



Questions and Answers

Oct. 27, 2009

Transitional Worker Program for the Commonwealth of the Northern Mariana Islands (CNMI)

Background

On May 8, 2008, President Bush signed into law Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA). Title VII of this law amended Pub. L. 94-241, the Act approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands (CNMI) in Political Union with the United States. Title VII fully extends certain provisions of the immigration laws of the United States to the CNMI for the first time in history. A transition period formally begins November 28, 2009.

Questions and Answers

Q. Who qualifies for the CNMI-only Transitional Worker status in CNMI?

A. USCIS has established a transitional worker program for foreign nationals to live and work in CNMI. Foreign nationals who are eligible for an INA-based nonimmigrant status would not be eligible. Short term visitors for business or pleasure are not eligible to obtain CW classification because such individuals are not part of the foreign work force that is the subject of this interim rule.

Q. What is the legal basis for the CNMI-only Transition Worker program?

A. Section 6(d) of Pub. L. 94-241, as amended by CNRA, directed the Secretary of Homeland Security to establish a transition program to assist CNMI employers to obtain necessary workers who are not otherwise eligible under U.S. immigration laws during the transition period.

Q. What is the purpose of the CNMI-Only Transitional Worker Program?

A. The CNMI-only Transitional Worker Program will allow foreign nationals who are not eligible for another INA-based employment authorized nonimmigrant status to perform work in CNMI during the transition period. Thus, the purpose of the CNMI-Only Transitional Worker visa is to offer a lawful U.S. immigration status to those foreign nationals who are not currently eligible for any other kind of immigrant or nonimmigrant visa. During the transition period, it is expected that these transitional workers will find a suitable, long-term alternative to their CNMI-Only Transitional Worker status by obtaining status under an INA-based visa category, or departing CNMI.

Q. What happens to foreign workers in CNMI on November 28, 2009?

A. When Federal immigration law takes effect in CNMI on November 28, 2009, foreign workers who have a valid CNMI employment authorization may remain, live and work in CNMI for up to two years, or for the duration of their CNMI-based status, whichever occurs first. Before the expiration of that limited time period, they must obtain either CNMI-Only Transitional Worker status, or some other lawful U.S. immigration status to lawfully work and reside in CNMI and to travel between CNMI and another U.S. or foreign destination. If they leave CNMI for any reason, they must have a valid U.S. immigration visa to re-enter. Foreign workers who do NOT have a CNMI work contract could risk becoming "unlawful" if another U.S. immigration status is not obtained.

Q. What is the admission code for this visa classification be?

A. This new nonimmigrant visa classification will use the admission code CW-1 for the principal transitional worker and CW-2 for dependents.

Q. What does this mean for foreign residents who have been living and working in CNMI?

A. For those foreign workers who are not eligible for another kind of U.S. immigration status, the transitional worker visa is a critically important alternative. It could potentially give thousands of foreign workers a temporary status while they determine an appropriate long-term immigration status for themselves and their families.

Q. What are the timeframes of the transition period?

A. Although U.S. immigration laws apply fully to CNMI, there will be a transition period during which temporary measures will be carried out to allow for an orderly transition from CNMI's permit system to Federal immigration law and give foreign non-resident workers time to identify an appropriate long-term INA-based visa classification. The transition period begins on November 28, 2009 and will end on December 31, 2014. The Secretary of Labor, in consultation with appropriate federal agencies and the Governor of CNMI, may extend the CNMI-Only Transitional Worker program for additional periods of up to five years. No decision on any extension has been made at this time.

Q. What are the requirements for the new CNMI Transitional Worker visa or status?

A. Under the CNMI-Only Transitional Worker program, there are requirements for both employers and workers.

Requirements for Employers—Employers must be engaged in legitimate business and may not engage directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law. The employer also bears the responsibility of filing the necessary petition and paying the requisite fees to employ transitional workers.

