



Marianas Integrated Immigration Task Force
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Testimony of Lamonte J. (Jim) Beighley
Marianas Integrated Immigration Task Force
House of Representatives
Committee on Natural Resources
Subcommittee on Insular Affairs, Oceans and Wildlife
1324 Longworth House Office Building
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Chairman Bordallo, Ranking Member Brown, and other esteemed members of the Committee. My name is Jim Beighley, and it is a pleasure to appear before you today. I am here today on behalf of the Marianas Integrated Immigration Task Force (Task Force). I plan to focus my comments today on the implementation of the Consolidated Natural Resources Act of 2008 (CNRA), and specifically its impact on the tourism economies of Guam and the Commonwealth of the Northern Mariana Islands (CNMI).

The Mariana Islands Immigration Task Force

The Task Force is a coordinated effort between the governments and private sector of Guam and the Northern Mariana Islands, and its mission is to work cooperatively with federal officials to ensure a smooth transition during implementation of the CNRA. The Task Force is comprised of representatives from the offices of the Governors of the CNMI and Guam; the Marianas Visitors Authority; the Guam Visitors Bureau; the Hotel Association of the Northern Mariana Islands; the Guam Hotel & Restaurant Association; the Guam Chamber of Commerce; the A.B. Won Pat International Airport, Guam; the Guam Legislature; and local immigration officials.

The Uniqueness of Guam and the CNMI

Chairman Bordallo, as you and other members of this Committee are aware, Guam and the Northern Mariana Islands have a special and unique relationship with the United States. Nearly seven thousand miles away from Washington, DC, the territory of Guam and the Commonwealth to the north are closer in proximity to Asia than to the United States. In fact, it is so far away, that when traveling to the mainland, I am treated as a foreigner—having to pass through customs and immigration—despite having originated on U.S. soil. Finally, the Northern Marianas has historically operated its own immigration program and will continue to do so until the CNRA is implemented.

The Consolidated Natural Resources Act

As you are aware, in 2008, Congress passed the CNRA to federalize the immigration program of the Northern Mariana Islands and expand tourism opportunities for the islands. Section 702 of this legislation directed the Department of Homeland Security (DHS) to issue



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regulations implementing a visa waiver program for Guam and the CNMI. On January 16, 2009, Customs and Border Protection published an Interim Final Rule establishing the Guam-CNMI visa waiver program.¹ The intention of Congress in enacting this legislation with respect to tourism is clear. As the legislation's Statement of Congressional Intent states, the statute "should be implemented wherever possible to expand tourism and economic development in the Commonwealth, including aiding prospective tourists in gaining access to the Commonwealth's memorials, beaches, parks, dive sites, and other points of interest."² This language leaves no doubt that Congress expected DHS to develop a Guam-CNMI visa waiver program that would expand tourism for the islands.

In fact, the Task Force's primary task has been to work with federal officials towards a smooth transition during the implementation of a joint Guam-CNMI visa waiver program under the CNRA that preserves access to Chinese and Russian tourists for the CNMI and extends the same access to Guam. In a July 10, 2008 joint report, the Task Force substantiated that Chinese and Russian source markets represent significant economic benefit and proposed a regulatory framework through which this access could be accomplished in compliance with the statutory provisions of the CNRA. Ten months following that joint report, the Task Force finds the significance of these source markets to the CNMI and Guam's tourism sector continues to increase, while others, including primary source markets such as Japanese and Korean travelers, continue to decline as had been forecasted.

Unfortunately, Madame Chairman, we have found that the Interim Final Rule issued by DHS will not expand tourism, but will drastically *decrease* tourist access to the islands when it takes effect on November 29, 2009. Unfortunately, under this Interim Final Rule, the Department actually made the newly revised Guam-CNMI visa waiver program in some ways *more* rigorous than the mainland Visa Waiver Program.³

More specifically, as you know, the CNRA establishes two alternative ways for a country to be included on the list of countries that can participate in the Guam-CNMI visa waiver program. First, the CNRA mandates that a country "*shall*" be included on the list if its nationals conferred a "significant economic benefit" on the CNMI based on "the number of visitors for pleasure" during the past year, as long as the country's inclusion on the list would not "represent a threat to the welfare, safety, or security of the United States."⁴ Second, the CNRA states that "the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the

¹ Establishing U.S. Ports of Entry in the Commonwealth of the Northern Marianas Islands (CNMI) and Implementing the Guam-CNMI Visa Waiver Program, 74 Fed. Reg. 2,824 (Jan. 16, 2009).

² CNRA § 702(b), P.L. 110-229, 122 Stat. 861; see also H.R. Rep. No. 110-324 at 1 (2008) (Comm. on Energy and Natural Res. Rep.) (purpose of legislation is to "facilitate travel to the CNMI by tourists")

³ The Interim Final Rule includes humanitarian concerns and other criteria that do not apply to countries seeking entry to the mainland Visa Waiver Program.

