



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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March 29, 2010

MEMORANDUM

TO: All Immigration Judges
All Attorney Advisors and Judicial Law Clerks

FROM: Brian M. O’Leary *Brian M. O’Leary*
Chief Immigration Judge

SUBJECT: *The Transition to the Immigration and Nationality Act in the Commonwealth of the Northern Mariana Islands*

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I. Introduction

Under the Title VII of the Consolidated Natural Resources Act of 2008 (“CNRA”),¹ the Immigration and Nationality Act (“INA”) took effect in the Commonwealth of the Northern Mariana Islands (“CNMI”) beginning on November 28, 2009. This memorandum contains information on the transition and on issues that may arise in cases involving respondents in the CNMI.

II. Background

Prior to November 28, 2009, the INA did not apply in the CNMI. Rather, a separate immigration system existed in the CNMI. This system was established under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (“Covenant”), which was signed in 1975 and codified as 48 U.S.C. § 1801.

The Covenant was amended by the CNRA, thus altering the CNMI’s immigration system. Specifically, CNRA § 702(a) amended the Covenant to state that “the provisions of the ‘immigration laws’ (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) shall apply to the Commonwealth of the Northern Mariana Islands.”² Further, under CNRA § 702(a), the “immigration laws,” as well as the amendments to the Covenant, “shall . . . supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.”

On November 30, 2009, the Executive Office for Immigration Review opened an immigration court in Saipan, CNMI. Immigration court proceedings for respondents in the CNMI are being conducted at the Saipan Immigration Court.

III. Effective Dates

The provisions of the INA not involving asylum took effect in the CNMI on November 28, 2009. In this regard, CNRA § 702(a) amended the Covenant to state that, except for asylum-related provisions, the INA would take effect “on the first day of the first full month commencing 1 year after the date of enactment of the” CNRA. As the CNRA was enacted on May 8, 2008, the transition was initially scheduled for June 1, 2009. On March 31, 2009, Department of Homeland Security (“DHS”) Secretary Janet Napolitano announced the effective date of the INA in the CNMI would be delayed from June 1, 2009, to November 28, 2009.³

¹ Pub. L. No. 110-229, §§ 701-18, 122 Stat. 754, 853-69 (May 8, 2008).

² INA § 101(a)(17) states “[t]he term ‘immigration laws’ includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.”

³ See Press Release, *DHS Delays the Transition to Full Application of U.S. Immigration Laws in the Commonwealth of the Northern Mariana Islands*, at http://www.dhs.gov/ynews/releases/pr_1238533954343.shtm#content (last accessed on March 24, 2010).

The provisions of the INA involving asylum will take effect on January 1, 2015. Before that date, aliens in the CNMI will be not permitted to apply for asylum. Pertaining to asylum, CNRA § 702(a) amended the Covenant to state that “[s]ection 208 of the Immigration and Nationality Act (8 U.S.C. 1158) shall not apply during the transition period [which ends on December 31, 2014] to persons physically present in the Commonwealth or arriving in the Commonwealth (whether or not at a designated port of arrival), including persons brought to the Commonwealth after having been interdicted in international or United States waters.”

The Federal regulations have been amended to reflect that the asylum provisions of the INA will not take effect in the CNMI until January 1, 2015. Specifically, 8 C.F.R. § 1208.1(a)(2) has been amended to state in part:

The provisions of this subpart A [“Asylum and Withholding of Removal”] shall not apply prior to January 1, 2015, to an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands seeking to apply for asylum. No application for asylum may be filed prior to January 1, 2015, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.⁴

With respect to the 1-year deadline to apply for asylum, the Federal regulations have also been revised for aliens in the CNMI. 8 C.F.R. § 1208.4(a)(2)(ii) now states in part:

For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from January 1, 2015, or from the date of the alien’s last arrival in the United States (including the Commonwealth of the Northern Mariana Islands), whichever is later. No period of physical presence in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015, shall count toward the 1-year period. After November 28, 2009, any travel to the Commonwealth of the Northern Mariana Islands from any other State shall not restart the calculation of the 1-year period.

However, aliens in the CNMI *can* apply for withholding of removal under the INA and protection under the United Nations Convention Against Torture⁵ (“CAT”) before January 1, 2015. Specifically, 8 C.F.R. § 1208.1(a)(2) now states in part that “[e]ffective on the transition program effective date [November 28, 2009], the provisions of this subpart A [“Asylum and Withholding of Removal”] shall apply to aliens physically present in or arriving in the CNMI with respect to withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the Convention Against Torture.”

