

DEPARTMENT OF HOMELAND SECURITY**8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, 286, and 299**

[CIS No. 2460–08; DHS Docket No. USCIS–2008–0039]

RIN 1615–AB77

DEPARTMENT OF JUSTICE**Executive Office for Immigration Review****8 CFR Parts 1001, 1208, 1209, 1212, 1235, and 1245 and 1274a**

[EOIR Docket No. 169 AG Order No. 3120–2009]

RIN 1125–AA67

Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands**AGENCY:** U.S. Citizenship and Immigration Services, DHS; Executive Office for Immigration Review, DOJ.**ACTION:** Interim final rule.

SUMMARY: The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing: asylum and credible fear of persecution determinations; references to the geographical “United States” and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Employment Eligibility Verification; employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program. Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal. The purpose of this rule is to ensure that the regulations apply to persons and entities arriving in or physically present in the CNMI to the extent authorized by the CNRA.

DATES: The rule will be effective November 28, 2009.

Written comments on this rule must be submitted on or before November 27, 2009.

Written comments on the Paperwork Reduction Act section of this rule must

be submitted on or before November 27, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2008–0039 by one of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0039 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT:

Regarding 8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, and 286 and 299: Fred Ongcapin, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2211, telephone (202) 272–8221 (not a toll-free call).

Regarding 8 CFR Parts 1001, 1208, 1209, 1212, 1235, 1245, and 1274a: Robin Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22401, telephone (703) 305–0470 (not a toll-free call).

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I. Public Participation—Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. All submissions received must include the agency name and DHS Docket No. USCIS–2008–0039. All comments received will be posted

without change to www.regulations.gov, including any personal information provided.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. Comments that will provide the most assistance will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

For access to the electronic docket to read background documents or comments received, go to www.regulations.gov. Submitted comments may also be inspected at the Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210.

II. Background

The Commonwealth of the Northern Mariana Islands (CNMI) is a U.S. territory located in the Western Pacific that has been subject to most U.S. laws for many years. The CNMI has administered its own immigration system under the terms of the 1976 Covenant with the United States. See Joint Resolution to Approve the “Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America,” and for Other Purposes (Covenant Act), Public Law 94–241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976) (48 U.S.C. 1801 note (2006)). On May 8, 2008, President Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA). See Public Law No. 110–229, Title VII, 122 Stat. 754, 853 (2008). Title VII of the CNRA extends U.S. immigration laws to the CNMI. The intent of Congress in passing this legislation is to ensure effective border controls and properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI. See Sec. 701(a) of Public Law 110–229. U.S. immigration law is defined by statute as the provisions of the Immigration and Nationality Act (Act or INA) (*i.e.*, title 8, Chapter 12 of the U.S. Code), and “all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.” See INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17).

Section 702 of the CNRA was scheduled to become effective approximately one year after the date of enactment, subject to certain transition

provisions. See Sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month commencing one year from the date of enactment of the CNRA), to November 28, 2009. The transition period concludes on December 31, 2014. Most amendments to the INA made by the CNRA take effect on the transition program effective date, November 28, 2009. Sec. 705(b) of Public Law 110–229.

III. Responsibilities of the Secretary of Homeland Security and the Attorney General

Under the INA, as amended by the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (codified at 6 U.S.C. 101 *et seq.*), the Secretary of Homeland Security is charged with the administration and enforcement of the INA, and all other laws relating to the immigration and naturalization of aliens, except insofar as such laws relate to the powers, functions, or duties conferred upon the President, the Attorney General, the Secretary of State, or consular officers. See INA sec. 103(a)(1), 8 U.S.C. 1103(a)(1). The Homeland Security Act, however, retained the functions of the Executive Office for Immigration Review (EOIR) (including the immigration judges and the Board of Immigration Appeals) within DOJ under the authority of the Attorney General. See 6 U.S.C. 521, 8 U.S.C. 1103(g). The DHS regulations relating to immigration are codified principally in 8 CFR chapter I, while the Attorney General's regulations relating to EOIR are codified in 8 CFR chapter V, beginning with 8 CFR 1001.

Some of the changes implemented under the CNRA affect existing regulations governing both DHS immigration policy and procedures and proceedings before the immigration judges and the Board. Accordingly, it is necessary to make amendments both to the DHS regulations and to the DOJ regulations. The Secretary and the Attorney General are making conforming amendments to their respective regulations in this single rulemaking document.

IV. Amendments

This rule amends several regulatory provisions to implement some of the changes to the INA made by the CNRA. Specifically, this rule defines the often-used term in the CNRA, “transition program effective date,” removes

references to the CNMI as a territory or possession of the United States not subject to the INA, and updates the definition of the geographical “United States” to include the CNMI for immigration purposes. In addition, this rule:

- Provides for the application in the CNMI of the prohibitions against the knowing employment of unauthorized aliens and the hiring of individuals without verifying their identity and employment authorization;
- Designates CNMI-issued documentation that may be acceptable by employers in the CNMI to verify the identity and employment authorization of newly hired employees;
- Adds work-authorized aliens in the CNMI under the CNRA's “grandfather” clause¹ for the first two years following the transition program effective date to the DHS work authorization regulations;
- Addresses the limitations on the granting of asylum under section 208 of the INA to aliens physically present in or arriving in the CNMI claiming a fear of persecution or torture in their country(ies) of nationality or, if stateless, country of last habitual residence, and adjustment of status under section 209(b) of the INA for such aliens; and
- Clarifies that immediate relatives who were admitted to the United States under the Guam Visa Waiver Program, pursuant to current 8 CFR 212.1(e) and 1212.1(e), and those who will be admitted to the United States under the new Guam-CNMI Visa Waiver Program, pursuant to new 8 CFR 212.1(q) and 1212.1(q), may apply for adjustment of status to that of a lawful permanent resident.

A. Definition of Transition Program Effective Date

The CNRA and its amendments to the Covenant Act make several references to the transition period or program effective date. See, e.g., Sec. 6(a)(7), (b) and (c) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229; sec. 702(i) of Public Law 110–229; sec. 705(b) of Public Law 110–229. The CNRA states that the provisions of the INA shall apply to the CNMI, “except as otherwise provided” in the CNRA, “effective on the first day of the first full month commencing 1 year after the date

¹The CNRA contains a “grandfather” clause that allows aliens lawfully present and authorized for employment under the laws of the CNMI to be considered authorized for employment by the Secretary of Homeland Security until the expiration of such CNMI employment authorization or two years from the transition program effective date, whichever is earlier. See Sec. 6(e)(2) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229.

of enactment of the [CNRA] (hereafter referred to as the ‘transition program effective date’),” unless the Secretary of Homeland Security acts to delay this effective date. Sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. On May 8, 2008, President Bush signed the CNRA into law. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month commencing one year from the date of enactment of the CNRA), to November 28, 2009. Accordingly, this rule defines “transition program effective date” to mean November 28, 2009, the effective date following the Secretary of Homeland Security's exercise of her authority pursuant to section 6(a)(2) of Public Law 94–241, as added by section 702(a) of Public Law 110–229, to delay commencement 180 days after June 1, 2009. See new 8 CFR 1.1(bb) and 8 CFR 1001.1(bb).

B. References to the Commonwealth of the Northern Mariana Islands

One step that the CNRA takes to effect application of U.S. immigration law to the CNMI is to include the CNMI in the meaning of “United States” and “State,” effective on the transition program effective date. Sec. 702(j)(2), (3) of Public Law 110–229; sec. 705(b) of Public Law 110–229. The INA defines these terms. INA sections 101(a)(36) and (a)(38), 8 U.S.C. 1101(a)(36) and (a)(38). While these amendments are automatically incorporated into the regulations by operation of 8 CFR 1.1(a) and 8 CFR 1001.1(a), which address the applicability of INA definitions, other more specific provisions in the DHS and DOJ regulations directly conflict with these amendments and require modification.

First, this rule incorporates specific references to the CNMI in those regulatory provisions that include a definition of the United States. See 8 CFR 214.11(a) (victims of trafficking in persons); 8 CFR 286.1(k) (immigration user fees). Second, this rule removes references to the CNMI when used in connection with references to U.S. territories and possessions, or modifies such references as appropriate. See 8 CFR 214.7(a)(3) and (a)(4)(i) (habitual residence); 8 CFR 214.7(b) (habitual residence in U.S. territories or possessions where the INA applies); 8 CFR 214.14(a)(11) (victims of criminal activity); 8 CFR 286.1(i) (immigration user fees). Finally, this rule removes references to the CNMI when listed

separately from the geographical “United States.” See 8 CFR 214.11(b)(2) and (g) (victims of trafficking in persons).

C. CNMI Asylum Provisions

While most U.S. immigration benefits will become available to aliens in the CNMI on the transition program effective date, the CNRA precludes the availability of asylum under section 208 of the INA, 8 U.S.C. 1158, on the transition program effective date and throughout the transition period to aliens physically present in or arriving in the CNMI. Sec. 6(a)(7) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. Asylum is a discretionary benefit that may be granted to aliens who establish that they have been persecuted or have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA sections 101(a)(42) and 208(b), 8 U.S.C. 1101(a)(42) and 1158(b). There are certain exceptions that limit the eligibility for aliens to apply for asylum, including a limitation stating that an alien must file his or her application for asylum within one year after the date of last arrival in the United States. INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B). Aliens granted asylum can seek lawful permanent resident (LPR) status in the United States by applying for adjustment of status no earlier than one year after being granted asylum. INA sec. 209(b), 8 U.S.C. 1159(b).

