



**U.S. Citizenship
and Immigration
Services**

August 29, 2016

The Honorable Ralph Deleon Guerrero Torres
Governor
Commonwealth of the Northern Mariana Islands
Caller Box 10007
Saipan, MP 96950

Dear Governor Torres:

Thank you for sharing with me during our meeting on June 7, 2016, your concerns about the cap being reached on Commonwealth-Only Transitional Worker (CW-1) nonimmigrant visas for the remainder of Fiscal Year (FY) 2016. I appreciate your concern for the individuals, families, and businesses affected by the cap, as well as your advocacy for the people of Commonwealth of the Northern Mariana Islands (CNMI).

We understand the potential impacts of the CW-1 numerical limits on transitional workers and their families, and we recognize that the current circumstances affect long-term workers and residents whose CW-1 nonimmigrant status cannot be extended and may create particular uncertainty and hardship in some cases. In light of these concerns, U.S. Citizenship and Immigration Services (USCIS) carefully reviewed current regulations and policies to clarify who is eligible to continue working in the CNMI, and effective February 2016, amended our regulations to authorize up to 240 days of continued employment authorization to certain beneficiaries of CW-1 applications for extension of status under 8 C.F.R. 274a.12(b)(20) (commonly referred to as the “240-day rule”):

1. An employee in CW-1 nonimmigrant status may lawfully continue employment for up to 240 days after the expiration of the employee’s previously approved CW-1 status if:
 - The employee’s current employer files a CW-1 petition asking to continue the employee’s previously approved employment;¹

¹ A petition subject to the FY 2016 CW-1 cap will be rejected rather than accepted for filing. The additional employment period of up to 240 days does not apply to rejected petitions.

- The employer files the petition before the employee's CW-1 status expires; and
- The employer asks to extend the stay of the employee in the petition.

The additional employment authorization period begins on the date the employee's CW-1 status expires and continues until USCIS issues a decision on the petition, or until 240 days after the CW-1 status expires, whichever comes first. The terms and conditions of the employment must remain the same as those previously approved.

2. If the employer's petition requesting an extension of stay is granted, the period of authorized employment under the 240-day provision ends on the date of the decision. The employee's CW-1 status is extended, and the employee may continue employment with the same employer during the validity period of the extension.
3. If the employer's petition is granted, but the application for extension of status is denied (referred to as a "split decision"), the employee's work authorization under the 240-day provision ends on the date of the decision. If the employee's CW-1 status has already expired, the employee must stop working at that time. The employee is eligible to obtain CW-1 status based upon the approved petition, but can only do so by leaving the CNMI, obtaining a CW-1 visa at a U.S. embassy or consulate abroad, and returning to the CNMI no earlier than 10 days before the approved employment start date of the petition. If the employee does this and is admitted to the CNMI in CW-1 nonimmigrant status, then the employee may work in the approved employment during the approved validity dates of the petition.
4. If the employer's petition is denied, and the employee's CW-1 status has already expired, the employee's work authorization under the 240-day provision ends on the date of that decision. The employee must stop working.

While the 240-day provision provides a bridge for qualifying CW-1 workers with pending petitions—including those described in point 1 above that have been or that may be filed within 6 months before a start date on or after October 1, 2016, under the FY 2017 cap—to continue working with their same employer for a limited period of time, such a temporary extension does not confer lawful nonimmigrant status. During the pendency of a timely-filed, non-frivolous CW-1 petition with a request to extend the beneficiary's stay, such beneficiaries generally will not accrue unlawful presence if they did not violate their nonimmigrant status prior to filing and did not engage in unauthorized employment.

As you know, USCIS has reached the FY 2016 cap for CW-1 visas. We therefore are unable to accept CW-1 petitions requesting start dates before October 1, 2016, unless the worker has already been counted under the FY 2016 cap (i.e., the worker's current validity period began on or after October 1, 2015). We are accepting petitions requesting start dates on or after October 1, 2016, as those come under the FY 2017 cap, which is yet to be announced, as long as the petition is filed no more than 6 months before the requested start date. We have carefully considered whether we could continue to accept petitions requesting start dates in FY 2016 until the number of approvals (as opposed to the number of filings) reaches the cap limit. Because we already have reached the cap limit with respect to approvals as well as filings, this possibility is not available to provide any future relief.

Nevertheless, USCIS may consider requests for deferred action, on a case-by-case basis, by long-term workers and residents with CW-1 visas who face a temporary interruption in their employment authorization until the renewal of their CW-1 visa in FY 2017 and who demonstrate exceptional circumstances or justifications.

As with all such requests, decisions on deferred action applications will be made on a case-by-case basis. Factors that may be considered, among others, when determining whether deferred action may be appropriate in an individual case include: the length of time that the requestor has been present in the CNMI; whether a spouse or child resides in the CNMI with the requestor;² the hardships that would be encountered if the requestor departs the CNMI; and any other factor which may warrant the favorable exercise of discretion in the individual's case.

If deferred action is granted, it will be of such limited duration as to allow a timely filed CW-1 petition requesting a start date on or after October 1, 2016, to be approved for consular processing and for the beneficiary to depart and obtain a new nonimmigrant visa. Individuals granted deferred action may then file a separate application for a discretionary grant of an Employment Authorization Document (EAD), which requires the applicant to prove economic necessity for employment. USCIS will provide instructions on how to file the EAD application on the deferred action approval letter.

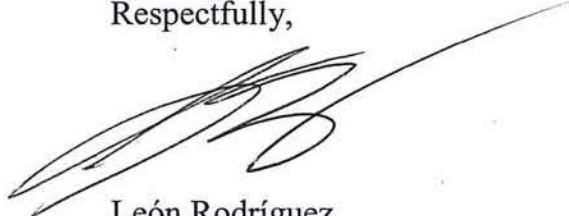
The consideration of deferred action under these particular circumstances is a singular response to address short-term and unexpected humanitarian circumstances immediately arising from the May 2016 announcement that the FY 2016 CW-1 cap had been reached.

² If the spouse or child of a CW-1 worker requesting deferred action has been in derivative CW-2 status, he or she may also wish to request deferred action. Each request for deferred action will be individually considered on a case-by-case basis.

We also emphasize that the CW-1 program is only for positions for which another employment-based nonimmigrant category under U.S. immigration law is not available. If, for example, the H-2B program for temporary or seasonal workers is available, that program should be used. The H-2B program is not subject to numerical limitation if the employment is to be performed in the CNMI or Guam during the transition period through December 31, 2019. USCIS has enhanced outreach efforts to convey this to CNMI employers, including by the USCIS outreach team in the CNMI in late July.

Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink, appearing to be 'León Rodríguez', written in a cursive style with a long horizontal stroke extending to the right.

León Rodríguez
Director