



Questions and Answers

Sept. 11, 2009

Proposed Rule Related to E-2 Nonimmigrant Status for Aliens in the CNMI with Long-Term Investor Status

Background

The U.S. Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) will publish a proposed rule in the Sept. 14, 2009 [Federal Register](#) that proposes to recognize a Commonwealth of the Northern Mariana Islands (CNMI) specific nonimmigrant investor visa classification. This "E-2 CNMI Investor" status is one of several CNMI specific provisions contained in the Consolidated Natural Resources Act of 2008 (CNRA), which extends most provisions of federal U.S. immigration law to the CNMI. These temporary provisions are proposed to provide for an orderly transition from the current CNMI permit system to the immigration laws of the U.S., to lessen potential effects on the CNMI economy, and to give foreign long-term investors time to identify and obtain appropriate U.S. immigrant or nonimmigrant status. The transition period will begin November 28, 2009 and end on December 31, 2014.

Questions and Answers

Q. Why has USCIS proposed this rule related to investors?

A. This proposed rule would classify eligible long-term foreign investors in the CNMI as CNMI-only "E-2" nonimmigrant investors. USCIS is proposing temporary regulatory provisions due to the unique nature of CNMI investors. This will provide a means through which an alien may transition from status under the laws of the CNMI to the immigration laws of the United States and to mitigate harm to the CNMI economy by allowing investors in the CNMI who may otherwise not be immediately eligible under the Immigration and Nationality Act (INA) time to obtain U.S. immigrant or nonimmigrant visa status.

Q. What is the CNMI-only "E-2" nonimmigrant investor status?

A. This proposed rule would establish a temporary status that is unique to the CNMI under which qualified alien foreign investors in the CNMI can be classified as E-2 nonimmigrants under U.S. immigration law based upon maintenance of his or her CNMI long-term investor status.

Q. Why will these categories be temporary?

A. The CNRA only provided for this status during the initial transition period, which begins on November 28, 2009 and extends through December 31, 2014.

Q. What is the "E-2 CNMI Investor"?

A. This rule proposes to establish procedures for long-term foreign investors in the CNMI to obtain nonimmigrant status within the E-2 treaty investor classification, notwithstanding the treaty requirements, in accordance with the CNRA. This would be a special status of E-2 investors that is only available to investors in the CNMI and only available to investors who have been granted a qualifying status by the CNMI prior to the transition period, which begins on November 28, 2009. USCIS refers to this special group as "E-2 CNMI Investors." With E-2 CNMI Investor nonimmigrant status, eligible CNMI investors would be able to remain in the CNMI for an initial period of two years and renewable through the duration of the transition period as investors under E-2 CNMI status, and to exit and enter the CNMI with valid E-2 CNMI Investor visas. The proposed rule is intended to implement one of the CNRA's provisions meant to provide a smooth transition for existing CNMI investors to federal immigration law, as well as to mitigate potential adverse consequences to the

CNMI economy during the transition period if the current investors were not eligible for E-2 treaty investor classification under the INA.

Q. What happens at the end of the Transition Period?

A. At the end of the transition period, E-2 CNMI Investors and qualifying spouses and children must qualify for and obtain an appropriate immigrant or nonimmigrant status under the INA in order to remain in the CNMI or to enter the CNMI after a departure.

Q. Will any extensions of the transition period, as determined by the Secretary of Labor, affect eligibility for the CNMI-only investor visas?

No. The CNMI-only investor status will cease to exist at the end of the transition period. Although the Secretary of Labor may extend the CNMI-only transitional worker program, the investor provisions will terminate on December 31, 2014, regardless of whether the transitional worker provisions are extended.

Q. What INA categories can these individuals apply for after the transition period?

A. That will depend upon individual circumstances, but investors will have the 5-year transition period to work on this. In some cases, for example, such individuals may be able to qualify for nonimmigrant status based upon employment or be able to adjust to lawful permanent residence based upon family relationships.

