August 26, 2019

Kenneth T. Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Washington, DC

Dear Director Cuccinelli:

Congratulations on your recent appointment as Acting Director of U.S. Citizenship and Immigration Services (USCIS). Success in your position is crucial for the success of my islands, our country and for the goals of our President, Donald J. Trump. I wish you the best of luck and look forward to working with you in addressing immigration issues in the Commonwealth of the Northern Mariana Islands (CNMI).

The CNMI and the federal government have a long history of partnership, honest dialogue, and understanding. The 1976 covenant defining the political relationship between the CNMI and the United States originally exempted the CNMI from certain federal immigration laws. However, the Consolidated Natural Resources Act of 2008 (CRNA) amended the joint resolution and DHS established the CNMI-Only Transitional Worker program. Since 2008, Congress addressed the needs of the CNMI and amended the CNRA several times with provisions related to the length of the transition period, the number of permits allocated, and the distribution of permits. Most recently, the Northern Mariana Islands U.S. Workforce Act of 2018 extended the transitional program and incentivized the hiring of U.S. workers in the CNMI workforce. Clearly, the immigration issues in the CNMI are uncommon among those in the contiguous United States as the application of U.S. immigration laws and the quantity of foreign labor existing in our workforce creates a vast array of complications to which we are committed to solving.

I am writing in the interest of our partnership and shared goals towards the efficacy of the CNMI-Only Transitional Worker program. Currently, significant issues exist with the Interim Final Rules promulgated under the Workforce Act that are threatening to cripple our economy and counteract the gains we have made in U.S. citizen employment. Specifically, due to the newly implemented four step process in obtaining a Temporary Labor Certification—a necessary component in a CW-1 Petition—CNMI employers are experiencing varying complications, unclear instructions, and extended application processing times. While the CNMI government has made every effort to assist in the implementation of the new federal regulations, many employers report that they will not be in receipt of their Temporary Labor Certifications in time to process their CW-1 petitions with USCIS prior to the end of the fiscal year. This will inevitably result in late CW-1 Petitions and the outward migration of a large number of our workforce at the end of this fiscal year.
The loss of these workers presents a dire situation for our employers, our economy, and the U.S. workers who work alongside CW-1 visa holders. In fact, in consideration of this imminent threat to the CNMI workforce, employers are considering closing businesses or limiting operations—which only contributes to the emergency state of the CNMI’s economy as we are still recovering from the onslaught of Super Typhoon Yutu. Clearly, this situation undermines the overall purpose and legislative intent of the CW program. In order to prevent a potentially catastrophic situation, I respectfully request your assistance and intervention.

First, I ask for a dialogue on the options available to provide CNMI employers expedited processing of their CW-1 applications so that they may receive the necessary authorization to have their workers remain in the CNMI pursuant to 8 C.F.R. § 274a.12(b)(20).

I further ask for your assistance in providing for an adjudication process in this first application period of this new regime that works with employers to remedy deficiencies within their applications to correct any misinterpretation of the new requirements or a delay in receipt of their required U.S. DOL documentation. The new processes implemented for the CW-1 program are complex and employers may err in submitting all the required documentation for full adjudication of their CW-1 petitions. It is the case that, despite the statutory requirement for employer training on the new permitting process, no on-island training on these new requirements has been offered. It is my belief that under the present circumstances and the limited outreach on the new application procedures that consideration be given to employers to correct deficiencies and not proceed immediately to issuing a denial of the petition.

Without some agreement on the deficiencies of this current application process, many of the workers the CNMI relies upon to maintain economic activity will depart for an undetermined period of time. This loss of workers will result in the furlough or unemployment of U.S. workers in our fragile economy. This is ultimately the outcome we are seeking to avoid.

Thank you for your consideration of these requests. I hope we can rely on your understanding and appreciation of the urgency we face. I will await your reply and look forward to working with you and your agency in serving this unique community.

Sincerely,

RALPH DLG. TORRES
GOVERNOR
Dear Governor Torres:

Thank you for your August 26, 2019, letter regarding the efficacy of the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Program. Please be assured that U.S. Citizenship and Immigration Services (USCIS) is aware of the importance of temporary foreign workers for economic development, employment and disaster recovery efforts in the CNMI.

As you are aware, the Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act) includes provisions that require CNMI employers to first obtain a temporary labor certification (TLC) from the U.S. Department of Labor (DOL) prior to petitioning USCIS to employ a nonimmigrant worker in CW-1 status. To implement the provisions of the Workforce Act, DOL published an interim final rule on April 1, 2019, effective April 4, 2019, that establishes a four-step process by which employers obtain a TLC from DOL. This process is essential to meeting the goals of the Workforce Act to increase worker protections for both U.S. and foreign workers and to ensure that no U.S. worker is placed at a competitive disadvantage or is displaced by a foreign worker.

On September 24, 2019, USCIS announced that it will consider certain fiscal year (FY) 2020 CW-1 petitions seeking an extension of status for temporary workers present in the CNMI to be filed on time, even if USCIS receives them after the worker’s current period of CW-1 petition validity expires.

USCIS is providing this one-time, limited accommodation to facilitate the initial implementation of the new requirement that CW-1 petitions with employment start dates on or after October 1, 2019, include a TLC approved by DOL.

Normally, under Department of Homeland Security regulations, an employer may only file a CW-1 petition on behalf of a worker present in the CNMI if the worker is lawfully present in the CNMI, and USCIS will not approve an extension of nonimmigrant status if the worker’s nonimmigrant status expired before the petition is filed. Additionally, under new statutory and DOL regulatory requirements, a CW-1 petition requesting an employment start date in FY 2020 (on or after Oct. 1, 2019) must include an approved TLC.
As such, USCIS has the discretionary authority to excuse a late filing for extension of status petitions in limited circumstances. USCIS has determined that it is appropriate, on a one-time basis, to exercise its authority to excuse late filings of CW-1 petitions (petitions USCIS receives after the current CW-1 status expires) by employers in the CNMI, only if:

- The petition is otherwise properly filed, and includes an approved TLC with a start date on or after October 1, 2019;
- USCIS receives the petition no later than 30 days after the date of TLC approval, or by November 1, 2019, whichever is earliest; and
- The expiration date of the currently approved petition is on or after September 1, 2019.

If an employer files an extension petition meeting these requirements, the CW-1 worker may continue employment with the same employer for up to 240 days beginning on the expiration of the authorized period of stay, pending adjudication of the petition (or, in the case of a non-frivolous petition for extension of stay with change of employer, until USCIS adjudicates the petition).

In addition to the relief mentioned above, USCIS continues to work on its own implementing regulation, and because the proposed language is currently in development, I cannot comment on the specifics of the rule before it is published in the Federal Register. I look forward to working with you toward implementing the provisions of the Workforce Act in a manner that is lawful, efficient, and one that is the least disruptive to the economy of the CNMI.

Thank you again for your letter and your interest in this matter. Should you wish to discuss this matter further, please do not hesitate to contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

Ken Cuccinelli II
Acting Director