The CNRA, however, does not preclude the granting of two related forms of protection from removal in the CNMI during the transition period: withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and withholding or deferral of removal under the regulations implementing Article 3 of the Convention Against Torture. See 8 CFR 208.16(c)–.18, 208.30–.31 (DHS regulations), 1208.16(c)–.18, 1208.30–.31 (DOJ regulations). Unlike asylum, withholding of removal under section 241(b)(3) of the INA is a mandatory prohibition on the removal to a particular country of a person who establishes that his or her life or freedom would be threatened in that country because of the person’s race, religion, nationality, membership in a particular social group, or political opinion. INA sec. 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16(a)–(b), 1208.16(a)–(b). Pursuant to U.S. obligations under the Convention Against Torture, a person may not be removed to a country where he or she is more likely than not to be tortured.

See Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, Div. G, tit. XXI, ch. 3, sub. B, sec. 2242, 112 Stat. 2681–822; 8 CFR 208.16(c)–.18, 208.30–.31, 1208.16(c)–.18, 1208.30–.31. Therefore, aliens who are ordered removed but who meet their burden under the Convention Against Torture may have their removal withheld. *Id.* If such aliens are ineligible for withholding (e.g., due to serious criminality, human rights abuses, or national security concerns), their removal may be ordered deferred. *Id.* Deferral of removal is a more limited prohibition on removal to a country where a person is more likely than not to be tortured, regardless of the alien’s ineligibility for asylum or withholding of removal. *Id.*²

The CNRA amendments to the Covenant Act provide that the asylum provisions of section 208 of the INA, 8 U.S.C. 1158, do not apply during the transition period to persons physically present in or arriving in the CNMI, including persons brought to the CNMI after having been interdicted in international or United States waters. Sec. 6(a)(7) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. The INA amendments also provide for delayed applicability of the asylum laws in the CNMI, including those providing for asylee adjustment of status. See sec. 702(j)(4) of Public Law 110–229; see also INA sec. 208(e) and 235(b)(1), 8 U.S.C. 1158(e) and 1225(b)(1). Under the CNRA amendments to the INA, however, the delay does not extend throughout the transition period (ending December 31, 2014), as the CNRA amendments to the INA only extend the inapplicability of the asylum provisions under section 208 of the INA, 8 U.S.C. 1158, to December 31, 2013. *Id.* These provisions, therefore, would seem to call for lifting

² A grant of withholding or deferral of removal is made with respect to an alien who has already been found by an immigration judge to be inadmissible or deportable and is subject to a final order of removal. See *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008). Withholding or deferral of removal precludes removing the alien to the particular country where the alien has established that the alien would more likely than not face persecution or torture, but “a grant of withholding of removal * * * does not afford the respondents any permanent right to remain in the United States. * * * The regulations make clear that a grant of withholding does not prevent DHS from removing an alien to a country other than the one to which removal has been withheld.” *Id.* at 434. Moreover, with respect to aliens in the CNMI, we note that Congress has amended INA section 212(d)(7), 8 U.S.C. 1182(d)(7), so that its provisions with respect to the inadmissibility of aliens seeking to enter the continental United States, or any other place under the jurisdiction of the United States, will be applicable to aliens traveling from the CNMI. See sec. 702(d) of Public Law 110–229.

the statutory prohibition on seeking asylum for applications filed on or after January 1, 2014. *Id.*

The Secretary and the Attorney General, however, have considered the statutory discrepancy and conclude that the CNRA’s provisions regarding asylum are properly read to apply in the CNMI during the entire transition period (ending December 31, 2014), rather than only through December 31, 2013. This reading is in keeping with the amendments to the Covenant Act and the intent of Congress, as evident from the CNRA’s language and the pertinent legislative history. As the title of the relevant CNRA amendments, “Conforming Amendments to the Immigration and Nationality Act,” indicates, the CNRA amendments to the INA asylum provisions were to be “conforming” amendments. Sec. 702(j)(4) of Public Law 110–229. Because the CNRA amendments to the Covenant Act are the source of authority for the requirement to extend the immigration laws to the CNMI, and include the exception with respect to the asylum provisions, the conforming amendments to the asylum provisions in section 208 of the INA must be read to conform to the substantive amendments to the Covenant Act that provide that asylum will be unavailable to persons physically present in or arriving in the CNMI during the entire time of the transition period. In other words, in construing these provisions together, the one designated as the conforming provision should be construed to conform to the primary provision in the CNRA’s amendments to the Covenant Act.

Moreover, the legislative history of the asylum-related provisions suggests how the discrepancy arose. The CNRA was an omnibus bill (S. 2739, 110th Cong. (2008) (enacted)) that originated in the Senate and contained numerous measures under the jurisdiction of the Senate Committee on Energy and Natural Resources that had previously been passed by the House of Representatives. One of these measures included H.R. 3079, 110th Cong. (2008), a free-standing bill virtually identical to what became the CNMI provisions of the CNRA (Title VII). The end date of the transition period provided by H.R. 3079 varied in different versions: December 31, 2017, in the bill as introduced, and December 31, 2013, in the bill as passed by the House and reported in the Senate. In the version passed by the House and reported in the Senate, the amendments to the asylum provisions provided for asylum eligibility “on or after January 1, 2014,” a date that conformed to the December

31, 2013 transition period end date. The intent was to provide for a five-year transition period. If the bill had become law in 2007, the year in which it was introduced, the transition period would have lasted from 2008 to 2013. The Senate bill also provided for a five-year transition period. However, with enactment occurring in 2008, the transition period shifted to end one year later. In S. 2739, Congress modified the December 31, 2013 date to 2014, but did not change the January 1, 2014 date to 2015 to conform to the new transition period. DHS and DOJ believe this to have been a technical oversight.

Where a statute includes a “technical or clerical error” such as an erroneous date, courts “look beyond a statute’s literal language to the statute’s legislative history to fashion an interpretation that is consistent with Congress’s intention in passing the statute.” *Relocation Deadline Provision Contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act*, 20 Op. O.L.C. 209, 211 (1996) (interpreting statute including deadline that had already passed when the statute was enacted); *see also, e.g., Chickasaw Nation v. United States*, 534 U.S. 84, 88–89 (2001) (concluding that Congress mistakenly included provision in statute because Court could “find no other reasonable reading”); *U.S. Nat’l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 454–55 (1993) (disregarding quotation marks that suggested meaning contrary to congressional intent); *United States v. Pabon-Cruz*, 391 F.3d 86, 98, 104 (2d Cir. 2004) (concluding in light of legislative history that provision that “ma[de] no sense” grammatically was a drafting error); *United States v. Hartsock*, 347 F.3d 1, 6 (1st Cir. 2003) (disregarding plainly erroneous cross-reference in statute); *Ronson Patents Corp. v. Sparklets Devices, Inc.*, 102 F. Supp. 123, 124 (E.D. Mo. 1951) (disregarding erroneous date in statute because the error was “apparent on the face of the act and [could] be corrected by other language of the act”); Memorandum Opinion for the General Counsel Department of Transportation and the Acting Chief Counsel Bureau of Alcohol, Tobacco, Firearms, and Explosives, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Department of Transportation Authority To Exempt Canadian Truck Drivers from Criminal Liability for Transporting Explosives* (Feb. 6, 2003) (concluding that Congress omitted “s” from end of word because contrary interpretation would yield “absurd results”); *Marketing Loans for*

Grains & Wheat, 16 Op. O.L.C. 114, 118–19 (June 3, 1992) (concluding based on textual analysis and legislative history that statutory provision was improperly denominated). Therefore, this rule uses the length of the transition period as defined in the final legislation to set the length of the inapplicability of section 208 of the INA, 8 U.S.C. 1158, in the CNMI to run through December 31, 2014.

This rule establishes several amendments to conform the regulations to the limitations on seeking asylum provided by the CNRA amendments to the Covenant Act and the INA. These amendments are described below.

1. General Applicability of the Asylum Provisions to Aliens Present in the CNMI Before January 1, 2015

This rule amends 8 CFR 208.1(a) by designating existing text as paragraph (a)(1) and by making minor edits to paragraph (a)(1) to show that the text in the paragraph is specific to “chapter I” and not “chapter I and V” of 8 CFR. Section 1208.1(a) is amended by designating existing text as paragraph (a)(1) and by making minor edits to paragraph (a)(1) to show that the text in the paragraph is specific to “chapter V” and not “chapter I and V” of 8 CFR. As previously explained, the DHS regulations relating to immigration are codified principally in 8 CFR chapter I, while DOJ regulations relating to EOIR are codified in 8 CFR chapter V, beginning with 8 CFR 1001.

This rule precludes the applicability of the provisions in subpart A prior to January 1, 2015, to aliens physically present in or arriving in the CNMI seeking asylum. *See* new 8 CFR 208.1(a)(2) and 1208.1(a)(2). Therefore, an alien already present in or arriving in the CNMI, seeking asylum prior to January 1, 2015, is not eligible to apply for asylum until on or after January 1, 2015. In addition, since the bar imposed by the CNRA amendments to the Covenant Act and INA is limited to asylum, this rule clarifies that the bar does not extend to aliens physically present in or arriving in the CNMI who establish eligibility for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture. *See* new 8 CFR 208.1(a)(2) and 1208.1(a)(2). For purposes of clarity upon the application of the asylum provisions in the CNMI on or after January 1, 2015, this rule divides existing 8 CFR 208.1(a) and 1208.1(a) into sub-paragraphs (1), restating and not substantively modifying the existing general rule of applicability,

and (2), stating the CNMI-specific temporally limited rule of applicability.

