Rules and Regulations

Federal Register
Vol. 79, No. 188
Monday, September 29, 2014

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2545–14; DHS Docket No. USCIS–2012–0010]

RIN 1615–ZB30

Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2015

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitation.

SUMMARY: The Secretary of Homeland Security announces that the annual fiscal year numerical limitation for the Commonwealth of the Northern Mariana Islands (CNMI)-only Transitional Worker (CW–1) nonimmigrant classification for fiscal year (FY) 2015 is set at 13,999. In accordance with Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) (codified, in relevant part, at 48 U.S.C. 1806(d)) and 8 CFR 214.2(w)(1)(viii)(C), this document announces the mandated annual reduction of the CW–1 numerical limit and provides the public with additional information regarding the new CW–1 numerical limit. This document is intended to ensure that CNMI employers and employees have sufficient notice regarding the maximum number of CW–1 transitional workers who may be granted status during FY 2015.

DATES: Effective Date: September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060. Contact telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the CNRA extended U.S. immigration law to the CNMI and provides CNMI-specific provisions affecting foreign workers. *See* Public Law 110–229, 122 Stat. 754, 853. The CNRA included provisions for a ''transition period'' to phase-out the CNMI's nonresident contract worker program and phase-in the U.S. federal immigration system in a manner that minimizes the adverse economic and fiscal effects and maximizes the CNMI's potential for future economic and business growth. *See* sec. 701(b) of the CNRA. The CNRA authorized the Department of Homeland Security (DHS) to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period. *See id.;* 48 U.S.C. 1806(d)(2). The CNRA also mandated an annual reduction in the allocation of the number of permits issued per year and the total elimination of the CW nonimmigrant classification by December 31, 2014, or by the end of any extension of the transition period for the CW program. *See* 48 U.S.C. 1806(d)(2).

Consistent with this mandate under the CNRA, DHS published a final rule on September 7, 2011 amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW–1 for principal workers and CW–2 for spouses and minor children). *See* Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011). DHS established the CW–1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. *See* 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS opted to publish any future annual numerical limitations by **Federal Register** notice. *See* 8 CFR 214.2(w)(1)(viii)(C). Instead of developing a numerical limit reduction plan, DHS determined that it would be best to instead assess the CNMI's workforce needs on a yearly basis. *Id.* This initial approach to the allocation system ensured that employers had an adequate supply of workers to provide a smooth transition into the federal immigration system. It also provided DHS with the flexibility to adjust to the future needs of the CNMI economy and to assess the total foreign workforce needs based on the number of requests for transitional worker nonimmigrant classification received following implementation of the CW–1 program.

DHS followed this same rationale for the FY 2013 and FY 2014 annual fiscal year numerical limitations. After assessing all workforce needs, including the opportunity for economic growth, DHS set the CW–1 numerical limitation at 15,000 and 14,000, respectively. *CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013,* 77 FR 71287 (Nov. 30, 2012); *CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014,* 78 FR 58867 (Sept. 25, 2013). The FY 2013 and FY 2014 numerical limitations were based on the actual demonstrated need for foreign workers within the CNMI during FY 2012. *See id.*

The CNRA directed the U.S. Secretary of Labor to determine, not later than 180 days before the end of the transition period, whether an extension of the CW program for an additional period of up to five years is necessary to ensure an adequate number of workers will be available for legitimate businesses in the CNMI, and further provided the Secretary of Labor with the authority to provide for such an extension through notice in the **Federal Register**. *See* 48 U.S.C. 1806(d)(5). On June 3, 2014, the Secretary of Labor exercised this statutory responsibility and authority by extending the CW program for an additional five years, through December 31, 2019. *See Secretary of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program,* 79 FR 31988 (June 3, 2014).

II. Maximum Number of CW–1 Nonimmigrant Workers for Fiscal Year 2015

The CNRA requires an annual reduction in the number of transitional workers but does not mandate a specific reduction. *See* 48 U.S.C. 1806(d)(2). In addition, 8 CFR 214.2(w)(1)(viii)(C) provides that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and it will be reasonably

calculated to reduce the number of CW–1 nonimmigrant workers to zero by the end of the program. DHS may adjust the numerical limitation at any time via notice in the **Federal Register**, but may only reduce the figure, not raise it. *See* 8 CFR 214.2(w)(viii)(D).

To comply with these requirements, meet the CNMI's labor market's needs, provide opportunity for growth, and preserve access to foreign labor, DHS has set the numerical limitation for FY 2015 at 13,999. DHS arrived at this figure by taking the number of CW–1 nonimmigrant workers needed based on the FY 2014 limitation of 14,000, and then nominally reducing it by one.

