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USCIS Issues Questions and Answers for CNMI E-2 Nonimmigrant Status For Foreign Nationals With Long-Term Investor Status

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Introduction

U.S. Citizenship and Immigration Services (USCIS) posted a final rule in the Federal Register ^[2] that creates a nonimmigrant investor visa classification in the Commonwealth of the Northern Mariana Islands (CNMI). The "E-2 CNMI Investor Visa" allows foreign long-term investors to reside in the CNMI through December 2014 and is intended to help with the transition to U.S. immigration law in the CNMI. This final rule implements one of the CNMI-specific provisions of the Consolidated Natural Resources Act (CNRA) of 2008, which extends the immigration laws of the United States to the CNMI.

Background

The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229 was signed into law on May 8, 2008. Title VII of this law extends the immigration laws of the United States to the CNMI. One provision of the CNRA authorizes the Secretary of Homeland Security to classify, during the transition period, an foreign investor in the CNMI as an E-2 nonimmigrant investor. This transition period formally began on Nov. 28, 2009 and is set to end on December 31, 2014. Accordingly, USCIS's rule allows foreign long-term investors to reside in the CNMI through December 2014 in CNMI E-2 nonimmigrant investor status. This rule temporarily resolves the immigration status of long-term investors in the CNMI and provides them time in which to obtain another lawful immigration status under the provisions of the Immigration and Nationality Act (INA). As with other immigration benefits, individuals must apply for E-2 CNMI Investor status.

Questions and Answers

Q1. Why did USCIS create this rule?

A1. As required by the CNRA, this final rule enables long-term foreign investors in the CNMI to apply for status as CNMI-only E-2 nonimmigrant investors. USCIS created this transitional regulatory provision because of the unique nature of CNMI investors who are not otherwise immediately eligible to obtain U.S. immigrant or nonimmigrant visa classifications.

Q2. What is the CNMI-only E-2 nonimmigrant investor status?

A2. The rule establishes a transitional status that does not exist anywhere else in the United States to temporarily resolve the immigration status of long-term investors in the CNMI by allowing foreign long-term investors to obtain status to reside in the CNMI through December 2014.

Q3. Why is this category temporary?

A3. The CNRA only provided for this status during the transition period. The E-2 CNMI Investor status is intended to help with the transition to U.S. immigration law in the CNMI. These investors are required to obtain another U.S. immigrant or nonimmigrant visa classifications by the end of the transition period, or December 31, 2014.

Q4. What forms of work authorization are investors currently using in the CNMI?

A4. Since the transition period began on November 28, 2009, most investors are continuing to work under CNMI-issued ?umbrella permits? or other CNMI work authorization permits issued prior to that date. These permits are valid until November 7, 2011, or their date of expiration, whichever is sooner.

Q5. What are the existing foreign investor requirements under the INA?

A5. Under U.S. immigration law, foreign investors may enter the United States as nonimmigrants within the treaty investor classification with an E-2 visa or may change to E-2 treaty investor nonimmigrant status from within the United States.

To qualify for E-2 treaty investor status, treaty investors must:

- Invest a substantial amount of capital in a bona fide enterprise in the United States
- Seek entry solely to develop and direct the enterprise
- Enter the United States according to treaty provisions
- Be nationals of a country with which the United States has a treaty of friendship, commerce, or navigation
- Intend to depart the United States when their treaty investor status ends

Q6. What happens at the end of the transition period?

A6. At the end of 2014, the transition period will expire and the E-2 CNMI investor status and visa will expire. Therefore, individuals in the CNMI with E-2 CNMI status must depart the CNMI at the end of the transition period or qualify for and obtain another nonimmigrant or immigrant status in order to lawfully remain in the CNMI.

Q7. When does the transition period end?

A7. The transition program will last through December 31, 2014.

Q8. Will any extensions of the transition period, as determined by the Secretary of Labor, affect eligibility for the CNMI-only investor visas?

A8. No. The CNMI-only investor status ends at the end of the transition period. Any extension by the Secretary of Labor will apply only to the CNMI transitional worker category. As mandated by the CNRA, the investor provisions will terminate on December 31, 2014, regardless of whether an extension to the transitional worker provision occurs.

Q9. What nonimmigrant or immigrant statuses can investors in the CNMI apply for?

