



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2537-13; DHS Docket No. USCIS-2012-0010]

RIN 1615-ZB23

**Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional
Worker Numerical Limitation for Fiscal Year 2014**

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitation.

SUMMARY: The Secretary of Homeland Security announces that the annual fiscal year numerical limitation for Commonwealth of the Northern Mariana Islands (CNMI)-only Transitional Worker (CW-1) nonimmigrant classification for fiscal year (FY) 2014 is set at 14,000. In accordance with Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) (codified, in relevant part, at 48 U.S.C. 1806(d)) and 8 CFR 214.2(w)(1)(viii)(C), this document announces the mandated annual reduction of the CW-1 numerical limit and provides the public with information regarding the new CW-1 numerical limit. This document is intended to ensure that CNMI employers and employees have sufficient notice regarding the maximum number of workers who may be granted transitional worker status during the upcoming fiscal year.

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extends U.S. immigration law to the CNMI and provides CNMI-specific provisions affecting foreign workers. See Pub. L. 110-229, 122 Stat. 754, 853. The CNRA included provisions for a “transition period” to phase-out the CNMI’s nonresident contract worker program and phase-in the U.S. federal immigration system in a manner that minimizes the adverse economic and fiscal effects and maximizes the CNMI’s potential for future economic and business growth. See sec. 701(b) of the CNRA. The CNRA authorized DHS to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period, which ends December 31, 2014.¹ See id.; 48 U.S.C. 1806(d)(2). The CNRA also mandated an annual reduction in the allocation of the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. 48 U.S.C. 1806(d)(2).

Consistent with this mandate under the CNRA, DHS published a final rule on September 7, 2011 amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW-1 for principal workers and CW-2 for spouses and

¹ The Secretary of Labor is authorized to extend the transitional worker program beyond December 31, 2014 for up to five years. See 48 U.S.C. 1806(d)(5). An extension decision must be made no later than 180 days before the expiration of the transition period on December 31, 2014, i.e., no later than July 7, 2014 (the first business day after the date that is 180 days before the end of the transition date, Friday, July 4, 2014). The Secretary of Labor has not made an extension decision as of the date of this Notice.

minor children). See Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011). DHS established the CW-1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. See 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS opted to publish any future annual numerical limitations by Federal Register notice. See 8 CFR 214.2(w)(1)(viii)(C). Instead of developing a numerical limit reduction plan, DHS determined that it would assess the CNMI's workforce needs on a yearly basis. Id. This initial approach to the allocation system ensured that employers had an adequate supply of workers to provide a smooth transition into the federal immigration system. It also provided DHS with the flexibility to adjust to the future needs of the CNMI economy and to assess the total alien workforce needs based on the number of requests for transitional worker nonimmigrant classification received following implementation of the CW-1 nonimmigrant classification.

DHS followed this same rationale for the FY 2013 annual fiscal year numerical limitation. After assessing all workforce needs, including the opportunity for growth, DHS set the CW-1 numerical limitation at 15,000. CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012). The FY 2013 numerical limitation was based on the actual demonstrated need for foreign workers within the CNMI during FY 2012. See id.

II. Maximum CW-1 Nonimmigrant Workers for Fiscal Year 2014.

The maximum number of CW-1 nonimmigrant workers announced in this document (14,000) is appropriate based on the actual demonstrated need for foreign workers within the CNMI. As of August 13, 2013, in FY 2013, employers in the CNMI

filed 4,791 petitions for CNMI-Only Nonimmigrant Transitional Workers, Form I-129 CW, requesting a total of 7,323 nonimmigrant transitional workers during FY 2013.² DHS continues to believe that the number of requested CW-1 nonimmigrant workers in the previous fiscal year provides an accurate assessment to use in determining the likely demand in FY 2014. In doing so, DHS also takes into account the number of CW-1 requests received in FY 2013. To date, most of the CW-1 petitions received in FY 2013 are extensions of CW-1 nonimmigrant status. DHS anticipates that this trend will continue; employers who petitioned for initial CW-1 nonimmigrant status are likely to seek to renew that status. It is important to note that the approvals for initial CW-1 nonimmigrant workers were staggered throughout FY 2012. Therefore, the need to file extensions for these workers will also be spread out throughout 2013. Most CW-1 beneficiaries still have valid CW-1 nonimmigrant status until late summer of 2013. Some employers may not have to file for their CW-1 nonimmigrant workers, to the extent that they plan to extend, until later in the year. As a result, USCIS has not yet received the total projected number of CW-1 extensions for the 12,247 initial CW-1 nonimmigrant workers granted in FY 2012. In short, DHS anticipates that the majority of the CW-1 employers will request renewal for their CW-1 workers' nonimmigrant statuses later in the year. These requests, to the extent they are granted, will be counted under the FY 2013 cap.