In setting this new numerical limitation for FY 2015, DHS considered its effect in conjunction with the Secretary of Labor's five-year extension of the transitional worker program. The Department of Labor's (DOL's) **Federal Register** notice indicated that DOL examined a number of factors, including but not limited to, studies on the need for foreign workers, unemployment rates, and prior use of foreign workers in certain industries, in reaching its decision to extend the program.[1] *See* 79 FR at 31989. In reviewing workforce studies that examined the economic impact of alien workers on the CNMI economy and on the labor market, DOL found that the majority of the CNMI's current labor supply is provided by foreign workers. *Id.* DOL indicated that the studies unanimously concluded that restrictions on the foreign labor supply will exacerbate the CNMI's current economic problems and restrain current economic growth. *Id.* In examining the unemployment rate, the labor force, and the number of jobs available in the CNMI, DOL also determined that even if all the U.S. workers in the labor force were employed, a significant number of jobs would still need to be filled by foreign workers. *Id.* On the need for foreign workers to fill specific industry jobs, CNMI government officials reported to DOL that legitimate businesses in the CNMI have difficulty finding qualified applicants for skilled jobs who are U.S. citizens and lawful permanent residents. *Id.* DOL thus concluded that there are an insufficient number of U.S. workers available to meet CNMI's businesses' current needs, and that a five-year extension of the CW–1 program is warranted. *Id.*

For the aforementioned reasons, DHS recognizes that any numerical limitation must account for the fact that the CNMI economy continues to be based on a workforce comprised primarily of foreign workers. Therefore, any new fiscal year numerical limit must allow for economic growth until the end of the transitional worker program, which is now December 31, 2019. DHS must reduce the annual numerical limitation as statutorily mandated, but also must ensure that there are enough CW–1 workers for future fiscal years until the end of the program. DHS believes that a conservative reduction of only one worker is appropriate for FY 2015 because the new baseline must preserve access to foreign labor, as well as accommodate future reductions to the numerical limitation until the end of the transitional worker program. Accordingly, DHS is reducing the number of transitional workers from the current fiscal year numerical limitation of 14,000, and establishing the maximum number of CW–1 nonimmigrant visas available for FY 2015 at 13,999. Given the significantly extended time horizon for the CW program until December 31, 2019, DHS believes that the prudent approach to the numerical limit for the next fiscal year is to essentially preserve the status quo rather than implement a more aggressive reduction of CW–1 numbers at this time.

This number of CW–1 nonimmigrant workers will be available beginning on October 1, 2014. DHS may adjust the numerical limitation for a fiscal year or other period, in its discretion, at any time via notice in the **Federal Register**. *See* 8 CFR 214.2(w)(1)(viii)(D). Consistent with the rules applicable to other nonimmigrant worker visa classifications, if the numerical limitation for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. *See* 8 CFR 214.2(w)(1)(viii)(E).

Each CW–1 nonimmigrant worker with an approved employment start date that falls within FY 2015 will be counted against the new numerical limitation of 13,999. Counting each CW–1 nonimmigrant worker in this manner will help ensure that USCIS does not approve requests for more than 13,999 CW–1 nonimmigrant workers. If USCIS determines that sufficient petitions have been filed to reach the 13,999 limit for CW–1 nonimmigrant workers, USCIS will hold any subsequently-received petitions until a final determination is made on the petitions already pending before USCIS. Any approved CW–1 workers from those pending petitions will be counted against the new numerical limitation of 13,999. Subsequently-received petitions on hold will be accepted for processing and forwarded for adjudication in the order in which they were received until USCIS has approved petitions for the maximum number of CW–1 nonimmigrant workers. Any remaining petitions that were held or that are newly received will be rejected once the numerical limitation for CW–1 nonimmigrant workers has been reached.

This document does not affect the immigration status of foreign workers who already have CW–1 nonimmigrant status. Foreign workers currently holding such status, however, will be affected by this document when their CNMI employers file for an extension of their CW–1 nonimmigrant classification, or a change of status from another nonimmigrant status to that of CW–1 nonimmigrant status.

This document does not affect the status of any individual currently holding CW–2 nonimmigrant status as the spouse or minor child of a CW–1 nonimmigrant worker. This document also does not directly affect the ability of any individual to extend or otherwise obtain CW–2 status, as the numerical limitation applies to CW–1 principals only. Individuals seeking CW–2 status may, however, be indirectly affected by the applicability of the cap to the CW–1 principals from whom their status is derived.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–23024 Filed 9–26–14; 8:45 am]

BILLING CODE 9110–97–P

[1] The CNRA stipulates that in making the determination of whether foreign workers are necessary to ensure an adequate number of workers in the CNMI, the Secretary of Labor may consider eight factors: (1) Government, industry, or independent workforce studies reporting on the need, or lack thereof, for alien workers in the Commonwealth's businesses; (2) the unemployment rate of U.S. citizen workers residing in the Commonwealth; (3) the unemployment rate of aliens in the Commonwealth who have been lawfully admitted for permanent residence; (4) the number of unemployed alien workers in the Commonwealth; (5) any good faith efforts to locate, educate, train, or otherwise prepare U.S. citizen residents, lawful permanent residents, and unemployed alien workers already within the Commonwealth, to assume those jobs; (6) any available evidence tending to show that U.S. citizen residents, lawful permanent residents, and unemployed alien workers already in the Commonwealth are not willing to accept jobs of the type offered; (7) the extent to which admittance of alien workers will affect the compensation, benefits, and living standards of existing workers within those industries and other industries authorized to employ alien workers; and, (8) the prior use, if any, of alien workers to fill those jobs, and whether the industry requires alien workers to fill those jobs. 48 U.S.C. 1806(d)(5)(C).