U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Domestic Operations (MS-2110)
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQ 70/10.10
AD10-02

Memorandum

NOV 23 2009

TO: Field Leadership

FROM: Donald Neufeld
Acting Associate Director, Domestic Operations

SUBJECT: Effect of the CNRA, Title VII of Public Law 110-229, Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C).

Chapter 36.8 Added to *Adjudicator's Field Manual* (AFM Update AD10-02)

1. Purpose

This memorandum provides field guidance and updates the Adjudicator's Field Manual (AFM) regarding eligibility for L nonimmigrant status for certain aliens who have been employed in the Commonwealth of the Northern Mariana Islands (CNMI) before the CNMI becomes subject to the Immigration and Nationality Act (the INA) on November 28, 2009. The policies and procedures contained in this memorandum are effective starting November 28, 2009, and are only intended for the purposes of determining "employment abroad" as it relates to employment experience in the CNMI prior to the transition. All other provisions under 8 CFR 214.2(l) remain applicable.

2. Background

Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA), amended the 1976 Covenant, Pub. L. No. 94-241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976), between the CNMI and the United States to extend the INA to the CNMI beginning on November 28, 2009 ("transition date"). Aliens who are in the CNMI on the transition date will be considered to be present in the United States without inspection by operation of law.

Although the CNMI will become part of the "United States" as defined by section 101(a)(38) of the INA on November 28, 2009, section 705(c) of the CNRA clarifies that (with the exception of determinations whether a lawful permanent resident has abandoned status) residence or presence

in the CNMI before November 28, 2009 shall not be construed to be residence or presence within the United States for INA purposes.

The extension of the INA to the CNMI raises particular concerns for eligibility under the L nonimmigrant classification. Specifically, the L classification requires that an alien have been employed abroad continuously for 1 year at any time during the preceding 3 years by a parent, branch, affiliate, or subsidiary of a U.S. company. Beginning November 28, 2009, aliens currently working in the CNMI will no longer be "employed abroad" for immigration purposes. As such, USCIS has determined that the following guidance shall be applied to applications and petitions where the beneficiary has been employed in the CNMI prior to the transition to the INA.

3. Field Guidance and AFM Update

All USCIS offices are directed to comply with the following guidance. The Adjudicator's Field Manual is updated by adding Chapter 36, Commonwealth of the Northern Mariana Islands, as follows:

Chapter 36 Commonwealth of the Northern Mariana Islands

36.8 Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C)

Aliens who are present in the CNMI on or after November 28, 2009 ("transition date") will be considered to be present in the United States by operation of law. The following policies and interpretations shall be applied to applications and petitions where the beneficiary has been employed in the CNMI prior to the transition date and to all petitioners:

1. Employment in the CNMI prior to November 28, 2009, will continue to be considered employment abroad for a qualifying foreign organization for all purposes under the INA.

2. Employers in the CNMI will be considered U.S. employers on or after November 28, 2009. From the perspective of the employee of a CNMI entity, the change that occurs from foreign to U.S. will be considered to be a transfer from foreign organization to a U.S. organization.

3. If the employer in the CNMI continues to meet the definition of a qualifying organization found in 8 CFR 214.2(l)(1)(ii)(G) in that there remains a foreign entity as required by that definition (i.e., one that is outside the CNMI/United States), the CNMI employer may petition for qualifying employees who are currently employed in the CNMI.

4. A qualifying employee is an employee with at least 1 year of continuous employment abroad for the qualifying organization within the preceding 3 years. Therefore, if the employee's foreign employment experience is only in the CNMI, the earliest qualifying date of employment is 11/26/06 with the 1 year foreign experience completed by 11/27/09. The experience will qualify if it is obtained at any time within this 3 year window.

5. These policies also apply to petitions filed for immigrant status under Section 203(b)(1)(C).

* * *

The AFM Transmittal Memoranda table is updated as follows:

AD10-02 [Date Published]	**Chapters:** • **36.8**	The AFM is updated to add Chapter 36.8 Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C).

4. Use

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

5. Contact Information

Questions regarding this memorandum may be directed through the appropriate supervisory channels.

Distribution List:

Chief, Field Operations
Chief, Service Center Operations
Regional Directors
District Directors
Field Office Directors
National Benefits Center Director