COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA, & NORTHERN ISLANDS

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TABLE OF CONTENTS

PROPOSE RULES AND REGULATIONS:

Public Notice of Proposed Restatement and Adoption of Comprehensive Immigration Regulations
Office of the Attorney General/Division of Immigration..... 23699

NOTICE AND CERTIFICATION ON ADOPTION OF REGULATIONS:

Notice and Certification of Adoption of Amendments to the Commonwealth of the Northern Mariana Islands Well Drilling and Well Operations Regulations
Division of Enviornmental Quality..... 23759

LEGAL OPINIONS:

RE: Kidong Choi/Rifu Corporation-Purchase of Island Apparel, Inc. Stock
Office of the Attorney General Legal Opinion No. 04-14..... 23766

PUBLIC NOTICE
PROPOSED RESTATEMENT AND ADOPTION OF COMPREHENSIVE IMMIGRATION REGULATIONS

The Commonwealth of the Northern Mariana Islands, Office of the Attorney General notifies the general public of the proposed restatement and adoption of a comprehensive set of Immigration Regulations. In light of the Commonwealth's evolving immigration laws and practices, and the need to keep accompanying regulations consistent with such changes, the Attorney General hereby proposes to restate the existing immigration regulations in their entirety, updated and amended for consistency, upon proper adoption, after the requisite period for public comment and with such changes as may be appropriate.

It is the intent of the Office of Attorney General to adopt the comprehensive Immigration Regulations as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). This publication of the proposed comprehensive Immigration Regulations in the Commonwealth Register provides notice and opportunity for comment. If necessary, a public hearing will be provided. All interested persons may submit written comments on the proposed amendments to Pamela Brown, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950 or by fax to (670) 664-2349, during the thirty-day period immediately following publication of the proposed amendments.

Submitted by: _____ 12/15/04
PAMELA BROWN
Attorney General
Date

Received by: _____ 12/16/04
THOMAS A. TEBUTEB
Special Assistant for Administration
Date

Filed and Recorded by: _____ 12/15/04
BERNADITA B. DE LA CRUZ
Date

Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 15th day of December 2004.

_____
PAMELA BROWN
Attorney General

PUBLIC NOTICE
PROPOSED RESTATEMENT AND ADOPTION OF COMPREHENSIVE IMMIGRATION REGULATIONS

The following comprehensive Immigration Regulations are proposed in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Office of the Attorney General is proposing to amend the Immigration Rules and Regulations that were initially adopted as permanent in Commonwealth Register, Vol. 7, No. 5, May 20, 1985, as subsequently amended, and to restate and republish the Immigration Regulations in their entirety, upon proper adoption.

Citation of Statutory Authority: The Office of Attorney General is authorized to promulgate regulations governing the movement of aliens into and away from the Commonwealth of the Northern Marianas Islands pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

Short Statement of Goals and Objectives: The proposed amendments to, and comprehensive restatement of, the Immigration Regulations will bring the regulatory code into compliance with existing law, policy and practice, and will provide a single source of reference for government and private practitioners.

Brief Summary of Proposed Amendments: The proposed amendments to the comprehensive Immigration Regulations are promulgated to:

(1) Amend Sections 703(C), (D), (E), (G), and (L), Section 804(C)(1), and Section 1401, to provide a consistent numbering scheme throughout the regulations.

(2) Remove or amend outdated terms and references.

(3) Remove or amend outdated provisions to comply with existing policy or practice.

(4) Correct typos and grammatical errors.

(5) Amend Section 703(L)(1) to clarify that all companies organizing travel from locations which require a VEP must be duly licensed and conducting business in the Commonwealth, whether registered as a travel agent or otherwise.

For Further Information Contact: Eric S. O'Malley, Assistant Attorney General, Office of the Attorney General, telephone (670) 664-2366 or facsimile (670) 234-7016.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The proposed amendments affect the Immigration Regulations.

Dated this 15th day of December 2004.

Submitted by:

PAMELA BROWN
Attorney General

NOTISIAN PUPBLIKU

MAN MAPROPONE I REGULASION IMMIGRASION NI MATALUN MASÅNGAN YAN ADOPTA POT PARA HU KOMPRENDIYON

I Ofisinan i Abugao Heneråt gi Commonwealth I Sankattan Siha Na Islas Marianas, ha notififika i pupbliku heneråt pot i Man Mapropone Na Regulasion Immigrasion Ni Matalun Masångan yan Ma'adopta Pot Para Hu Komprendiyon. Sigun gi tinilaikan i lai Imigrasion ni man mapraktitika, nisisårio na hu inakompapania ni regulasion gi parehu na tinilaika. I Abugådo Heneråt ha propone na hu mamanifesta talo' i Regulasion Immigrasion interamente, kabåles ya hu ma'amenda pot para hu konsiste yan i propio na inadoptasion despues de ginagagao na tiempo ni para hu mana guaha opinion pupbliku.

I intension-niha i Ofisinan Abugao Heneråt i pot para hu adopta i komprendiyon yan petmanente na Regulasion Immigrasion sigun gi 1 CMC Seksiona 9104 (a)(1) yan (2). I maproponen este i Komprendiyon na Regulasion Immigrasion gi Rehistran i Commonwealth, mapupblika pot para hu guaha notisia yan opottunidåt pupbliku pot para hu fan nahalom opinion, ya siempre hu mana guaha huntan pupbliku yanggen nisisårio. Todu i man enteresao na petsona siña masatmiti i matuge' na opinion pot i mapropone na amendasion guatto gi as Pamela Brown i Abugådo Heneråt gi Ofisinan i Abugao Heneråt, gi segundo bibienda gi Juan A. Sablan Memorial Bldg. giya Capitol Hill, Saipan MP, 96950 osino Fax guatto gi (670) 664-2349, gi halom trenta (30) diha siha na tiempo despues de mapupblikan este i mapropone na amendasion siha.

Masatmiti as: _____ _____
PAMELA BROWN — Fecha
Abugådo Heneråt

Marisibe' as: _____ 12/17/04
THOMAS A. TEBUTEB — Fecha
Espesiåt Na Ayudånte Para i Atministrasion

Pinelo' yan
Rinikot as: _____ 12/17/04
BERNADITA B. DELA CRUZ — Fecha
Rehistran i Koporasion

Sigun i lai 1 CMC Seksiona 2153, ni ina'amenda ni Lai Pupbliku 10-50, i areklamento yan regulasion siha ni man che'che'ton guine esta man ma'ina yan ma'aprueba i fotma kumo sufisiente na ligåt ginen i Ofisinan i Abugao Heneråt i CNMI.

Mafecha este gi mina _____ na ha'åne gi Disembre, 2004.

