



Testimony
Before the Committee on Natural
Resources, House of Representatives

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**COMMONWEALTH OF
THE NORTHERN
MARIANA ISLANDS**

**DHS Implementation of
U.S. Immigration Laws**

Statement of David Gootnick, Director,
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Accessible Version

GAO Highlights

Highlights of [GAO-19-376T](#), a testimony to Committee on Natural Resources, House of Representatives

Why GAO Did This Study

The 1976 covenant defining the political relationship between the CNMI and the United States exempted the CNMI—a U.S. territory north of Guam—from certain federal immigration laws. However, the covenant preserved the right of the U.S. government to apply federal law in these exempted areas. The CNRA, which amended a joint resolution approving the covenant, generally established federal control of CNMI immigration beginning in 2009.

In 2009, DHS began implementing, among other things, a foreign worker permit program to address CNRA provisions specific to the CNMI. DHS also began using its discretionary authority under the INA to parole certain groups of individuals into the CNMI (i.e., allow them to be temporarily present). Congress has amended the CNRA several times with provisions that affected the total number of permits allocated and the distribution of permits. Proposed bill H.R. 560 would further modify the CNRA by establishing a CNMI resident status for certain individuals. Among its other provisions, the CNRA allows CNMI employers to petition for H-2 visas for temporary workers without counting the visas against a numerical restriction.

Drawing from ongoing work, this testimony discusses DHS's implementation of (1) selected CNRA provisions regarding foreign workers, among others, in the CNMI and (2) its discretionary parole authority under the INA as applied in the CNMI. GAO updated information from May 2017 ([GAO-17-437](#)) and February 2018 ([GAO-18-373T](#)), reviewed relevant legal documents, and analyzed DHS data.

View [GAO-19-376T](#). For more information, contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov.

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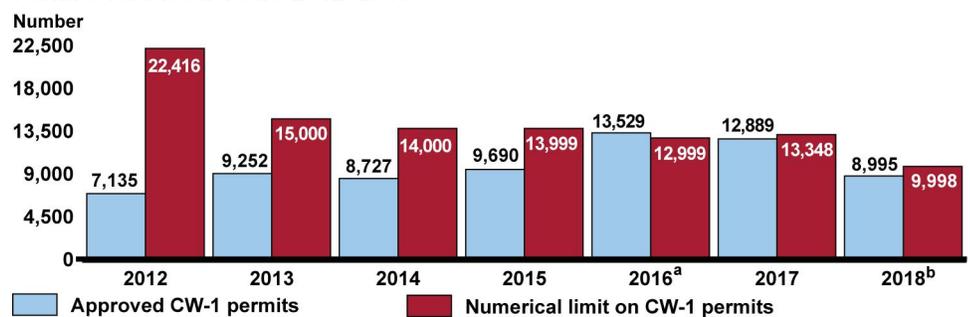
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DHS Implementation of U.S. Immigration Laws

What GAO Found

Under the Consolidated Natural Resources Act of 2008 (CNRA), the Department of Homeland Security (DHS) established the nonimmigrant Commonwealth of the Northern Mariana Islands (CNMI)—Only Transitional Worker program in 2011. Through the program, eligible foreign nationals can obtain CNMI-Only Transitional Worker (CW-1) permits to work temporarily in the CNMI. Under H.R. 560, foreign nationals who meet additional eligibility requirements could be eligible to receive CNMI resident status if they were admitted annually to the CNMI as a CW-1 worker in fiscal years 2015 through 2018. GAO's preliminary analysis of DHS data found that 2,875 (about 32 percent) of 8,995 workers with CW-1 permits for fiscal year 2018 had maintained continuous employment each fiscal year since 2015 (i.e., received a CW-1 permit annually). While DHS data show the number of approved CW-1 permit holders declined from fiscal year 2017 to fiscal year 2018 (see figure), the number of H-2B beneficiaries—who often fill construction jobs—increased from 0 to 3,058. In January 2019, DHS removed the Philippines from the list of countries eligible for the H-2B program.

Numbers of, and Numerical Limits on, CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2012–2018



Source: Preliminary GAO analysis of U.S. Department of Homeland Security (DHS) data. | [GAO-19-376T](#)

Data Table for Figure Numbers of, and Numerical Limits on, CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2012–2018

Fiscal year	Approved CW-1 permits	Numerical limit on CW-1 permits
2012	7,135	22,416
2013	9,252	15,000
2014	8,727	14,000
2015	9,690	13,999
2016 ^a	13,529	12,999
2017	12,889	13,348
2018 ^b	8,995	9,998

Notes: For fiscal years 2012 through 2018, DHS established an annual limit on the number of CW-1 permits, which allow qualified nonimmigrants to work temporarily in the Commonwealth of the Northern Mariana Islands (CNMI).

^aFor fiscal year 2016, DHS approved 530 permits in excess of the numerical limit to compensate for expected visa denials by the Department of State.

^bThe number of approved CW-1 permits shown for fiscal year 2018 was current as of May 9, 2018.

In 2009, DHS began granting discretionary parole that authorized temporary stays for certain CNMI residents, such as spouses and children of U.S. citizens. These individuals may have been inadmissible or otherwise ineligible for admission to the United States, according to DHS. However, in December 2018, DHS announced that it was terminating parole for certain categories of residents in response to Executive Order 13767, issued in 2017. The order called on DHS to take appropriate action to ensure that parole authority is exercised only on a case-by-case basis, among other things. According to DHS, 1,039 individuals in the terminated categories had been granted parole until December 31, 2018. Under H.R. 560, some of these individuals could be eligible to apply for CNMI resident status.

Vice Chairman Sablan, Republican Leader Gonzalez-Colon, and Members of the Committee:

Thank you for the opportunity to discuss preliminary observations from our ongoing work regarding the implementation of federal immigration laws in the Commonwealth of the Northern Mariana Islands (CNMI).

The 1976 covenant defining the political relationship between the CNMI and the United States exempted the CNMI—a U.S. territory north of Guam—from certain federal immigration laws. However, the covenant preserved the right of the U.S. government to apply federal law in these exempted areas.¹ The Consolidated Natural Resources Act of 2008 (CNRA),² which amended the joint resolution approving the U.S.–CNMI covenant, generally established federal control of CNMI immigration beginning in 2009.³

Under the CNRA, the Department of Homeland Security (DHS) established the CNMI-Only Transitional Worker program to provide for an orderly transition from the CNMI immigration system to the U.S. federal immigration system during a transition period, currently set to expire in fiscal year 2029.⁴ Through this program, qualified nonimmigrant workers can obtain CNMI-Only Transitional Worker (CW-1) permits allowing them

¹Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. No. 94-241, Mar. 24, 1976), codified as amended at 48 U.S.C. § 1801 note. In this report, we refer to the 1976 covenant between the United States and the CNMI as “the covenant” or “the U.S.–CNMI covenant.”

²Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, Title VII (May 8, 2008). The legislation’s stated intent is to ensure effective border control procedures and address national and homeland security issues while minimizing, to the greatest extent practicable, the potential adverse economic and fiscal effects of phasing out the CNMI’s nonresident contract worker program and maximizing the CNMI’s potential for economic and business growth. The provisions on immigration and transition in the CNMI that are the focus of this testimony are found in section 702 of the CNRA, as amended.

³Section 702 of the CNRA added section 6 to the “Joint Resolution to approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes,” Pub. L. No. 94-241 (Mar. 24, 1976). Throughout this testimony, references to the CNRA refer to section 6 of the joint resolution, which is codified as amended at 48 U.S.C. § 1806.

⁴The Northern Mariana Islands U.S. Workforce Act of 2018 amended the CNRA to, among other things, extend the transition period through December 31, 2029. The Northern Mariana Islands U.S. Workforce Act of 2018, Pub. L. No. 115-218, § 3 (July 24, 2018). After the transition period ends, CW-1 permits will not be valid.

to work temporarily in the CNMI.⁵ Also under the CNRA, certain financial investors who met specified eligibility requirements under the act were allowed to remain in the CNMI during the transition period. In addition, under the Immigration and Nationality Act of 1952 (INA), DHS has exercised its discretionary parole authority⁶ to allow certain groups of individuals who were ineligible for admission under federal law to remain temporarily in the CNMI, according to DHS.⁷ Proposed bill H.R. 560 would amend the CNRA to establish a CNMI resident status for certain individuals.⁸

In my statement today, I will draw on data and preliminary results from our ongoing work to discuss DHS's implementation of (1) CNRA provisions regarding foreign workers and investors in the CNMI and (2) DHS's discretionary parole authority under the INA as it has been applied in the CNMI.⁹ Our ongoing work updates information from two

⁵Employers submit a form I-129CW to petition for CW-1 status for one or more foreign workers. DHS deems CW-1 status to be synonymous with "permit" referenced in the CNRA. In this testimony, "CW-1 permit" refers to CW-1 status for one worker. DHS grants CW-1 status for up to 1 year.

⁶Parole allows an individual who may be inadmissible or otherwise ineligible for admission to be temporarily present in the United States and, after being paroled, to request temporary employment authorization, according to DHS. An individual granted parole has not been formally admitted to the United States for purposes of immigration law, according to DHS.

⁷The CNRA generally applied U.S. immigration law, including the INA with certain exceptions, to the CNMI. Pub. L. No. 110-229, § 702, codified as amended at 48 U.S.C. § 1806. A provision in the INA allows the Secretary of Homeland Security to use discretion to parole any foreign national applying for admission to the United States temporarily "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5).

⁸See H.R. 560, 116th Cong. (2019). An individual granted CNMI resident status under H.R. 560 would be authorized to work in the CNMI, among other benefits.

⁹On October 21, 2009, DHS announced that citizens of the People's Republic of China and Russia would be permitted to travel to the Commonwealth of the Northern Mariana Islands visa free and that those travelers would be paroled into the CNMI, based on the Secretary's discretionary parole authority, on a case-by-case basis. This visitor parole became effective November 28, 2009, according to DHS. We excluded visitor parole from the scope of our review.

prior products related to implementation of U.S. immigration law in the CNMI, published in May 2017 and February 2018.¹⁰

For the ongoing work on which this statement is based, we reviewed relevant provisions in the U.S.–CNMI covenant, the joint resolution approving the covenant, the CNRA, the INA, an executive order, and proposed legislation on CNMI immigration. We also reviewed DHS rules and regulations, policies, and other documents used to implement federal immigration laws in the CNMI. We obtained data from DHS's U.S. Citizenship and Immigration Services (USCIS), which administers the CNMI-Only Transitional Worker program and other federal immigration programs in the CNMI.¹¹ We used these data to conduct preliminary analysis of the numbers of CW-1 permits that USCIS approved for foreign workers in the CNMI for fiscal years 2012 through 2018.¹² We also obtained information about other foreign workers, investors, and individuals to whom USCIS had granted parole.

To determine the reliability of the USCIS data, we interviewed cognizant USCIS officials in Washington, D.C., and at the USCIS California Service Center, which adjudicates petitions for CW-1 permits and petitions for other types of status. We also discussed our methodologies and assumptions for analyzing CW-1 data and the results of our preliminary analysis with USCIS officials.¹³ We conducted electronic testing of the

¹⁰For more information, see GAO, *Commonwealth of the Northern Mariana Islands: Implementation of Federal Minimum Wage and Immigration Laws*, [GAO-17-437](#) (Washington, D.C.: May 18, 2017); and *Commonwealth of the Northern Mariana Islands: Recent Economic Trends and Preliminary Observations on Workforce Data*, [GAO-18-373T](#) (Washington, D.C.: Feb. 6, 2018). We plan to issue a report examining U.S. agencies' data related to the CNMI's workforce later in 2019.

¹¹USCIS's Office of Performance and Quality, Performance Analysis and External Reporting Branch provided record-level data on CW-1 permits granted for fiscal years 2012 through 2018 in May 2018 and provided other summary data for fiscal years 2012 through 2018 in February 2019. According to USCIS officials, as of May 9, 2018, USCIS had adjudicated approximately 98 percent of all petitions for CW-1 permits for fiscal year 2018. USCIS accepted petitions for fiscal year 2018 from April 3 through May 25, 2017.

¹²Although DHS set the permit allocation for fiscal year 2011 and granted several CW-1 permits for that fiscal year, our analysis does not include fiscal year 2011 CW-1 permit data.

¹³USCIS officials used their own methodologies to conduct a technical review of our tables showing numbers of CW-1 permits, CW-1 permit holders' countries of birth, employment duration, and occupations. USCIS officials confirmed the validity of our preliminary analysis.

data to identify and resolve inconsistencies in personally identifiable information for CW-1 permit holders and to ensure accuracy in tracking these individuals over time. We determined that the USCIS data were sufficiently reliable for our purposes.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.¹⁴

Background

U.S.-CNMI Relations

The United States took control of the Northern Mariana Islands from Japan during the latter part of World War II. After the war, the U.S. Congress approved a trusteeship agreement making the United States responsible to the United Nations for the administration of the islands.¹⁵ In 1976, the District of the Mariana Islands entered into a covenant with the United States establishing the island territory's status as a self-governing commonwealth in political union with the United States.¹⁶

The covenant granted the CNMI the right of self-governance over internal affairs and granted the United States complete responsibility and authority for matters relating to foreign affairs and defense affecting the

¹⁴We have reported on implementation of U.S. immigration laws in the CNMI since 2008. See GAO, *Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period*, [GAO-08-466](#) (Washington, D.C.: Mar. 28, 2008). We conducted our ongoing audit work on U.S. agencies' data related to the CNMI's workforce from July 31, 2017, to the present.

