



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 08 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

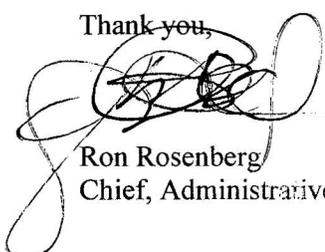
ON BEHALF OF PETITIONER:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


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 appeal will be dismissed. The petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner submitted a Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center on September 6, 2013. In the Form I-129CW visa petition, the petitioner describes itself as a help supply service company that was established in 1990. In order to employ the beneficiary in what it designates as a cook position, the petitioner seeks to classify him as a CNMI-Only Nonimmigrant Transitional Worker (CW-1) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition on March 7, 2014, finding that the petitioner failed to establish that the beneficiary was an eligible alien in accordance with 8 C.F.R. § 214.2(w)(2). Counsel for the petitioner subsequently filed a timely appeal.

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

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed.

II. ISSUE

The issue here is whether the petitioner established that the beneficiary was an eligible alien in accordance with 8 C.F.R. § 214.2(w)(2).

III. LAW

Under the regulatory provisions at 8 C.F.R. § 214.2(w)(2), 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 [U.S. Department of Homeland Security] 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 or classification under section 101(a)(15) of the Act.

"Lawfully present in the CNMI" is defined as follows under 8 C.F.R. § 214.2(w)(1)(v):

- (A) At the time the application for CW status is filed, is an alien lawfully present in the CNMI under 48 U.S.C. § 1806(e); or
- (B) Was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted or paroled as a visitor for a business or pleasure (B-1 or B-2, under any visa-free travel provision or parole of certain visitors from Russia and the People's Republic of China), and remains in a lawful immigration status.

The "transition period" is described at 48 U.S.C. § 1806(a):

- (2) Transition period
There shall be a transition period beginning on the transition program effective date and ending on December 31, 2014, except as provided in subsections (b) and (d), during which the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth, as provided in this section (hereafter referred to as the "transition program").

We now turn to 48 U.S.C. § 1806(e), which states, in pertinent part, the following:

Persons lawfully admitted under the Commonwealth immigration law

- (1) Prohibition on removal
 - (A) In general
Subject to subparagraph (B), no alien who is lawfully present in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be removed from the United States on the grounds that such alien's presence in the Commonwealth is in violation of section 212(a)(6)(A) of

the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)), until the earlier of the date –

(i) of the completion of the period of the alien's admission under the immigration laws of the Commonwealth; or

(ii) that is 2 years after the transition program effective date.

(B) Limitations

Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(6)(A)) of such an alien at any time, if the alien entered the Commonwealth after the date of enactment of the Consolidated Natural Resources Act of 2008, and the Secretary of Homeland Security has determined that the Government of the Commonwealth has violated section 702(i) of the Consolidated Natural Resources Act of 2008.

(2) Employment authorization

An alien who is lawfully present and authorized to be employed in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be considered authorized by the Secretary of Homeland Security to be employed in the Commonwealth until the earlier of the date –

(A) of expiration of the alien's employment authorization under the immigration laws of the Commonwealth; or

(B) that is 2 years after the transition program effective date.

(3) Registration

The Secretary of Homeland Security may require any alien present in the Commonwealth on or after the transition period effective date to register with the Secretary in such a manner, and according to such schedule, as he may in his discretion require. Paragraphs (1) and (2) of this subsection shall not apply to any alien who fails to comply with such registration requirement. Notwithstanding any other law, the Government of the Commonwealth shall provide to the Secretary all Commonwealth immigration records or other information that the Secretary deems necessary to assist the implementation of this paragraph or other provisions of the Consolidated Natural Resources Act of 2008. Nothing in this paragraph shall modify or limit section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or other provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] relating to the registration of aliens.

