



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 28285663

Date: SEP. 21, 2023

Appeal of California Service Center Decision

Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The Petitioner, a hotel, seeks to temporarily employ the Beneficiary as a marketing manager under the CNMI-Only Transitional Worker (CW-1) nonimmigrant classification. *See* 48 U.S.C. § 1806(d). It also requests that he be granted a change and extension of nonimmigrant status. The CW-1 visa classification allows employers in the Commonwealth of the Northern Mariana Islands (CNMI) to apply for permission to temporarily employ foreign workers who are otherwise ineligible to work under other nonimmigrant worker categories.

The Director of the California Service Center denied the petition, concluding that the Beneficiary is ineligible for CW-1 classification because the Petitioner did not demonstrate he was in a lawful immigration status in the CNMI at the time of filing. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

The regulation at 8 C.F.R. § 214.2(w)(2) provides the beneficiary eligibility requirements for petitioners seeking to classify noncitizens as CW-1 transitional workers. In part, any noncitizen who is in the CNMI when a CW-1 petition is filed on their behalf must be lawfully present. 8 C.F.R. § 214.2(w)(2)(iv). The regulations further state that “lawfully present in the CNMI” means that the noncitizen was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date and remains in a lawful immigration status. 8 C.F.R. § 214.2(w)(1)(vi).

Upon consideration of the record, including the Petitioner’s appeal, we adopt and affirm the Director’s decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1<sup>st</sup> Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

The Director determined that the record did not support the Petitioner's claim that the Beneficiary was lawfully present in the CNMI when it filed this petition in December 2022. The Director emphasized that the Beneficiary was last admitted as a CW-2 spouse of a CW-1 worker in April 2021 and provided a Form I-94 Arrival/Departure record indicating an expiration date of September 30, 2021. Although the Petitioner provided evidence that the Beneficiary had sought to extend his CW-2 status by filing a Form I-539, Application to Extend/Change Nonimmigrant Status, it did not provide evidence that U.S. Citizenship and Immigrant Services (USCIS) had approved that application. Specifically, the Director noted that USCIS ultimately denied the Form I-539 on February 10, 2023.<sup>1</sup>

On appeal, the Petitioner re-submits much of the same evidence provided in response to the Director's request for evidence. While this evidence demonstrates the Beneficiary's efforts to maintain his lawful status in the CNMI, as well as the principal CW-1 beneficiary's efforts to do the same, it does not overcome the Director's determination that USCIS never granted him an extension of CW-2 status, or any other status, beyond the initial expiration of September 30, 2021. Further, the record reflects that he has remained in the CNMI since his last admission in CW-2 status in April 2021.

The Petitioner did not establish that the Beneficiary remained in lawful status in the CNMI when this petition was filed and he is therefore ineligible for CW-1 classification under 8 C.F.R. § 214.2(w)(2)(iv). Accordingly, the appeal will be dismissed. The petition remains denied.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> USCIS records reflect that the Beneficiary filed two Forms I-539, which were both pending when this petition was filed. The first, filed on September 13, 2021, was denied on February 9, 2023 ([REDACTED]), and the second, filed on October 3, 2022, was denied on February 10, 2023 ([REDACTED]).