2. Jurisdiction of Immigration Judges Over Applications for Asylum Filed by Aliens in the CNMI Under a Visa Waiver Program

This rule clarifies the jurisdiction of immigration judges over applications for asylum under section 208 of the INA, 8 U.S.C. 1158, withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding of removal under the regulations implementing the Convention Against Torture, filed by aliens in the CNMI who were admitted to the United States under the Visa Waiver Program described in section 217 of the INA, 8 U.S.C. 1187, or the new Guam-CNMI Visa Waiver Program under section 212(l) of the INA, 8 U.S.C. 1182(l), as provided by the CNRA.

As of the transition program effective date, under the Visa Waiver Program described in section 217 of the INA, 8 U.S.C. 1187, visitors to the United States (including Guam and the CNMI) from designated countries will not need to obtain a visa in order to travel to the United States as visitors for business or pleasure. Under 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. Under both programs, such aliens’ stay in the United States is subject to several limitations, including limits on their eligibility for immigration benefits and a requirement that they waive, with few exceptions, their right to contest their removal. Accordingly, aliens admitted under a Visa Waiver Program are not entitled to removal proceedings under section 240 of the INA, 8 U.S.C. 1229. However, they may obtain a hearing before an immigration judge with respect to a claim for asylum (if available) or withholding of removal or deferral of removal only. *See* new 8 CFR 208.2(c)(1)(iii)–(iv) and 1208.2(c)(1)(iii)–(iv).

In light of the limitation in the CNRA that aliens physically present in or arriving in the CNMI cannot apply for asylum prior to January 1, 2015, the rule establishes that while an immigration judge will have jurisdiction over asylum applications filed by aliens who are seeking admission or have been admitted to the CNMI under a Visa Waiver Program, the immigration judge will not have jurisdiction over claims for asylum made in the CNMI before January 1, 2015. *See* new 8 CFR

208.2(c)(1)(iii), (iv), (vii), and (viii); and 1208.2(c)(1)(iii), (iv), (vii), and (viii).

3. Deadline for Filing Asylum Applications for Aliens in the CNMI on or After January 1, 2015

This rule clarifies the applicability of asylum application filing deadlines to aliens present in or arriving in the CNMI. *See* new 8 CFR 208.4(a)(2)(ii) and 1208.4(a)(2)(ii). Under the statute and current regulations, aliens seeking asylum must file their asylum applications within one year of the date of their arrival in the United States, unless an exception applies. *See* INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B); 8 CFR 208.4(a)(2)(i) and 1208.4(a)(2)(i). Since aliens in the CNMI seeking asylum will not be eligible to apply for asylum until January 1, 2015, application of this general one-year filing deadline without further clarification will render many otherwise eligible aliens who have been present in the CNMI for more than a year before January 1, 2015, ineligible to apply for asylum even though the reason for the delayed ability to file was a temporary statutory preclusion. Therefore, this rule applies the one-year filing deadline from January 1, 2015, or from the date of the alien's last arrival in the United States (including the CNMI), whichever is later. *See* new 8 CFR 208.4(a)(2)(ii) and 1208.4(a)(2)(ii). The rule provides, however, that for aliens who last arrived in the United States (e.g., at Honolulu) prior to January 1, 2015, any period of physical presence in the United States since that last arrival (other than physical presence in the CNMI prior to January 1, 2015) will count toward the 1-year period. The purpose of that exception is to preclude aliens from effectively restarting the 1-year period simply by traveling to CNMI from another part of the United States. Prior to January 1, 2015, aliens in the CNMI may only obtain protection from persecution or torture through withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture.

4. Aliens in DHS Custody

This rule amends the regulations at 8 CFR 208.5 and 1208.5 governing aliens in DHS custody seeking asylum or expressing a fear of persecution or torture if removed. The rule's amendment to 8 CFR 208.1(a) and 1208.1(a), discussed above, provides that this provision does not apply to aliens present in the CNMI seeking asylum prior to January 1, 2015, in conformity with the CNRA

amendments. However, DHS and DOJ believe that this provision requires clarification with respect to such aliens in DHS custody who express a fear of persecution or torture and may be eligible for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture. Thus, this rule provides that such aliens present in the CNMI cannot be excluded, deported, or removed before a decision is made on these applications. *See* new 8 CFR 208.5(a) and 1208.5(a). This rule also makes technical modifications to these provisions, as well as to the title of the sections, replacing references to the Immigration and Naturalization Service (Service) with references to DHS.

With respect to alien crewmembers in DHS custody expressing a fear of persecution or torture, special application procedures apply. *See* new 8 CFR 208.5(b) and 1208.5(b). We believe that these procedures also require clarification in light of the CNRA amendments. Under the current regulations, alien crewmembers who file a timely asylum application, Form I-589, Application for Asylum and for Withholding of Removal, will also be served with a Notice of Referral to Immigration Judge, Form I-863, for consideration of their claim before an immigration judge, rather than having their claim heard initially by DHS. This rule clarifies that alien crewmembers in the CNMI may request withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and withholding of removal under the regulations implementing the Convention Against Torture using this process, even though they are not eligible to apply for asylum prior to January 1, 2015. *See* new 8 CFR 208.5(b)(1)(iii) and 1208.5(b)(1)(iii).

5. Aliens Arriving in the CNMI Expressing a Credible Fear of Persecution or Torture

This rule makes conforming amendments to subparts B of 8 CFR parts 208 and 1208. Subparts B of CFR part 208 and 1208 begin at 8 CFR 208.30 and 1208.30, respectively. *See* 8 CFR 208.30 and 1208.30. These regulations set forth the procedures for handling claims by aliens arriving in the United States who express a credible fear of persecution and implement section 235(b) of the INA, 8 U.S.C. 1225(b), which governs the inspection of aliens arriving in the United States (or otherwise not admitted or paroled to the United States), including the screening of aliens for admissibility and the

handling of claims of asylum or fear of persecution or torture. The CNRA amended section 235 of the INA to clarify that it does not authorize aliens arriving in the CNMI to apply for asylum prior to January 1, 2014. *See* sec. 702(j)(5) of Public Law 110-229 (adding new section 235(b)(1)(G) of the INA, 8 U.S.C. 1225(b)(1)(G)).

Under the current regulations, these credible fear procedures apply to aliens subject to section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), and they would include the amendment made by the CNRA barring aliens in the CNMI from seeking asylum prior to January 1, 2014. *See* 8 CFR 208.30(a) and 1208.30(a). However, since the Secretary and the Attorney General have interpreted January 1, 2014, to be an incorrect reference to the end date of the transition period, as discussed above, this rule modifies 8 CFR 208.30(a) and 1208.30(a) to ensure that the asylum bar for aliens in the CNMI applies throughout the entire transition period, the period prior to January 1, 2015. *See* new 8 CFR 208.30(a) and 1208.30(a). In addition, this rule clarifies that these provisions do apply to aliens in the CNMI who establish eligibility for withholding of removal or protection under the regulations implementing the Convention Against Torture. *Id.*; *see also* new 8 CFR 208.30(e)(2) and existing 208.30(e)(3).

6. Eligibility of Asylees Physically Present in the CNMI to Adjust Status to That of an LPR

This rule amends the eligibility requirements for an asylee seeking to adjust his or her status to that of an LPR. An asylee may not adjust his or her status to that of an LPR while present in the CNMI until on or after January 1, 2015. *See* new 8 CFR 209.2(a)(3) and 1209.2(a)(3). This preclusion applies even if that applicant was granted asylum and relocated to the CNMI from elsewhere within the United States. This rule conforms the regulations to the preclusion of adjustment of status to such aliens required by section 702(j)(4) of the CNRA (adding new section 208(e) of the INA, 8 U.S.C. 1158(e)).

7. Procedures for Immigration or Asylum Officers for Referring Cases to the Immigration Judge

This rule makes conforming amendments to those regulatory provisions governing the applicable procedures for handling claims by arriving aliens who express a credible fear of persecution. These conforming amendments clarify that, with respect to aliens arriving in the CNMI, these application procedures do not apply to

applications for asylum filed prior to January 1, 2015, but do apply to such applications based upon eligibility for withholding of removal based on section 241(b)(3) of the INA.

Determinations involving a credible fear of torture will be unaffected by the regulation. *See* new 8 CFR 217.4(a)(1), 235.6(a)(1)(ii) and (iii), and 1235.6(a)(1)(ii) and (iii).

D. Eligibility for Adjustment of Status for Immediate Relative Aliens Admitted Under the Guam-CNMI Visa Waiver Program

The CNRA amended the INA to provide for a special visa waiver program for the CNMI by creating a new Guam-CNMI Visa Waiver Program, which will supersede the current Guam Visa Waiver Program. *See* sec. 702(b) of Public Law 110–229. Under the new Guam-CNMI Visa Waiver Program, citizens or nationals of eligible countries may apply for admission to Guam or the CNMI at ports of entry in Guam or the CNMI as nonimmigrant visitors for a period of 45 days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. U.S. Customs and Border Protection (CBP) is implementing the CNRA's creation of the Guam-CNMI Visa Waiver Program, including amending the applicable regulatory provisions at 8 CFR 212.1(e) and 212.1(q). DOJ will similarly revise its duplicate provisions at 8 CFR 1212.1(e) and add a new section 1212.1(q); however, these two paragraphs are being revised to omit regulatory provisions pertaining solely to matters within DHS's authority, by cross-referencing rather than restating in full those provisions in the DHS regulations at 8 CFR 212.1(e) and (q).

