

Why Nursing Staffing Agencies Should Not Be Able to Obtain a Special “Fast-Track” Carve-Out from the Regular Green Card Line

- I. **Nursing staffing agencies are asking for special treatment. They are asking for low-paid under-qualified foreign nurses claiming that everyone in America will die if they are not allowed to bring in and exploit foreign nurses. However, these Nursing staffing companies are not trying to solve an actual nursing shortage, they are trying to solve a shortage of “cheap foreign nurses.”**
- After the “DO NO HARM” provision was added to address the concerns from people in other countries that the Fairness bill, H.R.1044 / S.386 would lengthen their time in the green card line (which the bill now prohibits), the only remaining objection to the bill is that nurse staffing agencies claim that they deserve a special carve-out that will allow thousands of Filipino nurses to have special and immediate access to green cards with zero wait time.
 - Their claim is that nursing is a more critical profession to the United States to fill with foreign nationals than doctors, cancer researchers, AI engineers, rocket scientists etc. (all of whom are required to wait in the normal green card line).
 - They claim that there is a critical nursing shortage in the United States that must be filled by foreign labor.
 - Their claims, however, are belied by their actions. If you look at the FY 2018 Department of Labor disclosure data, you will see that the median wage for foreign nurse green card applicants for 2018 was paid **\$53,394**.

https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2018/PWD_Disclosure_Data_FY2018_EOY.xlsx [if you want to recreate this number for yourself: 1) click on the top left corner of the table on the black box to the left of the “A” cell and on top of the “1” cell; 2) go to the “Data” option on the top of the spreadsheet; 3) click the “sort” box; 4) click the option for “JOB_TITLE” where it says “Sort By”; 5) find a blank cell and type “=MEDIAN(AX90378:AX92191)”]; 6) this will take the median wage for all of the “Registered Nurse” green card applications filed.]

- On the other hand, the Department of Labor reports that the median wage in the United States for all registered nurses (which includes these foreign nurses imported over the years) is **\$71,730**.
See <https://www.bls.gov/ooh/healthcare/registered-nurses.htm> This means that American nurses are being paid even more than \$71,730 to be nurses.
- If there were a true shortage of people to serve as nurses, the way to alleviate the shortage would be by raising wages for nurses, and educating more American nurses—not by importing foreign nurses at a 25% cheaper salary than an American nurse.

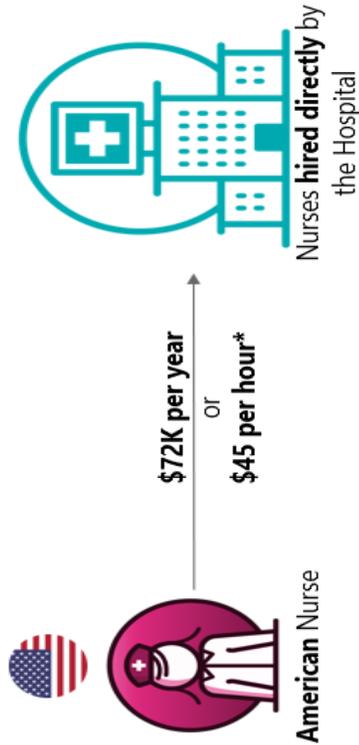
- Congress set four wage level tiers for all visa workers. Level 1 is at the 17th percentile. Level 2 is at the 33rd percentile. Level 3 is the occupational mean, or the 50th percentile. Level 4 is at the 66th percentile. The vast majority of foreign registered nurses are compensated at what is known as the “Level 1” wage
[https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2018/PWD Disclosure Data FY2018 EOY.xlsx](https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2018/PWD_Disclosure_Data_FY2018_EOY.xlsx)
- These facts are also backed up in a study conducted by NIH and a study by Dr. Patricia Pittman of George Washington University where she reports the following:
 - Nursing staffing agencies are not necessary to fill nursing shortages, their goal is to provide cheaper labor that will reduce the high turnover rates through extremely restrictive labor contracts with high liquidated damages clauses if the foreign nurse does not stay with their employer (meaning indentured servitude);
 - A study available on the National Institute of Health Library indicates that “immigration by foreign-trained nurses increases the supply of nurses and that this increase in supply is associated with a decrease in annual earnings.”
 See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3243945/>
 - The American Association of Colleges of Nursing (AACN) reports that in 2018 U.S. nursing schools turned away more than 75,000 qualified applicants due to insufficient number of faculty, clinical sites, classroom space, and clinical preceptors, as well as budget constraints. <https://www.aacnnursing.org/News-Information/Fact-Sheets/Nursing-Shortage>. As clearly evident, the AACN does not recommend foreign nurses and immigration as a solution for this problem.
 - Young Americans continue to be eager to go to nursing school; it is one of the best paying jobs for the level of education required; it cannot be outsourced to another country and has historically provided a pathway out of poverty for disadvantaged women and now increasingly men.
- If the nursing staffing companies want to carve out visas by arguing that they are necessary to fill critical shortages, the question is why are they trying to fill a purported nursing shortage by paying less money instead of offering more money to Americans? If there were real shortages, foreign nurses would be receiving the level 4 wage to enter the United States, not the level 1 wage. But as data shows (above), foreign nurses are being paid level 1 wage.
- But these staffing agencies know the truth, which is once they are required to pay foreign workers the wages American workers receive, hospitals will use other methods for filling their nursing shortages.
- To sum it up, the question to ask these nursing staffing companies is simply – “are you willing to pay a premium wage to your foreign nurses (level 4 wage) in order to obtain this special carve out you say you need because of a purported dire nursing shortage?” If they say no, the answer is clear that there is not an actual shortage, but simply a shortage that they seek to exploit for profits that could otherwise be solved by more nursing educational opportunities for Americans.