Q. What date is the end of the transition period?

A. The transition program will last through December 31, 2014.

Q. What happens to dependents of E-2 CNMI Investors during the transition period?

A. During the transition period, spouses and children are eligible for derivative status based on the grant of status to an E-2 CNMI Investor. Dependents would have to follow the normal procedures applicable to other non-immigrants with respect to extensions or changes of status.

Q. Who is eligible to be classified as an E-2 CNMI Investor?

- A. As required by the CNRA, USCIS proposes that eligible investors are those who:
- were admitted to the CNMI in long-term investor status under CNMI immigration law before the transition program effective date;
 - have continuously maintained residence in the CNMI under long-term investor status;
 - maintain the investment(s) that formed the basis for the CNMI long-term investor status; and
 - are otherwise admissible to the United States under the INA.

Q. Which current CNMI Investor categories qualify?

- A. It is proposed that those admitted to the CNMI in the following long-term investor classifications under CNMI immigration law qualify:
- Foreign Investor Entry Permit, with a foreign investment certificate issued by the CNMI;
 - Retiree Investor, with a foreign retiree investment certificate issued by the CNMI; and
 - Long-Term Business Entry Permit, with a Long-Term Business Certificate issued by the CNMI.

The rule proposes that such individuals must have an approval letter issued by the CNMI government certifying the acceptance of an approved investment subject to the CNMI's minimum investment criteria and standards for the CNMI-permit categories listed above. The proposed rule does not provide E-2 CNMI Investor status for individuals who were in the CNMI under the 2-year, non-renewable retiree investor program limited to Japanese nationals.

Q. How did USCIS decide which categories will qualify under the proposed rule?

A. The CNRA refers to admission in "long-term investor" status under the laws of the CNMI when creating the E-2 CNMI Investor status. So, only CNMI categories that mandated a fixed minimum

threshold amount of investment and are renewable over a period of multiple years (and therefore “long-term”) were considered to be “long-term investor” statuses for this proposed rule, namely the three categories listed above (Long-Term Business Investor, Foreign Investor, and Retiree Investor.)

Q. How many people are currently in these three CNMI long-term investor categories?

A. It is estimated that there are approximately 500 foreign investors in the CNMI long-term investor categories.

Q. Which current CNMI categories dealing with investments are not considered eligible for E-2 CNMI Investor status under the proposed rule?

A. The following are not considered eligible for this visa under the proposed rule:

- The sub-category of the Retiree Investors specifically limited to a 2-year, non-renewable investment by Japanese nationals
- Short- and Regular-Term Business Entry Permits

Q. Why is the sub-category of the Retiree Investor, specifically limited to Japanese retirees, not eligible under the proposed rule?

A. The proposed rule does not include this category, as this is not a “long-term investor.” The CNMI permit for the 2-year program for Japanese retirees is non-renewable, and therefore not considered “long-term.”

Q. What can these Japanese retirees do once their permit expires?

A. Japanese retirees in the CNMI would need to seek either a nonimmigrant or immigrant status under the immigration laws of the United States.

Q. Why are those with Short- and Regular-Term Business Entry Permits not included?

A. Aliens lawfully admitted under the CNMI Short-Term Business Entry Permit or the Regular-Term Business Entry Permit categories are not included in the proposed rule because these permits are not long-term, nor do they require investments.

Q. What can these individuals with short and regular term business permits do?

A. Those conducting business on a short term and/or regular basis may be eligible to apply for other nonimmigrant classifications under the immigration laws of the United States.

Q. Will foreigners with pending CNMI investor applications be eligible for the new E-2 CNMI Investor status?

A. Under the proposed rule, foreigners who have not been admitted by the CNMI as eligible CNMI investors prior to the beginning of the transition period are not eligible for classification as E-2 CNMI Investors. Therefore, aliens who have investor applications pending with the CNMI as of the transition program effective date will not be eligible for E-2 CNMI Investor status.