Currently, under 8 CFR 245.1(b)(7) and 1245.1(b)(7), an alien admitted into Guam under the Guam Visa Waiver Program or the Visa Waiver Program under section 217 of the INA is prohibited from adjusting his or her status to that of an LPR. *See* INA sec. 245(c)(4), 8 U.S.C. 1255(c)(4); 8 CFR 245.1(b)(7) and (8), 1245.1(b)(7) and (8). An exception to this ineligibility is when the alien is an "immediate relative." *See* INA sec. 245(c)(4), 8 U.S.C. 1255(c)(4) (permitting "immediate relatives" admitted under the Visa Waiver Program to adjust status); *see generally* INA sec. 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i) (defining "immediate relative"). An example of an immediate relative is an alien spouse of a U.S. citizen. The current provisions excluding aliens

admitted under the Guam Visa Waiver Program from adjusting status, 8 CFR 245.1(b)(7), 212.1(e)(4)(i), 1245.1(b)(7) and 1212.1(e)(4)(i), do not contain the statutory exception for immediate relatives, nor do the provisions at 8 CFR 212.1(q)(4)(i) of the interim final rule implementing the Guam-CNMI Visa Waiver Program. Therefore, this rule amends 8 CFR 212.1(e)(4)(i) and (q)(4)(i), 245.1(b)(7), and 1245.1(b)(7) and adds a new 8 CFR 1212.1(q)(4)(i) to provide that immediate relatives admitted to Guam or to the CNMI (on or after the transition program effective date) under the Guam-CNMI Visa Waiver Program remain eligible to apply for adjustment of status under INA section 245(a) and 8 CFR 245.1(a) and 1245.1(a).

E. Verification of Employment Authorization in the CNMI

Upon the transition program effective date, employers and certain recruiters and referrers for a fee³ (collectively referred to as "employer(s)") in the CNMI will be subject to the same prohibitions as other employers in the United States against knowingly employing aliens who are not authorized to work in the United States, since the addition of the CNMI to the United States as defined by the INA will apply section 274A of the INA in full to the CNMI. *See* sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229; INA sec. 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). These employers also will be subject to the same responsibilities as other employers in the United States for taking steps to ensure that their workforce is authorized for employment. *See* INA sec. 274A(b), 8 U.S.C. 1324a(a)(1)(B). This rule establishes conforming amendments to the regulations to ensure the proper application of these laws to employers in the CNMI within the parameters of the CNRA.

In addition, upon the transition program effective date, employers and other entities in the CNMI will be subject to the anti-discrimination provisions of the INA, which make it

³ 8 CFR 274a.2(a)(1) provides that "[f]or purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97–470 (29 U.S.C. 1802))." However, the anti-discrimination provisions of section 274B of the Act contain no such limitation. The Act broadly prohibits discrimination by "any individual or other entity with respect to * * * recruitment or referral for a fee." INA sec. 274B(a)(1), 8 U.S.C. 1324b(a)(1).

unlawful for a person or any other entity to discriminate on the basis of citizenship status or national origin in the hiring, employment eligibility verification process, firing, or recruitment or referral for a fee of an individual. *See* INA sec. 274B, 8 U.S.C. 1324b; 28 CFR Parts 44 and 68. Further, upon the transition program effective date, individuals in the CNMI will be subject to the civil document fraud provisions of the INA (in addition to criminal penalties for U.S. immigration-related document fraud already applicable under title 18 of the U.S. Code), which generally make it unlawful for any person or entity to use fraudulent documents for various purposes under the INA. *See* INA sec. 274C, 8 U.S.C. 1324c.

1. Employment Eligibility Verification Process

It is unlawful for any employer in the United States to hire an individual knowing that he or she is unauthorized to work in the United States with respect to that employment. *See* INA sec. 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). An alien is unauthorized to work if he or she is not an LPR or is not authorized to work under specific provisions of the INA or by DHS. *See* INA sec. 274A(h)(3), 8 U.S.C. 1324a(h)(3). If an employer hires an individual without knowledge that he or she is unauthorized to work in the United States, but gains this knowledge after the hire, or learns after the hire that the individual has become unauthorized to work, it is unlawful for the employer to continue to employ such individual. *See* INA sec. 274A(a)(2), 8 U.S.C. 1324a(a)(2). Consequences for violating these prohibitions include civil money penalties and, in some cases, criminal penalties. *See* INA sec. 274A(e), (f), and (g), 8 U.S.C. 1324a(e), (f), and (g).

To better ensure that employers do not hire unauthorized aliens in the first place, the INA makes it unlawful for employers to hire an individual for employment in the United States without verifying the identity and employment authorization of such individual, regardless of the individual's citizenship. *See* INA sec. 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). As part of the verification process, employers must complete a Form I–9, retain the form for a statutorily-established period, and make the form available for inspection by certain government officials. *See* INA sec. 274A(b), 8 U.S.C. 1324a(b); 8 CFR 274a.2. On Form I–9, a newly-hired employee must attest that he or she is a U.S. citizen or national, LPR, or an alien otherwise authorized to work in

the United States. The employee then must present a document from List A or a combination of documents from List B and C designated by statute or regulation and listed on Form I-9 as acceptable for establishing identity and employment authorization to his or her employer. The employer must examine the documents, record the document information on Form I-9, and attest that the documents appear both to be genuine and to relate to the individual presenting them.

2. Employment Authorization Documentation

After the transition program effective date, CNMI employers may hire or continue to employ aliens whose work authorization was granted under CNMI law before the transition program effective date within certain limitations. The Covenant Act amended by the CNRA contains a "grandfather clause" allowing alien workers in the CNMI lawfully present and authorized to be employed in the CNMI on the transition program effective date to be considered work authorized in the CNMI until their employment authorization expires under CNMI law, or for two years, whichever is shorter. Sec. 6(e)(2) of Public Law 94-241, as added by sec. 702(a) of Public Law 110-229. Therefore, employers who employ such aliens in the CNMI will not be in violation of the prohibition against knowingly hiring or continuing to employ an unauthorized alien, so long as the employment is consistent with the CNMI authorization.

This rule will allow aliens with unrestricted work authorization in the CNMI under the grandfather clause discussed above to present to their employers CNMI-specific documents in order to meet employment verification requirements. The Department of Labor of CNMI issues to aliens in the CNMI the following documentation evidencing work authorization:

- An Alien Entry Permit (with a red band) that shows the name of the alien, employer, job classification, citizenship, expiration date of the Alien Entry Permit, and the Alien Entry Permit number;⁴ and
- A Temporary Work Authorization letter containing a photograph.⁵

⁴ CNMI Public Law 15-108 Sec. 4925. It is DHS' understanding that cards provided to immediate relatives, aliens given refugee protection, or others with unrestricted work authorization have red bands, and cards provided to aliens authorized to work with a specific employer have blue bands. For this reason, the rule specifies that only red-banded Alien Entry Cards would be acceptable.

⁵ CNMI Public Law 15-108 Sec. 4947(f) provides that a " * * hearing officer may authorize a foreign national worker to

In addition, CNMI issued permanent resident cards to aliens who were granted permanent resident status under CNMI law between April 1, 1977 and April 23, 1981.⁶ This rule provides that these documents in combination with the alien's unexpired foreign passport are acceptable documents for completion of Form I-9 CNMI for new hires in the CNMI. *See* new 8 CFR 274a.2(b)(1)(v)(D). These documents establish both identity and work authorization for a two-year period starting from the transition program effective date. The limited duration of this provision parallels the period during which such aliens are authorized to work under the grandfather clause.

DHS has determined that, because of the limited situation and timeframe for verifying employment authorization for new hires in the CNMI, it is appropriate to designate certain limited documents that are used only in the CNMI as List A documents for Form I-9 purposes in the CNMI.

DHS is not amending Form I-9 (OMB Control Number 1615-0047) by adding CNMI-specific documents to its lists of acceptable documents and is instead creating a new form, Form I-9 CNMI, Employment Eligibility Verification, to be used by CNMI employers to document authorized employment. This form will contain new acceptable documents specific to the CNMI as described above. DHS determined that amending the form used for the 78 million estimated annual new hires and re-verifications in the U.S. to add CNMI-exclusive documents on the List of Acceptable Documents would result in unnecessary expense and confusion because those documents are not acceptable for Form I-9 purposes in the remainder of the United States. U.S. employers therefore will not be required under this rule to learn about documents that apply to a very limited geographic area and relatively small number of employers. Employers in any

be employed in the Commonwealth on a temporary basis pending a hearing with respect to a labor complaint. A temporary work authorization shall end two (2) business days after the hearing officer's order is issued."

