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***273 5. DHS Announces Interim Final Rule on Implementation of New Guam-CNMI Visa Waiver Program**

The Department of Homeland Security (DHS) has issued an interim final rule replacing the current Guam Visa Waiver Program with a new Guam-CNMI [Commonwealth of the Northern Mariana Islands] Visa Waiver Program. The rule enacts the changes made to the INA by § 702 of the Consolidated Natural Resources Act of 2008 (CNRA), [FN89] which extends U.S. immigration laws to the CNMI and calls for a visa waiver program for travel to Guam and the CNMI.

The rule establishes requirements for nonimmigrant visitors who seek admission without a visa to Guam or the CNMI for business or pleasure. Currently, an alien is admissible under the Guam Visa Waiver Program if he or she is classifiable as a visitor for business or pleasure, ***274** is solely entering and staying on Guam for a period not to exceed 15 days, is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding 15 days from the date of admission to Guam, is in possession of a completed and signed Guam Visa Waiver Information Form (Form I-736), waives any right to review or appeal under the INA of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, and waives any right to contest other than on the basis of an application for asylum any action for deportation of the alien. [FN90]

Under the interim rule, the criteria will also apply to those seeking admission to the CNMI, and the period of stay is extended to 45 days. [FN91] Three more criteria have also been added. Under this interim final rule, non-immigrant aliens must also (1) be in possession of a valid unexpired passport that meets the standards of the International Civil Aviation Organization (ICAO) for machine readability and is issued by a country that meets the eligibility requirements as determined by the Secretary; (2) have not previously violated the terms of any prior admissions to the U.S. under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, or the Visa Waiver Program as described in INA § 217(a) [8 USCA § 1187(a)] and admissions pursuant to any immigrant or nonimmigrant visa; and (3) present a valid completed and signed Form I-94, known as the Arrival-Departure Record Form. [FN92]

The interim rule gives DHS the authority to remove aliens "upon a determination that the alien is inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility (other than for lack of visa)" under INA § 212 [8 USCA § 1182]. Also, DHS may remove aliens who present fraudulent travel documents or who have violated the terms of their admission under the Guam-CNMI Visa Waiver Program. [FN93]

Aliens admitted under the Guam-CNMI Visa Waiver Program in Guam who seek asylum or withholding of removal must be issued a Form I-863 for proceedings in accordance with 8 CFR § 208.2(c)(1), but all others are not entitled to a proceeding before an immigration judge, and DHS may remove them. However, aliens who were admitted under the Guam-CNMI Visa Waiver Program and are physically present in the CNMI are prohibited by § 702 from applying for asylum during the transition period, which runs through January 1, 2015.

[FN94] Aliens in the CNMI who assert a fear of persecution or torture may only seek withholding from removal pursuant to INA § 241(b)(3) [8 USCA § 1231(b)(3)] or the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [FN95]

Extensions of stay are not permitted under the Guam-CNMI Visa Waiver Program. [FN96] However, aliens admitted under the program may seek a period of satisfactory departure. Under new 8 CFR § 212.1(q)(7), if an alien admitted under the Guam-CNMI Visa Waiver Program is prevented from departing within the period of his or her authorized stay due to an emergency, U.S. Customs and Border Protection (CBP) or U.S. Citizenship and Immigration Services (USCIS) may grant satisfactory departure to permit the alien to delay departing Guam or the CNMI for a period not to exceed 15 days. If the alien departs within the extended time period, the alien will be regarded as having departed within the required time period and will not be considered as having overstayed his or her period of authorized stay.

The interim rule also establishes a list of countries whose nationals may participate in the Guam-CNMI Visa Waiver Program. [FN97] The countries were selected based on various factors, including geographical proximity to Guam and the CNMI, the volume of nonimmigrant admissions to Guam or the CNMI, whether the country poses a threat to the welfare, safety, or security of the U.S. or its territories or commonwealths, whether the country is designated by the Department of State as being of special humanitarian concern, and whether the country does not accept for repatriation any citizen, former citizen, or national admitted into Guam or the CNMI under the Guam-CNMI Visa Waiver Program within three weeks after issuance of a final order of removal. The following countries were deemed to meet the criteria, and their nationals may participate in the Guam-CNMI Visa Waiver Program: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card is required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom.

The interim rule notes that, while visitors for pleasure from the People's Republic of China (PRC) and the Russian Federation provided a significant amount of economic benefit to the CNMI, "due to political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens, subjects, nationals and residents of the country subject to a final order of removal, nationals of the PRC and Russia are not eligible to participate in the Guam-CNMI Visa Waiver Program when the program is implemented." DHS did note that this will likely cause detrimental economic impacts for the CNMI in that visitors from these countries will need to apply for visas and will pay a higher cost in associated fees than those entering without visas and thus such visitors may not in fact seek to enter the CNMI. DHS also stated that Indonesia, the Solomon Islands, Vanuatu, and Western Samoa were dropped from the list. *275

The Solomon Islands are not included on the list of eligible countries for the Guam-CNMI Visa Waiver Program in consideration of ongoing civil and political instability. Indonesia, Vanuatu, and Western Samoa are not included on the list of eligible countries due to very high rates of refusal for nonimmigrant visitor visas. In addition, these four countries do not provide a "significant economic benefit" to the CNMI.

The interim rule provides an avenue for the U.S. to suspend admissions from a country if "admissions from that country have resulted in an unacceptable number of overstays, unlawful entry into other parts of the United States, or visitors seeking withholding of removal or seeking asylum" or if "visitors from that country pose a risk to the law enforcement or security interests of Guam, the CNMI, or the United States, including the interest in the enforcement of U.S. immigration laws." [FN98]