II. HR 1044/S. 386 does not “prevent much-needed foreign-trained nurses” from entering the United States

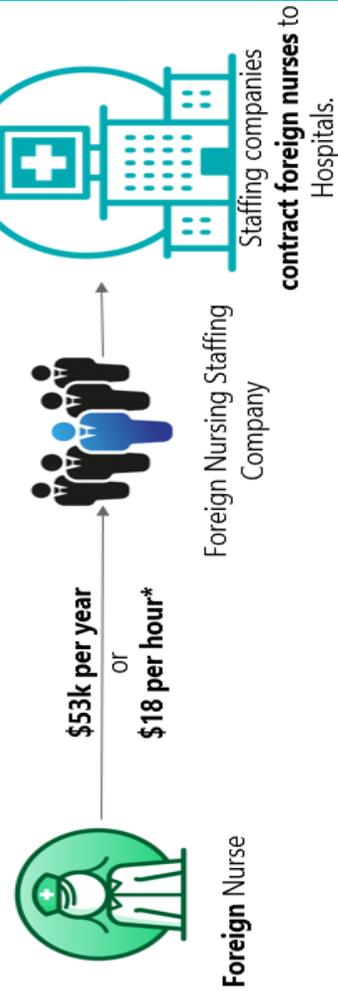
- As the following USCIS memo explains -- highly educated” nurses can obtain H-1B visas without any problem.
See: https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015-0218_EIR_Nursing_PM_Effective.pdf
 - Moreover, the vast majority of these foreign nursing positions are often not even subject to the H-1B cap (meaning these hospitals can hire as many skilled foreign nurses as they wish) because they are located at hospitals that are affiliated with universities or non-profit research institutions that are not subject to the H-1B cap i.e. they can file unlimited number of H-1B visas at any time if they want qualified foreign nurses. *See* <https://www.uscis.gov/archive/archive-news/h-1b-cap-exemptions-based-relation-or-affiliation>
 - However, as the USCIS memo also explains — “[m]ost registered nurse (RN) positions do not qualify as a specialty occupation because they do not normally require a U.S. bachelor’s or higher degree in nursing (or its equivalent) as the minimum for entry into those particular positions.”
- So, because nursing “staffing agencies” cannot get unqualified and untrained nurses into the United States using the H-1B program, they resort to abusing the Employment-Based Green card system, which permits them to petition for unskilled nurses under the unskilled “other worker” category. <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-third-preference-eb-3> These green cards would otherwise be available for more skilled doctors to enter the United States.
- But, instead, these nursing staffing companies have been abusing the system, hence the fact that “RN staffing companies across the US have seen I-140 immigrant visa petitions for RNs denied by the hundreds by the USCIS.” *See* <https://www.shusterman.com/registered-nurses-immigration-update-june-2018/>
- The fact that it is only unskilled nurses who are coming to the United States using green cards is why the American Nurses Association has said that it “it is inappropriate to look overseas for nursing workforce relief when the real problem is the fact that Congress does not provide sufficient funding for domestic schools of nursing, the U.S. health care industry has failed to maintain a work environment that retains experienced U.S. nurses in patient care, and the U.S. government does not engage in active health workforce planning to build a sustainable nursing and health professions workforce for the future.” *See* <https://judiciary.house.gov/files/hearings/pdf/Peterson080612.pdf>
- In addition to the H-1B Category – nursing staffing agencies can also use the TN visa (NAFTA) to obtain registered nurses from the Philippines who first go to Canada and can then come to the United States without any cap at all.
<https://www.nafsa.org/file/amresource/8cfr2146.htm>

