Screening migrants from the FAS for health issues

Should citizens of the Freely Associated States (FAS) undergo health screening before entering the United States?

FAS citizens are granted freedom to enter, work, and reside in the United States under the terms of the Compacts of Free Association ("the Compacts"). The Compacts allow for the admission of FAS citizens as nonimmigrants and they may establish residence and be employed in the United States without regard to sections 212(a)(5)(A) (labor certification requirements) and 212(a)(7)(B)(i)(II) (visa requirements) of the Immigration and Nationality Act (INA).[1] All the other grounds of inadmissibility and deportability apply. While FAS citizens are admitted as nonimmigrants, there is no limitation on the period of time that they may reside in the United States.

Although travelers from the FAS are required to fill out a Form I-94 upon arrival in the U.S., they do not need visas and therefore are not interviewed by U.S. Department of State (DOS) consular officers before traveling. Instituting a requirement to screen individuals from the FAS before entry into the United States would likely be interpreted by the FAS as violating the spirit of the Compacts, although the amended Compacts with the RMI and FSM expressly recognize the authority of the U.S. Government under section 214(a) of the INA "to provide that admission as a nonimmigrant shall be for such time, and under such conditions as the Government of the United States may by regulations prescribe." (Compact sec. 141(f)(2)). Additionally, the implementation of any kind of health screening procedure would present serious logistical obstacles.

Under the terms of the Compacts, FAS citizens are permitted visa-free travel to the United States. Requiring that they undergo some level of health screening before traveling to the United States – and accordingly receive clearance documentation – could be construed as a *de facto* visa, especially if it requires a pre-departure interview at a U.S. Embassy or Consulate.

It is also unclear who would perform such a screening. A screening for communicable diseases or other purely health-related issues could possibly be performed by a medical professional alone. However, a screening for public charge would require the evaluation of socio-economic factors that a medical

[1] References are to the amended Compacts with the FSM and RMI. The Palau Compact has somewhat different, although substantively very similar, provisions.

professional would not be equipped to evaluate (*see* INA §212(a)(4)(B)(i), listing age; health; family status; assets, resources, and financial status; and education and skills as minimum factors to consider). Requiring Embassy personnel to perform such a screening would require substantial additional resources, and would look even more like a visa by another name. Accordingly, we believe the FAS states would protest any such screening as a significant violation of the Compacts of Free Association.

At the port of entry, Department of Homeland Security (DHS) officers must inspect FAS citizens, as they do all applicants for admission into the U.S. in order for them to be admitted as nonimmigrants. FAS citizens are subject to the relevant health related grounds of inadmissibility (INA §212(a)(1)). Furthermore, FAS citizens are subject to inadmissibility grounds as a public charge (INA §212(a)(4)). A determination of inadmissibility based on public charge grounds requires a consideration of the totality of the circumstances as to whether the applicant is likely to become primarily dependent upon the government for subsistence, including age, health, family status, assets, resources, financial status, education and skills. If contested by the applicant, such a finding of inadmissibility under INA §212(a)(1) or §212(a)(4) is made by a Department of Justice Immigration Judge through a formal order of removal, and is not determined by a DHS immigration officer at the port of entry.