⁶ Under Northern Mariana Islands Public Law 5-11 Sec. 4, which became effective April 1, 1977, the Resident Commissioner (the highest executive authority of the Government of the Northern Mariana Islands at the time appointed by the Secretary of the Interior) was authorized to issue permanent identification cards to persons granted permanent residence status pursuant to the provisions of Northern Mariana Islands Public Law 5-11. Northern Mariana Islands Public Law 5-11, however, was repealed in 1981 by CNMI Public Law 2-17. Public Law 2-17, Sec. 2 preserved the rights and status of persons who were granted or applied for permanent residency status pursuant to prior Northern Mariana Islands Public Law 5-11.

other part of the United States may not accept the CNMI documents specified in this rule to satisfy documentation requirements of the Form I-9. The identification documents for all other employers will continue to be as currently provided in 8 CFR 274a.2(b)(1)(v).

DHS has also considered what documentation may reasonably be available to U.S. nationals and others who are authorized to work in the CNMI for the purpose of documenting their employment authorization. Under the applicable statutes and regulations that will be in effect beginning on the transition program effective date, the CNMI will be a "State" as defined by section 101(a)(36) of the INA, so U.S. nationals, LPRs, and categories of aliens eligible to obtain unrestricted Social Security cards (*i.e.*, those without a restrictive legend limiting the card's use as evidence of employment authorization) can present the CNMI driver's license and Social Security card combination, or a U.S. passport, Permanent Resident Card, Employment Authorization Document (EAD) or other appropriate employment authorization document or documents. *See* 8 CFR 274a.2(b)(1)(v)(A)-(C). Nationals of the Marshall Islands and the Federated States of Micronesia may use a passport and Form I-94 showing admission under the Compacts of Free Association, and may also apply for an EAD; nationals of Palau will need to obtain an EAD. DHS is not aware at the present time of other specific accommodations to the CNMI relating to Form I-9 identity or employment authorization documentation that may be necessary, but invites public comment on this subject.

3. Application of the Hiring Prohibitions to Employers in the CNMI

The prohibitions in section 274A of the INA, 8 U.S.C. 1324a, against the hiring of unauthorized aliens and the hiring of individuals without verifying their identity and employment authorization are applicable to any hiring in the United States on or after November 6, 1986 (the effective date of the prohibitions). *See* 8 CFR 274a.7; *see also* 8 CFR 274a.1(c). Although the provisions of section 274A do not apply in the CNMI until the transition period effective date, as of that date they will apply as stated in the INA. Therefore, Form I-9 requirements, using Form I-9 CNMI, should apply to hiring in the CNMI actually conducted on or after the transition program effective date.

The current provision at 8 CFR 274a.7 provides that the civil and criminal penalties associated with violating the

employment authorization requirements or knowingly continuing to employ unauthorized aliens will not apply to hires on or before November 6, 1986. To make the necessary conforming amendments to the current regulations, this rule amends 8 CFR 274a.7 to recognize that the penalties will not apply to hires in the CNMI prior to the transition program effective date. This rule would preclude application of these penalties to CNMI employers for potential employment authorization documentation violations committed after November 28, 2009 with respect to hires occurring before November 28, 2009. Therefore, under this rule, the employment authorization documentation requirements and associated penalties apply to any new hiring in the CNMI on or after November 28, 2009; a CNMI employer is not subject to penalties if it does not complete the Form I-9 CNMI for an employee continuing in his or her employment. See 8 CFR 274a.7.

This rule does not, however, provide a safe harbor to CNMI employers with knowledge that employees hired prior to the transition program effective date are unauthorized for employment. For this reason, the rule does not amend 8 CFR 274a.3, which provides that an employer is in violation of section 274A if it continues the employment of any alien hired on or after November 6, 1986, knowing that the employee is or has become unauthorized to be employed with respect to that employment. Although a Form I-9 CNMI is not required for employees continuing in their employment on the transition program effective date, DHS does not believe that CNMI employers should continue the employment of an individual on or after the transition date if they know that the individual is unauthorized to work. In particular, exempting CNMI employers from liability for ignoring expiration of CNMI work authorizations during the grandfather clause period would permit them to continue the employment of an alien worker during the period between expiration of his or her work authorizations (a date which, under the CNMI labor permitting system, is known to the employer) and the end of the grandfather period.

As described in 8 CFR 274a.3, the continuing employment prohibition applies to an employer who continues the employment of an alien hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien with respect to that employment. This provision applies in the CNMI to impose penalties on an employer who, on or after the transition

program effective date, knowingly employs an unauthorized alien hired after November 6, 1986, regardless whether a Form I-9 CNMI is required to be completed on the employee (which it would not be unless the hire was on or after the transition program effective date). An employee who is employed under a valid "grandfathered" grant of CNMI work authorization during the first two years of the transition period is not an "unauthorized alien," because the employee would be authorized by DHS under the amendments to 8 CFR 274a.12 also made by this rule. Rather, the violation would occur if the employer knew that the employee's grandfathered work authorization grant had expired, but continued the employment anyway.

4. Contracting for Labor or Services

If a person or entity has entered into a contract for the labor or services of an individual, the action is not necessarily considered a "hire" triggering section 274A of the Act, 8 U.S.C. 1324a, including the Form I-9 requirements. However, the law provides that if the person or entity uses a contract entered, renegotiated, or extended after November 6, 1986 to obtain the labor or services of an alien knowing that the alien is unauthorized for employment in the United States with respect to such labor or services, the person or entity will be considered to have knowingly hired the individual in violation of section 274A(a)(4) of the Act, 8 U.S.C. 1324a(a)(4). This provision is implemented in the current regulations at 8 CFR 274a.5 and in the definition of "hire" at 8 CFR 274a.1(c). This rule amends these provisions to provide that they are applicable in the CNMI to contracts entered into, renegotiated, or extended on or after the transition program effective date. See 8 CFR 274a.5 and 274a.1(c). DHS believes that amendments to these provisions to cover actions occurring in the CNMI on or after section 274A becomes applicable will avoid retroactive application of the law to the CNMI.

F. Employment Authorization of Aliens With Employment Authorization Granted by the CNMI

In order to conform the DHS work authorization regulations to the previously discussed "grandfather clause" authorizing employment for up to two years after the transition program effective date, this rule adds a new classification of CNMI aliens to the list of alien classifications authorized for employment incident to status with a specific employer. See new 8 CFR 274a.12(b)(24). Such work authorization

is limited to employment in the CNMI only, and within the time limitations set by the Covenant Act sec. 6(e)(2) (added by CNRA sec. 702(a)). DHS determined that it would be most reasonable to include this class of CNMI aliens within the list of alien classifications authorized to work incident to status with a specific employer since most aliens in the CNMI are granted employer-specific work authorization under CNMI law. However, some aliens are granted unrestricted work authorization. Therefore, this rule includes a distinction within new 8 CFR 274a.12(b)(24) to account for aliens with employer-specific work authorization.

Employers continuing the employment of aliens with CNMI work authorization under the grandfather clause will not be required to complete a Form I-9 CNMI for these employees on the transition program effective date because the Form I-9 requirements apply only to hiring on or after the transition program effective date, and not continuing employment. Unless they are permitted to change employers under their CNMI work authorization, most aliens with employer-specific CNMI work authorization will need to continue their employment with the same employer on or after the transition program effective date to be deemed employment-authorized under the grandfather clause. As provided in 8 CFR 274a.12(b)(24), employees who are authorized by the CNMI as of the transition program effective date to change employers may do so, whether the approval to change is employer-specific or in the form of unrestricted work authorization. For aliens with unrestricted CNMI work authorization or who are permitted to change employers, Forms I-9 CNMI will need to be completed for hires on or after the transition program effective date.

G. Technical Changes

This rule corrects an error in 8 CFR 217.4(a)(1) and (b)(1). These provisions provide for determinations of inadmissibility and deportability with respect to aliens arriving to the United States under the Visa Waiver Program, codified in section 217 of the INA, 8 U.S.C. 1187. Both paragraphs (a)(1) and (b)(1) in 8 CFR 217.4 require aliens seeking admission to the United States under the Visa Waiver Program who apply for asylum to be referred to the immigration judge for a proceeding under 8 CFR 208.2(b)(1) and (b)(2). However, the cross references to 8 CFR 208.2(b)(1) and (b)(2) are incorrect. The provision at 8 CFR 208.2(b) describes the general jurisdiction of the Immigration Court over asylum

applications and does not contain paragraphs (b)(1) and (b)(2). The provisions to which the cross references should apply are the provisions applicable to aliens not entitled to removal proceedings under section 240 of the INA, 8 U.S.C. 1229, with respect to applications for asylum and withholding of removal filed on or after April 1, 1997. The applicable provisions are 8 CFR 208.2(c)(1) and (c)(2), which this rule is amending by including a discussion of aliens arriving in the CNMI before January 1, 2015. To correct the error in 8 CFR 217.4(a)(1) and (b)(1), this rule replaces the reference to 8 CFR 208.2(b)(1) and (2) with a reference to 8 CFR 208.2(c)(1) and (c)(2). See new 8 CFR 217.4(a)(1) and (b)(1).

This rule also corrects an error in 8 CFR 208.1(a) and 8 CFR 1208.1(a). These provisions generally reference applicability of section 208 of the INA, 8 U.S.C. 1158. Both paragraphs reference motions to reopen and reconsider under section 240(c) of the INA, 8 U.S.C. 1229, and currently include references to sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229. However, pursuant to section 101(d)(1) of the REAL ID Act of 2005, Public Law 109–13, the provisions dealing with motions to reconsider and reopen previously codified at sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229, were re-designated as sections 240(c)(6) and (7) of the INA, 8 U.S.C. 1229. To correct this error in 8 CFR 208.1(a) and 8 CFR 1208.1(a), this rule replaces references to sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229, with references to sections 240(c)(6) and (7) of the INA, 8 U.S.C. 1229. See 8 CFR 208.1(a)(1) and 1208.1(a)(1).