_____
PAMELA BROWN
Abugådo Heneråt

NOTISIAN PUPBLIKU

MAN MAPROPONE I REGULASION IMMIGRASION NI MATALUN MASÅNGAN YAN ADOPTA POT PARA HU KOMPRENDIYON

I sigente siha na Regulasion Immigrasion ni man komprendiyon mapropone pot hu fan konsiste ni Akton i Areklamenton i Atministrasion lai 1 CMC Seksiona 9101, et. seq. I Ofisinan i Abugådo Heneråt mapropone na hu amenda i Areklamento yan Regulasion Immigrasion ni man ma'adopta petmanente gi Rehistran i Commonwealth, gi Baluma 7, Numiru 5, gi Måyo 20, 1985, ni ma'amenda mås, ni para hu matalun masångan yan matalun pupblika i Regulasion Immigrasion siha enteramente gi propio na inadoptasion.

Man Annok na Aturidåt i Lai: Sigun i Otden i Eksekatibu 03-01 yan 3 CMC Seksiona 4312 (d) ha aturisa i Ofisinan i Abugao Heneråt na hu fan establesi regulasion siha ni ginibebetna i kinalamten i taotao hiyong gi bandan humålom yan humånao gi Commonwealth I Sankattan Siha Na Islas Marianas.

Kadada Na Sumeria pot i Mapropone na Amendasion Siha: I mapropone na amendasion pot para hu Komprendiyon Na Regulasion Immigrasion siha man ma'establesi para:

(1) Amenda Seksiona 703 (C),(D),(E),(G) yan (L), Seksiona 804 (C) (1) yan Seksiona 1401, pot para hu probeniyi lamaolek na plånun man numiru gi enteru i regulasion siha.

(2) Hu fan malaknos pat amenda i hagas na palabra siha yan matiriat infotmasion(references).

(3) Hu fan malaknos pat amenda i hagas na prubension pot para hu konsiste ni eksisiste na areklamento yan prinaktika siha.

(4) Makurihi i man lache' na tinaip yan gramatika siha.

(5) Ma'amenda Seksiona 703 (L) (1) pot para hu klarifika na todu i kompania siha ni plumåplånu para hu fan karera gi lugåt siha ni manisisita i lisensian humålom para i bisita na debidi hu fan malisensia ya hu makondukta bisnis gi Commonwealth, maseha ma'enlista na pumasesehu.

Para Mås Infotmasion Ågan: Si Eric S. O'Malley, Ayudånten i Abugådo Heneråt, Ofisinan i Abugao Heneråt, numirun tilifon (670)664-2366 pat facsimile (670) 234-7016.

Annok i Man Achule yan/pat Inafekta Na Lai, Areklamento, Regulasion yan Otden Siha: I mapropone na amendasion ha afekta i Regulasion Immigrasion Siha.

Mafecha este gi mina _____ na ha'åne gi Disembre, 2004.

Masatmiti as:

_____
Pamela Brown
Abugådo Heneråt

ARONGORONGOL TOULAP
POMWOL ASSEFÁLIL ME FILLÓÓL ALONGAL ALLÉGHÚL IMMIGRATION

Commonwealth Téél Falúwasch Marianas, Bwulasiyool Sów Bwungúl Allégh Lapalap e arongaar aramas toulap reel pomwol ffééŕ sefál me fillóóy alongal alléghúl Immigration kkaal. Sángi bwááwowul eghús me eghús, ffééŕúl alléghúl Commonwealth me mwóghutul, me rebwe aschuuw alongal allégh kka e welepakk bwelle reel ssiwel kkaal, Sów Bwungúl Allégh Lapalap ekke pomwoli bwe ebwe ffééŕ sefál alongal allégh kka ighila, mil ffééta me fillóóy bwelle ebwe ghol, ngare schagh aa fil bwe ebwe fillóóy, mwiril schagh yaal isisiwow aghiyeghiir toulap bwelle reel lliwel kkaal igha ebwe mmwelil allégheló.

Aghiyeghil Bwulasiyool Sów Bwungúl Allégh Lapalap bwe ebwe fillóóy alongal alléghúl Immigration igha ebwe schééschéél, bwelle reel 1 CMC talil 9104(a) me (2). Arongol pomwol alongal alléghúl Immigration kkaal llól Commonwealth Register e ayoora akkatéél me bwángil mángemáng. Ngáre e welepakk, arongorong nge rebwe ayoora. Schóókka eyoor mángemángiir reel pomwol yeel nge emmwel rebwe ischilong reel Pamela Brown, Sów Bwungúl Allégh Lapalap, Bwulasiyool Sów Bwungúl Allégh Lapalap, aruwowal pwó, Juan A. Sablan Memorial Bldg, Capitol Hill, Seipél MP 96950 me ngáre fax reel (670) 664-2349, ótol eliigh (30) ráálil mwiril yaal arongowow pomwol lliwel kkaal.

Isaliyallow:

PAMELA BROWN — Rál
Sów Bwungúl Allégh Lapalap

Mwir sangi: + Jon P. Vun — 12/17/04

THOMAS A. TEBUTEB — Rál
Sów Alillisil Sów Lemelem

Aisis me ammwel: Bdela Cruz — 12/17/04

BERNADITA B. DELA CRUZ — Rál
Corporate Register

Sángi óutol 1CMC talil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50, allégh kkaal ikka ee appasch nge raa takkal amweri fischiy me alúghúlúghúló mereel CNMI Bwulasiyool Sów Bwungúl Allégh Lapalap.

Rállil ye_____llól Tumwur (December) 2004.

PAMELA BROWN
Sów Bwungúl Allégh

ARONGOL TOULAP
POMWOL ASSEFÁLIL ME FILLÓÓL ALONGAL ALLÉGHÚL IMMIGRATIONS KKAAL

Tálil alongal alléghúl Immigration kkaal ikka raa pomwoli bwelle reel Administrative Act, 1CMC tálil 9101, et seq. Bwulasiyool Sów Bwungúl Allégh Lalapalap ekke pomwoli bwe ebwe sssiweli Alléghúl Immigration kkaal ikka raa fasúl fillóóy bwe ebwe allégheló mellól Commonwealth Register, Vol. 7, No. 5, Ghúúw 20, 1985, iye ebwe sóbweey yaal ssiweli, me rebwe assefáli me akaté sefál alongal alléghúl Immigration, ngáre schagh aa ghatch rebwe fillóóy

Akkatéél Bwángil: Bwulasiyool Sów Bwungúl Allégh Lapalap nge ebwe mweiti ngáli akkatéél allégh kkaal ye ebwe lemelem mwóghutul aramasal lúghúl, toolongol me sángi Commonwealth Téél Falúwasch Marianas sángi Akkaléélyal sów Lemelem 03-01 me 3 CMC talil 4312(d).

Akkatéél bwángil Allégh: Pomwol lliwel kkaal ngáli me alongal milikka ebwe assefál reel, Alléghúl Immigration igha ebwe toolong alléghúl code llól eew schagh kkapasal reel Gobenno me mwóghutul private kkaal.