¹⁵In 1947, the United Nations gave the United States authority to administer the Trust Territory of the Pacific Islands, which included the Northern Mariana Islands. The trusteeship over the Northern Mariana Islands was formally dissolved in 1986.

¹⁶Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241 (Mar. 24, 1976), codified as amended at 48 U.S.C. § 1801 note. See also Howard P. Willens and Deanne C. Siemer, *An Honorable Accord: The Covenant between the Northern Mariana Islands and the United States* (Honolulu: University of Hawaii Press, 2002).

CNMI.¹⁷ The covenant also preserved the CNMI's exemption from certain federal laws that had previously been inapplicable to the Trust Territory of the Pacific Islands, including certain federal minimum wage provisions and immigration laws, with certain limited exceptions.¹⁸

Application of Federal Immigration Law to the CNMI

In 2008, the CNRA amended the joint resolution approving the U.S.–CNMI covenant to generally apply federal immigration law, including the INA, to the CNMI, with a transition period for foreign workers and investors.¹⁹ In addition, the INA provides DHS with discretionary authority to grant parole to certain noncitizens, on a case-by-case basis, allowing them to be temporarily present in the United States, including the CNMI.

Foreign Worker Provisions

To provide for an orderly transition from the CNMI immigration system to the U.S. federal immigration system under the immigration laws of the United States, DHS, through USCIS, established the CNMI-Only Transitional Worker program in 2011.²⁰ Through the program, employers petition for nonimmigrant CW-1 permits that allow foreign workers who meet certain requirements to work temporarily in the CNMI. The CNRA limits the number of permits DHS may issue annually and reduces that number each year until the end of the transition period.

¹⁷Under the U.S.–CNMI covenant, the U.S. government may enact legislation in accordance with its constitutional processes that will be applicable to the CNMI. To respect the CNMI's right of self-government under the covenant, certain provisions of the covenant may be modified only with the consent of both the federal government and the CNMI government.

¹⁸Before November 2009, Section 506 of the U.S.–CNMI covenant applied to the CNMI certain provisions of the INA relating to citizenship and family-based permanent immigration. Certain other nonimmigrant provisions of the INA, related to victims of human trafficking and other crimes, also applied to the CNMI. See 8 U.S.C. § 1101(a)(15)(T)–(U). In addition, the covenant provided U.S. citizenship to legally qualified CNMI residents.

¹⁹The CNRA also amended U.S. immigration law and replaced the existing Guam visa waiver program with a joint Guam-CNMI visa waiver program. Under this program, eligible visitors from designated countries who travel for business or pleasure to the CNMI for up to 45 days are exempt from the standard federal visa documentation requirements.

²⁰On September 7, 2011, DHS issued a final rule establishing a transitional work permit program in the CNMI for foreign workers not otherwise admissible under federal law.

Since 2008, Congress has amended the CNRA several times, with provisions that affected the length of the transition period, the number of CW-1 permits allocated, and the distribution of permits (see table 1).

Table 1: Selected Amendments to the Consolidated Natural Resources Act of 2008 Affecting Length of Transition Period for the CNMI, Number of CW-1 Permits Allocated, and Distribution of CW-1 Permits

Date	Citation	Amendments		
		Length of transition period ^a	Number of CW-1 permits allocated	Distribution of CW-1 permits
Dec. 16, 2014	Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Section 10	Extended the transition period through Dec. 31, 2019. ^b	Not Applicable	Not Applicable
Aug. 22, 2017	Northern Mariana Islands Economic Expansion Act, Pub. L. No. 115-53, Section 2	Not Applicable	Added 350 CW-1 permits to the numerical limit for fiscal year 2017 to allow for extensions of existing permits.	Specified that permits for construction and extraction occupations would be issued only to extend permits first issued before Oct. 1, 2015. ^c
July 24, 2018	Northern Mariana Islands U.S. Workforce Act of 2018, Pub. L. No. 115-218, Section 3	Extended the transition period through Dec. 31, 2029.	Increased the number of permits available for fiscal year 2019. Set required decreases in the annual numerical limit for the permits available for fiscal years 2019–2029.	Established a new designation for long-term workers who had been admitted under CW-1 status during fiscal year 2015 and every subsequent fiscal year until 2018. Restricted permits for construction and extraction occupations to those who qualified as long-term workers. ^d

Legend: CNMI = Commonwealth of the Northern Mariana Islands, CW-1 = CNMI-Only Transitional Worker

Source: GAO analysis of Pub. L. No. 113-235 § 10, Pub. L. No. 115-53 § 2, and Pub. L. No. 115-218 § 3. | GAO-19-376T

Notes: On March 24, 1976, the United States approved the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, codified as amended at 48 U.S.C. § 1801 note.

In 2008, the United States enacted the Consolidated Natural Resources Act of 2008 (CNRA), a provision of which generally applied U.S. immigration law, to the CNMI. Section 702 of the CNRA added section 6 to the “Joint Resolution to approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes.” References to the CNRA refer to section 6 of the joint resolution, which is codified as amended at 48 U.S.C. § 1806.

^aUnder the CNRA, the Department of Homeland Security (DHS) established the CNMI-Only Transitional Worker program to provide for an orderly transition from the CNMI immigration system to the U.S. federal immigration system during a transition period originally set to expire in fiscal year 2014.

^bThe transition period was initially extended through Dec. 31, 2019, under the authority of the U.S. Secretary of Labor. Pub. L. No. 113-235 generally codified that initial extension while eliminating the authority under which it had been granted.

