



August 9, 2011

PM-602-0013.1

## Policy Memorandum

**SUBJECT:** Adjudication of Adjustment of Status Applications from Aliens Present in the Commonwealth of the Northern Mariana Islands (CNMI) on or after November 28, 2009; Update to Chapters 36.3 and 23.5 of the *Adjudicator's Field Manual (AFM)*; *AFM* Update AD11-40

### **Purpose**

This Policy Memorandum (PM) provides guidance and updates the AFM regarding adjudication of family and employment-based Adjustment of Status Applications from aliens present in the CNMI. This PM is effective immediately.

### **Scope**

Unless specifically exempted herein, this PM applies to and binds all USCIS employees who adjudicate petitions and applications for nonimmigrant status.

### **Authority**

Public Law 110-229, Title VII, 122 Stat. 754, 853 (2008); 48 U.S.C. § 1806; Section 245 of the Immigration and Nationality Act (INA); 8 CFR 245

### **Background**

Before November 28, 2009, the CNMI regulated its own immigration law and policies, a privilege that it was accorded under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant").<sup>1</sup> Under the CNMI's distinct immigration laws, the CNMI admitted aliens into the CNMI in nonimmigrant classifications that were different from those in the INA. Further, those aliens were admitted without inspection and admission by a U.S. immigration officer as would be required under the INA for admission to the United States.

Title VII of Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA), amended the Covenant to extend the INA to the CNMI beginning on November 28, 2009 ("transition date"). The CNRA expanded the definition of "United States" in INA § 101(a)(38) to include the CNMI. Therefore, by operation of law, on November 28, 2009 all aliens present in the CNMI (other than U.S. lawful permanent residents) became present in the United States without admission or parole.

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<sup>1</sup> Pub. L. No. 94-241, § 1, 90 Stat. 263, 48 U.S.C. § 1801 note

Before November 28, 2009, section 506(c) of the Covenant allowed the application of U.S. immigration law only to adjustment of status applications filed on behalf of immediate relatives of U.S. citizens who were permanently residing in the CNMI (immigrant codes IR6, IR7, and IR0). Section 506(c) stated that all provisions of the INA applied to such aliens pursuing immediate relative status. In adjudicating adjustment of status applications filed by these aliens, the requirement in section 245(a) of the INA that the alien must have been “inspected and admitted or paroled into the United States” was met by either:

- Paroling the alien into Guam; or
- After the establishment of a USCIS office in the CNMI in March 2009, granting parole-in-place to an eligible alien immediately before adjusting his or her status.

The CNRA repealed section 506(c) effective on the transition date. Therefore, as of that date, section 245 and all other provisions of the INA relating to adjustment of status replaced the provisions of section 506(c). However, the unique position of aliens present in the CNMI who may be applicants for adjustment of status continues to require specific guidance to USCIS adjudicators.

### **Policy**

The CNRA contains two provisions (commonly referred to as the “grandfather provisions”) related to the continuation of presence in the CNMI:

- Any individual lawfully present under the CNMI immigration laws as of the November 28, 2009 transition date may remain in the CNMI until the expiration of the alien’s authorized period of stay or until November 27, 2011, whichever is earlier; and
- Any individual with a CNMI work authorization as of the transition date retains such authorization until its expiration date or November 27, 2011, whichever is earlier.

Although this authorized period of stay does not constitute “status” under the INA, an alien who is within this authorized period of stay when filing an application for adjustment will *not* be “in unlawful immigration status” for purposes of INA section 245(c)(2). Furthermore, the alien will not be considered to have “failed (other than through no fault of his own or for technical reasons) to maintain a lawful status since entry into the United States” under INA section 245(c)(2). For purposes of INA section 245(c)(2), the alien’s entry into the United States shall be considered to have taken place on November 28, 2009, if the alien was present in a CNMI-granted status on that date.

## **Implementation**

The *AFM* is revised as follows:

- ☞ 1. A new Chapter 36.3 is added to read:

### **36.3 Adjudication of Adjustment of Status Applications from Aliens Present in the Commonwealth of the Northern Mariana Islands (CNMI) after November 28, 2009.**

(a) Filing and Adjudication of Adjustment Application. Except as provided in this section, the general policies and procedures described in [Chapter 23.2](#) and [Chapter 23.5](#) apply to adjustment of status applications filed by residents of the CNMI.

(1) Filing Location. As of November 28, 2009, receipt of Adjustment of Status Applications is no longer limited to filings on behalf of immediate relatives of U.S. citizens permanently residing in the CNMI. Accordingly, as of that date USCIS may accept all family-based and employment-based immigrant classification filings under INA section 245(a).

An alien who is lawfully present in the CNMI with a CNMI immigration status and does not have evidence of admission or parole will file his or her adjustment application at the lockbox.

USCIS should not reject or deny an application for adjustment from a resident of the CNMI solely for failure to provide evidence of admission or parole. These applications should continue to be processed and forwarded to the Guam Field Office for interview and processing at the Saipan ASC. USCIS may grant parole status to aliens who are otherwise eligible for adjustment immediately prior to the approval of the adjustment application. This policy for such applicants is in effect for applications filed before November 28, 2011.