A9. That will depend upon individual circumstances. Investors who obtain the E-2 CNMI nonimmigrant investor status have until the end of 2014 to adjust or change their status. (Similarly, investors in the CNMI may apply for a nonimmigrant or immigrant status for which they qualify without first obtaining the E-2 CNMI investor status, however, they may not adjust status to a business based immigrant status without first obtaining an INA based nonimmigrant status.) E-2 CNMI Investor may:

- Qualify for a L-1A nonimmigrant executive or managerial visa
- Adjust status based on the status of family members
- Qualify under other investor or employment-based visas.

Q10. What happens to dependents of CNMI E-2 Investors during the transition period?

A10. During the transition period, dependents (spouses and children) can qualify for dependent status under the CNMI E-2 Investor final rule. Dependents will follow normal procedures with respect to extensions or changes of status for nonimmigrants.

Upon the end of the transition period, spouses and children also will be subject to the same regulations as other immigrants. For example, if the E-2 CNMI Investor qualifies for a change of status to regular E-2 status at the end of the transition period, his or her dependents would have to apply for a change of status as well and qualify under those statutory and regulatory provisions.

Q11. Who qualifies for the CNMI-only "E-2" nonimmigrant investor visa?

A11. To qualify for E-2 CNMI Investor status, the primary applicant must:

- Have been admitted to the CNMI with a long-term investor visa under CNMI immigration law before Nov. 28, 2009
- Have continuously maintained residence in the CNMI under long-term investor status
- Currently maintain the investment(s) that formed the basis for the CNMI long-term investor status
- Otherwise be admissible to the United States under the INA.

Q12. Which current CNMI investor statuses qualify?

A12. Individuals who were admitted to the CNMI in long-term investor status under CNMI immigration law qualify, specifically:

- A long-term business investor who was issued a long-term business certificate by the CNMI based upon an investment of at least \$50,000
- A foreign investor with a foreign investment certificate issued by the CNMI based upon an investment of at least \$100,000 in an aggregate approved investment in excess of \$2 million or at least \$250,000 in a single approved investment
- A retiree investor over the age of 55 years who was issued a foreign retiree investment certificate based upon a qualifying investment in an approved residence in the CNMI (but not including the 2-year non-renewable retiree investor program limited to Japanese nationals)

Q13. How did USCIS decide which categories will qualify under the final rule?

A13. The CNRA refers to admission in "long-term investor" status under the laws of the CNMI when creating the E-2 CNMI Investor status. Only CNMI categories that mandated a fixed minimum threshold amount of investment and are renewable over a period of multiple years (long-term) were considered to be "long-term investor" statuses for this rule, namely the three categories listed above (long-term business investor, foreign investor, and retiree foreign investor).

Q14. How many people are currently in these three CNMI long-term investor categories?

A14. USCIS estimates that there are approximately 500 foreign-registered investors in the CNMI long-term investor categories.

Q15. Which CNMI Investor categories are not eligible for E-2 CNMI Investor status under the rule?

A15. Other investors, including the following, are not eligible for this E-2 visa under the final rule:

- The sub-category of the retiree investor specifically limited to Japanese retirees
- Short-term business entry permits
- Regular-term business entry permits

Q16. Why is the sub-category of the retiree investor specifically limited to Japanese retirees not eligible for E-2 investor status?

A16. The rule does not consider this category eligible, as these individuals do not classify as "long-term investors." The CNMI permit for the two-year program for Japanese retirees is nonrenewable and only requires monthly rental payments rather than long-term investment.

Q17. What can these Japanese retirees do once their permit expires?

A17. By November 27, 2011, or the expiration of the Japanese retiree investor's CNMI-issued permit (whichever occurs first), the individual must depart the CNMI unless he or she applies for and is eligible to remain in the CNMI under another lawful status.

Q18. Why are individuals with short-term and regular-term business entry permits not eligible for E-2 investor status?

A18. Foreign nationals lawfully admitted under the CNMI short-term business entry permit or the regular-term business entry permit categories are not eligible because these permits are not long-term and they do not require investments.

Q19. If individuals with short-term and regular-term business entry permits are not eligible for an E-2 CNMI Investor visa, what can they do?

A19. Individuals with short-term and regular-term business entry permits will not be eligible to obtain the E-2 CNMI Investor visa and therefore must depart the CNMI at the expiration of their CNMI issued status or Nov. 27, 2011, whichever occurs first OR apply for and obtain another immigrant or nonimmigrant classification under the INA that permits them to remain in the CNMI.