^cIn addition, Pub. L. No. 115-53 required that, of the additional 350 permits, no fewer than 60 CW-1 permits be reserved for “healthcare practitioners and technical operations” and no fewer than 10

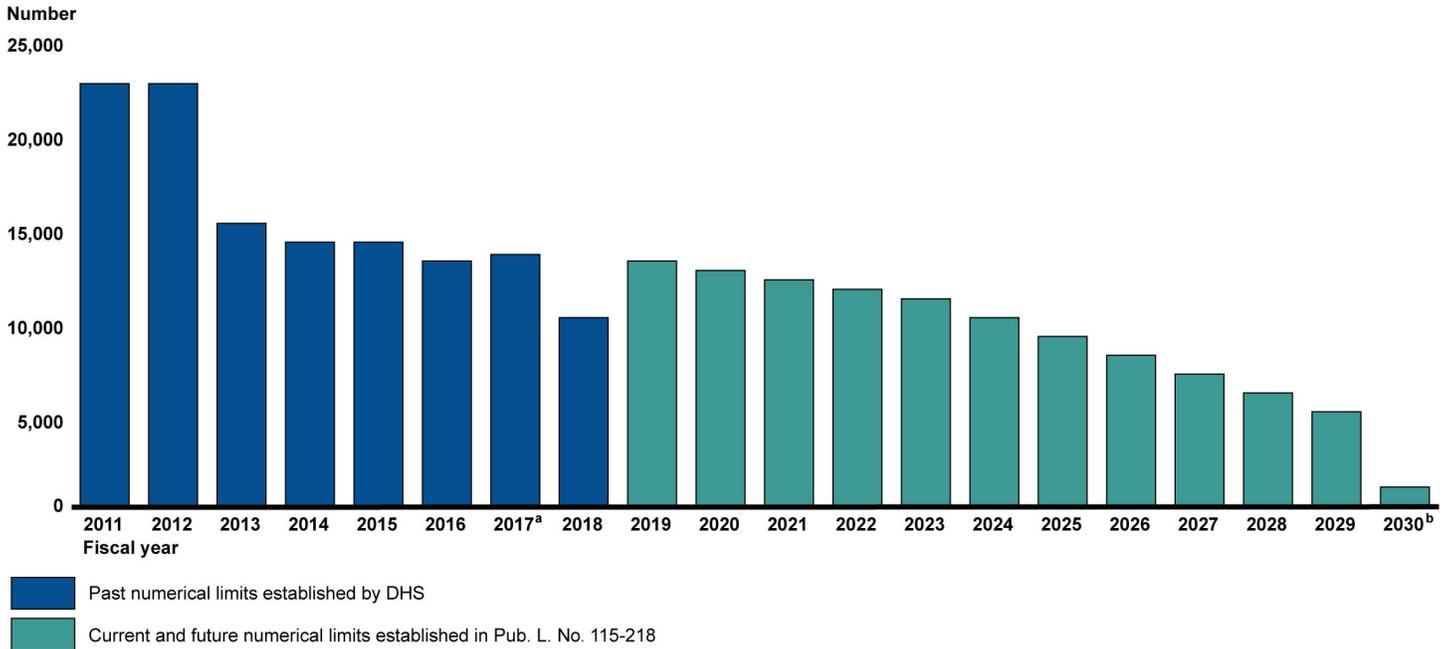
CW-1 permits for “plant and system operators” for fiscal year 2017. These occupations are defined in the U.S. Department of Labor’s Standard Occupational Classification system.

^dThis designation allowed such workers to be eligible for CW-1 permits that would be valid for up to 3 years and renewable in increments of up to 3 years during the transition period.

Figure 1 shows the past numerical limits on CW-1 permits established by DHS and the current and future numerical limits for permits specified in the Northern Mariana Islands U.S. Workforce Act of 2018, Pub. L. No. 115-218.²¹ The limits shown are the maximum number of permits available for each fiscal year through the end of the transition period and may not reflect the number of permits for which employers would petition and that DHS would approve.

²¹Pub. L. No. 115-218 also established new requirements for employers petitioning for CW-1 workers. Employers submitting petitions for fiscal year 2020 permits must receive a temporary labor certification from the U.S. Department of Labor. This certification must show that there are not sufficient U.S. workers in the CNMI who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved and that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. In addition, the act required the Secretary of Labor and the Secretary of Homeland Security to publish regulations specifying how each intends to implement certain provisions of the act no later than 180 days after the date of enactment. As of February 20, 2019, neither the Secretary of Labor nor the Secretary of Homeland Security had published such regulations.

Figure 1: Past Numerical Limits Established by DHS and Current and Future Limits Established in Public Law Number 115-218 for CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2011–2030



Source: GAO analysis of numerical limits specified by the Department of Homeland Security (DHS) and Pub. L. No. 115-218. | GAO-19-376T

Data Table for Figure 1: Past Numerical Limits Established by DHS and Current and Future Limits Established in Public Law Number 115-218 for CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2011–2030

Fiscal year	Past and current numerical limits established by DHS	Future numerical limits with P.L. 115-218
2011	22,417	0
2012	22,416	0
2013	15,000	0
2014	14,000	0
2015	13,999	0
2016	12,999	0
2017 ^a	13,348	0
2018	9,998	0
2019	0	13,000
2020	0	12,500
2021	0	12,000
2022	0	11,500
2023	0	11,000

Fiscal year	Past and current numerical established by DHS	Future numerical limits with P.L. 115-218
2024	0	10,000
2025	0	9,000
2026	0	8,000
2027	0	7,000
2028	0	6,000
2029	0	5,000
2030 ^b		1,000

Notes: On September 7, 2011, DHS issued a final rule establishing a transitional worker permit program in the Commonwealth of the Northern Mariana Islands (CNMI) for foreign workers not otherwise admissible under federal law. Through the CNMI-Only Transitional Worker program, which DHS's U.S. Citizenship and Immigration Services (USCIS) administers, CW-1 permits are available to qualified nonimmigrant workers to allow them to work in the CNMI.

^aOn August 22, 2017, Pub. L. No. 115-53 (Aug. 22, 2017) added 350 CW-1 permits to the numerical limit for fiscal year 2017 for extensions of existing permits, thus raising the total number of permits that may be issued from 12,998 to 13,348, among other changes.

^bUnder Pub. L. No. 115-218 (July 24, 2018), a transition period, during which CNMI-only transitional workers may be admitted to perform work, is set to end on December 31, 2029, or 3 months into fiscal year 2030. After this date, no CW-1 permits shall be valid.

In addition, the INA provides authorization for several types of visas for nonimmigrant workers and their families—for example, H-2B visas for temporary nonagricultural workers—that became applicable to the CNMI with the passage of the CNRA.²² The CNRA allows CNMI employers to bring temporary workers to the CNMI under the H-2B program without counting against the numerical restriction for H-2B visas.²³

Investor Provisions

The CNRA and its implementing regulations established E-2 CNMI Investor (E-2C) status, a classification for certain foreign investors who previously had been lawfully admitted to the CNMI under the territory's immigration system and who met certain eligibility requirements. Such

²²In 1952, the INA authorized the H-2 temporary worker program, which established visas for foreign workers to perform temporary services or labor in the United States (see Pub. L. No. 82-414, § 101(a)(15)(H)(ii) (June 27, 1952)). The Immigration Reform and Control Act of 1986 amended the INA and divided the H-2 program into two programs: the H-2A program for agricultural workers and the H-2B program for nonagricultural workers (see Pub. L. No. 99-603, § 301(a) (Nov. 6, 1986)). Both H-2A and H-2B visas are for jobs to fill a temporary or seasonal need, generally defined as lasting not longer than 12 months for H-2A workers and 10 months for H-2B workers (see 20 C.F.R. §§ 655.6(c), 655.103(d)).

