

Employers in CNMI Facing H-Visa Numerical Cap Issues Should Explore the CW Visa Program

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Greenberg Traurig recently reported on the looming [expiration of the H-1B and H-2B annual numerical cap exemption in Guam and CNMI](#), while urging local employers to consider filing extensions for any employee whose H-1B or H-2B authorization expires before December 31, 2014—the date the expiration takes effect. With pervasive Congressional deadlock on the immigration front and the end of the 113th Congress fast approaching, an extension of the exemption appears unlikely. However, employers in the Commonwealth of the Northern Mariana Islands may be able to minimize or avoid altogether the detrimental effects of the cap exemption expiration by taking advantage of an alternative employment-based non-immigrant program to satisfy their workforce needs: [the CNMI-Only Transitional Worker \(CW\) Visa](#).

[The Department of Homeland Security \(DHS\) announced today](#) that it will allow up to 13,999 non-immigrants for fiscal year (FY) 2015 for CNMI under the CW program. Approved petitions with an employment start-date in FY 2015 (October 1, 2014 – September 30, 2015) will count towards the limit, which applies only to principals and not their derivative beneficiaries. Curiously, this 13,999 total represents a reduction of just one petition from last FY's limit of 14,000; such reduction reflects the [regulatory mandate](#) (8 C.F.R. § 214.2(w)(1)(viii)(C)) that DHS decrease the numerical limit each FY to “a number reasonably calculated in DHS's discretion to reduce the number of CW-1 nonimmigrants to zero by the end of the transition period.” This requirement stems from the fact that the CW classification was conceived as a method of transition from the former CNMI foreign worker permit system to the U.S. immigration system. But the nominal reduction is also indicative of DHS' assessment of the local market: that it is not in the national interest to further restrain local employers' ability to fulfill their staffing needs through foreign workers. The imminent expiration of the cap exemption in Guam and CNMI was certainly a factor in DHS' calculus for determining the amount of CW visas to make available this FY 2015. Thus, employers in CNMI that anticipate labor issues resulting from the expiration of the cap exemption should explore the possibility of satisfying their workforce needs through the CW Visa program.

Shaun Staller contributed to this article.

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