In addition to the changes being addressed in this rule, DOJ recognizes the need to make further conforming changes updating and harmonizing the EOIR provisions at chapter V to take account of various other recent conforming revisions already made by DHS to 8 CFR chapter I, particularly sections 212.0, 212.1, 215.1, and 235.5. See 74 FR 2834 (Jan. 16, 2009), as revised, 74 FR 25388 (May 28, 2009); 73 FR 18384 (Apr. 3, 2008). DOJ plans to thoroughly review these provisions to determine whether it will retain these provisions or, in a future rulemaking, make further changes to delete provisions from the corresponding EOIR regulations (sections 1212.1, 1215.1, and 1235.5) that have been determined to be no longer within the jurisdiction of the Attorney General and do not need to be restated in the DOJ regulations. DOJ expects that such a future rulemaking may address other recent revisions made by DHS as part of the recent DHS

interim rule published at 74 FR 26933 (June 5, 2009). Although such changes are not being incorporated into the present rule (which is more specifically focused on the CNMI), DOJ welcomes public comment with regard to these planned revisions.

V. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” See 5 U.S.C. 553(b)(B). For reasons discussed below, DHS and DOJ find pre-promulgation notice and comment for this rule to be impracticable, unnecessary, and contrary to the public interest.

As noted earlier, the CNRA amends both the INA and the Covenant Act to extend U.S. immigration laws to the CNMI. These changes become effective on the transition program effective date, which is November 28, 2009. Because this rulemaking simply conforms the regulations with the applicable statute, notice and comment procedures are “unnecessary,” and the “good cause” exception to the APA’s notice-and-comment requirement, see 5 U.S.C. 553(b)(B), therefore is applicable. See, e.g., *Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1290–92 (D.C. Cir. 1991) (regulations that “either restate or paraphrase the detailed requirements” of a self-executing statute do not require notice and comment); *Komjathy v. Nat’l Transp. Safety Bd.*, 832 F.2d 1294, 1296 (D.C. Cir. 1987) (per curiam) (regulation that “merely reiterates the statutory language” does not require notice and comment); *Nat’l Customs Brokers & Forwarders Ass’n v. United States*, 59 F.3d 1219, 1223–24 (Fed. Cir. 1995) (notice and comment unnecessary where Congress directed agency to change regulations and public would benefit from amendments).

Furthermore, given the short timeframe available to develop the complex regulatory scheme necessary to ensure a smooth transition of the CNMI to the U.S. federal immigration system, the “good cause” exception also is applicable because it would be “impracticable” and “unnecessary,” 5 U.S.C. 553(b)(B), for the Departments to delay implementation of this rule to first consider public comment. Under the APA, an agency is authorized to forego notice and comment, in emergency situations, or where “the delay created by the notice and comment

requirements would result in serious damage to important interests.” *Woods Psychiatric Institute v. United States*, 20 Cl. Ct. 324, 333 (Cl. Ct. 1990), *aff’d*, 925 F.2d 1454 (Fed. Cir. 1991). “[W]hen there is a lack of specific and immediate guidance from the agency that would create confusion, economic harm, and disruption, not only to the participants of the program, who are forced to rely on antiquated standards, but would also extend to consumers in general, the good cause exception is a proper solution to ameliorate this expected harm.” *Woods*, 20 Cl. Ct. at 333; see also, e.g., *N. Am. Coal Corp. v. Director, Office of Workers’ Compensation Programs, U.S. Dep’t of Labor*, 854 F.2d 386, 389 (10th Cir. 1988) (finding good cause where delay would cause “real harm”); *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 886 (3d Cir. 1982) (finding good cause in light of statutory deadline); *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 575 (D.C. Cir. 1981) (per curiam) (finding good cause where agency had insufficient time to follow notice-and-comment procedures despite working diligently to meet deadline); *United States v. Hernandez*, 615 F. Supp. 2d 601, 613 (E.D. Mich. 2009) (finding good cause where agency acted “to prevent a delay in implementation that could jeopardize the safety of the public and thwart the purposes of” the statute). Under the CNRA, the transition will begin on November 28, 2009, even if regulations to guide the CNMI are not yet in place. Thus, the failure to have an effective interim regulation in place by the beginning of the transition period would serve only to confuse and harm the CNMI and aliens residing in the CNMI following the transition. This would have an adverse impact on the CNMI economy in direct contrast to congressional intent under the CNRA and would be contrary to an important public interest.

Although DOJ and DHS find that good cause exists under 5 U.S.C. 553(b) to issue this rule as an interim rule, DOJ and DHS nevertheless invite written comments on this interim rule and will consider those comments in the development of a final rule in this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847, 857, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small

organizations during the development of their rules. When an agency invokes the good cause exception under the Administrative Procedure Act to make changes effective through an interim final rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. See 5 U.S.C. 603(a). This rule makes changes for which notice and comment are not necessary, and, accordingly, DHS and DOJ have not prepared a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, 109 Stat. 48, requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector if the rule will result in expenditures exceeding \$100 million (adjusted for inflation) in any one year. 2 U.S.C. 1532(a). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. The CNRA will cause some changes for the CNMI government since they will no longer be implementing their own immigration, foreign worker, and border security program. However, the costs of administering that program will no longer be incurred by the CNMI government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the SBREFA. See 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

This rule has been designated as significant under Executive Order 12866. Therefore, an analysis of the costs and benefits of this rule has been performed and the rule has been reviewed by the Office of Management and Budget.

This rule contains only such regulations as are required to provide that U.S. immigration law will apply to the CNMI. This rule establishes provisions necessary for the application of the INA to the CNMI, and updates definitions and clarifies existing DHS and DOJ regulations in areas that may prove confusing or be in conflict with how they are to be applied after the INA takes effect in the CNMI. These statutory requirements, including imposition of any applicable application, petition, or user fees, would mostly be self-implementing in the absence of this regulatory action. The stated goals of the CNRA are to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth. While those goals are expected to be partly facilitated by the changes made in this rule, they are general and qualitative in nature. There are no specific changes made by this rule with sufficiently identifiable direct or indirect economic impacts so as to be quantified. There may be some inconvenience costs associated with the need for residents of the CNMI to adjust to application of the INA; however, those costs are independent of and would occur regardless of this rule. The CNRA mandates a 5-year transition, and provides for other programs that will mitigate the economic effects of the CNRA and allow for a less turbulent transition for the CNMI. The regulations for those programs are being implemented and their effects have been analyzed under separate rulemakings. This rule is limited to harmonization of DHS, DOJ, and CNMI rules and has no economic costs.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 109 Stat. 163, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. The collections of information encompassed within this rule have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The United States Citizenship and Immigration Services is requiring a new Form I-9 CNMI, to collect the information required to document that each new employee (both citizen and noncitizen) hired in the Commonwealth of the Northern Mariana Islands (CNMI) after November 27, 2009, is authorized to work in the CNMI. Since this is an interim rule, this information collection has been submitted and approved by OMB under the emergency review and clearance procedures covered under the PRA. See 44 U.S.C. 3507(j). During the first 30 days, USCIS is requesting comments on this information collection until November 27, 2009. When submitting comments on this information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond,

(5) Including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection is necessary to document that each new employee (both citizen and noncitizen)

hired in the Commonwealth of the Northern Mariana Islands (CNMI) after November 27, 2009, is authorized to work in the CNMI.

c. *Title of Form/Collection:* CNMI Employment Eligibility Verification.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-9 CNMI; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Primary: Individuals and Households.

f. *An estimate of the total number of respondents:* 1,700 respondents.

g. *Number of Responses per Respondent:* 1.

h. *Total Annual Responses:* 1,700.

i. *Hours per Response:* 9 minutes or .15 hours per response, and 3 minutes or .05 per response for recordkeeping.

j. *Total Annual Reporting Burden:* 340 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden may be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210.

List of Subjects

8 CFR Parts 1 and 1001

Aliens, Reporting and recordkeeping requirements.

8 CFR Parts 208 and 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 209 and 1209

Aliens, Immigration, Refugees.

8 CFR Parts 212 and 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 217

Aliens, Reporting and recordkeeping requirements.

8 CFR Parts 235 and 1235

Administrative practice and procedure, Aliens, Immigration,

Reporting and recordkeeping requirements.

8 CFR Parts 245 and 1245

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Department of Homeland Security

8 CFR Chapter I

■ Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); Title VII of Public Law 110-229.

■ 2. Section 1.1 is amended by adding a new paragraph (bb) to read as follows:

§ 1.1 Definitions.

* * * * *

(bb) The term *transition program effective date* as used with respect to extending the immigration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110-229; 8 CFR part 2.

■ 4. Section 208.1(a) is revised to read as follows:

§ 208.1 General.

(a) *Applicability.* (1) *General.* Unless otherwise provided in this chapter I, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an

immigration judge, regardless of the date of filing. For purposes of this chapter I, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(d). Such applications are referred to as “asylum applications.” The provisions of this part 208 shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part 208 except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(6) and (c)(7) of the Act, and 8 CFR parts 3 and 103, where applicable.

