

Review of Guam-CNMI Visa Waiver Program

Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-229, 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 the CNMI. U.S. Customs and Border Protection (CBP) published an interim final rule setting forth the regulations implementing this statutory prescribed Guam-CNMI Visa Waiver Program on January 16, 2009.

Under the Guam-CNMI Visa Waiver Program, eligible nonimmigrant visitors for business or pleasure may seek entry into and stay on Guam or the CNMI without a visa for a period of no more than forty-five (45) days. The interim final rule established the list of program countries and geographic areas and set forth the requirements for individual travelers' eligibility. Section 702(b) of the CNRA requires the Secretary of Homeland Security to include in the list of participating countries, a list of those countries from which the CNMI has received a "significant economic benefit" from the number of visitors for pleasure within the one-year period preceding the date of enactment of the CNRA (i.e., from May 2007 – May 2008). Although DHS determined that nationals of the People's Republic of China (PRC) and the Russian Federation (Russia) provided significant economic benefit to the CNMI, due to political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens, subjects, nationals and residents of the country subject to a final order of removal, the PRC and Russia were not included in the list of program countries and geographic areas published in the interim final rule.

In the interim final rule, DHS noted that:

After additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, and other border security infrastructure, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program. In making such a determination, DHS will consider the welfare, safety, and security of the United States and its territories, as well as other considerations deemed relevant by the Secretary.

If DHS determines that nationals from the PRC and/or Russia may participate in the Guam-CNMI Visa Waiver Program, DHS will amend the regulations as necessary.

74 FR 2824, 2827 (Jan. 16, 2009).

At this time, and in preparation for the development and publication of the Guam-CNMI Visa Waiver Program final rule, CBP is reviewing the public comments received relating to the interim final rule. In addition, CBP and DHS will consider what, if any, additional

layered security measures may be implemented and whether any additional countries and geographic areas will be added the list of designated program countries and geographic areas.

In recognition of the significant economic benefit to the CNMI of visitors for pleasure from the PRC and Russia, on October 21, 2009, Secretary Napolitano announced her decision to exercise her discretionary authority to parole into the CNMI eligible nonimmigrant visitors for business or pleasure from the PRC and Russia. This discretionary exercise of the Secretary's parole authority has been in place and utilized since November 28, 2009 (the transition program effective date), and will continue in effect until the date of publication of the final Guam-CNMI Visa Waiver Program (VWP) rule (or other date that the Secretary of Homeland Security may determine). Under this authority, in the Secretary's discretion on a case-by-case basis, nonimmigrant visitors for business or pleasure who are nationals of Russia and the PRC who present valid passports and who are not inadmissible, except for the lack of a valid U.S. visitor visa, may be paroled into the CNMI only and no other areas of the United States (including Guam). Parole, if granted, will be permitted for a period generally not to exceed 45 days and may be revoked or terminated at any time upon notice. Visitors who are paroled under this authority may not engage in local employment or labor for hire.