

# Adjudicator's Field Manual

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## Chapter 36 Commonwealth of the Northern Mariana Islands

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**36.1 Reserved**

## **36.2 Parole and Other Benefits for Certain Aliens in the CNMI [Chapter 36.2 added 11-24-2009]**

Certain aliens who are in the CNMI on November 28, 2009 (the transition date) will be considered to be applicants for admission to the United States as described in **section 235(a)(1)** of the Act and, as such, eligible for the exercise of parole authority under **section 212(d)(5)** of the Act.

Effective November 28, 2009, aliens who are present in the CNMI on the transition date and who fall under any one of the eligible categories specified in AFM **Chapter 36.2(a)** may be eligible for parole (with conditions) pursuant to section 212(d)(5) of the Act. They may also be eligible for employment authorization, travel to the United States and its territories, and advance parole to re-enter the CNMI from travel abroad. See AFM **Chapters 36.2(b)** , **(c)** , **(d)** , and **(e)** .

CBP and ICE also retain authority to issue parole. In cases where CBP or ICE grants parole to an alien residing in the CNMI on the transition date, and if that alien is otherwise eligible, the alien may apply for any other benefit provided by the parole program described in **AFM Chapter 36.2** .

USCIS expects that most of the aliens eligible for the benefits under this CNMI parole program reside in Saipan. As a result, the USCIS Application Support Center (ASC) in Saipan will likely process the majority of these requests for parole and ancillary benefits as well as the related biometrics processing. As needed, ASC circuit rides to accept parole requests and collect biometrics may be provided for the neighboring CNMI islands of Tinian and Rota.

### **Note**

USCIS officers should see **AFM Chapter 36.2(g)** for further operating procedures on processing benefit requests under the CNMI parole program, to include requests for parole, employment authorization, and travel-related benefits.

#### (a) Classes of Aliens Eligible for Parole and Other Benefits

The following classes of aliens in the CNMI on the transition date may be eligible for benefits provided by the parole program described in AFM **Chapters 36.2(b)** , **(c)** , **(d)** , and **(e)** so long as such aliens are under the respective CNMI immigration status as of the CNMI transition date. The benefits may include parole with conditions, employment authorization, travel to the United States and its territories, and advance parole to re-enter the CNMI from travel abroad,

- CNMI permanent residents. Approximately 400 individuals were granted permanent resident status prior to 1982 by the former government of what is now the CNMI.
- Immediate relatives (under CNMI law) of CNMI permanent residents. Under CNMI law, “immediate relative” means a legally recognized spouse; a child under the age of 21 years, whether natural or adopted before the age of 18 years; and a stepchild if the marriage that created the stepchild relationship took place before the child's eighteenth birthday.
- Surviving spouses and children (under CNMI law) of CNMI permanent residents. The surviving relationship must have qualified under the above definition of “immediate relative.”
- Immediate relatives (under CNMI law) of nationals of the Freely Associated States (FAS) who reside in the CNMI. The Freely Associated States are the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. Nationals of these countries are admitted to the United States as nonimmigrants with employment authorization for an indefinite period pursuant to the terms of the Compacts of Free Association. Immediate relatives of FAS nationals, who are not themselves also FAS nationals, are not accorded similar status or benefits.

#### Note

Immediate relative status under CNMI immigration law is not the same as immediate relative status under **section 201 (b)** of the Act.

#### Note

This guidance is not intended to prohibit the parole or advance parole of applicants for admission present in the CNMI, but who are not in one of the categories listed above, on an individual case by case basis for urgent humanitarian reasons or significant public benefit, as may otherwise be provided by regulation or policy.

- (b) Parole with Conditions for Eligible Classes of Aliens.

USCIS will exercise its parole authority under **section 212(d)(5)** of the Act to grant parole with conditions

on a case-by-case basis to aliens who are in any of the eligible classes specified in **AFM Chapter 36.2(a)** . By following the same parole request procedures below, eligible aliens may also request re-parole for up to 120 days before their existing parole period expires.