Q. Will anyone with an approved investor application be eligible for the E-2 CNMI Investor status?

A. Under the CNRA and the proposed rule, aliens who have not been admitted as eligible CNMI investors prior to the beginning of the transition period are not eligible for classification as E-2 CNMI Investors. Therefore, those who have approved investor applications but who have not been admitted to the CNMI as of the transition program effective date will not be eligible for E-2 CNMI Investor status.

Q. What is the 'continuous maintenance of residence' that is required for the E-2 CNMI Investor visa? What if an investor traveled regularly outside CNMI?

A. As defined in the proposed rule, “continuous maintenance of residence in the CNMI” means residence in the CNMI from the date that an alien obtained his or her CNMI status through the future date on which USCIS grants the new E-2 CNMI Investor status. This is not the same as continuous physical

presence; so, an investor would not need to have remained in the CNMI for the entire period in order to be deemed to have maintained continuous residence. The proposed rule provides that an investor must have been physically present in the CNMI during at least half the time for which continuous residence is required. Any single absence of more than 6 months, unless the individual is able to demonstrate that he or she did not abandon his or her residence by such absence, or any single absence of more than one year, will break continuity of residence.

Q. Can an investor lose his or her status?

A. Yes. According to the proposed rule, an investor could lose immigration status if he or she does not maintain the investment(s) that formed the basis for admission. To establish that an investor is maintaining the investment or investments that formed the basis for admission to the CNMI, the proposed rule would require each applicant to provide specific evidence demonstrating that the investor is in compliance with the terms upon which the CNMI investor certificate was issued.

Q. According to the proposed rule, what type of proof will an applicant for E-2 CNMI Investor have to provide in relation to his/her investments?

A. All documentation previously submitted in each application to the CNMI government for investor classification under CNMI law should be submitted as part of E-2 CNMI petitions to USCIS. The submission also should include the relevant CNMI-issued Investment Certificate, as well as the additional support as detailed in the proposed regulation.

Q. Is there a time constraint on when people can apply for a change of status?

A. Applications for this change in status to E-2 CNMI Investor status by aliens who were eligible for E-2 CNMI Investor status on the transition program effective date but who obtained other valid nonimmigrant status, would have to be filed by November 27, 2011 - within the two-year filing period for obtaining initial grants of E-2 CNMI Investor status. E-2 CNMI Investors may apply for changes of status to any other nonimmigrant or immigrant visa classifications for which they may qualify anytime during the transition period.

Q. When can CNMI Investors apply for the E-2 CNMI Investor Visa?

A. The proposed rule would allow applicants to apply for E-2 CNMI Investor status before the November 28, 2009 start of the transition period or within the first two years following the start of the transition period. Although applications would be accepted before November 28, 2009, USCIS would not grant E-2 CNMI Investor status before that date.

Q. What is the final date that applications will be accepted for the E-2 CNMI Investor Visa?

A. The final filing date would be two-year years from the start of the transition period, or November 27, 2011.

Q. What application form must be submitted for the E-2 CNMI Investor Visa?

A. USCIS has proposed that the existing Form I-129, "Petitioner for a Nonimmigrant Worker," with Supplement E will be the application form used for requesting E-2 CNMI Investor status.

Q. What is the cost of the application?

A. The current processing fee for Form I-129 is \$320. In addition, the biometrics fee is \$80.

Q. Where should the application be filed?

A. U.S. immigration applications are filed by mail, per the related instructions as found on-line at www.uscis.gov. It is proposed that, to file, the applicant must be present in the CNMI or outside the United States at the time his or her application is filed with USCIS. Upon approval, an alien outside the CNMI would need to obtain an E-2 CNMI Investor nonimmigrant visa at a United States Embassy or consulate abroad to be admitted to the CNMI as an E-2 CNMI Investor on or after the transition program effective date.