- Those nurses would then apply for a green card using the same process as doctors, physicists, researchers, and everyone else.
- Meanwhile, at the same time that the Nursing staffing companies are demanding quota to import cheaper and lesser-skilled foreign nurses directly to the United States on green cards, over 15,000 Indian and Chinese doctors at the hospitals across the country have been working diligently for many years saving patients' lives and are currently stuck in decades-long employment-based green card backlogs waiting for an employment-based green card.
<https://money.cnn.com/2018/06/08/news/economy/immigrant-doctors-green-card-backlog/index.html>
- Many of these doctors are ready, willing, and able to start new health care research that will cure diseases and create jobs for American workers on the very day they receive their employment-based green card. Unfortunately, under the current immigration system, because they are from India or China, a person from another country who might not even be born yet will receive their green card many years earlier than these hard-working doctors currently working at these same hospitals.
- Because of these green card backlogs, the highly qualified medical doctors are constantly living in fear of deportation, as they must renew their temporary visas every year in order to remain the United States while waiting for their green cards.
- Each year, this renewal process (which permits the government to deny visa renewals simply as a matter of discretion) causes dozens of these doctors to lose their immigration status and have to painfully uproot their families back to India and China—many of these families having U.S. citizen children who know no other home.
- Moreover, these discriminatory green card backlogs also mean that these doctors / physicians currently cannot travel to India or China for funerals, health emergencies, or other urgent issues without either losing their immigration status or missing months of work waiting for their visas to be stamped at a U.S. consulate.
- It is a complete shame that the nursing staffing companies has chosen to promote discrimination in the green card category in order to choose profits over the welfare of the physicians and healthcare system in the country. There is simply no moral or ethical basis for continuing to maintain an employment-based immigration system that requires discrimination based on immutable characteristics.
- The bill explicitly and clearly states that skilled immigrants from any country in the world currently in line with approved immigrant petition will NOT be adversely impacted by the bill. This change is a "DO NOT HARM" provision which 100% ensures that every person currently in line for a green card has the same or better wait time after this bill is passed (it explicitly prevents any person's wait time from getting longer). And now, there should be no reason for anyone with any standing to oppose the bill.

An American Nurse hired by a Hospital



A Foreign Nurse hired by a Foreign Staffing Company



2008: 5% of foreign Nurses recruited **directly on green cards** by hospital systems while **60%** of them are recruited through **staffing companies**.

2018: Above methods are **almost extinct** as foreign nurses are almost always hired by **Nursing staffing companies**.

Non-Profit Hospitals H1-B Benefit: Most hospital systems are non-profit (Mercy, Holy Cross, Mayo, MedStar, Kaiser) and hence can bring an **unlimited number** of qualified foreign nurses **anytime** via the **H1-B program**.

2008: 55% of foreign Nurses recruited directly on green cards by Nursing Staffing Companies

2018: Over **90%** of foreign Nurses are hired by Nursing staffing companies.

Reduced hiring of American Nurses: The whole business model is based on **discriminatory hiring** specifically from specific countries, undercutting American workers and American Nursing school applicants.

Poor work conditions: Restrictive contracts with liquidated damages in 6 figures, non-compete, forced assignments, benching and waiving of rights. Most foreign nurses are forced to work against their will, hundreds of civil lawsuits against foreign nurses, which forces them into Debt

*Source: Department of Labor, Bureau of Labor Statistics