



U.S. Citizenship
and Immigration
Services

January 29, 2010

HQ 70/6.2.8
AFM Update AD10-29

Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/
Acting Associate Director, Service Center Operations

SUBJECT: Numerical Limitation Exemption for H Nonimmigrants Employed in the CNMI and Guam

Revisions to *Adjudicator's Field Manual (AFM)*, Chapters 31.3 and 31.5
(AFM Update AD10-29)

1. Purpose

The purpose of this memorandum is to provide guidance for processing and adjudicating Form I-129, Petition for Nonimmigrant Worker, filed on behalf of H-1B “specialty occupation” and H-2B “temporary nonagricultural” workers.

2. Background

The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, includes a provision affecting the H-1B and H-2B visa classifications. Upon the CNRA’s implementation on November 28, 2009 and until December 31, 2014, H-1B and H-2B nonimmigrants admitted to perform labor and services in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) are exempt from the statutory numerical limitation for H-1B and H-2B classification. *See* Section 6(b) of Public Law 94-241, as added by section 702 of the CNRA.

3. Field Guidance and AFM Update

All USCIS offices are directed to comply with the following guidance. The *Adjudicator's Field Manual (AFM)* Chapters 31.3 entitled “H1-B Classification and Documentary Requirements” and 31.5 entitled “Temporary Service or Labor Workers (H-2B)” are amended as follows.

31.3 H1-B Classification and Documentary Requirements

(g) Adjudicative Issues.

(14) Cap Exemption for employment and services performed in the Commonwealth of the Northern Mariana Islands (CNMI) and Guam.

The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, includes a provision exempting H-1B workers performing labor or services in the CNMI and Guam from the H-1B numerical limitation in section 214(g)(1)(A) of the Act (aka the “H-1B cap”). Upon the CNRA’s implementation on November 28, 2009, H-1B workers in Guam and the CNMI are exempt from the statutory numerical limitation for H-1B classification from November 28, 2009 to December 31, 2014. See Section 6(b) of Public Law 94-241, as added by section 702 of the CNRA.

This H-1B cap exemption does not apply to any employment to be performed outside of the CNMI or Guam. As such, to qualify for this exemption, the petition must include a Labor Condition Application (LCA) for work locations in the CNMI and/or Guam only.

An H-1B worker granted H-1B status under this CNMI/Guam cap exemption who ceases to be employed in H-1B classification solely in the CNMI and/or Guam shall be deemed subject to the H-1B cap. A subsequent petition filed for such an H-1B worker (i.e. a change of employer petition with a request for an extension of stay) requesting employment located outside of CNMI and/or Guam is subject to the H-1B cap.

(15) H-1B “Remainder” Time

31.5 Temporary Service or Labor Workers (H-2B).

(j) Special Handling Situations.

(3) Workers performing labor and services in Guam and the Commonwealth of the Northern Mariana Islands (CNMI). The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, includes a provision exempting H-2B workers

performing labor or services in Guam and the CNMI from the H-2B numerical limitation in section 214(g)(1)(B) of the Act (aka the “H-2B cap”). Upon the CNRA’s implementation on November 28, 2009, H-2B workers in Guam and the CNMI are exempt from the statutory numerical limitation for H-2B classification from November 28, 2009 to December 31, 2014. See section 6(b) of Public Law 94-241, as added by section 702 of the CNRA.

This H-2B cap exemption does not apply to any employment to be performed outside of the CNMI or Guam. As such, to qualify for this exemption, the petition must include an approved temporary labor certification for work locations in the CNMI and/or Guam only.

An H-2B worker granted H-2B status under this CNMI/Guam cap exemption who ceases to be employed in H-2B classification solely in the CNMI and/or Guam shall be deemed subject to the H-2B cap. A subsequent petition filed for such an H-2B worker (i.e. a change of employer petition with a request for an extension of stay) requesting employment located outside of CNMI and/or Guam is subject to the H-2B cap.

4. AFM Transmittal Memoranda Revisions. The *AFM* Transmittal Memoranda table is revised by adding:

<p>AD10-29 January 29, 2010</p>	<p>Chapters:</p> <ul style="list-style-type: none"> • 31.3 • 31.5 	<p>This memorandum revises <i>Adjudicator’s Field Manual (AFM)</i> Chapters 31.3 and 31.5 to reflect the addition of an exemption to H-1B and H-2B caps when employment and services will be performed in the Commonwealth of the Northern Mariana Islands (CNMI) and/or Guam. These cap exemptions are a result of implementation of the Consolidated Natural Resources Act of 2008, Public Law 110-229 and valid only from November 28, 2009 and until December 31, 2014</p>
-------------------------------------	--	--

5. Use

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

6. Contact

Questions regarding this memorandum may be directed to USCIS Headquarters Office of Service Center Operations through appropriate supervisory channels.

Distribution List: Service Center Directors
 National Benefits Center Director
 Office of Refugee, Asylum and International Operations Director
 Regional Directors
 District Directors
 Field Office Directors