Q. Is a fee waiver available?

A. Yes, this proposal would allow for a fee waiver.

Q. Isn't it inconsistent to offer a fee waiver for an "investor" who would have to make a relatively significant monetary investment to qualify for the visa?

A. Waiver of the current \$320 fee for filing Form I-129 is normally not permitted. However, USCIS is proposing a waiver limited to investors under this rule in the CNMI due to the belief that some CNMI E-2 Investor eligible retiree investors may have invested the majority of their savings in their investment residences, may be living on fixed incomes, and may qualify for waivers. The waiver provision is limited to those who show inability to pay.

Applicants in the CNMI would also have to submit the \$80 biometric service fee; this fee is waivable for inability to pay under current USCIS regulations.

Q. If an application is denied, what recourse does the applicant have?

A. It is proposed that, as with other adjudications of Form I-129, denial of an E-2 CNMI Investor application may be appealed to the USCIS Administrative Appeals Office for agency review of the denial.

Q. What would this proposed rule do about the dependents of E-2 CNMI Investors?

A. The proposed rule would extend E-2 CNMI Investor status to the spouse and children of each principal E-2 CNMI Investor if they accompany or follow-to-join the principal alien. To qualify for this status, the spouse and children must be otherwise admissible to the United States.

Q. What might make the dependents inadmissible under the INA?

A. Generally, the INA makes certain aliens inadmissible to the United States base upon various grounds. For example, certain criminal convictions would make an alien inadmissible to the United States.

Q. For how long would the E-2 CNMI Investor visa be valid?

A. The proposed rule makes the initial admission period two years. Upon approval of their application(s) for derivative status, the spouse and minor children accompanying or following-to-join an E-2 CNMI Investor would be admitted for the same period that the principal alien is in valid E-2 CNMI Investor status.

Q. What happens to dependents if an E-2 CNMI Investor temporarily departs the CNMI?

A. It is proposed that the derivative status of the dependent spouse and children would not be affected, provided that the familial relationship continues to exist and the principal remains eligible for admission as an E-2 CNMI Investor.

Q. How would work authorizations be handled according to the proposed rule?

A. According to the proposed rule, all E-2 CNMI Investor principal and spousal employment authorization is limited to employment in the CNMI. Certain investors and their spouses would be eligible to work in the CNMI:

- The E-2 CNMI Investor is authorized to work for a specific employer determined by the long-term investor status under CNMI law on which the grant of E-2 CNMI Investor status is based.
- The spouse of an E-2 CNMI Investor may request employment authorization after he or she lawfully obtains E-2 CNMI Investor status and lawfully enters the CNMI.
- Work authorization is not permitted for children of E-2 CNMI Investors.
- Neither E-2 CNMI Investors with status under a Retiree Investment Permit, nor their spouses, are work-authorized because the CNMI does not currently allow work-authorization for such retiree investors.

Q. Can E-2 CNMI Investors change employers?

A. Yes, the proposed rule would allow investors to change employers. However, a new Form I-129 and Supplement E would have to be filed with USCIS if there are any substantive changes in the terms or conditions under which an individual originally qualified for E-2 CNMI Investor status.

Q. What if an individual changes employers without filing with USCIS?

A. An unauthorized change of employment to a new employer would result in the individual falling out of lawful status.

Q. Would E-2 CNMI Investors be able to apply for extensions?

A. Yes. This proposed rule allows for extensions of E-2 CNMI Investor status until the end of the transition period, in two-year increments. This is the same increment allowed for extensions of stay for E-2 nonimmigrants in the remainder of the United States.

Q. What will be required for an extension of stay?

A. To apply for an extension of stay, the proposal is for an E-2 CNMI Investor to file with USCIS an application for extension of stay, with required accompanying documents, in accordance with the instructions on Form I-129.