(2) Jurisdiction. After receipting the application for adjustment from a CNMI resident, the lockbox will forward it to the NBC for processing. Following processing, the NBC will forward it to the Guam Field Office for interview at the Saipan ASC.

(3) Presence in the United States. An alien who is present in the CNMI on or after November 28, 2009 (the “transition date”) will be considered to be present in the United States by operation of law. The CNRA contains two provisions (commonly referred to as the “grandfather provisions”) related to the continuation of presence in the CNMI:

- Any individual lawfully present under the CNMI immigration laws as of the transition date may remain in the CNMI until the expiration of the alien’s authorized period of stay or until November 27, 2011, whichever is earlier; and
- Any individual with a CNMI work authorization as of the transition date retains such authorization until its expiration date or November 27, 2011, whichever is earlier.

(4) Requirement for Admission or Parole. A CNMI resident described in paragraph (3) who applies for adjustment of status will be considered an applicant for admission to the United States as described in INA § 235(a)(1) and, as such, eligible for the exercise of parole authority under INA § 212(d)(5). To meet the requirements of INA § 245(a), the Guam Field Office or the Saipan ASC will, under this policy, grant parole-in-place to an alien otherwise eligible for parole and adjustment immediately prior to approving the adjustment application.

(5) Bars to Adjustment of Status.

(A) Covenant-based Bars. Effective November 28, 2009, the requirement relating to the residence of the U.S. citizen petitioner is removed. The petitioner is not required to reside in the CNMI. Nonetheless, the adjudicator must carefully review the merits of each family-based case, including the bona fides of any spousal relationship between the petitioner and applicant.

Adjustment of status filings by residents of the CNMI are now accepted under section 245 of the INA for all family-based immigrant classifications, including immediate relative and preference categories. Title VII of Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA) made the INA applicable in the CNMI and removed the restriction in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (“Covenant”) prohibiting the filing of an adjustment of status application by anyone not an immediate relative of a U.S. citizen residing in the CNMI. It is important to note that this policy of accepting adjustment of status applications does not relieve the applicant from establishing all other eligibility criteria, such as admissibility and visa availability.

(B) Unauthorized Presence or Employment Bar. An alien in the CNMI who is lawfully present under the CNRA’s grandfather provisions, see paragraph (a)(3), is not barred from adjustment by operation of section 245(c)(2). An alien lawfully present in the CNMI under the CNRA transition provisions

(providing for continued lawful status and employment authorization) will be considered eligible for adjustment under INA section 245(c)(2) absent:

- Some other violation of law rendering the alien removable; or
- Some other action inconsistent with lawful presence under the CNRA.

For purposes of section 245(c)(2), an alien present in the CNMI on November 28, 2009 will be considered to have entered the United States on that date.

(C) Bar to Adjustment as an Employment-based Immigrant Not in Lawful Nonimmigrant Status. Effective November 28, 2009, employment-based I-485 applications may be accepted from aliens in the CNMI. To be eligible, applicants must meet the requirements of Section 245(c)(7) and therefore must show evidence of admission in a lawful nonimmigrant status under the INA.

An adjustment applicant applying under section 203(b) of the INA (employment-based) must meet the provisions of INA section 245(c)(7) that require the alien to be in a lawful nonimmigrant status. The grandfathered lawful presence of aliens pursuant to their previous CNMI statuses, or parole under the INA, cannot be considered to be a lawful nonimmigrant status. Nor can either of these conditions be considered as presence in the United States “pursuant to a lawful admission” for purposes of the exception to the section 245(c)(7) bar provided by section 245(k) of the INA. Therefore, eligibility for adjustment in the CNMI for grandfathered aliens is limited to family-based applicants.

(b) Applications for Advance Parole and Employment Authorization. Before November 28, 2009, the adjudication of an accompanying Advance Parole or Employment Authorization application filed with an Adjustment of Status application was withheld and adjudicated only upon direction from the Guam Field Office. As of November 28, 2009, employment authorization and requests for advance parole applications will be processed under normal operating procedures for these applications and requests, in accordance with current SOP guidelines. In addition to permitting travel back to the CNMI after a trip abroad, adjustment of status applicants are eligible for a grant of parole-in-place to travel to other parts of the United States. Similarly, work authorization provided to an adjustment of status applicant is not limited to the CNMI and, therefore, may be used for employment in any part of the United States. (See also [Chapter 36.2](#))

☞ 2. Paragraph (a) of Chapter 23.5 is revised by adding at the end the following:

Note: See Chapter 36.3 of this manual for special guidance pertaining to the adjustment of status of aliens present in the Commonwealth of the Northern Mariana Islands (CNMI) on or after November 28, 2009.

☞ 3. The *AFM Transmittal Memoranda* button is revised by adding, in numerical order, a new entry to read:

AD11-40 8/9/2011	<a href="#">Chapter 36.3</a> <a href="#">Chapter 23.5(a)</a>	Adds Chapter 36.3 on adjudication of adjustment of status applications from aliens present in the Commonwealth of the Northern Mariana Islands (CNMI) on or after November 28, 2009. Also adds a reference to this new chapter in the general chapter on adjustment of status – Chapter 23.5(a).
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### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. 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.

### Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Field Operations Directorate or Service Center Operations Directorate.