



DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1208, 1209, 1212, and 1235

AG Order No. 4667-2020

RIN 1125-AA95

Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018

AGENCY: Executive Office for Immigration Review, DOJ.

ACTION: Final rule.

SUMMARY: The Department of Justice (“DOJ” or “the Department”) is making technical amendments to its regulations to conform to changes made by the Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act). The Workforce Act, in part, extended the bar for asylum in the Commonwealth of the Northern Mariana Islands (CNMI) by fifteen years, providing that the current bar will continue to apply for asylum applications submitted prior to January 1, 2030. This final rule makes the necessary conforming date changes in the Department’s regulations.

DATES: This rule is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

The Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) program allows employers within the CNMI to apply for permission to employ nonimmigrant workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories. *See* Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011). This transitional worker program was intended to provide for an orderly transition for those workers from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act (“INA”), and to mitigate potential harm to the CNMI economy as employers adjust their hiring practices and as foreign workers obtain U.S. immigrant or nonimmigrant status.

On July 24, 2018, President Donald J. Trump signed the Northern Mariana Islands U.S. Workforce Act of 2018 (“the Workforce Act”), Pub. L. 115-218, 132 Stat. 1547. The stated purposes of the Workforce Act are to increase the percentage of United States workers in the total workforce of the CNMI, while maintaining the minimum number of non-U.S. workers to meet the demands of the CNMI’s economy; to encourage the hiring of United States workers into the CNMI workforce; and to ensure that no U.S. worker is at a competitive disadvantage compared to a non-U.S. worker or is displaced by a non-U.S. worker. Workforce Act sec. 2.

The Workforce Act made a number of changes to the transitional provisions of Title VII of the Consolidated Natural Resources Act of 2008 (“CNRA”), Public Law 110-229, 122 Stat. 754, 853-854—which extended the U.S. immigration laws, with limited

exceptions, to the CNMI—and requires the Secretaries of Homeland Security and Labor to each promulgate an Interim Final Rule (“IFR”) implementing the related statutory changes. The Department of Labor (“DOL”) IFR was published on April 1, 2019, and went into effect on April 4, 2019.¹

Most of the other changes implemented under the Workforce Act that govern immigration policy and procedures will affect Department of Homeland Security (“DHS”) regulations. The resulting revisions to the DHS regulations will be addressed in a separate rulemaking. However, given the authority of the immigration judges and the Board of Immigration Appeals (“BIA”) to adjudicate asylum claims for aliens who are placed in proceedings before the immigration judges and the BIA, the Attorney General is making technical amendments to its regulations to reflect that the Workforce Act extended the statutory bar for asylum in the CNMI by fifteen years. Accordingly, this final rule replaces the current date of “January 1, 2015” with the new date of “January 1, 2030” in the applicable sections of the regulations.

II. Legal Authority

The Attorney General’s general authority for the regulatory amendments is found in the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and the Homeland Security Act of 2002 (HSA), Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* The Attorney General’s specific authority for issuing this rule is found in section 103(g) of the INA, 8 U.S.C. 1103(g), which authorizes the Attorney General to administer and enforce the immigration and nationality laws, as well as section 1101 of the HSA, 6 U.S.C. 521.

¹ 84 FR 12380 (Apr. 1, 2019).

III. Technical Amendments

The Attorney General is making technical amendments to regulations of the Executive Office for Immigration Review (“EOIR”) to reflect that Congress has extended the statutory bar for asylum in the CNMI by fifteen years. *See* Workforce Act at sec. 3(a); 48 U.S.C. 1806(a)(2). These technical amendments (i.e., a change of date) are being made in the following provisions of the EOIR regulations: 8 CFR 1208.1(a)(2), 1208.2(c)(1)(iii), (iv), (vii), (viii), 1208.4(a)(2)(ii), 1208.5(a), (b)(1)(iii), 1208.30(a), 1209.2(a)(3), 1212.1(q)(8)(i)(A), (ii)(A), and 1235.6(a)(1)(ii), (iii). These are the only changes being made in the EOIR regulations.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 13771

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation; Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The rule merely revises regulations to conform to a new date set by the Workforce Act. The Office of Information and Regulatory Affairs, of the Office of Management and Budget, has determined that this final rule is not a “significant regulatory action” as defined in Executive Order 12866, section 3(f). Accordingly, this final rule has not been reviewed by the Office of Management and Budget.

Finally, because this rule is not a significant regulatory action, it is not subject to the requirements of Executive Order 13771. There are no costs associated with this

regulation. Because there are no costs associated with this final rule, there are no monetized benefits.

B. Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, “Federalism,” the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

D. Administrative Procedure Act

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), an agency may, for good cause, find that the usual requirements of prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The rule merely makes technical amendments to the EOIR regulations to reflect that Congress has extended the statutory bar for asylum in the CNMI by fifteen years. Because the Department must follow the mandate of Congress and has no discretion in the matter, the Department has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary.

E. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 603, 604, and 605(b), a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this regulatory amendment.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1535.

G. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521.

H. Congressional Review Act of 1996

This rule is not a major rule as defined by the Congressional Review Act of 1996, 5 U.S.C. 804.

List of Subjects

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1209

Aliens, Immigration, Refugees.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the Attorney General amends 8 CFR parts 1208, 1209, 1212, and 1235 as follows:

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 1208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115-218.

§§ 1208.1, 1208.2, 1208.4, 1208.5, and 1208.30 [Amended]

2. In part 1208, remove the date “January 1, 2015” and add in its place the date “January 1, 2030” in the following places:

- a. Section 1208.1(a)(2) (two occurrences);
- b. Section 1208.2(c)(1)(iii), (iv), (vii), and (viii);
- c. Section 1208.4(a)(2)(ii) (two occurrences);
- d. Section 1208.5(a) and (b)(1)(iii);
- e. Section 1208.30(a).

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS

GRANTED ASYLUM

3. The authority citation for part 1209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115-218.

§ 1209.2 [Amended]

4. In § 1209.2, remove the date “January 1, 2015” and add in its place the date “January 1, 2030” in paragraph (a)(3).

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS;

WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

5. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Title VII of Pub. L. 110–229; Pub. L. 115-218.

§ 1212.1 [Amended]

6. In § 1212.1, remove the date “January 1, 2015” and add in its place the date “January 1, 2030” wherever it appears in paragraphs (q)(8)(i)(A) and (q)(8)(ii)(A).

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

7. The authority citation for part 1235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Pub. L. 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 115-218.

§ 1235.6 [Amended]

8. In § 1235.6, remove the date “January 1, 2015” and add in its place the date “January 1, 2030” in paragraphs (a)(1)(ii) and (iii).

Dated: March 17, 2020.

William P. Barr
Attorney General

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