- (4) **Removable aliens**
Except as specifically provided in paragraph (1)(A) of this subsection, nothing in this subsection shall prohibit or limit the removal of any alien who is removable under the Immigration and Nationality Act.
- (5) **Prior orders of removal**
The Secretary of Homeland Security may execute any administratively final order of exclusion, deportation or removal issued under authority of the immigration laws of the United States before, on, or after the transition period effective date, or under authority of the immigration laws of the Commonwealth before the transition period effective date, upon any subject of such order found in the Commonwealth on or after the transition period effective date, regardless whether the alien has previously been removed from the United States or the Commonwealth pursuant to such order.

Under 48 U.S.C. § 1806(e)(1), the emphasis of the relevant time period is the earlier of the date of the expiration of the alien's admission under the immigration laws of CNMI or two years after the transition program effective date.

The regulatory provision at 8 C.F.R. § 214.2(w) states the following with regard to a change of employer for a CW-1 nonimmigrant:

- (7) **Change of employers.** A change of employment to a new employer inconsistent with paragraphs (w)(7)(i) and (ii) of this section will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. A CW-1 nonimmigrant may change employers if:
 - (i) The prospective new employer files a petition to classify the alien as a CW-1 worker in accordance with paragraph (w)(5) of this section, and
 - (ii) An extension of the alien's stay is requested if necessary for the validity period of the petition.
 - (iii) A CW-1 may work for a prospective new employer after the prospective new employer files a Form I-129CW petition on the employee's behalf if:
 - (A) The prospective employer has filed a nonfrivolous petition for new employment before the date of expiration of the CW-1's authorized period of stay; and
 - (B) Subsequent to his or her lawful admission, the CW-1 has not been employed without authorization in the United States.

- (iv) Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.
- (v) If a CW-1's employment has been terminated prior to the filing of a petition by a prospective new employer consistent with paragraphs (w)(7)(i) and (ii), the CW-1 will not be considered to be in violation of his or her CW-1 status during the 30-day period immediately following the date on which the CW-1's employment terminated if a nonfrivolous petition for new employment is filed consistent with this paragraph within that 30-day period and the CW-1 does not otherwise violate the terms and conditions of his or her status during that 30-day period.

IV. ANALYSIS

USCIS records indicate that [REDACTED] filed a CW-1 petition on behalf of the beneficiary. The petition was approved for employment from May 3, 2012 to May 2, 2013. On October 22, 2012, [REDACTED] filed a CW-1 petition on behalf of the beneficiary. This petition was denied on May 9, 2013.¹

Subsequently, on September 6, 2013, the petitioner submitted the instant petition. In Part 2 of the form, the petitioner indicated that the "Basis of Classification" was "[c]hange of employer" and provided the receipt number [REDACTED] which corresponds to the petition filed by [REDACTED]. Contrary to the petitioner's claim, however, the referenced petition had been denied and the beneficiary had not been granted CW-1 classification on the basis of [REDACTED] filing.

In response to the RFE and in the appeal brief, the petitioner and counsel indicate that the beneficiary applied for parole but that the request was denied. When a request for parole is denied, the applicant will accrue unlawful presence beginning on the date his status expired. The submission of a request for parole does not authorize employment.

Thus, while the record of proceeding indicates that the beneficiary was granted CW-1 classification until May 2, 2013, we note that the instant petition was filed approximately four months after the expiration of the beneficiary's CW-1 classification validity period. Accordingly, the petitioner has not established that the instant petition was filed in accordance with the change of employer provisions at 8 C.F.R. § 214.2(w)(7).

¹ Subsequently, [REDACTED] filed an appeal, but it was summarily dismissed. Since the CW-1 petition filed by [REDACTED] was never granted, it cannot serve as the basis for the petitioner's request for a change of employer.

Further, the petitioner has not provided probative evidence that the beneficiary was granted any other lawful status in the CNMI after May 2, 2013. There is a lack of evidence demonstrating that the beneficiary was lawfully present in the CNMI at the time the instant CW-1 petition was filed.

V. CONCLUSION

Based upon a complete review of the record of proceeding, we find that the petitioner has not established eligibility for the benefit sought.

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 appeal is dismissed. The petition is denied.