The following conditions will apply to all parole or re-parole issued:

- Parole may be granted for a maximum of two years per grant.
  
- Grant of parole is discretionary, on a case by case basis after appropriate record checks.
  
- In general, inadmissibility of the alien for criminal or other reasons is a factor warranting an unfavorable exercise of discretion; however, inadmissibility under **sections 212(a)(5)** (lack of labor certification) and **212(a)(7)** (lack of passport or visa) of the Act should not be considered a disqualifying factor.
  
- Parole should not be granted to any alien in CNMI removal proceedings on the transition date, or in removal proceedings under the Act at any time, without coordination with and approval by ICE.
  
- Employment may be authorized only for the period of parole.
  
- Advance written approval from the Director, USCIS District 26 (Honolulu), is required for travel to other parts of the United States, including Guam and the other territories. Such travel must be requested (without fee) in writing to the Director, USCIS District 26.
  
- Extension of parole is available as long as the alien maintains residence in the CNMI, the qualifying relationship to the CNMI permanent resident or FAS national continues to exist (if applicable), and the alien's admissibility and other factors continue to warrant a favorable exercise of discretion.

- Advance parole may be approved for reentry to the United States on a case-by-case basis for legitimate business or personal reasons, but such advance parole will only be valid for entry into the CNMI.

**Note**

The conditions placed on parole allow USCIS to periodically determine if these aliens are eligible for any classification under the Act. USCIS could also determine if there has been a change in circumstances, such as termination of a marriage, a criminal arrest or conviction or a national security concern, that would warrant a termination of parole or the alien's removal.

(c) Parole Request Requirements.

To request parole under the CNMI parole program described in **AFM Chapter 36.2**, an applicant must make an InfoPass appointment and submit such request to USCIS in person at his or her appointment in writing. No fee is required. By following the same parole request procedures, eligible aliens may also request re-parole up to 120 days before their existing parole period expires.

USCIS will notify applicants in writing of the decision on their parole request. USCIS officers should see **AFM Chapter 36.2(g)** for specific instructions on processing parole requests.

The parole request must include all of the following documentation:

- A request letter signed by the applicant and addressed to the Director, USCIS District 26, Honolulu Hawaii. The printed letter may be typewritten or legibly handwritten;
- A completed Form G-325, Biographic Information;
- Four recent passport-style photos;

- A valid identity document such as a passport or birth certificate; and
- Evidence of the applicant's status as of the transition date.

The following may be submitted as proof of an applicant's status and/or qualifying relationship. Copies may be accepted.

- CNMI Permanent Resident or Immediate Relative Status Card
- FAS national's evidence of status
- Marriage certificate
- Child's birth certificate
- Decedent's death certificate
- Evidence of the alien's last CNMI immigration status
- Evidence of the alien's current CNMI employment status

**Note**

Aliens who seek parole status based upon a marriage to an alien admitted to the CNMI under the terms of the Compacts of Free Association are to be interviewed with the CFA spouse during the InfoPass appointment. Furthermore, the above proof list is not exhaustive.

(d) Employment Authorization for Eligible Classes of Aliens .

Aliens who have been granted parole under the CNMI parole program described in **AFM Chapter AFM 36.2** are eligible for employment authorization for the entire period of their parole. Accordingly, work authorization relating to that parole program is not available to aliens who have not been granted parole by such program.

An applicant who has been paroled under this parole program and who seeks employment authorization must file Form I-765 , Application for Employment Authorization, to the filing location designated in the form instructions and include with their I-765 application a copy of their **I-94** card.

The granting of parole status does not, however, automatically provide employment authorization. The ASC must not accept an EAD application. However, if an alien indicates an interest in obtaining employment authorization during his or her InfoPass appointment, including those who bring an I-765 application to the appointment as described in **AFM Chapter 36.2(d)** , USCIS staff should provide such information.