⁴ Other related provisions have been amended as well. See 8 C.F.R. §§ 1208.2(c)(1)(iii)-(iv), (vii)-(viii), 1208.5(a), (b)(1)(iii), 1208.30(a), 1209.2(a)(1), (3), 1212.1(e)(1)(vi), (q)(8)(i)(A), (ii)(A), 1235.6(a)(1)(ii)-(iii). The amended regulations concerning asylum with respect to the CNMI took effect November 28, 2009.

⁵ Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted and opened for signature* Dec. 10, 1984, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988).

IV. Entry into the CNMI

A Guam-CNMI Visa Waiver Program has been established and is governed by 8 C.F.R. § 1212.1(q). Under this program, aliens of certain nationalities are entitled to enter the CNMI (and Guam) for up to 45 days, subject to conditions. The supplemental information accompanying the newly revised regulations explains that “[u]nder the Guam-CNMI Visa Waiver Program, visitors to Guam and the CNMI will not need a visa to travel to Guam and the CNMI temporarily as visitors for business or pleasure, but are generally required to obtain a visa to travel onward to the rest of the United States.” Application of the Immigration Regulations to the Commonwealth of the Northern Mariana Islands, 74 Fed. Reg. 55,726, 55,729 (Oct. 28, 2009). The countries and geographic areas whose nationals are eligible for the Guam-CNMI Visa Waiver Program are listed in 8 C.F.R. § 212.1(q)(2). These countries and areas are Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, the Republic of Korea, Singapore, Taiwan, and the United Kingdom.

Although China and Russia are not listed in 8 C.F.R. § 212.1(q)(2), DHS Secretary Napolitano has exercised her discretionary authority to parole Chinese and Russian nationals into the CNMI without visas, subject to certain requirements.⁶

V. Pipeline Cases

When the INA took effect on November 28, 2009, there were a number of “pipeline” immigration cases pending in the CNMI court system. Brief background information on these cases is available in a September 15, 2009, memorandum issued by the Attorney General of the CNMI and the Special Counsel to the Governor of the CNMI, entitled *The Commonwealth’s Protocol for Implementation of P.L. 110-229* (“Protocol”).⁷ The Protocol states on page 20 that “[a]s of September 1, 2009, there are 215 immigration cases (not including routine criminal cases in which deportation is a possible penalty) pending in Commonwealth Superior Court and fewer than 10 immigration cases pending in Commonwealth Supreme Court.” The Protocol further states on page 21 that “[a]s of November 28, 2009, the CNMI Attorney General will not accept appeals with respect to the admission and removal of aliens. These matters will be referred to federal authorities. Files on pending appeals before the Attorney General will be delivered to USCIS [U.S. Citizenship and Immigration Services] on November 28, 2009.”

Pursuant to a November 27, 2009, order by the Commonwealth Superior Court in the CNMI, all deportation cases pending in that court were dismissed.⁸ The court’s order states that “[t]he [CNMI] Attorney General’s Office may refer these matters to the Immigration and Customs Enforcement Agency, which is a part of the Department of Homeland Security, as they see fit.” It

⁶ See U.S. Customs and Border Protection Carrier Liaison Program – 2009 CLP Bulletin, [Important Update in Entry Requirements: Parole for Citizens of the Russian Federation and the People’s Republic of China for the CNMI Only](#).

⁷ The Protocol is available [here](#).

⁸ The Commonwealth Superior Court’s order is available [here](#).

is unclear whether any immigration cases that may have been pending in the CNMI Supreme Court on November 28, 2009, were dismissed.

VI. Legal Issues

Removal proceeding involving respondents in the CNMI, or who have transited through the CNMI, may present a variety of novel legal issues. These issues may include how to apply the INA with respect to cases that were pending, or events that occurred, before the INA took effect in the CNMI on November 28, 2009. For example, issues may arise concerning criminal convictions in the CNMI that occurred before November 28, 2009, and the consequences under the INA of any such convictions. Motions to change venue from the Saipan Immigration Court to immigration courts outside the CNMI may also raise novel legal issues.

There may also be a variety of issues involving the provision that aliens “physically present in or arriving in” the CNMI cannot apply for asylum until January 1, 2015. For example, the law is silent on whether an alien who transited through the CNMI en route to another area of the United States is barred from applying for asylum until January 1, 2015. Other issues may involve what type of legal status aliens who have previously been granted refugee protection under CNMI law are entitled to.

VII. Conclusion

This memorandum has set out some of the issues that may arise in cases involving respondents in the CNMI. The legal issues described above should be addressed on a case-by-case basis, as appropriate, should they arise. Additional information on the transition to the INA in the CNMI is available at http://www.dhs.gov/files/programs/gc_1225725411526.shtm (last accessed on March 24, 2010).