Requirements for Workers — Under the interim final rule, foreign workers may be classified as CW-1 nonimmigrants if, during the transition period, they:

1. will enter or stay in CNMI to work in an occupational category that needs alien workers to supplement the resident workforce;
2. are petitioned for by an employer;
3. live in CNMI;
4. are lawfully present in CNMI; and
5. are not otherwise inadmissible to the United States.

Q. What does a worker need to do to get this visa or status?

A. The foreign national worker must meet the criteria noted in the answer above and find an employer willing to sponsor him/her. The responsibility for applying rests with the employer. Employers may file a petition for a transitional worker with USCIS using Form I-129CW, Petition for a Nonimmigrant Worker in the CNMI. (This new form was modeled after the existing Form I-129.)

Q. What does the worker's spouse and/or child need to get CW-2 status?

A. To accompany or follow to join, the derivative CW-2 nonimmigrant may file an application for extension of nonimmigrant stay on Form I-539 in accordance with the form instructions. The CW-2 status extension may not be approved until approval of the CW-1 extension petition. The filing fee is \$300.

Q. How does someone obtain CW status?

A. Once the I-129CW petition is approved, the beneficiary and eligible family members may apply for CW-1, or CW-2 status. Since foreign nationals present in CNMI will not have given biometric information to the Federal government before, and thus not have had required security checks conducted, biometrics will be required. The fee to collect biometrics is \$80. A fee waiver is available if applicants can show inability to pay for both the Form I-129CW and biometric fees.

Aliens who are abroad will need to apply for a CW-1 or CW-2 visa at a U.S. consulate. When applicants apply overseas, USCIS will not require biometrics, however biometrics may be required by the Department of State.

Q. Which groups can apply for the Transitional Worker Program?

A. The transitional worker program will be available to two groups of foreign workers: (1) those who are lawfully present in the CNMI and (2) those who are abroad.

Q. Can people with CW status travel outside the CNMI?

A. Once status is obtained, the CW-1 or CW-2 nonimmigrant may leave CNMI but they must have the appropriate visa to re-enter. If the CW-1 or CW-2 status is obtained in CNMI (not the Consular post abroad) the nonimmigrant will have the legal status, but this is not a visa valid for travel to and admission into CNMI. If the CW-1 or CW-2 nonimmigrant departs CNMI, he or she must obtain a visa from a U.S. embassy or consulate to return to CNMI, unless alternative arrangements have been specifically approved by the U.S. Department of Homeland Security.

Q. How does one obtain the visa for re-entry?

A. Someone who has obtained CW-1 or CW-2 status in CNMI (not at a Consular post abroad) who needs to leave CNMI for whatever reason will need to get a visa from the State Department to re-enter CNMI. Usually this is done at the U.S. Embassy or a U.S. Consulate via a locally managed appointment system. If, for example, someone with CW-1 status plans to visit family in the Philippines, he/she would need to make an appointment with the U.S. Embassy in Manila to get the CW visa while they are in the Philippines. They would need to travel with documents to show the State Department officer during their interview and be prepared to wait at least a few days for the visa to be issued. Each U.S. Embassy and Consulate abroad has a different appointment system. To learn more about the U.S. Embassy or Consulate you may need to visit, travelers should go to: <http://www.usembassy.gov/>. Visa wait times for each Consular post abroad are posted at: http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php.

Q. Can people with CW status travel elsewhere within the United States?

A. No. The CW visa classification is valid only in CNMI and does not permit travel to any other part of the United States, including Guam. However, if someone with CW status qualifies for another kind of nonimmigrant or immigrant visa, or a visa waiver program, he or she may travel elsewhere in the United States and the CW status would not prevent that.

Q. How much does it cost to apply for this visa?

A. The fee for Form I-129CW will be \$320, the same amount charged for the I-129. In addition, Public Law 110-229 mandates a "CNMI education funding fee" of \$150 per beneficiary per year which is mandatory and cannot be waived. Lastly, there would be a fee of \$80 to collect biometrics (fingerprints and photos) and run necessary background checks. This expense could be borne by the applicant or the employer.