The employment authorization eligibility category on Form I-765 is **8 CFR 274a.12(c)(11)** , an alien paroled into the United States temporarily for emergency reasons or reasons deemed strictly in the public interest pursuant to **8 CFR 212.5** .

For an extension of employment authorization (EAD extension), an alien must first be re-paroled and then submit evidence of parole along with a completed Form I-765 application. In order to avoid a gap in parole status and employment authorization, CNMI parolees will be allowed to apply for re-parole up to 120 days before the expiration of their parole status. If approved, applicants can then file their renewal employment authorization application with USCIS up to 120 days before their existing EAD expires.

(e) Travel to the United States and other U.S. Territories while in Parole Status .

Aliens who have been granted parole under the CNMI parole program described in **AFM Chapter 36.2** may



be eligible for travel to other parts of the United States and its territories. To request authorization to travel to other parts of the United States and/or a U.S. territory, an applicant must prepare and sign a letter indicating the purpose of the travel and the alien's intention of returning to the CNMI. The letter must be addressed and mailed to the Field Office Director, USCIS Guam Field Office, Hagatna, Guam.

The Guam Field Office will notify the applicant in writing of the decision on his or her travel request. If the request is approved, the field office will prepare and issue a travel authorization letter to the parolee. The approved length of travel is subject to the discretion of the Field Office Director, USCIS Field Office, Guam. Generally, the approved length of travel should not exceed more than six months. An approved travel request is only for a single trip. If the request is denied, the field office will prepare and issue a denial notice to the parolee.

USCIS officers should see AFM **Chapter 36.2(g)** for further instructions relating to travel under the CNMI parole program described in this chapter.

(f) Reentry to the CNMI after Foreign Travel while in Parole Status.

Aliens who have been granted parole under the CNMI parole program described in **AFM Chapter 36.2** may be eligible for advance parole to reenter the CNMI after travel abroad. Such aliens should mail Form I-131 , Application for Travel Document, in accordance with the form instructions and with appropriate fees directly to the Field Office Director, USCIS Guam Field Office, Hagatna, Guam. If the application is approved, the Guam Field Office will issue Form I-512 , Advance Parole Document, to the applicant. If the application is denied, the Guam Field Office will provide a denial notice to the applicant.

USCIS officers should see AFM **Chapter 36.2(g)** for further instructions relating to travel under the CNMI parole program described in this chapter.

(g) USCIS Operating Procedures for CNMI Parole Requests

Along with the general guidelines provided in **Chapter AFM 36.2** , USCIS officers or authorized personnel must follow the internal operating instructions provided below when processing an alien's parole request submitted in accordance with AFM Chapter 36.2. Such parole requests should only be approved after the alien seeking parole has met all eligibility requirements and has cleared all required security checks.

USCIS officers or authorized personnel should query any electronic database that is regularly used to verify the identity and nationality of the applicant for any benefit provided by this parole program as deemed necessary, e.g., CIS, IDENT, ENFORCE, CCD, US-VISIT.

### **Parole request adjudication**

Step 1. USCIS officer reviews parole request packet for completeness and for prima facie eligibility. See AFM **Chapters 36.2(a)** and **(c)** .

Step 2. USCIS officer or authorized personnel completes IBIS check and captures 10-print fingerprints (code 1). After the IBIS and fingerprint checks clear favorably, a US-VISIT check should also be made.

Step 3. USCIS officer or authorized personnel searches for any existing A-files pertaining to the applicant. If it appears no A-file exists, an A-file should be created and established in the Central Index System (CIS).

If any A-file exists that appears to pertain to the applicant, request all such A-files and consolidate accordingly. USCIS may create a T-file for the applicant (and establish in CIS) while the existing A-files are en route. The USCIS officer may also process the parole request in such cases so long as the identity and nationality of the applicant can be determined through querying the electronic systems (such as CIS, IDENT, ENFORCE, CCD, US-VISIT).

