



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **JAN 23 2014** OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker Classification Pursuant to 48 U.S.C. § 1806(d)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp or seal.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The petition will be remanded to the director for further action consistent with this decision.

The petitioner submitted a Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center on November 29, 2011. In the Form I-129CW visa petition, the petitioner describes its type of business as "document handling service/Translation service, [REDACTED]". In order to employ the beneficiary in what it designates as a general manager position, the petitioner seeks to classify him as a CNMI-Only Nonimmigrant Transitional Worker (CW-1) to work in the Commonwealth of the Northern Mariana Islands (CNMI) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition on March 28, 2013 as a matter of administrative discretion stating that "the petitioner has failed to demonstrate eligibility and for other good cause." The petitioner subsequently filed an appeal on April 19, 2013.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129CW and supporting documentation; (2) the director's request for evidence (RFE) dated December 26, 2012; (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In this matter, the petitioner filed the Form I-129CW on behalf of the beneficiary to serve as a general manager on a full-time basis at a salary of \$8.00 per hour. With the Form I-129CW, the petitioner provided documentation in support of the petition, including the following:

- A Foreign National Worker Permit issued by the CNMI Department of Labor for the beneficiary on November 27, 2009 and valid until November 27, 2011;
- An Authorization for Parole for an Alien into the United States;
- A Form I-94, Arrival-Departure Record, for the beneficiary;
- A copy of employment contract between the petitioner and the beneficiary dated November 19, 2011; and
- A job posting placed on the CNMI Department of Labor website for the position of general manager.

¹ In the Form I-129CW visa petition, the petitioner indicated that it was established in 2006 and has four employees. The petitioner further stated that its gross annual income is approximately \$94,330 per year and that its net annual income is approximately \$13,240 per year.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director's notice outlined the evidence to be submitted.

The petitioner responded to the RFE by submitting additional evidence, including the following:

- Form 1120-CM, Corporate Income Tax Return for 2012, 2011, and 2010;
- Form 941-SS, Employer's Quarterly Federal Tax Returns for 2012;
- Business Gross Revenue Tax/Monthly Returns;
- CNMI Article of Incorporation;
- Business licenses;
- Zoning permits;
- Financial statements for 2011 and 2012; and
- Copies of untranslated advertisements, with the petitioner's name printed in English.

The director reviewed the evidence submitted and denied the petition on March 28, 2013. Specifically, the director stated:

[Title] 8 C.F.R. 214.2(w)(2) describes the requirements for eligible aliens under the CW transitional program. Specifically, 8 C.F.R. 214.2(w)(2)(v) states that the CW-1 nonimmigrant must not be inadmissible to the United States as a nonimmigrant or that such alien must be granted a waiver of each applicable ground of inadmissibility.

Pursuant to 8 C.F.R. 214.2(w)(21): "[t]he ultimate decision to grant or deny CW-1 or CW-2 classification or status is a discretionary determination, and the petition or the application may be denied for failure of the petitioner or the applicant to demonstrate eligibility or for other good cause." USCIS has determined in its discretion that the petitioner should be denied because the petitioner has failed to demonstrate eligibility and for other good cause.

USCIS has thoroughly reviewed the instant record of proceeding and has afforded due consideration with regards to positive factors that must be weighed when considering the adjudication and grant of status to the alien to the United States as a nonimmigrant. When the evidence of record is viewed in its totality USCIS believes that the favorable exercise of the Secretary of Homeland Security's discretion is not warranted in this instance. Therefore, the petition is denied as a matter of

administrative discretion.

Thereafter, the petitioner filed the instant appeal of the denial of the CW-1 petition. Based upon a complete review of the record of proceeding, the AAO will discuss some findings that are material to the determination of the merits of this appeal.

The AAO notes that the regulation at 8 C.F.R. § 103.2(b)(19) states that the director will notify a petitioner in writing of a decision made on a benefit request. Further, 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the director shall explain in writing the specific reasons for denial.