Akkatéél pomwol lliwel: Pomwol lliwel kkaal ngali alongal alleghul Immigration kkaal ikka ebwe akkatééwow reel:

(1) Ssiweli Tálil kka 703 (C), (D), (E), (G), me (L), Tálil 804 (C) (1), me Talil 1401, igha e schungi feffeer ngów llól allegh kkaal.

(2) atoowowu me ngáre ssiweli fasúl mwógutul me kkapasal.

(3) atoowowu me ngare ssiweli fasúl allégh kkaal igha ebwe tabweey allégh me mwóghut kkaal.

(4) Awela typos me grammatical errors.

(5) Ssiweli Tálil 706 (L) (1) Igha ebwe affata bwe alongal mwiischil mwóghutul kkompinia me tafal igha ebwe yááyá ngáli VEP nge ebwe lisensia me ayoora business mellól Commonwealth , e weewe schagh bwe e registered bwe traveled agent me ngáre ifa leil.

Reel amataf faingi:: Eric S. O'Malley, Sow alillisil Sów Bwungúl Allégh Lalapalap, Bwulasiyool Sow Bwungul Allegh Lapalap, tilifoon (670) 664-2366 me ngáre facsimile (670) 234-7016.

Akkatéél akkááw allégh: Pomwol lliwel kkaal iye e aweiresi alléghúl Immigration.

Rállil ye _____llól Tumwur (December) 2004.

Isaliyallong:

_____
PAMELA BROWN
Sów Bwungúl Allégh Lapalap

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE ATTORNEY GENERAL-IMMIGRATION DIVISION

[PROPOSED AMENDED AND RESTATED] IMMIGRATION REGULATIONS[1]

I. GENERAL

Section 101. Purpose. These regulations shall replace those rules and regulations repealed by Section 29 of Public Law No. 3-105.

Section 102. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105. As used herein, "inspector" shall include registrars, examiners, inspectors, and all officers of the Immigration Office.

II. APPOINTMENTS

Section 201. Immigration Officer. The Immigration Officer shall be appointed by a letter of appointment signed by the Attorney General delivered to the Immigration Officer and the Governor.

Section 202. Inspector.

A. Inspectors shall perform all the duties of the Office of Immigration under Public Law Nos. 1-8 and 3-105.

B. Inspectors shall be appointed by memoranda of the Immigration Officer with the written concurrence of the Attorney General. To become effective, the appointments must be followed by the execution of an oath of office.

Section 203. Examiner.

A. Examiners shall provide further examination of persons excluded at the borders by an inspector. An examiner shall have the powers and duties described in Sections 14-16 of Public Law 3-105 specifically and those of an inspector generally.

B. Examiners shall be designated by memoranda of the Immigration Officer with notice to the Attorney General. Appointment to the position of examiner does not entitle the examiner to an increase in compensation and shall not be considered as a promotion or demotion. There shall be one examiner on duty with an inspector at each port of entry when clearing vessels.

Section 204. Registrar.[2]

A. Registrars shall register aliens in accordance with Section 24 of Public Law No. 3-105 and the regulations issued thereunder.

B. Registrars shall be inspectors designated as registrars by the Immigration Officer with notice to the Attorney General. Appointment to the position of registrar does not entitle the registrar to an increase in compensation and shall not be considered as a promotion or demotion.

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[1] Comprehensive Regulations proposed *Commonwealth Register* Vol. 7, No. 5, May 20, 1985, at page 3623 to 3645, adopted with amendments *Commonwealth Register* Vol. 7, No. 7, July 22, 1985, at page 3774 to 3795.

[2] Amendment proposed *Commonwealth Register* Vol. 8, No. 6, September 15, 1986, at page 4576 to 4579, adopted *Commonwealth Register* Vol. 8, No. 7, October 22, 1986, at page 4687 to 4688.

C. There shall at all times be at least two registrars in the island of Saipan and one registrar each in Rota and Tinian.

III. COURSE OF INSPECTORS

Section 301. Personnel Service System Rules and Regulations. The Personnel Service System Rules and Regulations, as finally adopted by the Civil Service Commission, shall apply to all inspectors. All amendments thereafter shall apply. In particular, the Code of Ethics, Part V(D), applies to every inspector. The Immigration Officer shall cause a copy of the Code of Ethics to be delivered to every inspector.

Section 302. Dress. No inspector shall report to duty unless dressed in full uniform. Full uniform consists of black shoes, dark socks, dark blue pants, black leather belt, light blue shirt, name tags and badge. Those items issued by the government cannot be substituted. In cold weather, the government-issued dark blue jackets shall be worn.

A. Clothing shall be clean and ironed. Shoes shall be shined. The inspector must be clean-shaven and neat.

Section 303. Punctuality.

A. An inspector shall arrive at his assigned station on time for his shifts in uniform and prepared to work. Failure to do so may result in suspension or termination. This is particularly important at the ports of entry where the commercial activities of the Commonwealth depend upon Immigration to promptly clear vessels and aircraft.

B. If an inspector is unable to arrive on time or is unable to show up to work, he shall immediately notify his supervisor in advance. If his supervisor is unavailable, he shall notify the Deputy Director or the Immigration Officer. Failure to do so may result in suspension or termination.

Section 304. Chain of Command.

A. Requests or grievances shall be brought within the chain of command in order to provide for an orderly, non-partisan resolution of problems within the Office. An employee shall not pursue a grievance with a higher rank supervisory official until he has done so with a lesser rank official.

B. The one exception to the rule is that informal grievances may be brought to the Personnel Officer in order to seek advice.

IV. REGISTRATION

Section 401. Purpose. These regulations shall provide for a system of annual registration as required by Section 24 of Public Law No. 3-105.

Section 402. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105, except as may be set forth pursuant to administrative or executive order.

Section 403. Registration. [3]

A. Any alien who intends to remain in the Commonwealth for more than ninety (90) days shall register with the Office of Immigration within ninety (90) days of their arrival, except as set forth pursuant to these regulations.

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[3] Amendment proposed *Commonwealth Register* Vol. 16, No. 7, July 15, 1994, at page 12234 to 12236, adopted *Commonwealth Register* Vol. 18, No. 7, July 15, 1996, at page 14206 to 14208.

B. Any alien who is issued a renewal of his or her employment or business permit shall register within ten (10) business days after the issuance of the renewal.

C. Parents and legal guardians of alien children and wards are responsible for the registration of such children and wards that are under the age of 21.

D. An employer shall ensure that any alien in his or her employ has registered in accordance with these regulations. An employer's responsibility under this section is in addition to and does not diminish the responsibility of an alien.

Section 404. Registered Alien Sticker.

A. Aliens who file the required documents, pay the required fee, and who are legally present in the Commonwealth shall receive a Registered Alien Sticker.

B. The Registered Alien Sticker shall be affixed on the reverse side of the immigration entry permit card.

Section 405. Registration Fee. No Registered Alien Sticker shall be issued until the alien has paid a twenty-five dollar ($25.00) application processing fee to the Treasurer of the Commonwealth of the Northern Mariana Islands.[4]

Section 406. Application.