Q. Are fee waivers available?

A. Normally there is no fee waiver in employment-based cases. However, due to unique circumstances in CNMI, the I-129CW fee may be waived in extraordinary situations where an employer can demonstrate an inability to pay the fee. However, given the inherent inconsistency between sponsoring an alien for work and being unable to pay the fee required for that sponsorship, the situations warranting a fee waiver are expected to be extremely limited. There is a fee waiver for the \$80 biometrics fee if applicants can show an inability to pay.

Q. Can an employer petition for more than one worker on the same form?

A. Yes, with some restrictions, employers may file for multiple beneficiaries on the same I-129CW. If the employees are all working in the same occupational category, for the same time period and in the

same location, the employer may name as many employees on the petition as he/she wants. Unnamed beneficiaries are not allowed under this program.

Q. When can employers begin filing for workers?

A. The interim final rule stipulates that employers may not file for a worker more than six months before the date the employer needs that employee's services (i.e. if an employer needs a worker's services on January 1, the employer may submit a petition for the worker no earlier than July 1). The rule states that petitions may be filed before November 28, 2009, but USCIS will not grant CW-1 status before that date.

Q. What forms are needed to apply for this visa?

A. Employers may file a petition for a transitional worker with USCIS using Form I-129CW, Petition for a Nonimmigrant Worker in CNMI. (This new form was modeled after the existing Form I-129.)

Q. How does the employer file the Form I-129CW Petition?

A. By mail to the USCIS California Service Center. Please follow the instructions on the form.

Q. What happens to CW-1 transitional workers at the end of the transition period?

A. The transition period ends on December 31, 2014. The CW classification will exist for the duration of the transition period. CNMI-Only Transitional Worker status will be granted initially for 1 year and is renewable throughout the transition period in 1-year increments. At the end of the transition period, the Transitional Worker Program will cease to exist and the transitional workers who held this status must change to another nonimmigrant or immigrant status under the INA if they wish to stay in CNMI lawfully. The U.S. Department of Labor may extend the availability of the CNMI Transitional Worker Program beyond 2014, but no decision on any extension has been made at this time.

Q. What occupational categories would be allowed?

A. Under the rule, the Transitional Worker program includes MOST occupational categories being used in CNMI now. Domestic household workers employed directly by private residents will not be eligible for CW-1 status. However, domestic workers employed through a "legitimate business" for placement in individual households could be eligible.

Q. Which CNMI employers are eligible to petition for transitional workers?

A. To be eligible to petition for a CW-1 nonimmigrant worker, an employer must: be engaged in legitimate business; consider all available United States workers for the positions being filled by the CW-1 worker; offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in CNMI; and comply with all Federal and Commonwealth requirements relating to employment, including nondiscrimination, occupational safety, and minimum wage requirements. Legitimate business means a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit, or is a governmental, charitable or other validly recognized nonprofit entity. The business must meet applicable legal requirements for doing business in CNMI. A business will not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law.

Q. Can domestic workers receive CW-1 transitional worker status under this program?

A. Yes, but they must be sponsored by an eligible employer doing business in CNMI as described above.

Q. What does a CNMI employer need to demonstrate in its petition for a transitional worker?

A. A petition must be accompanied by evidence demonstrating the petitioner meets the definition of eligible employer, and must attest that: qualified United States workers are not available to fill the position; the employer is doing business as defined in the rule; the employer is a legitimate business as defined in the rule; the worker has the qualifications for the position (including an occupational license, if required for the occupation); the worker, if present in CNMI, is lawfully present in CNMI; the position is not temporary or seasonal employment, and the petitioner does not reasonably believe it to qualify for any

other nonimmigrant worker classification; and the position falls within the list of acceptable occupational categories

Q. How many transitional worker visas will be available?

A. For the first year, the numerical limit for CW-1 status will be based on CNMI government's own estimate of the foreign worker population, which is 22,417. The CNRA requires that the number be reduced on an annual basis to zero by the end of the transition period. Therefore, after the first year, the numerical limit will drop, but that number has not yet been determined.