Q20. Will foreigners who had pending CNMI Investor applications on November 28, 2009, be eligible for the new E-2 CNMI Investor status?

A20. Foreign nationals who were not admitted as eligible CNMI investors prior to the beginning of the transition period are not eligible for classification as E-2 CNMI nonimmigrant

investors. Therefore, individuals who had investor applications pending with the CNMI as of the transition program effective date are not eligible for E-2 CNMI Investor status.

Q21. Is an individual with an approved investor application eligible for E-2 CNMI Investor status?

A21. An individual who was not admitted as an eligible CNMI investor prior to November 28, 2009, is not eligible for classification as E-2 CNMI nonimmigrant investor. Therefore, an individual who has an approved investor application but was not admitted to the CNMI as of the transition program effective date is not eligible for E-2 CNMI Investor status.

Q22. What does the E-2 CNMI Investor visa requirement ?continuous maintenance of residence? mean? What if an investor travels regularly outside CNMI?

A22. ?Continuous maintenance of residence in the CNMI? means residence in the CNMI from the date that an individual obtained his or her CNMI status through the date on which USCIS grants the new E-2 CNMI Investor status. This is not the same as continuous physical presence. An investor does not need to remain in the CNMI for the entire period in order to have maintained continuous residence. The rule provides, however, that an investor must be physically present in the CNMI for at least half the time for which continuous residence is required. Additionally, an individual will not maintain continuous residence if he or she leaves the CNMI for more than one year or leaves the CNMI for more than 6 months and cannot demonstrate that he or she did not abandon his or her residence by this absence.

Q23. Can an investor lose his or her status?

A23. Yes, an investor could lose immigration status if he or she does not maintain the investment(s) that formed the basis for admission. To establish that an investor is maintaining the investment or investments that formed the basis for admission to the CNMI, the rule requires each applicant to provide specific evidence demonstrating that the investor is in compliance with the terms upon which the CNMI investor certificate was issued. Additionally, as previously mentioned, an investor can lose immigration status if he or she does not maintain continuous residence in the CNMI.

Q24. What evidence must an applicant for E-2 CNMI Investor provide?

A24. All documentation previously submitted in each investor application to the CNMI government should be submitted as part of each E-2 CNMI petition to USCIS.

All Individuals

All individuals must provide the following evidence of lawful admission to the CNMI:

- A valid unexpired foreign passport
- A properly endorsed CNMI admission document (e.g., entry permit, entry certificate or foreign investor visa) with a period of validity that includes November 28, 2009

Individuals with a CNMI-issued foreign investor entry permit or long-term business entry permit

An applicant with a CNMI-issued foreign investor entry permit or long-term business entry permit must submit evidence to show that he or she has maintained his or her investment with the E-2 CNMI Investor application. This evidence could include:

- An approval letter issued by the CNMI government
- Evidence that capital has been invested, such as bank statements, receipts or contracts

for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, or other agreements supporting the application

- Evidence that the applicant has invested at least the minimum amount required, such as evidence of assets purchased or property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing secured by assets of the applicant
- A comprehensive business plan for new enterprises
- Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital
- Current business licenses
- Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital
- A listing of all resident and nonresident employees
- A listing of all holders of business certificates for the business establishment
- A listing of all corporations in which the applicant has a controlling interest

For the holder of a certificate of foreign investment, copies of annual reports of investment activities in the CNMI showing that the certificate holder is under continuing compliance with the standards required. Each report must be accompanied by an annual financial audit report performed by an independent certified public accountant.

Individuals with a CNMI-issued retiree investor permit

CNMI retiree investors should submit the following with their applications for E-2 CNMI Investor status:

- Proof that the foreign applicant has an interest in property in the CNMI, such as a lease agreement
- Proof of the value of that property, such as an appraisal
- Proof of any improvements to the property, which could include receipts or invoices of the costs of construction, the amount paid for a preexisting structure, or an appraisal of improvements

Q25. When can individuals apply for E-2 CNMI Investor status?

A25. Petitions for E-2 CNMI Investor status may be filed on January 18, 2011. Any petitions received prior to January 18, 2011 will be rejected. E-2 CNMI investors may apply for changes of status to any other nonimmigrant or immigrant visa classifications for which they may qualify anytime during the transition period.

