

IMMIGRATION IMPLEMENTATION – CNMI

ISSUE: What is the status of implementation of the CNRA, Subtitle A, which transferred immigration authority from the CNMI to the Department of Homeland Security (DHS)?

KEY POINTS:

Implementation is on-going but moving forward with some logistical challenges presented by the unique nature of extending federal immigration law to the CNMI after 30 years of CNMI control.

- **DHS**
 - DHS will provide an oral presentation during the Inter-Agency Group on Insular Areas meeting outlining its action regarding CNMI immigration.

- **DOL**
 - DOL's two agencies directly involved in implementation of CNRA are Wage and Hour Division and Employment Training Administration (ETA)

 - Wage and Hour continues to investigate and enforce Fair Labor Standards Act with an expanded coverage to include all domestic workers within the CNMI. Domestic Workers include house workers and well as gardeners, landscapers and farmers who work for individual employers and not commercial farming operations. Wage and Hour are a member in the Human Trafficking Prevention Coalition.

 - ETA is integral to alien worker visas under the INA as amended by the CNRA. Any employer wishing to employ an alien must obtain a foreign labor certification from ETA. FLC require a determination of the prevailing wage applicable to the position and location of employment as well as a determination that the alien employment will not adversely affect available US qualified workers.

- **DOJ**
 - US Attorney for Guam and Northern Mariana Islands is fully engaged in enforcement of immigration violations including human smuggling, trafficking, illegal harboring, marriage fraud and other Title 8 and Title 18 of USCA violations and acts as Chair of Human Trafficking Intervention Coalition.

 - DOJ Immigration Court is fully operational with hearings being conducted in Saipan every sixty days and telephonically with Honolulu judges on as needed basis.

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- **DOI**

- US Labor Ombudsman is fully staff and operational with four caseworker/translators to assist aliens within the CNMI with immigration, labor and law enforcement matters as well as being a member of the Human Trafficking Intervention Coalition.
- In December 2009 to early January 2010, the Ombudsman office conducted an accounting of aliens present in the CNMI which resulted in a total number of 20,859 aliens not including citizens of freely associated states. The majority of these aliens were alien workers from the Republic of the Philippines.
- In April 2010, DOI released its Report of the Alien Worker Population in the Commonwealth of the Northern Mariana Islands as required by the CNRA and recommended five potential long-term status for lawfully present aliens within the CNMI.
- DOI has continued to provide technical assistance funding to both DOJ for a criminal immigration prosecuting AUSA and for relief services for victims of trafficking in the CNMI.
- OIA has conducted numerous outreach programs to provide accurate information to aliens and the business community regarding implementation of the CNRA as well as assistance to aliens and businesses in processing proper forms regarding adjustment of status and employment of aliens.
- OIA conducted a Forum on Economic and Labor Development (FELD) in November 2010 in order to get stakeholder in-put in the development of a technical assistance program:
 - ♣ To identify opportunities for, and to encourage the diversification and growth of, the economy of the Commonwealth.
 - ♣ To assist in the recruiting, training, and hiring of workers, to assist employers in the Commonwealth in securing U.S. eligible employees, first from among U.S. citizens and residents, then from among legal permanent residents including lawfully admissible citizens of the freely associated states.
 - ♣ To assist in the identification of types of jobs needed, skills need to fulfill such jobs, and to assist educational entities in the Commonwealth to develop curricula for such job skills to include training teachers and students.
 - ♣ The FELD was well attended by business and community leaders in Saipan and simultaneously video-conferenced to Tinian and Rota for stakeholder participation on these two islands. The results of the FELD are being finalized and will soon be posted on OIA's website. From information obtained during this forum, OIA will develop a technical assistance program to assist in the Commonwealth in its economic recovery efforts.

Consultation with CNMI government

- Federal agencies involved in implementation of the CNRA have individually and collectively consulted with the CNMI government since enactment of the CNRA in June 2008.

- o DOI, OIA officials met on several occasions with CNMI government regarding implementation of the CNRA as well as recommendations regarding long-term status for lawfully present aliens within the CNMI in preparation for its report to Congress in April 2010.
- o GAO has conducted several audits and produced several reports regarding implementation of the CNRA in the CNMI.
- o DOL, ETA has conducted several meetings post CNRA effective date to educate the business community on obtaining foreign labor certification and the prevailing wage survey which needs to be done to avoid use of the Guam prevailing wage to CNMI employers.

FUTURE CHALLENGES

- On November 28, 2011, aliens who have not adjusted their status to a federal immigration status may be placed in removal proceedings.
- Given the continued downturn in the CNMI economy, the number of aliens unable to secure an employment based federal immigration status is likely to range between 5,000 and 8,000 aliens.
- The E2 CNMI visa regulations published by DHS on December 20, 2011 are unclear as to whether a holder of a long term business permit issued by the CNMI prior to November 28, 2009 can apply for this status. The regulations require a CNMI issued certification of a \$50,000 investment in order to qualify for the E2 CNMI status. **The CNMI did not provide an investment amount in its certification for an applicant for a long-term business permit so such a certification cannot be produced by any long-term business permit holder. Proof of a \$50,000 investment was required in order to be certified by the CNMI Department of Commerce from 1996. Those holding long-term business permits prior to 1996 were grandfathered into the status.** This provision of the E2 CNMI regulations needs further clarification.
- The costs and resources will be substantial and the negative potential impact of the safety and welfare of the CNMI.
- Continued lack of a prevailing wage survey for the CNMI will continue to frustrate the CNMI business community since no H visa or other employment based visa will be issued without a foreign labor certification.
- Continued disparity over application of “lawfully present” under Commonwealth immigration law prior to November 28, 2011 effective date of CNRA as far as determination of whether an alien is out of status and therefore, removable, will likely require judicial resolution.
- CBP is processing alien tourists at an acceptable pace but holding aliens with I-94 and Advance Parole permits issued by USCIS for more than two hours for individualized questioning.

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