The alien must complete an Alien Registration Application and sign it under penalty of perjury before a Registrar.

Section 407. Examination.

Upon registration, the alien must appear before a registrar in the Office of Immigration.

Section 408. Not Evidence of Legal Status.

The purpose of the Alien Registration Sticker is to provide evidence that the alien has complied with the alien registration requirements. The issuance of an Alien Registration Card is not an adjudicatory act determining the legality of an alien's status.

Section 409. Immigration Processing. The Immigration Officer shall cause the information received to be recorded on computer. In addition, a current file system shall be established with a file for each alien containing, at the minimum, the application forms and a photograph of the alien.

V. PORT OF ENTRY

Section 501. Purpose. The Attorney General shall designate Ports of Entry for arriving aliens under Section 26 of Public Law No. 301-5.

Section 502. Saipan and Northern Islands. There are hereby designated only two ports of entry for the island of Saipan and those islands of the Commonwealth north of Saipan:

A. Saipan International Airport (at Aslito Field) for all carriers,

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[4] Amendment proposed *Commonwealth Register* Vol. 16, No. 7, July 15, 1994, at page 12234 to 12236, adopted *Commonwealth Register* Vol. 18, No. 7, July 15, 1996, at page 14206 to 14208.

B. Charlie Dock (Tanapag Harbor, Saipan) for ocean carriers.

Section 503. Tinian. There are hereby designated two ports of entry for the islands of Tinian and Aguigan:

A. North Field Airport, Tinian for air carriers,

B. Tinian Harbor for ocean carriers.

Section 504. Rota. There are hereby designated three ports of entry for the island of Rota:

A. Rota International Airport for all carriers,

B. West Dock (Sasanlago Harbor),

C. East Dock (Sasanhaya Harbor).

Section 505. Exclusive Ports of Entry. The ports of entry designated in Sections 502, 503 and 504 are exclusive. Any person who unlawfully enters or attempts to enter the CNMI or any alien who enters or attempts to enter the CNMI at a place other than these ports of entry is guilty of a crime under Section 25(a) of Public Law No. 3-105. In addition, any carrier, master, commanding officer, purser, person in charge, agent, owner or consignee of any vessel or aircraft who knowingly brings or attempts to bring or aid, abet or assist in bringing any person into the Commonwealth at other than these ports of entry may be punished by a civil penalty of not more than Five Thousand Dollars ($5,000.00) for each occurrence.

VI. VESSEL AND AIRCRAFT ENTRY

Section 601. Permission to Enter

A. Permission to Enter. No vessel or aircraft, unless military, shall enter the CNMI without first having received permission from the Immigration Officer. A vessel or aircraft master or pilot may file an Application For Vessel Or Aircraft To Enter The Northern Mariana Islands. Request for permission to enter shall contain the following information:

1. Vessels:

   a. Name of vessel,

   b. Place of registry and registration number,

   c. Name, nationality and address of operator,

   d. Radio call sign,

   e. Length, breadth and depth of vessel,

   f. Gross tonnage,

   g. Last port of call,

   h. Date of last entry,

   i. Purpose of entry,

   j. Approximate duration of stay,

   k. Port of next destination,

l. Name and address of agent,

m. Estimated time of arrival.

2. Aircraft:

a. Type and serial number of aircraft,

b. Name, nationality and address of senior pilot,

c. Name, nationality and address of owner,

d. Plan of flight route,

e. Landing weight,

f. Date of last entry,

g. Port of next destination,

h. Name and address of agent,

i. Purpose of entry,

j. Estimated time of arrival.

B. Aircraft may obtain multiple entry permission upon submission of the type and serial number of the aircraft, the name, nationality and address of the owner, the purpose of entry, the name, address and phone number of the agent, and roster of all flight staff. This multiple entry permission shall remain in effect for one (1) year and is specifically conditioned on the local agent providing at least seven (7) days in advance to the Immigration Officer an estimated passenger forecast and the port of last call for the aircraft.

C. Non-commercial pleasure vessels or aircraft may arrive at the ports of entry without prior permission to enter if:

1. They immediately notify the port authority of their entry and their lack of permission to enter from the Immigration Officer,

2. The total number of crew and passengers is less than ten (10) persons,

3. The master or pilot immediately reports to port authority to request Immigration clearance,

4. The master or pilot fills out the form entitled "Application for Vessel Or Aircraft To Enter The Northern Marianas," and

5. No member of the crew leaves the vessel or aircraft until directed to do so by an Immigration Inspector.

Section 602. Emergency Entry. Upon request, the Immigration Officer may authorize the emergency entry of a vessel or aircraft to CNMI port of entry in the event of distress, weather, mechanical, or medical emergency. Post-entry authorization may be granted where circumstances do not permit pre-entry authorization. No vessel or aircraft which has entered the CNMI port by reason of an emergency shall be permitted to depart the CNMI until a written report of the emergency incident, bearing the subscription of

the master of such vessel or senior pilot of such aircraft, is filed with and evaluated by the Immigration Officer with the concurrence of the Attorney General. If the emergency is not verified by such report, the entry shall be considered as being unlawful. The period of stay authorized by an emergency entry shall be limited to the length of time until the emergency circumstances have been resolved. The owners, agents, crew, passenger and master of any such vessel or aircraft shall be liable for the costs of inspectors providing services at hours other than working hours in accordance with Section 605.

Section 603. List of Crew and Passengers. The master or pilot of every vessel or aircraft arriving in the CNMI port outside the CNMI shall furnish a list of the crew and passengers aboard before the commencement of inspection.

Section 604. Departure of Vessel or Aircraft. The privilege of a vessel or aircraft to enter the CNMI may be revoked or suspended at any time by the Immigration Officer. Grounds for revocation or suspension include violation of any section of these Regulations or violations of Section 22 of Public Law No. 3-105. An aircraft or vessel's privilege to enter shall be suspended if the aircraft or vessel abandons any of its crew in the CNMI. The period of suspension shall be at the discretion of the Immigration Officer.

Section 605. Compensation for Services Rendered. [5]

A. All air and sea carriers and other persons whose operations require the service of Immigration officers of the Commonwealth of the Northern Mariana Islands at other than established working hours shall pay the overtime costs for such officers providing said services.

1. "Other than established working hours" include work performed in excess of eight (8) hours on a weekday or forty (40) hours a week and the twenty-four (24) hour period for Saturday and the twenty-four (24) hour period for Sunday. The rate of compensation for overtime or for employees required to work during other than established working hours is one and one-half (1 ½) times the employee's basic pay. An employee required to work on a legal holiday shall be compensated at two (2) times the base salary rate. Overtime pay shall include overtime compensation as well as applicable employer contributions for retirement and Medicare.

