

**STATEMENT
OF
RICHARD BARTH
Acting Principal Deputy Assistant Secretary for Policy
Department of Homeland Security
Before
The House Committee on Natural Resources
Subcommittee on Insular Affairs, Oceans, and Wildlife
“Implementation of Public Law 110-229 to the Commonwealth
of the Northern Mariana Islands and Guam”
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Chairwoman Bordallo, Ranking Member Brown, and other distinguished Members of the Subcommittee. Thank you for the opportunity to testify today on the efforts that the Department of Homeland Security (DHS) is making to implement Title VII of the Consolidated Natural Resources Act of 2008 (CNRA). DHS recognizes the importance of the implementation of Title VII of the CNRA to the people of Guam and the Commonwealth of the Northern Mariana Islands (CNMI). Since the enactment of this historically significant legislation, DHS and its components have been working very hard to ensure that we implement the statute in a manner that will minimize any adverse effects on the people of Guam and the CNMI.

Transition Program Date

The CNRA originally established June 1, 2009, as the commencement of a five-year transition period toward full federalization of immigration law in the CNMI unless delayed by the Secretary of Homeland Security. Under the CNRA, the Secretary, in consultation with the Secretaries of the Interior, Labor, and State, the Attorney General, and the Governor of the CNMI can delay the effective date of the transition program up to 180 days beyond the June 1

date. In accordance with this provision, on March 31, 2009, DHS notified the appropriate House and Senate Committees and the Delegates from Guam and the CNMI that the start of the transition would be delayed for 180 days, until November 28, 2009.

Immigration Provisions of the CNRA

I would like to begin with an overview of the key immigration provisions of the CNRA. The CNRA

- Includes the CNMI in the definition of “United States” under the Immigration and Nationality Act (INA), thus extending all U.S. immigration laws to the CNMI as of the transition program effective date, except as otherwise specifically provided by the CNRA. This is the first expansion of the definition since the inclusion of Guam more than 50 years ago.
- Establishes a transition period that will last initially until December 31, 2014. The law allows for extensions of the provision relating to transitional workers if determined necessary by the Secretary of Labor.
- Provides for DHS, through U.S. Citizenship and Immigration Services (USCIS), to immediately resume its role as a protection consultant with regard to refugee protection, followed by full federal assumption of responsibility for this function on the transition program effective date. The INA section on asylum, however, continues to be inapplicable to the CNMI during the transition period.
- Amends the Guam Visa Waiver Program statute to create a Guam-CNMI Visa Waiver Program and extends the authorized period of stay from 15 days to 45 days, as of the beginning of the transition period.

- Creates a nonimmigrant transitional worker immigration status in the CNMI during the transition period.
- Provides for investor nonimmigrant status for aliens with certain CNMI- authorized long-term investor status.
- Exempts the CNMI and Guam from the statutory caps on the number of H-1B and H-2B nonimmigrant temporary workers during the transition period. This exemption does not apply to any employment to be performed outside Guam or the CNMI.
- Continues lawful presence and employment authorization for aliens lawfully admitted and authorized to be employed by the CNMI as of the transition program effective date. Such lawful presence and employment authorization will remain valid until the end of the CNMI authorization or at the end of two years – whichever is earlier.
- Limits the removal of aliens lawfully present in the CNMI as of the start of the transition period on the basis of presence without admission or parole during the initial two years of the transition period or until that lawful status expires, whichever occurs first.
- Specifies that prior residence in the CNMI will count as residence in the United States for an alien lawfully admitted for permanent residence who may otherwise have been considered to have abandoned residence in the United States by residing in the CNMI.
- Provides for immigration-related fees to be paid to the Federal Government, given its assumption of immigration responsibilities in the CNMI.
- Imposes an annual supplemental fee of \$150 per nonimmigrant transitional worker to fund vocational educational curricula and program development by CNMI educational entities.
- Authorizes DHS to establish operations in the CNMI prior to the beginning of the transition period.

- Limits the number of foreign workers in the CNMI during the period between enactment of the CNRA and the start of the transition period. Specifically, the number of temporary workers is capped at the number present in the CNMI as of the date of enactment (May 8, 2008).
- Requires the Departments of Homeland Security, Labor, and Justice to recruit and hire personnel from among qualified local applicants, to the maximum extent practicable.