Step 4. USCIS officer or authorized personnel issues decision on parole request.

### **If parole request is approved**

· Complete the arrival and departure portions of **Form I-94** placing a parole stamp on both portions and annotating it “CH” for humanitarian parole and “CNMI Only.” Affix the applicant’s photo to Form I-94 and seal it using a DHS dry seal. Indicate a two-year expiration from the date of approval;

- Make a copy of Form I-94 and place it in the applicant's A-file (or T-File);
- Mail the departure portion of Form I-94 to the applicant with a letter notifying the applicant of his or her new status and its conditions;
- Mail the arrival portion of Form I-94 to:

DHS/ACS

1084 S. Laurel Rd.

London, KY 40744

- Perform system updates in accordance with existing procedures.

### **Note**

USCIS officers should provide applicants who bring completed Forms I-765 to their InfoPass appointments with general filing and eligibility requirements relating to employment authorization during the InfoPass appointment. See AFM **Chapter 36.2(d)** . If the applicant brings a completed Form I-765 and its supporting documentation with the parole request, return all such documents to the applicant so that applicant may file the I-765 application in accordance with the form instructions. Notify the applicant that a copy of his or her **I-94** card should be included along with the I-765 application.

### **If a parole request is denied**

- Compose a denial notice and mail it to the applicant by certified mail. The Immigration Service Officer (ISO) should consult with ICE, their supervisor and/or counsel as may be appropriate regarding whether an NTA or other enforcement action should be pursued against aliens denied parole.

- Perform system updates in accordance with existing procedures.

**Note**

If a parole request was adjudicated without all A-File(s) being present, when the file(s) arrive(s), consolidate the files, conduct a post-audit review of the decision and take any appropriate action.

**If a request to travel to the United States or other U.S. territory(ies) pursuant to Chapter 36.2(e) or an advance parole request pursuant to Chapter 36.2(f) is denied**

- In addition to mailing a denial notice to the parolee, send a copy of the denial to the CBP port director in Saipan.

### **36.3 Adjudication of Adjustment of Status Applications from Aliens Present in the Commonwealth of the Northern Mariana Islands (CNMI) after November 28, 2009.**

(a) Filing and Adjudication of Adjustment Application. Except as provided in this section, the general policies and procedures described in Chapter 23.2 and Chapter 23.5 apply to adjustment of status applications filed by residents of the CNMI.

(1) Filing Location. As of November 28, 2009, receipt of Adjustment of Status Applications is no longer limited to filings on behalf of immediate relatives of U.S. citizens permanent residing in the CNMI. Accordingly, as of that date USCIS may accept all family-based and employment-based immigrant classification filings under INA section 245(a).

An alien who is lawfully present in the CNMI with a CNMI immigration status and does not have evidence of admission or parole will file his or her adjustment application at the lockbox.

USCIS should not reject or deny an application for adjustment from a resident of the CNMI who does not have evidence of admission or parole solely for failure to provide evidence of admission or parole. These applications should continue to be processed and forwarded to the Guam Field Office for interview and processing at the Saipan ASC. USCIS may grant parole status to aliens who are otherwise eligible for adjustment immediately prior to the approval of the adjustment application. This policy for such applicants is in effect for applications filed before November 28, 2011.

(2) Jurisdiction. After receipt of the application for adjustment from a CNMI resident, the lockbox will forward it to the NBC for processing. Following processing, the NBC will forward it to the Guam Field Office for interview at the Saipan ASC.

(3) Presence in the United States. An alien who is present in the CNMI on or after November 28, 2009 (the "transition date") will be considered to be present in the United States by operation of law. The CNRA contains two provisions (commonly referred to as the "grandfather provisions") related to the continuation of presence in the CNMI:

- Any individual lawfully present under the CNMI immigration laws as of the transition date may remain in the CNMI until the expiration of the alien's authorized period of stay or until November 27, 2011, whichever is earlier; and
- Any individual with a CNMI work authorization as of the transition date retains such authorization until its expiration date or November 27, 2011, whichever is earlier).