²³There is a statutory numerical limit on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year.

investors could petition for E-2C status prior to January 18, 2013, according to USCIS.²⁴ Eligibility criteria include, among others, providing evidence of maintaining financial investments in the CNMI of at least \$50,000. DHS may grant E-2C status for up to 2 years, and such status can be renewed.²⁵

Parole Provisions

Under the INA, DHS has discretionary parole authority to allow certain noncitizens, on a case-by-case basis, to be temporarily present in the United States. DHS has used this authority to grant parole to individuals who may be inadmissible or otherwise ineligible for admission to allow them to remain in the CNMI, according to DHS.²⁶

In 2017, the President issued Executive Order 13767, calling for, among other things, the Secretary of Homeland Security to take appropriate action to ensure that parole authority is exercised only on a case-by-case basis in accordance with the plain language of the statute and, in all circumstances, only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.²⁷

Proposed Legislative Changes Affecting the CNRA

Proposed bill H.R. 560 includes several provisions, among others, that would provide CNMI resident status to eligible individuals. To be eligible for CNMI resident status under H.R. 560, an individual must

- have been lawfully present in the CNMI under U.S. immigration laws on the date of enactment or on December 31, 2018;

²⁴After January 18, 2013, USCIS accepted only extensions of previously approved E-2C petitions, according to USCIS. DHS established E-2C status to implement the nonimmigrant investor visa classification authorized by the CNRA. See 8 C.F.R. § 214.2(e)(23).

²⁵8 C.F.R. 214.2(e)(23).

²⁶DHS exercised its discretionary parole authority pursuant to section 212(d)(5) of the INA, codified as amended at 8 U.S.C. § 1182(d)(5). Persons granted parole have not been formally admitted to the United States for purposes of immigration law, according to DHS.

²⁷Exec. Order No. 13767, *Border Security and Immigration Enforcement Improvements*, 82 Fed. Reg. 8793 (Jan. 25, 2017).

- be admissible as an immigrant to the United States under the INA, although no immigrant visa is required;
- have resided continuously and lawfully in the CNMI from November 28, 2009, through the date of enactment; and
- not be a citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau.

Individuals who meet each of these four criteria would be eligible to apply for CNMI resident status if they fall into one of the categories shown in table 2.

Table 2: Categories of Individuals Who, If Otherwise Eligible, May Be Granted CNMI Resident Status under H.R. 560

Categories
1. Was born in the CNMI between Jan. 1, 1974, and Jan. 9, 1978.
2. Was, on Nov. 27, 2009, a permanent resident of the CNMI (as defined by CNMI law in effect on May 8, 2008).
3. Is the spouse or child (as defined in the INA) of an individual described in (1) and (2) above.
4. Was, on Nov. 27, 2011, a spouse, child, or parent of a U.S. citizen, and continues to have such family relations with the citizen.
5. Had a grant of parole on Dec. 31, 2018, under the former DHS parole program for certain in-home caregivers.
6. Was admitted to the CNMI as a CW-1 worker during fiscal year 2015 and during every subsequent fiscal year beginning before July 24, 2018.
7. Resided in the CNMI as an investor under CNMI immigration law and is presently resident under E-2 CNMI investor status.

Legend: CNMI = Commonwealth of the Northern Mariana Islands, DHS = Department of Homeland Security, INA = Immigration and Nationality Act of 1952.

Source: GAO presentation of H.R. 560 information. | GAO-19-376T

Note: An individual must also meet all of the following conditions to be eligible to apply for CNMI resident status under H.R. 560: (a) was lawfully present in the CNMI under U.S. immigration laws on the date of enactment or on December 31, 2018; (b) is admissible as an immigrant to the United States under the INA, although no immigrant visa is required; (c) resided continuously and lawfully in the CNMI from November 28, 2009, through the date of enactment; and (d) is not a citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau.

DHS Implementation of CNRA Foreign Worker and Investor Provisions

Foreign Workers

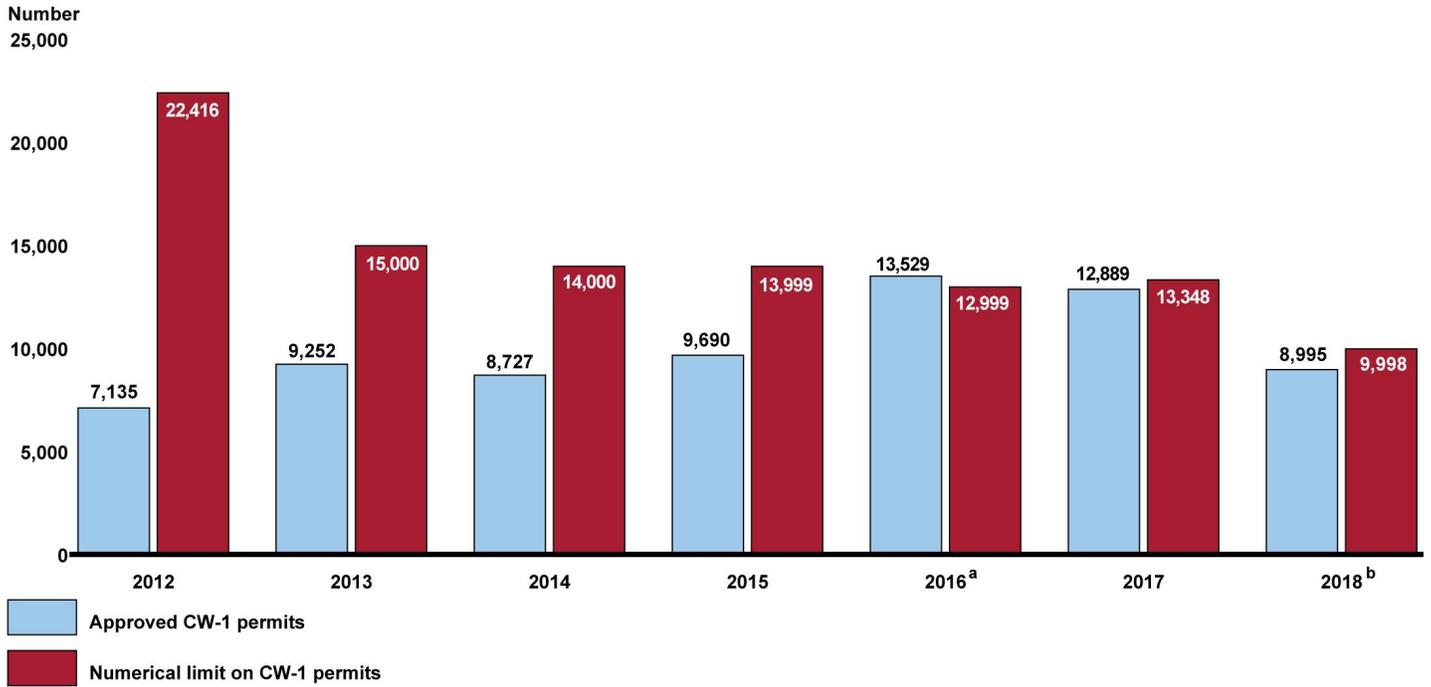
CW-1 Permits

As figure 2 shows, the number of CW-1 permits approved by USCIS remained well under the annual numerical limits established by DHS for fiscal years 2012 through 2015²⁸ and exceeded or neared the annual limits for fiscal years 2016 and 2017.²⁹