Because the CNRA has provisions that affect Guam and the CNMI to differing extents, I would like to first address those provisions which affect both territories.

The Guam-CNMI Visa Waiver Program

The CNRA replaced the existing Guam Visa Waiver Program (VWP) with a combined Guam-CNMI VWP that allows admission to Guam, the CNMI, or both for a period up to 45 days. As with the current Guam VWP, the program does not provide for onward travel to the rest of the United States.

While the Guam VWP allowed travel to Guam for citizens of 15 participating countries, the new combined program allows citizens of 12 participating countries / geographic areas. These are Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom. Citizens of Indonesia, the Solomon Islands, Vanuatu, and Western Samoa will not be able to travel under the new, combined program. This change was decided after careful review of the current participating countries and the requirements of the new program. DHS issued an interim final rule on the Guam-CNMI Visa Waiver Program on January 16, 2009. The public comment period expired on March 17, 2009, and DHS is currently analyzing the comments received.

As with the Guam VWP, the Guam-CNMI VWP is a separate program under Section 212 of the INA, as distinct from the Visa Waiver Program authorized by Section 217 of the INA. Some countries are eligible to participate in both programs. A visitor from one of those countries may choose to travel under either of the programs but must comply with all the conditions of whichever program is chosen.

Numerical Limitations on H-Nonimmigrant Workers

The INA provides for a statutory limitation on the number of nonimmigrant workers classified under INA section 101(a)(15)(H), which includes the H-1B, H-2A, and H-2B classifications. The CNRA provides for an exemption to these numerical limitations for the duration of the transition program in Guam and the CNMI.

Provisions Affecting the CNMI Only

Certain provisions of the CNRA affect the CNMI only. DHS has worked hard to include its federal and local partners and stakeholders in developing our approach to implementing the CNRA in the CNMI.

DHS has designated experienced officers within its relevant components to serve as points of contact and to lead teams composed of Headquarters and Field office staff to prepare for the CNMI's transition to federal immigration law. With the assistance of the Department of the Interior, meetings were held to ensure that other affected federal agencies were included in this effort. U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and USCIS representatives have participated in meetings in Washington and in the CNMI with representatives of the Government of the CNMI and the CNMI private sector,

and with the U.S. Departments of the Interior, Labor, Justice and State. DHS has submitted to Congress the required resource report on implementing Title VII and in support of the military build-up in Guam and, in doing so, identified some of the challenges that remain in implementing the legislation.

Through working with the community and both private and public parties, DHS has identified groups of individuals who may not easily fall within the INA classifications and for whom the CNMI classifications in the CNRA may not be appropriate. DHS is actively pursuing policy decisions that will, it is hoped when announced, reduce the fear and uncertainty of what will happen when the transition takes place. In doing so DHS is quite aware of the challenges facing the CNMI economy and considers it a priority and goal to support existing businesses when developing policies and regulations to implement the legislation. By stabilizing immigration laws and regulations in the CNMI, DHS believes that implementation of the CNRA will support new investment and result in an improved economy.

The rules on the CNMI E-2 Nonimmigrant Investor and the Transitional Worker are still in development and I am not able at this time to go into detail on the specifics. As noted, though, DHS plans to minimize adverse impacts and to discharge its responsibilities under the CNRA. DHS is currently giving high priority to the development and publication of these rules. DHS also is working with the Department of Justice and its Executive Office for Immigration Review to develop a rule that will update the current regulations to ensure they reflect the changes in immigration law and definitions made by the CNRA. Lastly, a decision on a registration program and whether and how it would be done is still in process.

Implementation Planning

DHS has met with the Delegates from Guam and the CNMI, the Governors of both territories and their staff, as well as other elected officials and interested parties. Here are some significant dates and meetings that have taken place with regard to the CNMI in support of implementation of the CNRA.

July 2008. A DHS team composed of DHS Office of Policy, CBP, ICE, and USCIS visited the CNMI. Meetings were held with the Legislature, the Governor and members of the CNMI Agencies, the Saipan Chamber of Commerce (with members from Tinian and Rota present), Marianas Community College administration, Karidat Social Services – an organization providing support to victims of abuse and trafficking, and with law enforcement organizations in Saipan. Representatives of workers organizations and foreign diplomatic officials were also provided an opportunity to discuss issues with the members of DHS team.

