STATEMENT
OF
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Department of Homeland Security
Before
The House Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
"Implementation of Public Law 110-229, the Consolidated Natural Resources Act, and Legislative Hearing on H.R. 4296"
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Chairman Fleming, Ranking Member Sablan, and distinguished Members of the Subcommittee, my name is David Gulick, I am the U.S. Citizenship and Immigration Services (USCIS) District Director for District 26, which is headquartered in Honolulu, Hawaii and has jurisdiction over Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) for immigration services. Pursuant to Title VII of the Consolidated Natural Resources Act of 2008 (CNRA), P.L. No. 110-229, extending Federal immigration responsibilities to the CNMI, I serve as the lead USCIS official for CNRA implementation responsibilities.

Thank you for the opportunity to testify today on the efforts that the Department of Homeland Security (DHS) and USCIS have undertaken to implement the CNRA. DHS recognizes the importance of the implementation of Title VII of the CNRA to the United States and to the people of the CNMI and Guam. Since the enactment of this historically significant legislation, DHS and our interagency partners have worked hard to fulfill our statutory obligations to implement the CNRA in a manner that minimizes adverse effects on the CNMI. At USCIS, our efforts include the on-island work at our busy Saipan Application Support Center which opened in March 2009; our Hagatna, Guam Field Office; and our team at the California Service Center processing CNMI nonimmigrant petitions. Application support centers capture biometrics – fingerprints, photographs and signatures – in order to verify the identity of and conduct background checks on immigration benefit applicants. We also work closely to fulfill our obligations at the field and headquarters levels, with our interagency partners and with CNMI and Guam customers and stakeholders to fulfill our important responsibilities under the CNRA. Since DHS last testified on this matter in July 2011, important steps have been taken toward implementation of federal immigration law in the CNMI and the transition program, which began on November 28, 2009 (the "transition program effective date"). As H.R. 4296 deals with the special nonimmigrant provisions for the transition period, I will provide an update on USCIS programs and implementation of these provisions, and will briefly discuss the CNMI and the USCIS asylum program on which H.R. 4296 also has an impact.

Through working with the community and both private and public partners, DHS identified groups of individuals who may not necessarily fall within Immigration and Nationality Act (INA) classifications and for whom the CNMI classifications in the CNRA did not appear to be appropriate. These individuals had an immigration status under previous CNMI immigration law which allowed them to potentially remain in the CNMI indefinitely. The CNRA did not,

however, provide any INA status to these long-term residents of the CNMI or provide an avenue for such long-term residents (without a comparable INA status) to remain in the CNMI. Absent any DHS action, these individuals would have been deemed "present in the United States" without prior lawful admission or parole. To address these challenges, in November 2009 and again in November 2011, DHS issued policies on discretionary parole, which allows noncitizens to remain temporarily in the CNMI. In November 2009, the parole policy covered CNMI permanent residents, immediate relatives of CNMI permanent residents, spouses and children of deceased CNMI permanent residents, and immediate relatives of citizens of the Freely Associated States; and in November 2011the parole policy covered immediate relatives of U.S. citizens, especially parents of U.S. citizen children. Granting parole provided a legal means to recognize the lawful presence of these individuals in the CNMI during the transition period. In creating these parole policies, DHS was cognizant of the challenges facing the CNMI economy and sought to ameliorate unforeseen adverse impact during the implementation of the CNRA.

CNMI E-2 Nonimmigrant Investor

As part of our implementation efforts, DHS has promulgated a number of regulations to set forth the processes and procedures for seeking federal immigration status in the CNMI. The CNMI E-2 Nonimmigrant Investor Notice of Proposed Rulemaking was published in the Federal Register September 2009. USCIS received and reviewed public comments and published a final rule on December 20, 2010. The final rule, which took effect on January 19, 2011, fully implements the CNRA provision that provides during the transition period a nonimmigrant status under U.S. immigration law for certain foreign investors in the CNMI who had been previously granted long-term investor status by the CNMI government. USCIS conducted outreach in Saipan on the regulation in January 2011. USCIS has granted CNMI Investor status to 261 individuals since that time.

