

Q&A from the December 9, 2009, AILA SCOPS call

1. Transitional Worker Program for the Commonwealth of the Northern Mariana Islands (CNMI)

As the transition period for the Transitional Worker Program for the CNMI formally begins on November 28, 2009, a few preliminary questions/issues have arisen from stakeholders regarding the filing of Form I-129CW.

The instructions to the Form I-129CW and the Q&A published on October 27, 2009, indicate that once CW status is obtained the individual(s) may leave CNMI but can not reenter until the appropriate CW visa has been obtained.¹

- What provisions if any have been made by the CSC for the possible expected influx of filings on November 28, 2009?
- Will premium processing be available? If not, will the CSC consider expedite requests especially in light of the holidays approaching and CW applicants living within the CMNI will not be able to travel and re-enter until their petitions are approved.
- Has a specific unit at the CSC be charged with handling these cases?

SCOPS Committee Note: The discussion of the Transitional Worker Program for the CNMI was tabled until the future in light of the preliminary injunction issued by the U.S. District Court for the District of Columbia prohibiting DHS from implementing the interim final rule. For more information on the injunction and the Transitional Worker Program for the CNMI please see:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b139f8b9f8555210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> & <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a0f7f4c882635210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

2. Cases Held in Abeyance Until the Effective Date of Public Law 110-293 (42 CFR 34.2(b) Inadmissibility Due to Human Immunodeficiency Virus (HIV) Infection)

On November 24, 2009, USCIS published a memorandum regarding the effective date of Public Law 110-293 and the elimination of HIV as a ground of

¹<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1f69f45434394210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

inadmissibility.² The memorandum/guidance instruct officers on how to handle a variety of scenarios related to HIV infection and inadmissibility until Public Law 110-293 becomes effective on January 4, 2010.

Question: Does USCIS have in place a way to flag cases currently being held in abeyance that can come to final adjudication once the law becomes effective on January 4, 2010?

Answer: USCIS is able to track these cases in its database system. The Texas and Nebraska Service Centers have identified and housed together the cases that will be able to come to final adjudication once the law becomes effective on January 4, 2009, and will work the cases accordingly.

Question: Should applicants and/or their attorneys of record bring pending cases to the attention of the service through the NCSC or through liaison?

Answer: Applicants and/or their attorneys are not required to bring these cases to USCIS attention as they have already been flagged but applicants and attorneys are free to put inquiries through the NCSC if they choose to do so.

Question: Will Form I-693 be amended to eliminate Part 2, C, HIV Infection prior to the effective date of the law? If not, should USCIS authorized physicians be directed to cross out or in some other way indicate that section is no longer applicable?

Answer: The Service has provided outreach and education to the authorized physicians letting them know that they can either leave this question blank or fill in that it is no longer required if and until the current version of Form I-693 is amended. USCIS officers have also received education and training on this issue and are aware the new provision of law.

² November 24, 2009, Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, Donald Neufeld, Acting Associate Director, Domestic Operations, Pearl Change, Acting Chief, Office of Policy and Strategy, *Public Law 110-293, 42 CFR 34.2(b), and Inadmissibility Due to Human Immunodeficiency Virus (HIV) Infection, Revision to Adjudicator's Field Manual (AFM) Chapters 24.2, 40.1, 41.3, and Appendix 41-, 41-2, and 41-3(AD 10-03)*, HQ 70/21.1.1, HQ 70/12.2.1, AFM Update AD1-03
<http://www.uscis.gov/USCIS/New%20Structure/Laws%20and%20Regulations/Memoranda/2009/HIVInadmissibilityFinalHHSRule.pdf>