²⁸According to USCIS, it (1) counts the number of foreign workers listed on each I-129CW petition in the order the petitions are received until it reaches the numerical limit for CW-1 permits established for that fiscal year and (2) counts each worker granted multiple CW-1 permits for the same fiscal year once for that year. Similarly, we counted each worker with an approved CW-1 permit only once toward the numerical limit for that year.

²⁹USCIS approved 530 CW-1 permits in excess of the numerical limit for fiscal year 2016 to compensate for the expected number of visa denials by the Department of State. The number of approved CW-1 permits shown for fiscal year 2018 was current as of May 9, 2018.

Figure 2: Numbers of Approved CW-1 Permits and Numerical Limits on CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2012–2018



Source: Preliminary GAO analysis of U.S. Department of Homeland Security (DHS) data. | GAO-19-376T

Data Table for Figure 2: Numbers of Approved CW-1 Permits and Numerical Limits on CNMI-Only Transitional Worker (CW-1) Permits for Fiscal Years 2012–2018

Fiscal year	Approved CW-1 permits	Numerical limit on CW-1 permits
2012	7,135	22,416
2013	9,252	15,000
2014	8,727	14,000
2015	9,690	13,999
2016 ^a	13,529	12,999
2017	12,889	13,348
2018 ^b	8,995	9,998

Notes: On September 7, 2011, DHS issued a final rule establishing a transitional work permit program in the CNMI for foreign workers not otherwise admissible under federal law. Through this program, which DHS's U.S. Citizenship and Immigration Services (USCIS) administers, annually decreasing numbers of CW-1 permits are available to qualified nonimmigrant workers to allow them to work in the Commonwealth of the Northern Mariana Islands (CNMI).

In our analysis, each foreign worker counts once toward the numerical limit on CW-1 permits that USCIS set for each fiscal year.

The numbers of approved permits shown differ from the numbers we reported previously. According to USCIS officials, in its reporting for fiscal years 2015 through 2018, USCIS assigned permits to fiscal years based on the employment start date; in its reporting for prior years, USCIS assigned permits to fiscal years based on the permit's approval date. In our analysis, we assigned permits to fiscal years based on the employment start date. Other data differences reflect revocations of permits over time and different methods for addressing missing or duplicate information.

^aUSCIS approved 530 CW-1 permits in excess of the numerical limit for fiscal year 2016 to compensate for the expected number of visa denials by the Department of State.

^bThe number of approved CW-1 permits shown for fiscal year 2018 was current as of May 9, 2018. According to USCIS officials, USCIS had adjudicated approximately 98 percent of all petitions for the fiscal year as of that date.

According to USCIS data, most individuals with approved CW-1 permits for fiscal years 2015 through 2018 were born in the Philippines or China. In addition, as table 3 shows, four times more CW-1 permits were issued to Chinese nationals for fiscal years 2016 and 2017 than for fiscal year 2015. As we reported in 2017, firms involved in building a new casino in Saipan have primarily employed Chinese workers.³⁰

Table 3: Numbers of Approved CW-1 Permits, by Workers' Country of Birth, for Fiscal Years 2015–2018

Country of birth	2015	2016	2017	2018 ^a
Philippines	7,186	7,097	6,173	5,793
China	1,231	5,034	5,037	1,748
South Korea	488	433	373	382
Bangladesh	330	484	340	203
Japan	195	144	129	97
All others	260	337	837	772
Total	9,690	13,529	12,889	8,995

Legend: CNMI = Commonwealth of the Northern Mariana Islands; CW-1 = CNMI-Only Transitional Worker.

Source: Preliminary GAO analysis of U.S. Department of Homeland Security (DHS) data. | GAO-19-376T

Notes: On September 7, 2011, DHS issued a final rule establishing a transitional work permit program in the CNMI for foreign workers not otherwise admissible under federal law. Through the CNMI-Only Transitional Worker program, which DHS's U.S. Citizenship and Immigration Services (USCIS) administers, CW-1 permits are available to qualified nonimmigrant workers to allow them to work in the CNMI.

³⁰In August 2014, the CNMI government entered into a casino license agreement with a business to build a phased development project within 8 years, with a minimum of 2,004 guest rooms and areas for gaming, food, beverage, retail, and entertainment, among other things. The total investment cost of the project was estimated at \$3.14 billion (2014 dollars). See [GAO-17-437](#).

In our analysis, each foreign worker counts once toward the numerical limit on CW-1 permits that USCIS sets for each fiscal year.

^aThe number of approved CW-1 permits shown for fiscal year 2018 was current as of May 9, 2018. According to USCIS officials, USCIS had adjudicated approximately 98 percent of all petitions for fiscal year 2018 as of that date.

About one-third of fiscal year 2018 CW-1 permit holders had maintained continuous employment in the CNMI since 2015 and could be eligible for CNMI resident status under H.R. 560, if they had been admitted every year under CW-1 status and were otherwise eligible.³¹ USCIS CW-1 permit data for fiscal years 2015 through 2018 show that, of the 8,995 foreign workers with CW-1 permits approved by USCIS for fiscal year 2018, 2,875 workers (about 32 percent) had maintained continuous employment in the CNMI since fiscal year 2015. (Of this group, 2,287—80 percent—were born in the Philippines.) Under H.R. 560, a foreign national who meets additional eligibility requirements, including having resided continuously and lawfully in the CNMI from November 28, 2009, through the date of enactment, may be admitted to the CNMI under CNMI resident status if that individual was admitted to the CNMI as a CW-1 worker during fiscal year 2015 and during every subsequent fiscal year beginning before July 24, 2018. As a result, according to our analysis of USCIS data, 2,875 workers could be eligible under H.R. 560 to apply for CNMI resident status if they were admitted as CW-1 workers every fiscal year until 2018 and met all other eligibility conditions.³² Table 4 shows the numbers of foreign workers who received CW-1 permits for fiscal year 2018 and had maintained continuous employment in the CNMI since fiscal years 2012 through 2017.