2. There shall be a minimum charge of two (2) hours overtime for each arrival requiring the services of Immigration officers. An employee who is required to work overtime of less than two (2) hours is credited with a minimum of two (2) hours overtime work. Any fraction of an hour in excess of the two (2) hour minimum shall be compensated at the full hour rate. Compensation for services shall commence thirty (30) minutes prior to the scheduled arrival time of a carrier. It shall terminate thirty (30) minutes after the officer's services are terminated at the post of duty.

3. Sea carriers, individuals, non-scheduled aircraft, and others for which overtime services can be specifically assigned shall be charged for the actual overtime incurred by the Immigration officer(s) providing such services.

4. Said overtime charges and holiday charges shall be waived when services are rendered to a carrier operating under emergency conditions or for emergency purposes.

5. For scheduled and extra section flights to Saipan, Tinian, or Rota, Immigration services provided during overtime hours shall be presumed to be performed for two or more airlines during one continuous tour of overtime duty. The total charge for these services shall be prorated to the aircraft arriving between 4:00 p.m. to 6:30 a.m. weekdays, and the twenty-four (24) hour period of a Saturday, Sunday or holiday. The total charge shall be assessed pursuant to Customs Service Regulation Section 1302.22(e)(1).

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[5] Emergency amendments proposed *Commonwealth Register* Vol. 14, No. 10, October 15, 1992, at page 9761 to 9768, adopted *Commonwealth Register* Vol. 15, No. 2, February 15, 1993, at page 10472 to 10477.

6. For purposes of this application, overtime charges of the Immigration Division will be included and billed using a standard rate that also includes the overtime charges of the Customs and Quarantine Division and assessed pursuant to Customs Service Regulation Section 1302.22(e)(1).

7. At the end of the fiscal year, the Director of Finance will compute actual costs in accordance with the percentage allocation formula set forth in Customs Service Regulation Section 1302.22(e)(1).

B. Non-performance of Requested Service. If employees have reported to work in order to provide requested overtime services, but services are not performed by reason of circumstances beyond the control of the employees concerned, compensation shall be in accordance with paragraph (1) of this section.

C. Notice of Rate Change. The Director of the Department of Finance pursuant to the authority granted the Director under 4 CMC §2553, may change the rate and basis for allocation used for billing overtime services upon ninety (90) days public notice.

D. Interest Charge. Interest charge of fifteen percent (15%) per annum shall be imposed on all unpaid charges required by this part.

Section 606. Clearance During Journey.

A. Clearance services may be provided during the journey of a vessel or aircraft upon request.

B. The charges shall be according to Section 605.[6]

C. All necessary transportation shall be furnished by the master, owner or agent. The master, owner, or agent shall provide to the inspector [a] per diem at the prevailing government rate or adequate hotel accommodations if the vessel departure is delayed and the inspector is required to wait for more than three (3) hours between 10:00 p.m. and 5:00 a.m. or for more than six (6) hours between 6:00 a.m. and 10:00 p.m. for the departure.

D. During the voyage, accommodations provided [to] passengers must be provided to the inspector.

E. The master, owner or agent shall assume responsibility for necessary medical expenses incurred while away from the primary duty station in order to provide clearance during a journey.

Section 607. Billing.

A. Charges shall be billed monthly.

B. Late payment shall be charged at fifteen percent (15%) per annum.

C. All bills not paid within ninety (90) days shall be reported to the Attorney General for civil suit and to revoke a carrier's entry privilege.

VII. ENTRY PERMIT

Section 701. Requirement. An alien may enter the CNMI only upon evidence of a valid entry permit (either a Visitor Entry Permit or an Authorization For Entry) granted in advance of his arrival at the port of entry.

Section 702. Exceptions by Waiver. Section 701 is waived for:

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[6] Conforming amendment adopted *Commonwealth Register* Vol. 15, No. 2, February 15, 1993, at page 10478.

A. Aliens traveling for purposes of tourism or business who are exempt pursuant to Section 703(B).

B. Employees of the CNMI government and their immediate relatives exempt pursuant to Section 705.

Section 703. Visitor Entry Permit.[7]

A. Applicability. A Visitor Entry Permit is required for entry by aliens who are seeking to enter the CNMI for tourism or business purposes. The term "tourism purposes" is defined as traveling for pleasure or recreation by an alien who has a residence in a foreign country which he has no intention of abandoning and who is visiting the Commonwealth of the Northern Mariana Islands temporarily for business, pleasure or recreation. Such visitors shall not include those visiting the Commonwealth for purposes of work, or for other purposes requiring an Authorization For Entry.

B. Visitor Entry Permit Exemptions. The following aliens do not require a Visitor Entry Permit in order to enter the CNMI:

1. Any alien with a valid United States entry visa which is valid for at least 60 days from the date of entry into the CNMI provided that the United States visa permits re-entry back into the United States after entry and departure from the CNMI.

2. Any alien who is a national or citizen of a country that is permitted to enter the United States under the United States visa waiver program.

3. Any alien who is a citizen, national, permanent resident, or holds a status as a temporary resident authorized to work in and unconditionally reenter a country that appears on the Commonwealth Visitor Entry Permit Exempt Countries List, which shall be issued from time to time by the Attorney General, and made available to members of the public at their reasonable request.

4. United States residents who present evidence of a valid, un-expired form I-551 issued by U.S. Customs and Immigration Service (USCIS). The following shall be acceptable as providing evidence of such status:

   a. Form I-551 – Permanent Resident Card

   b. Form I-551 – Alien Registration Receipt Card

   c. A Lawful Permanent Resident may present a valid un-expired passport containing a valid un-expired temporary residence stamp. (Processed for I-551 Temporary Evidence of Lawful Admission)

C. Carrier Responsibility

1. The carrier at the point of embarkation shall not board an alien seeking to travel to the CNMI for tourism or business purposes unless: (1) the individual presents a valid, un-expired Visitor Entry Permit; or (2) the individual satisfies one of the exempt categories set forth in Immigration Regulation 703(B) above.

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[7] Emergency amendments proposed *Commonwealth Register* Vol. 24, No. 6, June 17, 2002, at page 19246 to 19255, re-proposed with amendments *Commonwealth Register* Vol. 25, No. 6, July 15, 2003, at page 20649 to 20676, adopted *Commonwealth Register* Vol. 25, No. 10, November 17, 2003, at page 21469; amendments proposed *Commonwealth Register* Vol. 26, No. 3, March 23, 2004, at page 22110 to 22120 and 22120A to 22120H (emergency supplement), adopted with amendment *Commonwealth Register* Vol. 26, No. 4, April 23, 2004, at page 22482.

2. For all flights or cruises originating from a port outside the authority of United States immigration, carriers shall provide to the Division of Immigration an electronic manifest listing the names and nationalities of all passengers prior to arrival in the Commonwealth.

D. Persons Not Permitted to Enter.

1. No alien may enter the CNMI by exiting their country of citizenship or point of origin with a Visitor Entry Permit as described under these regulations and then entering the CNMI with an Authorization for Entry or work entry permit issued under Section 706(K) of these regulations.