Both ICE and CBP personnel have made numerous visits to the CNMI in support of determining resource requirements and in preparation of the start of the transition period. USCIS has determined the resources necessary to process the applications and petitions that are projected to occur and, as noted below, opened an Application Support Center in support of the implementation.

December 2008: The USCIS 1-800 National Customer Service Center toll free information becomes available to residents of the CNMI.

January 2009: Representative of DHS held a public forum on the Guam-CNMI Visa Waiver Program rule in Garapan, Saipan, CNMI. Meetings with the Chamber of Commerce, the Executive Branch, and Legislature were held.

January 2009: Representatives of USCIS visited the CNMI to establish contacts and to prepare plans for outreach to the community and the population in the CNMI on transition and to identify issues that will need resolution when the Transition takes place.

March 2009: Because USCIS currently has jurisdiction to grant permanent resident status and naturalize immediate relatives of U.S. citizens residing in the CNMI and in anticipation of the increased workload for biometric collection, an early decision was made in June 2008 to open an Application Support Center in the CNMI. On March 10, 2009, Acting Deputy Director of USCIS Michael Aytes opened the Application Support Center in the CNMI. His participation in this opening clearly shows, I believe, the importance that the Department places on the CNRA and its implementation. This Application Support Center is an expanded version of the Application Support Centers in the rest of the United States in that it provides information services and interviews for those residents who are currently eligible under the current Covenant, as well as processing requests for biometric services. Also in March, the USCIS Protection Consultant to the CNMI trained new Administrative Protection Judges and a CNMI Assistant Attorney General for Immigration in CNMI Refugee Law and Procedures. The Protection Consultant also worked to ensure that USCIS is ready to conduct credible fear and reasonable fear interviews in the CNMI beginning on November 28, 2009.

In addition to the regulations that are required to properly implement the CNRA, DHS has identified several groups of individuals with CNMI status who are of special concern to DHS and its efforts to implement the INA in the CNMI. At present, we do not believe that it is in the interest of the United States and the CNMI to take precipitous actions which would force law-abiding aliens residing in the CNMI with legal immigration status at the time of transition to depart the CNMI. DHS recognizes that some residents of the CNMI have a CNMI immigration

status that cannot fall within one of the nonimmigrant classifications of the INA, yet their CNMI immigration status supports the favorable exercise of discretion to be allowed to remain in the CNMI after the start of the transition period. These CNMI classifications are not those which are normally referred to as “guest workers” and were not in the population DHS believes that the Congress envisioned as becoming transitional workers under the CNRA. An example of this are those aliens who were granted “permanent resident” status in the CNMI by the former Trust Territory of the Pacific Islands government prior to 1982. Another example is spouses of aliens from the Freely Associated States who are not nationals of those Freely Associated States and would not ordinarily be allowed to be in the United States under the terms of the Compacts of Free Association.

DHS is still reviewing other issues and circumstances such as widows of U.S. citizens who could have applied for status many years ago but did not because they resided in the CNMI, alien parents of disabled U.S. citizen children, the income level required for affidavits of support to obtain U.S. permanent residence and the requirements for travel and reentry by aliens with lawful CNMI employment authorization during the first two years of the transition period. DHS also believes that communicating the decisions made on these issues will be essential to a successful transition and DHS has begun and continues to plan for the outreach efforts that will be needed. As with the Guam-CNMI VWP rule, representatives of DHS and USCIS will conduct an extensive outreach effort when the rules are published.

In closing I hope that you will be reassured that DHS has given the implementation of the CNRA the appropriate priority and that DHS is working to ensure that its responsibilities under the CNRA will be executed in such a manner that minimizes any adverse impacts of the transition to the INA. We are working to ensure that we have the best information available and

that we take into account the unique and special circumstances of this legislation and of the circumstances that exist in the CNMI at this time – especially the economic challenges faced by the CNMI in restoring its economy, implementing minimum wage increases, and increasing tourism and other investments in the CNMI.

Thank you again for this opportunity to testify, we will be happy to answer any of your questions.