(4) Requirement for Admission or Parole. A CNMI resident described in paragraph (3) who applies for adjustment of status will be considered an applicant for admission to the United States as described in INA section 235(a)(1) and, as such, eligible for the exercise of parole authority under INA section 212(d)(5). To meet the requirements of INA section 245(a), the Guam Field Office or the Saipan ASC will, under this policy, grant parole-in-place to an alien otherwise eligible for parole and adjustment immediately prior to approving of the adjustment application.

(5) Bars to Admission or Parole.

(A) Covenant-based Bars. Effective November 28, 2009, the requirement relating to the residence of the U.S. citizen petitioner is removed. The petitioner is not required to reside in the CNMI. Nonetheless, the adjudicator must carefully review the merits of each family-based case, including the bona fides of any spousal relationship between the petitioner and applicant.

Adjustment of status filings by residents of the CNMI are now accepted under section 245 of the INA for all family-based immigrant classifications, including immediate relative and preference categories. Title VII of Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA) made the INA applicable in the CNMI and remove the restriction in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant") prohibiting the filing of an adjustment of status application by anyone not an immediate relative of a U.S. citizen residing in the CNMI. It is important to note that this policy of accepting adjustment of status applications does not relieve the applicant from establishing all other eligibility criteria, such as admissibility and visa availability.

(B) Unauthorized Presence or Employment Bar. An alien in the CNMI who is lawfully present under the CNRA's grandfather provisions (see paragraph (a)(3)) is not barred from adjustment by operation of section 245(c)(2). An alien lawfully present in the CNMI under the CNRA transition provisions (providing for continued lawful status and employment authorization) will be considered eligible for adjustment under INA section 245(c)(2) absent:

- Some other violation of law rendering the alien removable; or
- Some other action inconsistent with lawful presence under the CNRA.

For purposes of section 245(c)(2), an alien present in the CNMI on November 28, 2009 will be considered to have entered the United States on that date.

(C) Bar to Adjustment as an Employment-based Immigrant Not in Lawful Nonimmigrant Status. Effective November 28, 2009, employment-based I-485 applications may be accepted from aliens in the CNMI. To be eligible, applicants must meet the requirements of Section 245(c)(7) and therefore show evidence of admission in a lawful nonimmigrant status under the INA.

An adjustment applicant applying under section 203(b) of the INA (employment-based) must meet the provisions of INA section 245(c)(7) that require the alien to be in a lawful nonimmigrant status. The grandfathered lawful presence of aliens pursuant to their previous CNMI statuses, or parole under the INA, cannot be considered to be a lawful nonimmigrant status. Nor can either of these conditions be considered as presence in the United States "pursuant to a lawful admission" for purposes of the exception to the section 245(c)(7) bar provided by section 245(k) of the INA. Therefore, eligibility for adjustment in the CNMI for grandfathered aliens is limited to family-based applicants.

(b) Applications for Advance Parole and Employment Authorization. Before November 28, 2009, the adjudication of an accompanying Advance Parole or Employment Authorization application filed with an Adjustment of Status application was withheld and adjudicated only upon direction from the Guam Field Office. As of November 28, 2009, employment authorization and requests for advance parole applications will be processed under normal operating procedures for these applications and requests, in accordance with current SOP guidelines. In addition to permitting travel back to the CNMI after a trip abroad, adjustment of status applicants are eligible for a grant of parole-in-place to travel to other parts of the United States. Similarly, work authorization provided to an adjustment of status applicant is not limited to the CNMI and, therefore, may be used for employment in any part of the United States. (See also Chapter 36.2)

### **36.4 Waivers of Inadmissibility and Grants of Status for Certain Aliens Seeking Nonimmigrant Status in the Commonwealth of the Northern Mariana Islands (CNMI) [Chapter 36.4 added 12/14/2010; PM-602-0012, AD11-12]**

