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DHS Publishes Interim Final Rule On Countries Eligible For Guam-CNMI Visa Waiver Program

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[Rules and Regulations]

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Rules and Regulations

Federal Register

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 212

[USCBP-2011-0007; CBP Dec. 11-07]

RIN 1651-AA81

Clarification of Countries and Geographic Areas Eligible for
Participation in the Guam-Commonwealth of the Northern Mariana Islands
Visa Waiver Program

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This interim final rule amends Department of Homeland Security regulations to clarify that individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to the Hong Kong Special Administrative Region (Hong Kong) are eligible for participation in the Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program. The Guam-CNMI Visa Waiver Program allows certain nonimmigrant aliens to enter Guam and/or the CNMI as nonimmigrant visitors for business or pleasure without a visa for a period of authorized stay not to exceed forty-five days. This interim final rule provides that beginning May 23, 2011, individuals holding BN(O) passports as a result of their connection to Hong Kong and traveling to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program on such BN(O) passport must present it and a Hong Kong identification card.

DATES: Effective Date: The effective date of the rule is May 23, 2011.

Comment Date: Comments must be received by May 23, 2011.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> [2].

Follow the instructions for submitting comments via docket number USCBP-2011-0007.

Mail: Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov> [2], including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> [2]. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, U.S. Customs and Border Protection, Office of Field Operations, (202) 344-1438.

SUPPLEMENTARY INFORMATION:

I. Public Comments

Interested persons are invited to submit written comments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of this rule. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

A. Guam-CNMI Visa Waiver Program

Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, 122 Stat. 754, 854, subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. See sections 212 and 214 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1182 and 1184). On January 16, 2009, the Department of Homeland Security (DHS), through CBP, issued an interim final rule in the Federal Register replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. See 74 FR 2824.

The January 2009 rule provided that, beginning June 1, 2009, DHS would begin the administration and enforcement of the Guam-CNMI Visa Waiver Program. This program allows nonimmigrant visitors to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed forty-five days. On March 31, 2009, the Secretary of Homeland Security, after the necessary consultations, announced the delayed start of the transition period until November 28, 2009. On May 28, 2009, a technical amendment to the January 2009 rule was published, extending the implementation date of the Guam-CNMI Visa Waiver Program from June 1, 2009 to November 28, 2009. See 74 FR 25387.

The January 2009 rule lists the countries and geographic areas from which otherwise eligible individuals may travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. Among those countries and geographic areas listed are Hong Kong and the United Kingdom. The January 2009 rule allows individuals possessing a Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card as a result of their connection to Hong Kong to travel under the Guam-CNMI Visa Waiver Program. The January 2009 rule does not address the

eligibility of individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to Hong Kong for travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program, and questions have arisen about their eligibility for travel under that program.

B. British Nationals (Overseas)

On July 1, 1997, sovereignty over Hong Kong reverted from the United Kingdom to the People's Republic of China, establishing Hong Kong as a Special Administrative Region of the People's Republic of China. In the years prior to the reversion, the United Kingdom created a new category of British nationality, British National (Overseas) (BN(O)). A person who was considered a British national by his or her connection with Hong Kong, as defined in the Hong Kong (British Nationality) Order 1986, was entitled to apply for BN(O) status, and to hold a passport in that status, by registration. BN(O) status is for life, but is not transferable, and registration ended in 1997. BN(O) passports, while British travel documents, do not confer the same rights as regular United Kingdom passports. BN(O) passports are issued to permanent residents of Hong Kong and do not confer the right of abode in the United Kingdom.

C. The Amendment

Under the Guam Visa Waiver Program, the predecessor to the current Guam-CNMI Visa Waiver Program, BN(O) passport holders were eligible to participate in the program as citizens of "the United Kingdom (including the citizens of the colony of Hong Kong)." 8 CFR 212.1(e)(3)(i). As a result of the reversion of sovereignty, Hong Kong and the United Kingdom are listed separately for the Guam-CNMI Visa Waiver Program. 8 CFR 212.1(q)(2)(ii).

In light of the questions that have arisen regarding whether BN(O) passport holders qualify under the Guam-CNMI Visa Waiver Program in the absence of a specific reference in the regulation to BN(O) passport holders, CBP believes it is appropriate to amend the regulations to clarify this issue. The amended regulation explicitly allows Hong Kong individuals holding BN(O) passports as a result of their connection to Hong Kong to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. This clarification is based on the political changes in Hong Kong, the idiosyncrasies of the law of the United Kingdom discussed above, and the status of BN(O) passport holders as permanent residents of Hong Kong. Like Hong Kong SAR passport holders, BN(O) passport holders must present a Hong Kong identification card to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program.

In order to provide BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program, the effective date of the amended regulation is May 23, 2011.

In addition, to provide further clarity in the regulation, DHS is relocating the existing regulatory requirements applicable to travelers

from Taiwan under the Guam-CNMI Visa Waiver Program, from a parenthetical regarding Taiwan within the country list at 8 CFR 212.1(q)(2)(ii) in place since the January 2009 rule, to a new paragraph, 8 CFR 212.1(q)(2)(ii)(B). This new paragraph contains substantively identical text to the parenthetical in the January 2009 rule. The regulation continues to require that in order to participate in the program as a result of a connection to Taiwan, an individual must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 702(b) of the CNRA directs that all regulations necessary to implement the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). See section 212 of the INA, as amended (8 U.S.C. 1182(l)(3)). As was the case with the January 2009 rule that replaced the Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program, this interim final rule is exempt from the notice and comment and 30-day delayed effective date requirements of the APA. See 74 FR 2824. DHS is nevertheless providing the opportunity for public comments. Further, a 60-day delayed effective date is provided in order to allow BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program.

B. Executive Order 12866

Section 3(d)(2) of Executive Order 12866 provides that the Executive Order does not apply to a regulation that involves a foreign affairs function of the United States, and thus it does not apply to this rule. Accordingly, the Office of Management and Budget has not reviewed this regulation under that Executive Order.

C. Regulatory Flexibility Act

Because this rule is being issued as an interim final rule on the foreign affairs function of the United States, as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Amendments to Regulations

Part 212 of title 8 of the Code of Federal Regulations is amended as set forth below:

PART 212--DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

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1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2.

Section 212.1(q) also issued under section 702, Public Law 110-229, 122 Stat. 754, 854.

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2. Section 212.1(q)(2)(ii) is revised to read as follows:

Sec. 212.1 Documentary Requirements for Nonimmigrants.

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(q) * * *

(2) * * *

(ii) Eligible Countries and Geographic Areas. Nationals of the following countries are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, and the United Kingdom. Travelers with a connection to one of the following geographic areas--the Hong Kong Special Administrative Region (Hong Kong) or Taiwan--may also be eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI, see paragraphs (q)(2)(ii)(A) and (q)(2)(ii)(B) respectively.

(A) Hong Kong Special Administrative Region (Hong Kong). To be eligible to participate in the program as a result of a connection to Hong Kong, the following documentation is required: A Hong Kong Special Administrative Region (SAR) passport with a Hong Kong identification card; or a British

National (Overseas) (BN(O)) passport with a Hong Kong identification card.

(B) Taiwan. To be eligible to participate in the program as a result of a connection to Taiwan, one must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

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Dated: March 16, 2011.

Janet Napolitano,
Secretary.

[FR Doc. 2011-6555 Filed 3-22-11; 8:45 am]

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Agency:

DHS ^[3]

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