For a petition to be granted, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The regulation at 8 C.F.R. § 214.2(w) states the following regarding classifying aliens as CW-1 nonimmigrants:

- (2) Eligible aliens. Subject to the numerical limitation, an alien may be classified as a CW-1 nonimmigrant if, during the transition period, the alien:
 - (i) Will enter or remain in the CNMI for the purpose of employment in the transition period in an occupational category that DHS has designated as requiring alien workers to supplement the resident workforce;
 - (ii) Is petitioned for by an employer;
 - (iii) Is not present in the United States, other than the CNMI;
 - (iv) If present in the CNMI, is lawfully present in the CNMI;
 - (v) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility; and
 - (vi) Is ineligible for status in a nonimmigrant worker classification under section 101(a)(15) of the Act.

Further, the regulation at 8 C.F.R. § 214.2(w) states the following regarding eligible employers:

- (4) Eligible employers. To be eligible to petition for a CW-1 nonimmigrant worker, an employer must:
 - (i) Be engaged in legitimate business;
 - (ii) Consider all available United States workers for the position being filled by the CW-1 worker;

- (iii) Offer terms and conditions of employment which are consistent with the nature of the petitioner's business and the nature of the occupation, activity, and industry in the CNMI; and
- (iv) Comply with all Federal and Commonwealth requirements relating to employment including but not limited to nondiscrimination, occupational safety, and minimum wage requirements.

The regulation further specifies that documentary evidence establishing eligibility for CW status is required. 8 C.F.R. § 214.2(w)(6). A petition must be accompanied by evidence demonstrating the petitioner meets the definition of eligible employer. *Id.* The AAO reviewed the documentation provided by the petitioner with its initial petition and in response to the RFE, and notes that the documentation is not sufficient to establish eligibility.

In the instant case, the documentation submitted by the petitioner does not establish that the petitioner considered all available United States workers for the position being filled by the CW-1 worker.² More specifically, the petitioner filed the Form I-129CW on behalf of the beneficiary to serve as a general manager on a full-time basis at a salary of \$8.00 per hour. However, the petitioner submitted a job posting placed on the CNMI Department of Labor website for the position of general manager for which the salary is \$6 per hour – thus, 25% less than the wage offered to the beneficiary for the proffered position.³ The wage in the advertisement is less favorable than the wage offered to the beneficiary (thus, limiting the pool of applicants).

Given that the salary is not the same, it appears that the job posting is for a different position than the proffered position. The petitioner has not provided probative evidence that it placed a job posting for the proffered position as described in the CW-1 petition. Accordingly, the documentation does not establish that the petitioner considered all available United States workers for the position being filled by the beneficiary and, thus, that it meets the requirements to establish that it is an eligible employer in accordance with 8 C.F.R. § 214.2(w)(4).

Furthermore, the petitioner must provide an attestation certified as true and accurate that no qualified United States worker is available to fill the position. 8 C.F.R. § 214.2(w)(6)(i)(A). However, for the reasons discussed above, the AAO must question the accuracy of the petitioner's attestation on this issue. Further, in accordance with the regulations, the petitioner must attest that the beneficiary meets the qualifications for the position. 8 C.F.R. § 214.2(w)(6)(ii)(E). In the instant case, the job posting states the petitioner's "Qualification Requirements" as a bachelor's degree and at least four years of general manager experience requested. The petitioner's requirements do not appear elsewhere in the record, and the petitioner did not submit any documentation establishing the

² Furthermore, the email address provided on the job posting does not correspond to the email address provided by the petitioner on the Form I-129 and Form I-290B. No explanation for the inconsistency was provided by the petitioner.

³ The job posting indicates that the maximum wage for the position is \$6 per hour.

beneficiary's credentials. The record of proceeding does not establish that the petitioner has met its burden of proof in this regard.

Accordingly, the petition will be remanded to the director for further action consistent with this decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The matter is remanded to the director for further action consistent with this decision.