The CNRA requires an annual reduction in the number of transitional workers (and complete elimination of the CW nonimmigrant classification by the end of the transition period) but does not mandate a specific reduction. 48 U.S.C. 1806(d)(2). In

² USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB), figures provided as of August 13, 2013. This data includes petitions for initial status and for extensions of status.

addition, 8 CFR 214.2(w)(1)(viii)(C) provides that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and it will be reasonably calculated to reduce the number of CW-1 nonimmigrant workers to zero by the end of the transition period.

To comply with these requirements, meet the CNMI's labor market's needs, provide opportunity for growth, and preserve access to foreign labor, DHS has set the numerical limitation for FY 2014 at 14,000. DHS arrived at this figure by taking the number of CW-1 nonimmigrant workers needed based on the FY 2013 limitation of 15,000, and then reducing it by 1,000, or approximately 6.7 percent. This number will accommodate the staggered extensions for the 12,247 initial CW-1 nonimmigrant workers granted during FY 2012 (to the extent that the employer requests an extension) and will also accommodate possible economic growth that might lead to a need for additional nonimmigrant workers during FY 2014.

In setting this new number, DHS also considered the effect of the FY 2014 numerical limitation on an extension of the transitional worker program, if any. To date, the Department of Labor (DOL) has not announced a decision on the extension of the program. However, DHS must prepare for both the end of the transitional worker program and for an extension of the transitional worker program; a drastic reduction would not account for the possibility of an extension. DHS must ensure that the numerical limitation is reduced as statutorily mandated, but that it still provides for enough CW-1s for future fiscal years if the transitional worker program is extended. DHS thus believes that a reduction of only 6.7 percent or 1,000 is appropriate because the new baseline must preserve access to foreign labor, as well as accommodate future

reductions, if the DOL extends the transitional worker program. Accordingly, DHS reduced the number of transitional workers from the current fiscal year numerical limitation of 15,000, and established the maximum number of CW-1 nonimmigrant visas available for FY 2014 at 14,000.

This number of CW-1 nonimmigrant workers will be available beginning on October 1, 2013. DHS may adjust the numerical limitation for a fiscal year or other period, in its discretion, at any time via notice in the Federal Register. 8 CFR 214.2(w)(1)(viii)(D). Consistent with the rules applicable to other nonimmigrant worker visa classifications, if the numerical limitation for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. 8 CFR 214.2(w)(1)(viii)(E).

Petitions requesting a start date within fiscal year 2014 will be counted against the 14,000 limit. As such, each CW-1 nonimmigrant worker who is listed on a Form I-129CW is counted against the numerical limitation at the time USCIS receives the petition. Counting the petitions in this manner will help ensure that USCIS does not approve requests for more than 14,000 CW-1 nonimmigrant workers. If the number of CW-1 nonimmigrant workers approaches the 14,000 limit, USCIS will hold any subsequently-filed petition until a final determination is made on the petitions that are already included in the numerical count. Subsequently-filed petitions will be forwarded for adjudication in the order in which they were received until USCIS has approved petitions for the maximum number of CW-1 nonimmigrant workers; any remaining petitions that were held or that are newly received will be rejected.

This document does not affect the immigration status of aliens who hold CW-1 nonimmigrant status. Aliens currently holding such status, however, will be affected by

this document when they apply for an extension of their CW-1 nonimmigrant classification, or a change of status from another nonimmigrant status to that of CW-1 nonimmigrant status.

This document does not affect the status of any alien currently holding CW-2 nonimmigrant status as the spouse or minor child of a CW-1 nonimmigrant worker. This document also does not directly affect the ability of any alien to extend or otherwise obtain CW-2 status, as the numerical limitation applies to CW-1 principals only. Aliens seeking CW-2 status may, however, be indirectly affected by the applicability of the cap to the CW-1 principals from whom their status is derived.

Rand Beers,
Acting Secretary.

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