Q26. What is the final date that initial petitions will be accepted for the E-2 CNMI Investor visa?

A26. The final acceptable filing date for initial E-2 CNMI investor petitions will be January 18, 2013.

Q27. What application must be submitted for the E-2 CNMI Investor visa?

A27. The existing Form I-129, Petitioner for a Nonimmigrant Worker, with Supplement E is the application form used for requesting E-2 CNMI Investor status.

Q28. What is the cost of the application?

A28. The processing fee for Form I-129 is \$325. In addition, the biometrics fee for applicants present in the CNMI who are applying for an initial grant of status is \$85.

Q29. Where should I file the application?

A29. Most U.S. immigration applications, including the Form I-129, are filed by mail. Detailed instructions for each form, including the address to which the application should be sent, are found on-line at www.uscis.gov/forms [3]. All E-2C petitions are filed with the California Service Center at: P.O. Box 10698, Laguna Niguel, CA 92607-1098. All courier/express deliveries should be forwarded to 24000 Avila Road, 2nd Floor, Room 2312, Laguna Niguel, CA 92677.

You must be present in the CNMI or outside the United States at the time your application is filed with USCIS. If you are outside the United States upon approval, you will need to obtain an E-2 CNMI Investor nonimmigrant visa at a United States Embassy or consulate abroad to be admitted to the CNMI as an E-2 CNMI Investor.

Q30. Is a fee waiver available?

A30. Yes, the final rule allows the applicant to file for a fee waiver. If you wish to apply for a fee waiver, you must complete and submit a Form I-912, Request for Fee Waiver with the Form I-129 petition.

Q31. Why does the rule permit a fee waiver for an investor? who would have to make a relatively significant monetary investment to qualify for the visa?

A31. Waiver of the fee for filing Form I-129 is normally not permitted. However, USCIS is allowing a waiver limited to investors under this rule in the CNMI due to the current adverse economic conditions there and because of the retirees and proprietors of small businesses included in this new nonimmigrant category. The fee waiver provision is limited to those who show inability to pay. USCIS understands that some CNMI E-2 Investor eligible retiree investors may have invested the majority of their savings in their investment residences, may be living on fixed incomes, and may qualify for waivers.

Applicants in the CNMI who are applying for an initial grant of status must also submit the biometric service fee. This fee is waivable for inability to pay under current USCIS regulations.

Q32. What can I do if my application is denied?

A32. As with other adjudications of Form I-129, the denial of an E-2 CNMI investor application may be appealed to the USCIS Administrative Appeals Office for a review.

Q33. Does immigration status extend to dependents of E-2 CNMI Investors?

A33. The rule allows dependents of the principal E-2 CNMI Investor to accompany or follow-to-join the principal investor, irrespective of the nationality of these dependents. To qualify for this status, the spouse and children must be otherwise admissible to the United States under the INA. As outlined below, to obtain this status, a dependent living in the CNMI must submit a Form I-539, Application to Extend/Change Status.

Q34. How does a dependent (a spouse or child) obtain derivative E-2 CNMI Investor status?

A34. If a dependent is living in the CNMI, he or she must submit a Form I-539, Application to Extend/Change Status. The fee for this form is \$290, plus the biometric fee of \$85 if requesting an initial grant of status in the CNMI. Fee waivers are available for inability to pay. If abroad, the spouse and/or child should not file the Form I-539 but each dependent needs to

apply for an E-2 CNMI visa at the appropriate U.S. embassy or consulate.

Q35. For how long is the E-2 CNMI Investor visa valid?

A35. The initial admission period is two years. Upon approval of their application(s) for derivative status, the spouse and minor children accompanying or following-to-join an E-2 CNMI investor would be admitted for the same period that the principal investor is in valid E-2 CNMI Investor status.

Q36. What happens to dependents if an E-2 CNMI Investor temporarily departs from the CNMI?

A36. The derivative status of the dependent spouse and children would not be affected, provided that the familial relationship continues to exist and the principal remains eligible for admission as an E-2 CNMI investor.

Q37. How will work authorizations be handled?