2. No alien is entitled to a Visitor Entry Permit by right. Citizens of countries not exempt from the Visitor Entry Permit requirement pursuant to Immigration Regulation 703(B) may enter only under the terms contained herein.

E. Application.[8]

1. In order to obtain a Visitor Entry Permit, the applicant must submit an application via fax, e-mail, or posted mail to the CNMI Division of Immigration, Office of the Attorney General. The Visitor Entry Permit application shall be submitted under penalty of perjury and shall include the following information:

a. Name;

b. Certified copy of valid passport;

c. Home address, telephone number, fax number, place of birth;

d. Length of time at home address;

e. Expected date and time of arrival;

f. Expected date and time of departure;

g. Name and address of sponsor/reference/hotel in the CNMI;

h. Proof of financial responsibility;

i. Copy of round trip ticket or e-ticket or verified itinerary;

j. Indication whether applicant has visited CNMI previously; and

k. Indication whether applicant has ever applied and been denied entry or an entry permit.

Additional information may be required as needed.

2. The application shall be free of charge if submitted more than more than seven (7) days prior to the expected date of arrival. If the application is received less than seven (7) days prior to the expected date of arrival, the applicant must submit a non-returnable processing fee of one hundred dollars ($100). Expedited processing fees must be received prior to issuance of a VEP.

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[8] Amendment proposed *Commonwealth Register* Vol. 26, No. 1, January 22, 2004, at page 21561 to 21579, adopted with amendments *Commonwealth Register* Vol. 26, No. 4, April 23, 2004, at page 22482.

F. Finding of Deficiency.

Once the Division of Immigration receives an application for a Visitor Entry Permit, it will review the application to determine whether all of the information required has been provided. This deficiency review will be completed within seven working days after receipt of the application. If the application is found to be complete, it will be reviewed in accordance with the Standards For Review provided herein. If the application is found to be deficient, then the deficiencies shall be listed and forwarded to the applicant by the third day of the deficiency review period in the same manner as the application was received.

G. Standards for Review.[9]

1. Once a Visitor Entry Permit application is determined to be complete, within seven working days it will be reviewed for substantive compliance and approved by the Attorney General, or her duly-appointed designee, based on the following requirements:

   a. valid passport for at least sixty (60) days after expected time of departure from the CNMI;

   b. copy of a round trip ticket or verified electronic itinerary (i.e., e-ticket);

   c. finding that person resides permanently in place of residence and is reliably expected to return there;

   d. finding that there is no reasonable cause to believe the visit is for purposes other than tourism or business;

   e. either (a) acceptable sponsorship and affidavit of support from a party residing in, or an entity located in, the Commonwealth who has not been found in violation of prior sponsorships; or (b) acceptable proof (such as a bank account statement, letter of credit, or proof of a valid credit card with an equivalent available credit) of means sufficient to support a stay for the duration of the trip (which shall be no less than $100 per day, per day); and

   f. determination and finding of accuracy in application.

2. A Visitor Entry Permit may be denied if the examining official has reasonable cause to believe that the individual is excludable pursuant to 3 CMC § 4322, or reasonable cause to believe that the individual's entry is not in the best interest of the Commonwealth.

H. Issuance of Permit – Decision Within Seven Working Days.

Once a Visitor Entry Permit application is determined to be complete and all of the substantive Standards For Review are determined to be satisfied, then a Visitor Entry Permit will be granted within seven working days after the initial receipt of the application. If any of the standards are determined to be in non-compliance, the application shall be denied and the applicant shall be notified of the denial within two working days of the determination.

A copy of the approved Visitor Entry Permit shall be delivered to the applicant with a copy to the airline carrier in the CNMI. The airline carrier in the CNMI shall forward a copy of the Visitor Entry Permit to the point of embarkation to the CNMI. The airline carrier at the point of embarkation shall not board a Visitor Entry Permit holder if the holder's copy does not match the carrier's copy.

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[9] Amendment proposed *Commonwealth Register* Vol. 26, No. 1, January 22, 2004, at page 21561 to 21579, adopted *Commonwealth Register* Vol. 26, No. 4, April 23, 2004, at page 22482.

I. Duration of Visitor Entry Permit.

Once the application is approved, it will be valid for a single entry and for thirty (30) days from the original date of entry to the CNMI. An alien may apply for an extension as permitted by law.

J. No Transfer of Permit.

An alien with a valid Visitor Entry Permit may not work, and may not obtain or seek to obtain a work permit under Section 706(K) of these regulations during a visitor permit entry. An alien who violates this provision shall be subject to criminal prosecution and/or deportation pursuant to applicable statues and regulations.

K. Admission.

No alien may seek or obtain entry into the Commonwealth as a matter of right. Nothing in these regulations shall be construed to entitle any alien, to whom a Visitor Entry Permit has been issued, to enter the Commonwealth of the Northern Mariana Islands, if, upon arrival at a port of entry in the Commonwealth, he is found to be excludable under any provision of law. If entry is denied to a valid Visitor Entry Permit holder, the applicant may be temporarily admitted at the discretion of the Director of Immigration under such conditions as will insure the visitor's availability for further proceedings, including retaining the visitor's passport and return airline ticket. An alien so admitted shall be deemed not to have entered the Commonwealth. The exclusion or removal of a temporarily admitted alien shall not require deportation proceedings.

L. Approval of Travel Agencies.[10]

Any travel agency, as that term is defined by the Secretary of Commerce, or similar organization seeking to arrange travel or process documents for persons requiring a VEP shall have satisfied the conditions set forth herein and shall have received prior written authorization from the Office of the Attorney General.

1. Eligibility.

Only companies duly licensed and conducting business in the Commonwealth are eligible to apply for status as authorized agencies.

2. Petition.

An eligible travel agency shall file a signed petition with the Office of the Attorney General, Division of Immigration. Such petition shall include: (1) a description of the travel agency, including the number of operational offices and estimated annual revenues, as well as the services it seeks to provide; (2) any associations or institutions with which the travel agency is affiliated; (3) the anticipated number of alien visitors per year; (4) the number of employees, both in the Commonwealth and in the location of departure, and their positions and qualifications; and (5) a description of the travel agency's procedures for conducting background and medical searches, and for returning alien visitors who fail to comply with the terms of entry.

3. Interview of petitioner.

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[10] Addendum proposed *Commonwealth Register* Vol. 26, No. 3, March 23, 2004, at page 22110 to 22120 and 22120A through 22120H (emergency supplement), adopted with amendment *Commonwealth Register* Vol. 26, No. 4, April 23, 2004, at page 22482.

Petitioner may be required to appear in person, under oath, before the Attorney General or her duly appointed designee prior to approval. Petitioner may also request an interview.

4. Approval of petition.

Subject to the bonding requirement described in paragraph (10) of this Section 703(L), the Attorney General may approve a petition upon a determination that the travel agency is capable of and intends to comply with Commonwealth laws and regulations and will, if necessary, take all reasonable measures to assist the DOI in performing its functions. The Attorney General shall notify the petitioner in writing whether the petition has been approved or denied. An approval may be revoked in accordance with the provisions of paragraph (8) of this Section 703(L), and is subject to annual review and renewal.

