30 days of the filing of a PERM application.

Once a PERM application is filed, the DOL’s new computer system will analyze the application to determine whether it fits the criteria requiring an audit by the DOL. If not, the computer will still randomly select applications for routine audits. Even if the computer system does not flag an application for an audit, a DOL representative may still review the application manually and flag it for an audit. If audited, an employer has only 30 days to respond to the DOL. As such, every employer must assume it will be audited by the DOL and be prepared for such an eventuality.

4.2 THE IMMIGRANT VISA PETITION AND ADJUSTMENT OF STATUS PROCESS

Once the PERM labor certification application is certified by the DOL, the sponsoring employer files an I-140 Immigrant Petition for Alien Worker with the USCIS (*for registered nurses and physical therapists, the I-140 is the first step in the green card process*). The purpose of an I-140 is to demonstrate to the USCIS that the sponsored employee has met the requirements set forth through the VisaScreen credentialing process, and that the sponsoring employer has the ability to pay the prevailing wage for the position being sponsored in the geographic area where the position is located.

4.2.1 HEALTHCARE WORKERS RESIDING IN THE UNITED STATES

If visa numbers are available, the sponsored employee can also file an I-485 Application for Adjustment of Status, along with an I-765 Application for an Employment Authorization Document ("EAD") and an I-131 Application for an Advance Parole Travel Document, at the same time as their I-140 petition.

- The purpose of the I-485 application is to request that the USCIS convert the applicants' immigration status from "nonimmigrant" to "immigrant", or "permanent resident".
- The purpose of an "EAD" is to allow a foreign national to work as a "prospective immigrant" (*i.e.*, they no longer need to rely on their nonimmigrant status for work authorization).
- The purpose of an "advance parole" travel document is to allow a foreign national to travel outside of the United States as a "prospective immigrant". Without an advance parole, a foreign national will be deemed to have abandoned their green card application when they exit the United States. The only exception to this rule is if the foreign national is traveling on an "H" or "L" nonimmigrant visa.

One major benefit of the EAD and advance parole applications is that a person on advance parole need not renew their nonimmigrant visas at a U.S. Embassy or consulate. This is seen as a significant benefit by most foreign nationals.

Another major benefit is that after a foreign national's I-140 has been approved and his or her I-485 has been pending for at least 180 days, the foreign national may transfer his or her green card application to a new employer. This provides some flexibility to a foreign national whose I-485 has been pending for a long time.

4.2.2 HEALTHCARE WORKERS RESIDING OUTSIDE THE UNITED STATES

If a foreign national is not residing in the United States, they do not apply for a "green card" through the USCIS. Instead, they apply for an "immigrant visa" through the U.S. State Department at the U.S. Embassy or consulate located nearest to their place of residence. There is no difference between a "green card" and "immigrant visa". Both confer "permanent residency" to a foreign national. The only difference is which government agency grants the permanent residency.

Therefore, for foreign nationals who do not reside in the United States, once their I-140 petition is approved, the next step is to apply for an immigrant visa using Form DS-230. Once the required forms and supporting documentation are received by the U.S. Embassy or consulate, it will schedule the foreign national for an interview. The foreign national must take all of the required documentation (*including both originals and a copy for the Embassy or consulate*) to the interview where a consular officer will review the documentation and issue the foreign national an immigrant visa. This immigrant visa is the foreign nurse's authorization to enter the United States as a permanent resident and begin to work for his or her sponsoring employer.

4.2.3 CREDENTIALING AND LICENSING REQUIREMENTS DURING THE GREEN CARD PROCESS

The U.S. government does not require a foreign healthcare worker to have the VisaScreen certificate when an I-140 petition is filed. However, the foreign healthcare worker must obtain a VisaScreen certificate before they can obtain a green card from the USCIS or an immigrant visa from a U.S. Embassy or consulate.

Nor must a foreign healthcare worker be licensed in the State where they intend to work when an I-485 application or DS-230 application is filed. The VisaScreen certificate is accepted as evidence that the worker should have no difficulty in obtaining a license once they enter the United States. However, once in the United States, the foreign healthcare worker must adhere to the licensing requirements of the State where they intend to work. This is not the case for a foreign pharmacist or other non-VisaScreen healthcare position.