(2) *Commonwealth of the Northern Mariana Islands.* The provisions of this subpart A 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. Effective on the transition program effective date, the provisions of this subpart A 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.

* * * * *

■ 5. Section 208.2 is amended by:
 ■ a. Revising paragraphs (c)(1)(iii) and (iv);

■ b. Removing the word “or” at the end of paragraph; (c)(1)(v);

■ c. Removing the period at the end of paragraph (c)(1)(vi), and adding a semicolon in its place; and by

■ d. Adding new paragraphs (c)(1)(vii) and (viii).

The revisions and additions read as follows:

§ 208.2 Jurisdiction.

* * * * *

(c) * * *

(1) * * *

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver

Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015;

* * * * *

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

■ 6. Section 208.4 is amended by adding three new sentences to the end of paragraph (a)(2)(ii) to read as follows:

§ 208.4 Filing the application.

- (a) * * *
- (2) * * *

(ii) * * * For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from either 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 re-start the calculation of the 1-year period.

* * * * *

- 7. Section 208.5 is amended by:
 - a. Revising the section heading;
 - b. Revising paragraph (a); and by
 - c. Adding a new paragraph (b)(1)(iii).

The revisions and addition read as follows:

§ 208.5 Special duties toward aliens in custody of DHS.

(a) *General.* When an alien in the custody of DHS requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, DHS shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under 8 CFR 208.30 or a reasonable fear determination pursuant to 8 CFR 208.31. Although DHS does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either 8 CFR 208.30 or 8 CFR 208.31, DHS may provide the appropriate forms, upon request. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application. Furthermore, except as provided in paragraph (c) of this section, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands shall not be excluded, deported, or removed before a decision is rendered on his or her application for withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. No application for asylum may be filed prior to January 1, 2015, under section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

- (b) * * *
- (1) * * *

(iii) An alien crewmember physically present in or arriving in the Commonwealth of the Northern Mariana Islands can request withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. However, such an alien crewmember is not eligible to request asylum pursuant

to section 208 of the Act prior to January 1, 2015.

* * * * *

- 8. Section 208.30 is amended by:
 - a. Revising paragraph (a); and by
 - b. Adding a sentence at the end of paragraph (e)(2).

The revision and addition read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, DHS has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart B, paragraphs (b) through (g) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act. Prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

(e) * * *

(2) * * * However, prior to January 1, 2015, in the case of an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, the officer may only find a credible fear of persecution if there is a significant possibility that the alien can establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act.

* * * * *

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 9. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

- 10. Section 209.2 is amended by:
 - a. Revising paragraph (a)(1) introductory text; and
 - b. Adding paragraph (a)(3).

The revision and addition read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by USCIS to that of an alien lawfully admitted for permanent residence, provided the alien:

* * * * *

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 11. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Public Law 108-458; Title VII of Public Law 110-229; 8 CFR part 2.

■ 12. Section 212.1 is amended by revising paragraphs (e)(4)(i) and (q)(4)(i), to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident.

* * * * *

(q) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 13. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Public Law 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the

Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Public Law 110-229; 8 CFR part 2.

■ 14. Section 214.7 is amended by:

- a. Revising the section heading;
■ b. Revising paragraph (a)(3);
■ c. Revising the first sentence of paragraph (a)(4)(i) introductory text; and by
■ d. Revising paragraph (b).

The revisions read as follows:

§ 214.7 Habitual residence in the territories and possessions of the United States and consequences thereof.

(a) * * *

(3) Territories and possessions of the United States means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa, as long as the Act does not apply to it.

(4)(i) Habitual resident means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa, as long as the Act is not applicable to it) pursuant to section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature.

* * * * *

(b) Where do these rules regarding habitual residence apply? The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, the American Virgin Islands, and the Commonwealth of the Northern Mariana Islands. These rules do not apply to habitual residents living in American Samoa as long as the Act does not extend to it. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

* * * * *

■ 15. Section 214.11 is amended by:

- a. Revising the definition of "United States" in paragraph (a);
■ b. Revising paragraph (b)(2);
■ c. Revising the first sentence in paragraph (g) introductory text; and by
■ d. Revising paragraph (g)(1).

The revisions read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) * * *

United States means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * *

(b) * * *

(2) Is physically present in the United States, American Samoa, or at a port-of-entry thereto, on account of such trafficking in persons;

* * * * *

(g) Physical presence on account of trafficking in persons. The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application.

(1) In general. The evidence and statements included with the application must state the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States, American Samoa, or a port-of-entry thereto, and demonstrate that the applicant is present now on account of the applicant's victimization as described in paragraph (f) of this section and section 101(a)(15)(T)(i)(I) of the Act.

* * * * *

■ 16. Section 214.14 is amended by revising paragraph (a)(11) to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

(a) * * *

(11) Territories and Possessions of the United States means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

* * * * *

PART 217—VISA WAIVER PROGRAM

■ 17. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 18. Section 217.4 is amended by revising the last sentence in paragraph (a)(1) and the last sentence in paragraph (b)(1) to read as follows:

§ 217.4 Inadmissibility and deportability.

(a) * * *

(1) * * *
 (1) * * * Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

* * * * *
 (b) * * *
 (1) * * * Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

* * * * *
PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 19. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E. O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731-32; Title VII of Public Law 110-229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458).

■ 20. Section 235.6 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 235.6 Referral to immigration judge.

(a) * * *
 (1) * * *
 (ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2015, an alien arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.
 (iii) If the immigration judge determines that an alien in expedited

removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *
PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 21. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105-100, 111 Stat. 2160, 2193; section 902, Public Law 105-277, 112 Stat. 2681; Title VII of Public Law 110-229; 8 CFR part 2.

■ 22. Section 245.1(b)(7) is revised to read as follows:

§ 245.1 Eligibility.

* * * * *
 (b) * * *
 (7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (q), other than an immediate relative as defined in section 201(b) of the Act;

* * * * *
PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 23. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110-229; 8 CFR part 2.

■ 24. Section 274a.1 is amended by revising paragraph (c) to read as follows:

§ 274a.1 Definitions.

* * * * *
 (c) The term *hire* means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and 8 CFR 274a.5, a hire occurs when a person or entity uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition program effective date as defined in 8 CFR 1.1), to obtain the labor of an alien in the United States,

knowing that the alien is an unauthorized alien;

* * * * *
 ■ 25. Section 274a.2 is amended by adding new paragraph (b)(1)(v)(D) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *
 (b) * * *
 (1) * * *
 (v) * * *
 (D) The following are acceptable documents to establish both identity and employment authorization in the Commonwealth of the Northern Mariana Islands only, for a two-year period starting from the transition program effective date (as defined in 8 CFR 1.1), in addition to those documents listed in paragraph (b)(1)(v)(A) of this section:

(1) In the case of an alien with employment authorization in the Commonwealth of the Northern Mariana Islands incident to status for a period of up to two years following the transition program effective date that is unrestricted or otherwise authorizes a change of employer:

(i) The unexpired foreign passport and an Alien Entry Permit with red band issued to the alien by the Department of Labor of the Commonwealth of the Northern Mariana Islands before the transition program effective date, as long as the period of employment authorization has not yet expired, or

(ii) An unexpired foreign passport and temporary work authorization letter issued by the Department of Labor of the Commonwealth of the Northern Mariana Islands before the transition program effective date, and containing the name and photograph of the individual, as long as the period of employment authorization has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Temporary Work Authorization letter;

(iii) An unexpired foreign passport and a permanent resident card issued by the Commonwealth of the Northern Mariana Islands.

(2) [Reserved]

* * * * *
 ■ 26. Section 274a.5 is revised to read as follows:

§ 274a.5 Use of labor through contract.

Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition

program effective date as defined in 8 CFR 1.1), to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

- 27. Section 274a.7 is amended by:
 - a. Revising the section heading;
 - b. Revising paragraph (a); and by
 - c. Revising paragraph (b) introductory text.

The revisions read as follows:

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986 or in the CNMI prior to the transition program effective date.

(a) For employees who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in 8 CFR 274a.2(b)(1)(viii)), except those individuals described in 8 CFR 274a.2(b)(1)(viii)(A)(7)(iii) and (b)(1)(viii)(A)(8):

(1) The penalty provisions set forth in section 274A(e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986.

(2) The penalty provisions set forth in section 274A(e) and (f) of the Act for violations of section 274A(a)(1)(B) of the Act shall not apply to employees who were hired in the CNMI prior to the transition program effective date as defined in 8 CFR 1.1.

(b) For purposes of this section, an employee who was hired prior to November 7, 1986 (or if hired in the

CNMI, prior to the transition program effective date) shall lose his or her pre-enactment status if the employee:

- * * * * *
- 28. Section 274a.12 is amended by:
 - a. Removing the word “or” at the end of paragraph (b)(20);
 - b. Removing the period at the end of paragraph (b)(21) and adding a “;” in its place;
 - c. Removing the period at the end of paragraph (b)(23), and adding a “; or” in its place; and by
 - d. Adding a new paragraph (b)(24), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(24) An alien who is authorized to be employed in the Commonwealth of the Northern Mariana Islands for a period of up to 2 years following the transition program effective date, under section 6(e)(2) of Public Law 94–241, as added by section 702(a) of Public Law 110–229. Such alien is only authorized to continue in the same employment that he or she had on the transition program effective date as defined in 8 CFR 1.1 until the earlier of the date that is 2 years after the transition program effective date or the date of expiration of the alien’s employment authorization, unless the alien had unrestricted employment authorization or was otherwise authorized as of the transition program effective date to change employers, in which case the alien may have such employment privileges as were authorized as of the transition program effective date for up to 2 years.