⁴ CNRA § 702(b)(3)(l)(3)(A), P.L. 110-229, 122 Stat. 861 (emphasis added).



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Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems and information exchange.”⁵

By mandating the listing of countries whose tourism provides a “significant economic benefit” to the CNMI unless they present a threat to the U.S., the statute clearly provides a more direct path to listing in the Guam-CNMI visa waiver program for those countries. This statutory language is consistent with Congress’ explicit intent in enacting the CNRA, and the Department ultimately concluded that certain tourist markets in the CNMI satisfy the significant economic benefit test.

However, instead of implementing the alternative criteria as set out in the statute, the Interim Final Rule requires countries to meet *both* CNRA tests instead of just one. The regulation first lists four “General Eligibility Criteria” that apply to all countries.⁶ The regulation then describes what is referred to as “Significant Economic Benefit Criteria.” That section says that “*in addition to*” the general criteria, DHS must determine that a country that provided a significant economic benefit to the CNMI would not represent a threat to the welfare, safety, or security of the United States.⁷

Thus, the regulation establishes two *cumulative* tests that a country that provides significant economic benefit to the CNMI must meet to participate in the visa waiver program. The regulation as written establishes a counterintuitive system under which countries whose citizens confer an economic benefit on the CNMI have a more difficult time being listed in the visa waiver program. By doing so, the regulation contravenes the language of and the express Congressional intent stated in the CNRA.

Madame Chairman, and members of the committee, these facts are important to note. For the first time in history, these island territories halfway around the globe, nearly solely dependent on tourism for survival, whose citizens (and travelers) are treated by Customs and Border Protection as foreigners when entering the United States, will in some ways have a more difficult time obtaining access to new tourist markets than the mainland. This is a monumental departure from well-settled U.S. policy dating back to 1986 when the Guam visa waiver program was first established. In 1986, Congress emphasized the “unique conditions prevailing on Guam and its isolated location” which “justify a broad application of the visa waiver system.”⁸ The Interim Final Rule turns that “broad application” on its head.

⁵ CNRA § 702(b)(3)(l)(4), P.L. 110-229, 122 Stat. 862.

⁶ 8 C.F.R. §212.1(q)(2)(i)(A)-(D).

⁷ 8 C.F.R. §212.1(q)(2)(iii) (emphasis added).

⁸ 132 Cong. Rec. S4844 (Apr. 24, 1986).



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Tourism in the Marianas

As island territories in the Pacific, the economies of Guam and the CNMI are critically dependent on tourism. Visa access, the health of the economies in neighboring Asian countries, convenience and price competitiveness of air service, and the ability to compete with other nearby beach destinations are several factors which are continually monitored by island officials and tourism industry leaders.

The CNMI first began marketing to Russian tourists in 1996 and Chinese tourists in 1998. This initially began with private sector investment by several hotels and was later expanded to include investments by the Marianas Visitors Authority, regional tourism businesses and others. The CNMI was also able to get Approved Destination Status (ADS), which allowed it to market tourism legally in China at the end of 2005. Tourists from Russia and China are currently not allowed on Guam under the Visa Waiver Program.

Economic Significance of Chinese and Russian Tourists

While DHS found in the Interim Final Rule that visitors from the PRC and Russia conferred a “significant economic benefit”⁹ to the economy of the CNMI, the Task Force believes that the Interim Final Rule grossly underestimates the true economic impact that the exclusion of PRC and Russian visitors will have on our economy. In fiscal year 2008, tourist arrivals from PRC and Russia accounted for 19.6% of the total tourism revenue from our primary, secondary and emerging markets of Japan, South Korea, PRC and Russia. Accounting for approximately 10% of the total visitor arrivals, visitors from PRC and Russia contributed \$56,790,108 in direct economic impact and \$185,659,450 in indirect economic impact. The combined tourism revenues from these four source countries are \$289,464,728 in direct impact and \$948,205,151 in indirect impact. Considering the significant economic benefit of visitors from PRC and Russia, any interruption in their access to the CNMI would have a detrimental and long-standing effect on the economy and the livelihood of the people.

We project an even larger adverse effect for fiscal year 2009. With respect to our four major markets, we make the following assumptions: (1) the absence of federalization of CNMI's immigration; (2) the reinstatement of the Guangzhou air service twice weekly; and (3) a growth of 1.5% of our visitor arrivals from Russia. With these assumptions, Marianas Visitors Authority estimates that PRC and Russia would have a direct economic impact of \$70,311,378 and an indirect impact of \$229,864,919 – an increase of 23.8% over the previous fiscal year. Considering the adverse impact the global economic crisis is having on arrivals from South Korea – where we expect that visitor arrivals will shrink by as much as 26% – PRC and Russia are estimated to account for 24.5% of the total tourism revenue from the four source countries in FY 2009. Again, our expectation of the significant economic impact is underscored by the Interim Final Rule which “recognize that there are significant limitations and uncertainties in [its] analysis.”