³¹This testimony refers to workers who received a CW-1 permit annually for fiscal years 2015 through 2018 as having maintained continuous employment in the CNMI during those years.

³²If USCIS approved additional CW-1 permits after May 9, 2018, the number of workers who could be eligible under H.R. 560 to apply for CNMI resident status may be larger.

Reduction in CW-1 Permit Holders and Increase in H-2B Beneficiaries

Table 4: Numbers of Foreign Workers Who Received CW-1 Permits for Fiscal Year 2018 and Maintained Continuous Employment in the CNMI since Fiscal Years 2012–2017

Fiscal years	Foreign workers
2018	8,995 ^a
2017–2018	5,463
2016–2018	3,564
2015–2018	2,875
2014–2018	2,549
2013–2018	2,283
2012–2018	1,458

Legend: CNMI = Commonwealth of the Northern Mariana Islands; CW-1 = CNMI-Only Transitional Worker.

Source: Preliminary GAO analysis of U.S. Department of Homeland Security (DHS) data. | GAO-19-376T

Notes: On September 7, 2011, DHS issued a final rule establishing a transitional work permit program in the CNMI for foreign workers not otherwise admissible under federal law. Through the CNMI-Only Transitional Worker program, which DHS’s U.S. Citizenship and Immigration Services (USCIS) administers, CW-1 permits are available to qualified nonimmigrant workers to allow them to work in the CNMI.

In this table, workers who received a CW-1 permit for fiscal year 2018 and for each prior fiscal year since 2012 are referred to as having maintained continuous employment in the CNMI during those years.

^aThe number of CW-1 permits shown for fiscal year 2018 was current as of May 9, 2018. According to USCIS officials, USCIS had adjudicated approximately 98 percent of all petitions for fiscal year 2018 as of that date. If the number of foreign workers with fiscal year 2018 CW-1 permits increased, our estimate of the numbers shown for other years could also change.

USCIS data show a reduction from fiscal year 2017 to fiscal year 2018 in the number of CW-1 permit holders and a significant increase in the number of H-2B beneficiaries.³³ While the number of approved CW-1 permit holders declined from 12,889 in fiscal year 2017 to 8,995 in fiscal year 2018, the number of H-2B beneficiaries for those years increased from 0 to 3,058. In addition, our analysis of USCIS data found that the number of CW-1 permit holders for the construction trade declined from

³³In this testimony, “H-2B beneficiaries” are foreign workers listed on an approved petition for H-2B status. According to USCIS, unlike the CNMI-Only Transitional Worker program, the H-2 program does not provide permits for workers. Employers submit a form I-129 to petition for H-2B status for one or more foreign workers. DHS may grant H-2B status for up to 1 year, according to USCIS. On the basis of this status, the Department of State grants H-2B visas to workers as appropriate.

2,981 to 545—by 82 percent—from fiscal year 2017 to fiscal year 2018.³⁴ Meanwhile, the number of H-2B beneficiaries for the construction trade in the CNMI increased from 0 for fiscal year 2017 to 1,801 for fiscal year 2018.

In August 2017, Congress amended the CNRA to, among other things, restrict CW-1 permits for workers in construction and extraction occupations (as defined in the U.S. Department of Labor’s Standard Occupational Classification system) by allowing only extensions of CW-1 permits first issued before October 1, 2015.³⁵ The CNRA allows CNMI employers to petition for H-2 visas to bring temporary workers, such as construction workers, to the CNMI without counting against the numerical restriction for such visas.³⁶ According to a senior USCIS official, the new casino employer in Saipan began petitioning in 2018 for foreign workers under the H-2B program instead of petitioning for CW-1 permits for its construction workers. The official noted that Pub. L. No. 115-53’s restriction on the use of CW-1 permits for construction trade workers may account for the decrease in petitions for CW-1 permit holders and increase in petitions for H-2B beneficiaries from fiscal year 2017 to fiscal year 2018.

Table 5 shows the numbers of approved CW-1 permit holders and H-2B beneficiaries for the construction trade in fiscal years 2016 through 2018.

Table 5: Numbers of Approved CW-1 Permit Holders and H-2B Beneficiaries for the Construction Trade in the CNMI for Fiscal Years 2016–2018

	2016	2017	2018
CW-1 permit holders	3,479	2,981	545 ^a
H-2B beneficiaries	0	0	1,801
Total	3,479	2,981	2,346

Legend: CNMI = Commonwealth of the Northern Mariana Islands, CW-1 = CNMI-Only Transitional Worker, H-2B = Temporary Nonagricultural Worker.

Source: Preliminary GAO analysis of U.S. Department of Homeland Security (DHS) data. | GAO-19-376T

³⁴These data may not necessarily reflect permits for construction and extraction occupations referenced in Pub. L. No. 115-53 due to potential differences that may exist between the U.S. Department of Labor’s and USCIS’s definitions of “construction trade.”

³⁵Northern Mariana Islands Economic Expansion Act, Pub. L. No. 115-53, § 2 (Aug. 22, 2017) (amending 48 U.S.C. § 1806).

³⁶This provision also applied to Guam employers, 48 U.S.C. § 1806(b).

Notes: On September 7, 2011, DHS established the CNMI-Only Transitional Worker program, which U.S. Citizenship and Immigration Services (USCIS) administers. Through the program, CW-1 permits are available to qualified nonimmigrant workers to allow them to work in the CNMI.

CW-1 data shown are as of May 9, 2018. According to USCIS officials, USCIS had adjudicated approximately 98 percent of all petitions for fiscal year 2018 as of that date. H-2B data shown are as of February 7, 2019.

According to USCIS, unlike the CNMI-Only Transitional Worker program, the H-2 program does not provide permits for workers. Employers submit a form I-129 to petition for H-2B status for one or more foreign workers. As a result, we refer to workers listed on an approved H-2B petition as H-2B beneficiaries. DHS may grant H-2B status for up to 1 year, according to USCIS. On the basis of this status, the Department of State grants H-2B visas to workers as appropriate.

The data shown for CW-1 permits reflect numbers of permits that USCIS designated "construction trade." The data shown do not include permits for occupations such as building services; handlers; helpers; laborers; machine operators; technicians; or other occupations in architecture, engineering, and surveying. Workers who received multiple CW-1 permits for a given fiscal year in different occupations were counted under the most recent permit's occupation.