* * * * *

PART 286—IMMIGRATION USER FEE

- 29. The authority citation for part 286 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110–229; 8 CFR part 2.

- 30. Section 286.1 is amended by:

- a. Revising paragraph (i); and by
- b. Revising paragraph (k).

The revisions read as follows:

§ 286.1 Definitions.

* * * * *

(i) *Territories or possessions of the United States* means American Samoa, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway, Swains Island, Palmyra Island, and Wake Island.

* * * * *

(k) *United States*, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

PART 299—IMMIGRATION FORMS

- 31. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

- 32. Section 299.1 is amended in the table by adding Form “I–9 CNMI” to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I–9 CNMI	XX–XX–XX	CNMI Employment Eligibility Verification.

- 33. Section 299.5 is amended in the table by adding the Form “I–9 CNMI” in proper alpha/numeric sequence, to read as follows:

§ 299.5 Display of control number.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
I–9 CNMI	CNMI Employment Eligibility Verification	1615–XXXX

Department of Justice

8 CFR Chapter V

■ Accordingly, the Attorney General amends chapter V of title 8 of the Code of Federal Regulations as follows:

PART 1001—DEFINITIONS

■ 34. The authority citation for part 1001 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); Title VII of Public Law 110–229.

- 35. Section 1001.1 is amended by:
 - a. Adding and reserving paragraphs (x), (y), (z), and (aa); and by
 - b. Adding a new paragraph (bb), to read as follows:

§ 1001.1 Definitions.

* * * * *

- (x) [Reserved]
- (y) [Reserved]
- (z) [Reserved]
- (aa) [Reserved]

(bb) The term *transition program effective date* as used with respect to extending the immigration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 36. The authority citation for part 1208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 37. Section 1208.1(a) is revised to read as follows:

§ 1208.1 General.

(a) *Applicability.* (1) *In general.* Unless otherwise provided in this chapter V, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter V, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 1208.16(d). Such applications are hereinafter referred to as “asylum applications.” The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case

prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(6) and (c)(7) of the Act, and 8 CFR parts 1003 and 1103, where applicable.

(2) *Commonwealth of the Northern Mariana Islands.* The provisions of this subpart A 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. Effective on the transition program effective date, the provisions of this subpart A 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.

* * * * *

- 38. Section 1208.2 is amended by:
 - a. Revising paragraphs (c)(1)(iii) and (iv);
 - b. Removing the word “or” at the end of paragraph (c)(1)(v);
 - c. Removing the period at the end of paragraph (c)(1)(vi), and adding a semicolon in its place; and by
 - d. Adding new paragraphs (c)(1)(vii) and (viii).

The revisions and additions read as follows:

§ 1208.2 Jurisdiction.

* * * * *

- (c) * * *
- (1) * * *

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his

or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015;

* * * * *

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

■ 39. Section 1208.4 is amended by adding three new sentences to the end of paragraph (a)(2)(ii) to read as follows:

§ 1208.4 Filing the application.

- (a) * * *
- (2) * * *

(ii) * * * 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 re-start the calculation of the 1-year period.

* * * * *

- 40. Section 1208.5 is amended by:
 - a. Revising the section heading;
 - b. Revising paragraph (a); and by
 - c. Adding a new paragraph (b)(1)(iii).

The revisions and addition read as follows:

§ 1208.5 Special duties toward aliens in custody of DHS.

(a) *General.* When an alien in the custody of DHS requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, DHS shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under 8 CFR 1208.30 or a reasonable fear determination pursuant to 8 CFR 1208.31. Although DHS does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either 8 CFR 1208.30 or 8 CFR 1208.31, DHS may provide the appropriate forms, upon request. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application. Furthermore, except as provided in paragraph (c) of this section, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands shall not be excluded, deported, or removed before a decision is rendered on his or her application for withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. 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.

(b) * * *

(1) * * *

(iii) An alien crewmember physically present in or arriving in the Commonwealth of the Northern Mariana Islands can request withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. However, such an alien crewmember is not eligible to request asylum pursuant to section 208 of the Act prior to January 1, 2015.

* * * * *

■ 41. Section 1208.30 is amended by revising paragraph (a) to read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart B apply to aliens subject to

sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations. Prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 42. The authority citation for part 1209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229.

■ 10. Section 1209.2 is amended by:

■ a. Revising paragraph (a)(1) introductory text; and by

■ b. Adding paragraph (a)(3).

The revision and addition read as follows:

§ 1209.2 Adjustment of status of alien granted asylum.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien lawfully admitted for permanent residence, provided the alien:

* * * * *

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 43. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Title VII of Public Law 110–229.

■ 44. Section 1212.1 is amended by:

■ a. Revising paragraph (e);

■ b. Adding and reserving paragraph (p); and by

■ c. Adding a new paragraph (q).

The revision and additions read as follows:

§ 1212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) *Aliens entering Guam pursuant to section 14 of Public Law 99–396, “Omnibus Territories Act” and 8 CFR 212.1(e).* (1) As provided in 8 CFR 212.1(e), until November 28, 2009, a visa is not required of an alien who is a citizen of a country enumerated in 8 CFR 212.1(e)(3) who:

(i) Is classifiable as a visitor for business or pleasure;

(ii) Is solely entering and staying on Guam for a period not to exceed fifteen days;

(iii) Is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam;

(iv) Is in possession of a completed and signed Visa Waiver Information Form (Form I–736);

(v) Waives any right to review or appeal the immigration officer’s determination of admissibility at the port of entry at Guam; and

(vi) Waives any right to contest any action for deportation, other than on the basis of a request for asylum.

(2) The DHS regulations for waiver of the visa requirement for aliens entering Guam pursuant to section 14 of Public Law 99–396, prior to November 28, 2009, are set forth at 8 CFR 212.1(e).

(3) [Reserved]

(4) Admission under 8 CFR 212.1(e) renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act or as an immediate relative as defined in section 201(b), to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

* * * * *

(q) *Aliens admissible under the Guam-CNMI Visa Waiver Program and 8 CFR 212.1(q).* (1) *Eligibility for Program.* As provided in 8 CFR 212.1(1), in accordance with Public Law 110–229, beginning November 28, 2009, the Secretary of Homeland Security, in consultation with the Secretaries of the Departments of Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI

Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

- (i) Be a national of a country or geographic area listed in 8 CFR 212.1(q)(2);
- (ii) Be classifiable as a visitor for business or pleasure;
- (iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;
- (iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. "Round trip ticket" includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;
- (v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736);
- (vi) Be in possession of a completed and signed I-94, Arrival-Departure Record (CBP Form I-94);
- (vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of paragraph (q)(2) of this section;
- (viii) Have not previously violated the terms of any prior admissions. Prior admissions include those under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;
- (ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into Guam or the CNMI;
- (x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the Act; and
- (xi) If a resident of Taiwan, possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-

entry permit issued by the Taiwan Ministry of Foreign Affairs.

(2) *Implementing regulations.* The DHS regulations for waiver of the visa requirement for aliens seeking admission to Guam or to the CNMI under the Guam-CNMI Visa Waiver Program are set forth at 8 CFR 212.1(q).

(3) [Reserved]

(4) *Admission under 8 CFR 212.1(q).* Admission under 8 CFR 212.1(q) renders an alien ineligible for:

- (i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act, other than as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident;
- (ii) Change of nonimmigrant status; or
- (iii) Extension of stay.

(5)–(7) [Reserved]

(8) *Inadmissibility and Deportability.*

(i) *Determinations of inadmissibility.* (A) An alien who applies for admission under the provisions of the Guam-CNMI Visa Waiver Program, who is determined by an immigration officer to be inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into Guam or the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum, withholding of removal under section 241(b)(3) of the INA or withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding or deferral of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3

of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) [Reserved]

(C) Refusal of admission under this paragraph or 8 CFR 212.1(q)(8)(i) shall not constitute removal for purposes of the Act.

(ii) *Determination of deportability.* (A) An alien who has been admitted to either Guam or the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from either Guam or the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from either Guam or the CNMI to his or her country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program who applies for asylum or other form of protection from persecution or torture must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present or arriving in the CNMI prior to January 1, 2015, may apply for withholding of removal under section 241(b)(3) of the Act and withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (b)(1) of this section or 8 CFR 212.1(q)(8)(ii) is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) [Reserved]

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 45. The authority citation for part 1235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 46. Section 1235.5(a) is revised to read as follows:

§ 1235.5 Preinspection.

(a) In United States territories and possessions. For provisions of the DHS regulations with respect to examinations of passengers and crew in the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, see 8 CFR 235.5.

* * * * *

■ 47. Section 1235.6 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 1235.6 Referral to immigration judge.

(a) * * *

(1) * * *

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1,

2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 48. The authority citation for part 1245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229.

■ 49. Section 1245.1(b)(7) is revised to read as follows:

§ 1245.1 Eligibility.

* * * * *

(b) * * *

(7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (q), other than an immediate relative as defined in section 201(b) of the Act;

* * * * *

Janet Napolitano, Secretary of Homeland Security.

Eric H. Holder, Jr. Attorney General.

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