5. Denial of petition and opportunity to cure.

If the petition is denied, the petitioner shall be notified of the reasons thereof and of the right to cure any deficiency in the petition within fifteen (15) days after service of the written denial. Should the petitioner fail to satisfactorily cure the deficiency within the prescribed cure period, the petitioner shall be ineligible to reapply for a period of sixty (60) days after expiration of such cure period.

6. Recordkeeping requirements.

An approved travel agency must keep records of the names, date and place of birth, country of citizenship, address and telephone number, and a photocopy of the passport and entry permit for each alien visitor. Such records shall be readily available to the DOI and shall be retained for a period of two years following the departure of the alien visitor.

7. Reporting requirements.

Approved travel agencies are required to immediately report to the DOI the following:

a. An alien visitor is arrested or detained for any reason;

b. An alien visitor fails to depart the Commonwealth as scheduled;

c. An alien visitor requires hospitalization due to illness or injury; or

d. Any event, whether in the Commonwealth or in the country of origin, that could potentially prevent the scheduled repatriation of the alien visitor.

8. Revocation of approved status.

a. Revocation on notice.

The approval may be revoked on notice by the Attorney General for a failure to comply with Commonwealth law and regulation or for any valid and substantive reason. If a travel agency's approval is revoked on notice pursuant to this paragraph, the travel agency shall be ineligible to reapply for a period of one year after the effective date of the revocation.

b. Automatic revocation.

If an approved travel agency terminates its operations or experiences a change in ownership that results in a change of control, approval will be automatically revoked as of the effective date of such events.

9. Revocation proceeding.

Should the DOI believe that a travel agency is no longer entitled to approval, the DOI shall serve notice of intent to revoke the approval. Such notice shall describe the grounds for revocation and shall inform the travel agency that it may, within fifteen (15) days of the date of service of the notice, file an appeal to the Attorney General. A statement setting forth the grounds for contesting the revocation of the approval shall support such appeal. The Attorney General shall promptly issue a written decision either revoking approval or granting continued approval, including a discussion of the evidence and findings. The Attorney General may rely solely on the record, or may supplement the record with new evidence. The decision of the Attorney General shall constitute a final agency decision for purposes of judicial review.

10. Bonding Requirement.

a. Once a travel agency has received a written approval from the Attorney General but prior to making travel arrangements for any alien visitor, the travel agency shall deliver to the DOI a bond or other surety from a recognized insurance company in a form acceptable to the DOI to secure the faithful performance of the duties and responsibilities of the travel agency, to ensure the departure of all alien visitors as scheduled and prior to expiration of the alien visitor's tourist permit, and to indemnify the Commonwealth for reasonable costs incurred as a result of the travel agent's negligence or failure to comply with these regulations.

b. If the travel agency fails to make reasonable efforts to repatriate an alien visitor, thereby allowing that alien visitor to become an illegal alien, then all costs of deportation shall be paid by the travel agency or deducted from the bond or surety, subject to the provisions of the Administrative Procedure Act 1 CMC § 9101 et seq.. All such payments or deductions shall be made to the Alien Deportation Fund.

c. The amount of the bond shall be determined and maintained at: (i) at least two thousand dollars ($2,000) per alien visitor if the expected number of alien visitors in the next fiscal quarter is less than 200; (ii) at least five hundred thousand dollars ($500,000) if the expected number of alien visitors in the next fiscal quarter is more than 200 but less than 500; (iii) at least seven hundred and fifty thousand dollars ($750,000) if the expected number of alien visitors in the next fiscal quarter is greater than 500 but less than 1,000; and (iv) at least one million dollars ($1,000,000) if the expected number of alien visitors in the next fiscal quarter is greater than 1,000.

Section 704. Short-Term Business Entry Permit.[11]

A. The Short-Term Business Entry Permit may be obtained only upon arrival at the port of entry subject to an arrival interview conducted at the port of entry by a designated immigration inspector.

B. The Short-Term Business Entry Permit is for the purpose of conducting negotiations, formulating business plans, surveying business prospects and engaging in any lawful business or commercial activities. The holder of a Short-Term Business Entry Permit may not become employed by a Commonwealth employer.

[11] Emergency regulations proposed *Commonwealth Register* Vol. 13 No. 11 November 15, 1991, at page 8511 to 8513, adopted *Commonwealth Register* Vol. 14, No. 2, February 15, 1992 at 8929 to 8933.

C. The Short-Term Business Entry Permit allows the holder to stay in the Commonwealth for one visit of not more than thirty (30) days.

D. The Short-Term Business Entry Permit shall not be granted within thirty (30) days of the expiration of stay allowed in the entrant's previous Short-Term Business Entry Permit.

E. No extension of the Short-Term Business Entry Permit may be granted. The stay allowed can be lengthened only upon the grant of a Regular-Term Business Entry Permit.

F. Application for a Regular-Term Business Entry Permit must be made at least ten (10) days in advance of the expiration of the Short Term Business Entry Permit.

Section 705. CNMI Employees.

A. CNMI alien employees and immediate relatives may enter for twenty (20) days without an entry permit if they possess a valid passport and a valid CNMI government travel order that specifies the immediate relatives to accompany the employee.

B. It is specifically a condition of such entry that applications for CNMI employee entry permits shall be filed within ten (10) days of the arrival.

C. Should employment terminate for any reason during the twenty (20) day period, the alien and the supervisor must report this fact to the Immigration Officer within twenty-four (24) hours.

Section 706. Classification of Entry Permits.

A. The Regular-Term Business Entry Permit[12] – allows the holder to stay in the CNMI for one visit of not more than a ninety (90) day stay or multiple visits totaling not more than ninety (90) days within one twelve (12) month period. The applicant must be present in the CNMI to apply for the permit.

1. The Regular Term Business Entry Permit allows the holder to engage in any lawful business or commercial activity in the Commonwealth only after certification of such activity by the Secretary of Commerce.

2. The holder of a Regular-Term Business Entry Permit shall not become employed by a Commonwealth employer, other than by such an employer in which the holder maintains a substantial ownership interest.

B. CNMI Employee Entry Permit – permits alien to remain in the CNMI for one (1) year so long as the alien is employed by the CNMI government. Alien may not enter into any other employment agreements while in the CNMI other than with the government. If the employee continues employment beyond the entry permit, then the permit may be renewed. .