^aThe number of CW-1 permit holders shown for the construction trade for fiscal year 2018 represents an 82 percent decline from fiscal year 2017. In 2017, Congress amended the Consolidated Natural Resources Act of 2008 to, among other things, restrict future CW-1 permits for workers in construction and extraction occupations (as defined in the U.S. Department of Labor's Standard Occupational Classification system) to only allow extensions of those permits first issued before October 1, 2015, Northern Mariana Islands Economic Expansion Act, Pub. L. No. 115-53, § 2 (Aug. 22, 2017) (amending 48 U.S.C. § 1806). These data may not reflect those permits for construction and extraction occupations referenced in Pub. L. No. 115-53, due to potential differences between the Department of Labor's and USCIS's definitions of "construction trade." A DHS official noted that Pub. L. No. 115-53's restriction on the use of CW-1 permits for construction trade occupations may account for the decrease in petitions for CW-1 permit holders and the increase in petitions for H-2B beneficiaries from fiscal year 2017 to fiscal year 2018.

In October 2016, DHS announced the list of countries whose citizens were eligible to participate in the H-2 program from January 18, 2017, to January 18, 2018. Asian countries on the list included the Philippines, South Korea, Taiwan, and Thailand, among others, but did not include China.³⁷ In January 2019, because of concerns about overstays and human trafficking, DHS removed the Philippines from the list of countries eligible for the H-2B program.³⁸ CNMI government and Chamber of Commerce officials have voiced concerns that the removal of the

³⁷See 81 Fed. Reg. 74,468 (Oct. 26, 2016). Employers can petition for H-2B status for a worker from a country not on that list if the employer shows that it is in the U.S. interest to grant the H-2B status (see 8 C.F.R. § 214.2(h)(6)(i)(E)(2)).

³⁸According to DHS, overstays are individuals who are admitted to the country under a specific nonimmigrant category but exceed their lawful admission period.

Philippines from the list will make it difficult to hire construction workers in the aftermath of two recent typhoons.³⁹

Investors

USCIS began approving 2-year E-2C status for eligible foreign long-term investors and their dependents in the territory in fiscal year 2011.⁴⁰ According to USCIS, as of February 5, 2019, 56 investors who had previously resided in the CNMI as investors under CNMI immigration law were residing in the CNMI with E-2C status.⁴¹ Under H.R. 560, foreign nationals who otherwise meet additional eligibility requirements may be granted CNMI resident status if they resided in the CNMI as investors under CNMI immigration law and are presently resident under E-2C status. As a result, under H.R. 560, these 56 investors could be eligible to apply for CNMI resident status if they met all other eligibility conditions.

DHS Implementation of Parole Authority under the INA

According to USCIS testimony, after the CNRA was passed in 2008, USCIS implemented DHS's discretionary parole authority by making parole available to groups of individuals residing in the CNMI who would not be covered by INA classifications and for whom the classifications

³⁹According to the CNMI Secretary of Labor, CNMI businesses use the H-2B program to hire foreign labor from the Philippines, especially for jobs in the construction industry. Filipino workers are also employed as CNMI masons, electricians, plumbers, and heavy equipment operators, among others. According to the Secretary, removing these Filipino workers from the CNMI's workforce will affect the islands' recovery in the aftermath of two recent devastating typhoons, Mangkhut and Yutu, in 2018. According to a local news article, the President of the Saipan Chamber of Commerce said local businesses are directly affected by USCIS's decision to remove the Philippines from the H-2B visa program, especially while the islands of Saipan and Tinian are recovering from the devastation brought by Super Typhoon Yutu.

⁴⁰Only certain investors lawfully admitted to the CNMI under the territory's previous immigration system may apply for E-2C status. DHS may grant renewable E-2C status for up to 2 years and requires a minimum of \$50,000 in investment in the CNMI. See 8 C.F.R. § 214.2(e)(23).

⁴¹In addition, dependents of E-2C investors may petition for the same status. As of February 5, 2019, 21 dependents had E-2C status, according to USCIS.

established in the CNRA did not appear to be appropriate.⁴² These individuals previously had immigration status under CNMI immigration law that allowed them to potentially remain in the CNMI indefinitely, according to USCIS.⁴³ Without USCIS action, these individuals would have been deemed unlawfully present in the United States, according to USCIS documents.

To provide such individuals with a means to remain temporarily in the CNMI during the transition period, USCIS announced several discretionary parole policies to cover the following groups, among others, which were potentially eligible for parole:⁴⁴

- CNMI permanent residents, immediate relatives of CNMI permanent residents, spouses and children of deceased CNMI permanent residents, and immediate relatives of citizens of the freely associated states⁴⁵ (November 2009)
- Certain in-home foreign national caregivers of CNMI residents (October 2011)
- Immediate relatives of U.S. citizens, especially parents of U.S. citizen children, and stateless individuals in the CNMI⁴⁶ (November 2011)

In response to Executive Order 13767, on December 27, 2018, USCIS announced the termination of parole for immediate relatives of U.S. citizens and certain stateless individuals; CNMI permanent residents,

⁴²U.S. Citizenship and Immigration Services, *Implementation of Public Law 110-229, the Consolidated Natural Resources Act, and Legislative Hearing on H.R. 4296*, testimony before the House Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, April 29, 2014.

⁴³The CNRA did not provide any INA status to these long-term residents of the CNMI or provide an avenue for such long-term residents (without a comparable INA status) to remain in the CNMI, according to USCIS.

⁴⁴According to USCIS testimony, in creating these parole policies DHS was cognizant of the challenges facing the CNMI economy and sought to ameliorate unforeseen adverse impact during the implementation of the CNRA.

⁴⁵The freely associated states comprise the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau.

⁴⁶According to USCIS, (1) stateless individuals are aliens, or children or legal spouses of aliens, born in what is now the CNMI between January 1, 1974, and January 9, 1978, and (2) these individuals are sometimes referred to as "stateless" because of their unique situation under the covenant establishing eligibility for U.S. citizenship of individuals born in the CNMI.

immediate relatives of CNMI permanent residents, and immediate relatives of citizens of the freely associated states; and certain in-home foreign worker caregivers of CNMI residents. To provide an opportunity for individuals in these categories to prepare to depart or seek a different lawful status, USCIS announced that the affected individuals were allowed to remain in the CNMI with a transitional parole status for up to 180 days, not to extend beyond June 29, 2019.

According to a senior USCIS official, from December 2, 2016, through December 14, 2018, USCIS had granted parole until December 31, 2018, to 1,039 individuals in the terminated parole categories. Under H.R. 560, some of these individuals could be eligible to apply for CNMI resident status if they met all other eligibility conditions.

Vice Chairman Sablan, Republican Leader Gonzalez-Colon, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

GAO Contact and Staff Acknowledgements

If you or your staff have any questions about this testimony, please contact David Gootnick, Director, International Affairs and Trade, at (202) 512-3149 or gootnickd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

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