#### **Policy**

USCIS officers may exercise the Secretary's authority under section 212(d)(3)(A)(ii) of the INA<sup>1</sup> to grant a waiver of inadmissibility to aliens present in the CNMI for inadmissibility that arises only under sections 212(a)(6)(A) and 212(a)(7)(B) of the INA. The prospective nonimmigrant must meet the following criteria in order for the waiver to be granted:

- Be lawfully present in the CNMI under a grant of parole by USCIS; a grant of parole by CBP pursuant to an advance parole by USCIS; or otherwise under the "grandfather provision" of the CRA (48 U.S.C. §1806(e)(1) or (2)) providing for continued lawful presence and work authorization (if applicable) for up to two years after Nov. 27, 2009.
- Have appropriate documents in the form of a valid unexpired passport and other evidence (such as a CNMI government-issued "umbrella permit" or other permit in the case of the grandfather provision, or a DHS-issued Form I-94 pursuant to a grant of parole) that the alien meets the lawful presence requirements for the waiver described above.
- File an application for nonimmigrant status or have a petition for nonimmigrant status filed on his or her behalf by an employer, seeking a nonimmigrant classification other than B.
- Meet all the other statutory and regulatory criteria for the intended nonimmigrant visa classification (such as L, H, F, or P).
- Have successfully completed all appropriate USCIS security checks.
- Meet his or her burden of proving admissibility other than for the specific grounds of inadmissibility for which a waiver is available under this policy.
- Demonstrate that he or she otherwise merits a favorable exercise of discretion.

Accordingly, upon approval of a petition or application for nonimmigrant status where the beneficiary meets the requirements stated above, including those who may have been granted parole in place by USCIS District 26, USCIS will admit the beneficiary, if not otherwise inadmissible, by granting the status sought and issuing a Form I-94 that provides evidence of admission.

A dependent's I-539 and grant of status may not be approved until the principal's I-129 and grant of status is approved. Both a principal and dependent are subject to the same conditions stated above.

#### **Implementation**

Officers should be guided by this policy in adjudicating petitions and applications for nonimmigrant status submitted by employers or aliens where the alien is present in the CNMI.

#### **USCIS Operations**

The petitioning employer or alien beneficiary must file either an I-129 petition or I-539 application with USCIS for a grant of nonimmigrant status under federal immigration laws. Such filings will still be subject to all other initial or change of status filing requirements as well as biometrics identification under the INA and current operating procedures. Derivative beneficiaries will also file I-539 applications as following-to-join or accompanying family members.

No specific form or fee is required in order to request a waiver of inadmissibility under this policy. In cases where the alien is determined on a case-by-case basis to be eligible for a waiver under this policy, the waiver should be granted without the need for the alien specifically to request it. Grant of a waiver under this policy does not preclude an alien from applying for the appropriate visa abroad if the alien desires the visa in order to facilitate travel.

Waivers of the nonimmigrant visa requirement granted under this policy are on-time waivers so that aliens will not need to travel abroad unnecessarily in order to obtain nonimmigrant status. Those waivers do not serve to waive lack of a visa in the case of aliens who travel abroad and seek to return to the CNMI.

#### **NOTES**

<sup>1</sup> 212(d)(3)(A)(ii) provides-

"(3)(A) Except as provided in this subsection, an alien ... (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the [Secretary of Homeland Security]. The [Secretary] shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph."



**36.5 Reserved**

**36.6 Reserved**

**36.7 Reserved**

### **36.8 Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C) of the INA [Chapter 36.8 added 11-23-2009]**

Aliens who are present in the Commonwealth of the Northern Mariana Islands (“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:

(a) 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.

(b) 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.

(c) 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.

(d) 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 November 26, 2006 with the 1 year foreign experience completed by November 27, 2009. The experience will qualify if it is obtained at any time within this 3 year window.

(e) These policies also apply to petitions filed for immigrant status under **Section 203(b)(1)(C)** under the INA.