A37. All E-2 CNMI Investor principal and spousal employment authorization is limited to employment in the CNMI. Certain investors and their spouses will be eligible to work in the CNMI:

- The E-2 CNMI Investor is authorized to work for a specific employer determined by the long-term investor status under CNMI law on which the grant of E-2 CNMI Investor status is based
- The spouse of an E-2 CNMI Investor may request employment authorization after he or she lawfully obtains E-2 CNMI Investor status and lawfully enters the CNMI
- Spouses of E-2 CNMI Investors who initially had CNMI Retiree Investor Certificates are not authorized to seek employment authorization
- Work authorization is not permitted for children of E-2 CNMI investors
- Neither E-2 CNMI Investors with status under a retiree investment permit nor their spouses are work-authorized. Entering the CNMI as a ?retiree? is inconsistent with obtaining employment

The E-2 CNMI Investor principal?s work authorization is employer-specific incident to the E-2 CNMI Investor status, so the principal does not need to apply for an Employment Authorization Document (EAD). The investor?s passport and Form I-94 showing E-2 CNMI Investor status are acceptable forms of documentation to complete the Employment Eligibility Verification, Form I-9, when commencing any new employment authorized under that status. A spouse must apply for an EAD, using Form I-765, in order to be granted employment authorization. If granted an EAD, the spouse may use it as evidence of identity and work authorization for Form I-9 purposes with any employer in the CNMI.

Q38. What happens if an individual changes employers without filing with USCIS?

A38. An unauthorized change of employment to a new employer could cause the individual to lose lawful status.

Q39. May E-2 CNMI Investors apply for extensions?

A39. Yes. An individual may apply for an extension before the status expires. An individual with E-2 CNMI Investor status may apply for an extension until the end of the transition period.

Q40. What will be required for an extension of stay?

A40. To apply for an extension of stay, an E-2 CNMI investor must file a new Form I-129 and Supplement E with the required evidence and fee.

Q41. Does this visa allow an E-2 CNMI Investor to travel elsewhere in the United States?

A41. No. E-2 CNMI Investor status for long-term CNMI investors is a ?CNMI-only nonimmigrant? status, and does not exist within the United States as a whole. It does not authorize entry to Guam or to any other part of the United States. However, it does not bar travel if the investor is otherwise authorized and admissible to the United States in another status.

Q42. What would happen if an E-2 CNMI Investor traveled to another part of the United States solely based up the CNMI-only E-2 visa?

A42. Travel or attempted travel from the CNMI to another part of the United States without the appropriate visa or other authorization is a violation of the E-2 CNMI Investor status. If an individual fails to comply with the conditions of the E-2 CNMI Investor status, he or she would be deportable from the CNMI or any other U.S. location.

Q43. Could an E-2 CNMI Investor travel outside the United States and then return to the CNMI?

A43. Yes, the final rule allows for travel outside the U.S. However, individuals who are present in the CNMI under a CNMI-only nonimmigrant status who depart and desire to return in the same status must obtain a visa from the U.S. Department of State in order to be readmitted to the CNMI. Therefore, if an E-2 CNMI Investor obtained his or her status from USCIS in the CNMI, he or she would need to obtain an E-2 CNMI Investor visa from a U.S. Embassy or Consulate in order to be readmitted to the CNMI, regardless of nationality. USCIS approval of E-2 CNMI Investor status provides status while present in the CNMI, but does not eliminate the requirement of a visa for admission to the CNMI.

Q44. What is the process for obtaining a visa overseas?

A44. Once USCIS approves a petition for E-2 CNMI Investor classification, the investor should apply for an E-2 CNMI Investor visa at the U.S. Embassy or Consulate with jurisdiction over their place of permanent residence.

Q45. How many public comments were received in this rule making and were they taken into account?

A45. USCIS received 13 comments. DHS and USCIS reviewed and considered each comment that was submitted. In one of the most significant changes resulting from public comments, the final rule reduced the minimum investment of a CNMI Long-Term Business Entry Permit holder with a CNMI Long-Term Business Certificate to \$50,000 from the \$150,000 threshold in the proposed rule. USCIS also clarified the manner in which E-2 CNMI Investor status will be granted directly in the CNMI using appropriate waiver authority under the INA, without requiring investors to travel abroad to obtain a visa in order to be admitted in E-2 Investor status. All comments received are posted without change to <http://www.regulations.gov> [4], as part of the final rule.

Nonimmigrant Visas:

E Visa [5]

Agency:

USCIS ^[6]

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[3] <http://www.uscis.gov/forms>

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