The CNMI E-2 investor program is scheduled to terminate on its statutory sunset date of December 31, 2014. Unlike the CNMI Transitional Worker Program, the U. S. Secretary of Labor does not have authority under the CNRA to administratively extend the CNMI E-2 investor program past the statutory sunset date. Any extension of the E-2 investor program would require a legislative change. H.R. 4296 would extend this sunset date until December 31, 2019.

CNMI Transitional Worker

In October 2009, DHS published the Transitional Worker Classification Interim Final Rule. After some delay as the result of litigation, DHS published a final rule implementing the Transitional Worker (CW) classification on September 7, 2011. On October 8, 2011, USCIS began accepting applications for Transitional Worker status. DHS set the number of transitional workers for fiscal year (FY) 2013 at 15,000. Consistent with the CNRA's requirement to reduce the number of Transitional Workers on an annual basis during the transition period, DHS reduced the number to 14,000 for FY 2014. In setting the number, DHS takes into account the number of workers granted status in the prior year and current fiscal year as an indication of likely demand to allow for expansion of the economy. USCIS is awaiting the Secretary of Labor's decision whether to extend the Transitional Worker Program before determining the number for FY 2015. As such, DHS is providing extensions of status and grants of new

Transitional Worker status until the December 31, 2014 current sunset date of the program. Once the Secretary of Labor announces the Department's determination regarding extending the Transitional Worker Program, DHS will consult with the Department of Labor, the Department of Justice, the Department of the Interior, and the CNMI Governor's Office before announcing the FY 2015 numerical limitation for transitional workers. In FY 2013, USCIS approved CW status for 10,071 beneficiaries of petitions; thus far in FY 2014, USCIS has approved CW status for 4,052 beneficiaries.

Exemptions to the numerical limits (cap) on certain H nonimmigrant visas

The CNRA provided an exemption to the numerical limitations on H-2B and H-1B nonimmigrant workers for work performed in Guam or the CNMI. USCIS has received 228 petitions for H-1B and three petitions for H-2B status filed by employers in the CNMI since the beginning of the transition period in November 2009. Because of the unique timetable for the transition, (i.e., the inclusion of a period during which employees in the CNMI could work for up to two years based upon work authorization previously granted by the CNMI Government) the CNRA exemption from the numerical limitations on H-1B and H-2B categories allowed CNMI employers to petition for workers—both new and current employees—at the end of the two- year period in November 2011. This action was in furtherance of Congress' intent, as described in the CNRA, to have alien workers in the CNMI fall within INA classifications.

The CNMI and Guam H-1B and H-2B cap exemptions are scheduled to terminate on the December 31, 2014 sunset date, as provided by the CNRA. Unlike the CNMI CW Transitional Worker Program, the U.S. Secretary of Labor does not have authority under the CNRA to extend the H-2B and H-1B cap exemptions administratively. H.R. 4296 would extend these exemptions until December 31, 2019.

Asylum Application Bar

While aliens present in the CNMI are not eligible to apply for asylum until January 1, 2015, DHS remains responsible for credible fear screening of certain aliens applying for admission who express a fear of return to their home countries. Although such individuals cannot seek asylum, the credible fear process provides a threshold screening for certain forms of protection that are not barred such as withholding of removal and protection under the Convention Against Torture. From the start of the transition period in November 2009 through the second quarter of FY 2014, a total of nine individuals made credible fear claims in CNMI, two of whom later withdrew their claims.

Under current law, aliens present in the CNMI may begin to apply for asylum on January 1, 2015. H.R. 4296 appears to extend the asylum application bar through December 31, 2019, although some additional technical clarification of Congressional intention on this important matter would be helpful as the bill proceeds in the legislative process. Under current law, and consistent with U.S. treaty obligations, aliens subject to removal from the CNMI could continue to seek withholding or deferral of removal because of threat of persecution or torture in their home countries.

Conclusion

DHS continues to work diligently to ensure that we have the best information available and that we take into account the unique and special circumstances of the transition program and of the circumstances in the CNMI – especially the economic challenges faced by the CNMI in restoring its economy, implementing minimum wage increases, and increasing tourism and other investments. Because DHS believes that communicating the decisions made on these issues has been essential to a successful transition, DHS engaged in extensive outreach efforts with regard to policy decisions and rulemakings and will continue to do so.

I appreciate the opportunity to appear before the Subcommittee. I will be happy to answer any of your questions.