Q. Can an E-2 CNMI Investor travel throughout the United States based on this visa?

A. No. E-2 CNMI Investor status as proposed for long-term CNMI investors would be a “CNMI-only” status, as stated by the CNRA. It would not authorize entry to Guam or to any other part of the United States. However, it also would not bar travel if the individual is otherwise authorized and admissible to the United States in another status. So, for example, an E-2 CNMI Investor could make a tourist or business visit to Guam or another part of the United States if he or she has a B-1 or B-2 nonimmigrant visa or is eligible for such travel under an applicable visa waiver program.

Q. What would happen if an E-2 CNMI Investor traveled to another part of the United States?

A. Travel or attempted travel from the CNMI to another part of the United States without the appropriate visa or other authorization would be a violation of the E-2 CNMI Investor status according to the proposed rule. When an individual fails to comply with the conditions of the E-2 CNMI Investor status, he or she will be considered to not be maintaining lawful status under the terms and conditions of E-2 CNMI Investor status and may be removable.

Q. Could an E-2 CNMI Investor travel outside the United States and then return to CNMI?

A. Yes, the proposed rule would allow this. However, aliens who are present in the CNMI under a CNMI-only status, who subsequently depart and desire to return in the same status, would have to get a visa from the Department of State in order to be admitted after the transition program effective date. So, if an E-2 CNMI Investor obtained his or her status from USCIS in the CNMI, he or she would need to obtain an E-2 CNMI Investor visa from a U.S. Embassy or Consulate in order to be readmitted to the CNMI as an E-2 CNMI Investor, regardless of nationality. USCIS approval of E-2 CNMI Investor status provides status while present in the CNMI, but does not eliminate the requirement of a visa for admission to the CNMI.

Q. How does the process for obtaining a visa overseas work?

A. Once USCIS has granted status, such as the proposed E-2 CNMI Investor, USCIS would issue a “Notice of Approval”, which the investor would bring to the Embassy or Consulate when applying for the visa to return to the CNMI. Individuals should generally apply at the American Embassy or Consulate with jurisdiction over their place of permanent residence. Wait times for an interview appointment can vary, so early visa application is strongly encouraged. Visa wait times for interview appointments and visa processing time information for each U.S. Embassy or Consulate worldwide is available on the State Department website at [Visa Wait Times](#), and on most embassy websites.

Q. By what date must comments be received?

A. Written comments must be submitted on or before October 14, 2009.

Q. Are these public comments really taken into account?

A. Interested persons are encouraged to participate in this rulemaking by submitting written views on all aspects of this proposed rule. DHS and USCIS also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to DHS and USCIS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Public comment is an integral part of the federal government's rulemaking process. DHS and USCIS will review and consider each comment submitted. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Q. How can I comment on this rule?

A. You may submit comments, identified by DHS Docket No. USCIS-2008-0035 by one of the following methods:

- Internet - Follow the instructions for submitting comments at the Federal e-Rulemaking Portal: <http://www.regulations.gov>
- E-mail - Submit comments directly to USCIS at rfs.regs@dhs.gov, including "DHS Docket No. USCIS- 2008-0035" in the subject line of the message
- Mail - Paper, disk, or CD-ROM submissions may be mailed to: Chief, Regulatory Management Division, DHS-USCIS, 111 Massachusetts Avenue, NW, Suite 3008, Washington, DC 20529. Reference "DHS Docket No. USCIS-2008-0035" on the correspondence
- Hand Delivery/Courier - U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, Suite 3008, Washington, DC 20529. Contact telephone number is (202) 272-8377

All submissions must include the agency name and DHS Docket No. USCIS-2008-0035.

Q. How can I get more information on this rule?

A. To read background documents or comments received, go to <http://www.regulations.gov>. Comments may also be inspected at the Regulatory Management Division, DHS-USCIS, 111 Massachusetts Avenue, NW, Suite 3008, Washington, DC 20529-2140.

For further information, contact Steven W. Viger, Office of Policy & Strategy, DHS-USCIS, 20 Massachusetts Avenue, NW, 2nd Floor, Washington, DC 20529-2140, telephone (202) 272-1470.