⁹ 74 Fed. Reg. 2,2826 (Jan. 16, 2009).



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We, however, strongly disagree with the assertion that these tourists will continue to travel to the CNMI without the visa waiver access that currently exists. The Interim Final Rule estimates that the CNMI will lose only 16% of the PRC and 3% of the Russian markets. To the contrary, the Marianas Visitors Authority found in discussions with travel industry partners that requiring PRC and Russian visitors to first obtain a U.S. visa to enter the CNMI under the Guam-CNMI visa waiver program would have a significant and negative impact on their decision to travel to the CNMI. Why would a family of four choose to incur the added expense and effort of making a U.S. visa appointment, filling out U.S. visa applications, paying hundreds of dollars in visa fees, traveling to a U.S. consulate, being subjected to a visa interview, and waiting for days to receive U.S. visa when they can travel to one of the many destinations that do not require a visa, such as Thailand? The answer is simple; they would choose to go elsewhere, as they do now with Guam. Despite Guam's best efforts to attract and increase tourists from the PRC and Russia, those markets continue to represent less than one-half of one percent of all tourists traveling to Guam. Therefore, we estimate that requiring a visa would negatively impact both source markets of the PRC and Russia by approximately 95%. For islands that are dependent on a single industry – tourism – it is not difficult to imagine what effect this economic loss will have on the businesses and the people of the CNMI.

Impact on Employment

The Northern Mariana Islands Strategic Initiatives for 2006 – 2010 was prepared for the Office of Governor Benigno R. Fitial in May 2006 by the Ad Hoc Tourism Committee of the Strategic Economic Development Council. The plan provides a proposed set of strategic initiatives to guide the industry in achieving goals to bring our tourism industry back to good health. In its findings, the initiative noted that for every 85 tourists, one person is employed in the private sector and for every 95 tourists, one person is employed in the public sector.

As Russian visitors stay much longer than packaged tourists from the other source markets, it takes approximately 3.7 packaged tourists to equal the length of stay of a single Russian visitor. In other words, each Russian visitor is equal to an average of 3.7 visitors from other source markets. Taking this into consideration, the estimated FY 2009 arrivals for Russia of 9,267 tourists is the economic equivalent of 34,288 packaged tourists. The estimated FY 2009 arrivals for PRC is 31,267. With a projected 95% negative impact on visitor arrivals from PRC and Russia through their exclusion in the visa waiver program, the CNMI stands to lose 62,278 visitors combined from PRC and Russia. Using the visitor to public/private employment ratio from the Strategic Initiatives, 733 private and 656 public sector jobs will be immediately lost.

Recommendations

Due to the reasons set forth above, on behalf of the Task Force, I specifically recommend that Congress take the following actions:

1. Urge the Department of Homeland Security to carefully examine the Interim Final Rule and issue a Final Rule consistent with the stated Congressional Intent in the CNRA of expanding tourism opportunities on the islands.
2. Delay implementation of the transition period until federal immigration ports of entry and security procedures can be put into place to allow for a smooth transition for the



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- tourism economy. DHS must be allowed the time—and given the proper resources—to establish the security measures as outlined in the statute and regulation. If the CNRA implementation date comes before DHS has fully operational ports of entry on CNMI, there would be a catastrophic halt in all tourism to the CNMI.
3. Require DHS to specify to Congress, local officials in Guam and the CNMI, and private sector interests, exactly what additional security measures, if any, will be needed to fully comply with the CNRA's stated congressional intent of expanding tourism on the islands.

Conclusion

Taking everything into consideration — the exclusion of PRC and Russia in the Guam-CNMI visa waiver program, reduction of air service from Japan, and continued decline in visitor arrivals from South Korea — the estimated \$950 million in revenue from the travel industry in FY 2008 could be reduced by as much as 35.2% to approximately \$614 million annually. Given this forecast, the economic revenue that PRC and Russian visitors bring to the CNMI is very much needed by the CNMI people, now more than ever.

Madame Chairman, Ranking Member Brown, and other members of the Committee, thank you again for allowing me to appear before you today. Thank you for your interest and leadership on this important issue. It is my hope that this Committee will carefully consider the issues that I have brought forward today. The Task Force is committed to working with you and the Department to ensure a smooth transition to federal immigration in the CNMI, but also to expand tourism opportunities in the island territories. Thank you, and I look forward to answering any questions that you may have.