Q. What about spouses and dependents? Can they travel and work?

A. The law allows spouses and minor children of someone in CW-1 nonimmigrant status admission into CNMI as accompanying or following to join the principal CW worker. The rule would adopt the INA's definition of "child" for immigration purposes (other than naturalization in section 101(b)) adding a requirement that the child be under 18 years of age since the statute refers to "minor children" rather than "children." Employment is not authorized for spouses and children of CW-1 nonimmigrants.

Q. Can CW-1 nonimmigrants change status or adjust status?

A. The law allows workers in the CW classification to change to another nonimmigrant status or to adjust status to lawful permanent resident (get a green card) throughout the transition period if they are eligible. The rule allows an alien to be present in, or come to, CNMI for a temporary period as a CW-1 or CW-2 nonimmigrant and, at the same time, seek to become a lawful permanent resident of the United States, as long as the alien intends to depart voluntarily at the end of the alien's authorized nonimmigrant stay. For purposes of qualifying for CW-1 or CW-2 classification, the alien is not required to maintain a residence abroad, and dual immigrant and nonimmigrant intent is allowed.

Q. I am a foreign worker in CNMI. Can I apply directly for CW status without my employer's approval?

A. No, CW status is based upon an employer in CNMI needing your services. Your current or prospective employer must sponsor you by filing a Form I-129CW petition. After that petition is approved, you and your eligible family members can obtain CW status based on the approved petition.

Q. If I obtain CW status, will that lead to U.S. lawful permanent resident ("green card") status?

A. No, not directly. However, as a CW nonimmigrant you are not barred from obtaining lawful permanent residence if otherwise eligible as a family- or employment-based immigrant.

Q. How long does a grant of CW-1 status last?

A. One year. A CW-1 nonimmigrant in good standing may obtain additional one-year extensions if his or her employer files a petition asking for the extension, subject to availability under the numerical cap.

Q. How long does a grant of CW-2 status for a derivative family member last?

A. The same length of stay as the CW-1 principal, except that a CW-2 child's length of stay ends on his or her 18th birthday, if sooner.

Q. Can a CW-1 worker change jobs in CNMI and keep the CW-1 status?

A. Yes, but the new employer would have to file the Form I-129CW petition for the worker's new position before the worker can be employed there. CW-1 transitional workers are only authorized to work for the employer that has petitioned for them.

Q. I am a CW nonimmigrant who obtained status in CNMI. I need to travel abroad and return on very short notice because of a sudden family emergency. Can I do that without a visa?

A. Normally a visa will be expected for the readmission of a CW nonimmigrant returning to CNMI. In emergency situations, however, it may be possible for DHS to give prior permission to travel and return without a visa. Please consult with the USCIS office in Saipan.

Q. As a CW nonimmigrant, may I travel to or from the CNMI using flight arrangements that transit through the Guam airport?

A. No. CW visas and status are authorized for travel to, and presence in CNMI only. You may not travel to any other U.S. place, even in brief transit, without an appropriate other visa or documentation authorizing that visit.

Q. How can I or my company submit comments on the rule?

A. USCIS encourages public comment on this rulemaking. Comments must be received by Nov. 27, 2009. Comments should be identified by DHS Docket No. USCIS-2008-0038 and submitted one of the following ways:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- E-mail: rfs.regs@dhs.gov. Include DHS Docket No. USCIS-2008-0038 in the subject line.
- Mail: Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210. To ensure proper handling, please reference DHS Docket No. USCIS-2008-0038 on your correspondence.

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