



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

(b)(6)

DATE: **APR 14 2015** 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:

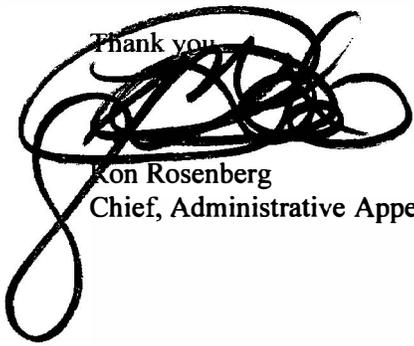
SELF-REPRESENTED

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. 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. In the Form I-129CW visa petition, the petitioner describes itself as a business, with two employees, that was established in [REDACTED]¹. In order to employ the beneficiary in what it designates as an electrician 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, concluding that the petitioner did not establish that the beneficiary was an eligible alien in accordance with the applicable regulations. The petitioner subsequently filed an appeal.

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

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;

¹ The petitioner provided the following information as to the type of business it conducts: retail, house rental.

- (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.

The regulatory provision at 8 C.F.R. § 214.2(w)(1)(v) defines "lawfully present in the CNMI" as follows:

- (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 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.

The regulatory provision at 8 C.F.R. § 214.2(w) further states, in pertinent part, the following with regard to an alien violating his or her CW-1 status:

- 23) Expiration of status. CW-1 status expires when the alien violates his or her CW-1 status (or in the case of a CW-1 status violation caused solely by termination of the alien's employment, at the end of the 30 day period described in section 214.2(w)(7)(v)), 10 days after the end of the petition's validity period, or at the end of the transitional worker program, whichever is earlier.

An individual in CW-1 status may be employed only by the petitioner through whom the status was obtained or as otherwise authorized by the regulations. 8 C.F.R. § 274a.12(b)(23).

IV. ANALYSIS

The record of proceeding indicates the following:

- [REDACTED] filed a CW-1 petition on behalf of the beneficiary on November 29, 2011.
- The petition was denied on March 27, 2013.
- [REDACTED] filed a CW-1 petition on behalf of the beneficiary on December 9, 2011.
- The petition was initially approved, but thereafter, on May 20, 2013, it was automatically revoked because the employer filed a written withdrawal of the petition. The employer stated that it did not wish to pursue the petition.
- [REDACTED] filed a CW-1 petition on behalf of the beneficiary on December 31, 2012.
- The petition was approved with validity dates of March 13, 2013 to March 12, 2014.

On March 13, 2014, the petitioner filed the instant petition. In Part 2 of the form, the petitioner indicated that the "Basis of Classification" was "[c]hange of employer." Although required by the Form I-129CW (page 2), the petitioner did not include the prior petition receipt number. Furthermore, the petitioner stated (on page 3) that the beneficiary had never been denied CW-1 classification. The regulations state that each benefit request must be properly completed. 8 C.F.R. § 103.2(b)(1).

The director reviewed the submission and issued an RFE. In response to the RFE, the petitioner indicated that the beneficiary had been terminated from his employment with [REDACTED] in May 2013. Thus, the beneficiary's employment ended over ten months before the instant petition was filed (specifically, 314 days earlier). Thus, more than 30 days lapsed between the termination of his previous employment and the filing the instant petition. We observe that the petitioner has not provided probative evidence establishing that the beneficiary was granted any other lawful status in the CNMI and was lawfully present in the CNMI at the time the instant CW-1 petition was filed.

Moreover, we note that the response to the RFE indicates that the beneficiary was employed by the petitioner as a "manager" in 2013 and 2014. More specifically, the evidence includes, *inter alia*, a Wage and Tax Statement (Form W-2CM) reporting that the beneficiary was compensated \$8,467.20 by the petitioner in 2013, as well as documentation submitted to the Division of Revenue and Taxation indicating the beneficiary was employee of the petitioner (in fact, at times, he was reported as being the only employee) during 2013 and 2014. The beneficiary, however, was not legally authorized to work for the petitioner.² Thus, for this reason as well the record does not demonstrate that the beneficiary has maintained lawful status.

V. CONCLUSION

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

² Moreover, we must question whether the petitioner has accurately described the terms and conditions of the beneficiary's employment in the CW petition, including that the beneficiary will serve as a full-time electrician who job duties are to "do the electrical & maintenance." Nevertheless, as the petitioner has not established eligibility for the benefit sought for the reasons discussed in this decision, we need not address this issue and/or the additional issues that we observe in the record of proceeding.