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[12] Amendment proposed *Commonwealth Register* Vol. 8. No. 6, September 15, 1986, at page 4576 to 4579, adopted *Commonwealth Register* Vol. 8. No. 7. October 22, 1986, at page 4687 to 4688; amendment proposed *Commonwealth Register* Vol. 11, No. 9, September 15, 1989, at page 6457 to 6462, adopted *Commonwealth Register* Vol. 12, No. 7, July 15, 1990, at page 7203; amendment proposed *Commonwealth Register* Vol. 13 No. 11, November 15, 1991, at page 8510 to 8513, adopted *Commonwealth Register* Vol. 14. No. 2, February 15, 1992, at page 8929 to 8933; amendment proposed *Commonwealth Register* Vol. 16, No. 11, November 15, 1994, at page 12585, adopted *Commonwealth Register* Vol. 17, No. 3, March 15, 1995, at page 13040 to 13047.

C. Long-Term Tourist Entry Permit[13] – permits alien to remain in the CNMI for up to sixty (60) days. No Long-Term Tourist Entry Permit shall be granted within thirty (30) days of the expiration of any previous tourist entry permit, except that one Long-Term Tourist Entry Permit may be issued as an extension to a Short-Term Tourist Entry Permit. Alien shall not conduct business or perform services during stay. The Division of Immigration may impose a reasonable fee for processing and/or issuing a Long-Term Tourist Entry Permit. A Long-Term Tourist Entry Permit will be granted only upon a determination that it is in the best interests of the Commonwealth.

D. Immediate Relative of Non-alien Entry Permit – permits immediate relatives of persons who are not aliens to remain in the CNMI for one (1) year so long as the immediate relative status is in effect. The permit may be renewed.

E. Immediate Relative of Alien Entry Permit[14] – an immediate relative of an alien may enter under a permit for the same term as the alien's entry if, in addition to satisfying such other requirements as may be imposed by law or regulations, the alien posts cash as a bond with the Director of Immigration in the amount of twice the cost of return travel to the point of origin at the time of application. An alien may not obtain a permit under this section solely by virtue of his or her relationship to an alien who holds an Immediate Relative of a Non-Alien Entry Permit issued pursuant to Immigration Regulation 706(D).

F. Diplomat or Consular Entry Permit – permits designated principal resident representing a foreign government which government is recognized in law by the United States and his immediate relatives to remain in the CNMI for the duration of his appointment. The DCEP also permits officially designated staff members and their immediate relatives to remain for the term of their appointment. There shall be no fee for this permit.

G. Foreign Investor Visa – an alien granted a certificate of foreign investment by the Department of Commerce and Labor and has complied with Part IX of these regulations.

H. Foreign Student Entry Permits[15] –

1. Post-Secondary Student Entry Permit.

a. In order to qualify for entry into the CNMI under this subsection, an applicant must be admitted to matriculate "full time" in a post secondary educational institution, which is licensed and permitted in the Commonwealth, and which the Office of the Attorney General has determined in writing is a bona-fide post-secondary institution eligible to accept foreign students under this provision. "Full time" under this subsection is defined as 12 credit hours per semester.

b. Applicants may apply for this type of entry permit prior to formal enrollment with an approved CNMI institution, but the permit will not be issued until proof of enrollment is received and verified by the Office of the Attorney General, Division of Immigration (DOI). Upon receipt and preliminary approval by the DOI of a Foreign Student Entry Permit application and supporting materials (see Section 3 and 4, below), the DOI will issue a " Student Authorization For Entry" or similar document that will allow the individual to travel to and enter the CNMI temporarily, in order to enroll in their approved institution and obtain a permit.

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[13] Amendment proposed *Commonwealth Register* Vol. 26, No. 1, January 22, 2004, at page 21580 to 21590, adopted with amendment *Commonwealth Register* Vol. 26, No.7, July 26, 2004, at page 22865.
[14] Amendment proposed *Commonwealth Register* Vol. 25. No. 6, July 15, 2003, at page 20677 to 20681, adopted with amendments *Commonwealth Register* Vol. 25, No.9, October 15, 2003, at page 21444.
[15] Emergency amendment proposed *Commonwealth Register* Vol. 25, No. 7, August 22, 2003, at page 20717 to 20739, adopted with amendments *Commonwealth Register* Vol. 26, No.1, January 22, 2004 at page 21709.

c. Permission to remain in the CNMI, as granted by this subsection, shall expire upon completion of a degree or upon notification by the institution to the DOI that the student is no longer a full-time active student. It is the responsibility of the institution to notify the DOI of a student's failure to maintain "full-time" status. Failure of an institution to notify the DOI immediately when a student falls below full-time status, or has more than three (3) consecutive days of unexcused absence from required classes, may result in revocation of that institution's approved status and denial of future of Foreign Student Entry Permits under this subsection issued for that institution.

d. A permit issued pursuant to this subsection shall be valid for no more than one (1) year and is renewable on an annual basis if the applicant continues to meet all conditions of the original issuance. All applicants must comply with paragraphs 3 and 4 of this section.

e. Dependents of students.

Dependents (which includes only children, under the age of eighteen, and spouses) of a holder of a Foreign Student Entry Permit issued pursuant to this subsection may be granted "Immediate Relative of Alien" entry permits pursuant to Immigration Regulation 706(E); provided, however, that in addition to the requirements of that Regulation, the applicant must also submit proof that sufficient funds are or will be available from an identified and reliable source to defray all living expenses during the period of the applicant's Foreign Student Entry Permit. Provided, further, that in addition to the repatriation bond required by Immigration Regulation 706(E), the applicant also must secure a three thousand dollar ($3,000) bond for each dependent for health care services or provide proof of valid medical insurance coverage. An Immediate Relative of an Alien entry permit issued pursuant to this subsection shall be valid for no more than one year and renewable on a yearly basis provided that all conditions of the original issuance are met.

2. Limited Term Student Entry Permit.

a. In order to qualify for entry into the CNMI under this subsection, an applicant must be admitted "full time" to a school or training program licensed in the Commonwealth that the Office of the Attorney General has determined in writing is a bona-fide school or training program eligible to accept foreign students under this provision. "Full time" under this subsection is defined as a program of study or training that requires at least twelve (12) hours of active participation in course work or training per week. Such bona-fide school or training program shall include but not be limited to management training programs, pre-college course work such as NCLEX or CPA training. Such bona-fide school or training program is not intended to include traditional primary or secondary school.

b. Applicants may apply for this type of entry permit prior to formal enrollment with an approved CNMI institution, but the permit will not be issued until proof of enrollment is received and verified by the Office of the Attorney General, Division of Immigration (DOI). Upon receipt and preliminary approval by the DOI of a Foreign Student Entry Permit application and supporting materials (see Section 3 and 4, below), the DOI will issue a " Student Authorization For Entry" or similar document that will allow the individual to travel to and enter the CNMI temporarily, in order to enroll in their approved institution and obtain a permit.

c. Permission to remain in the CNMI, as granted by this subsection, shall expire upon completion of the coursework or program or upon notification by the

institution to the DOI that student is no longer a full-time active student. It is the responsibility of the institution to notify the DOI of a student's failure to maintain "full-time" status. Failure of an institution to notify the DOI immediately when a student falls below full-time status, or has more than three (3) consecutive days of unexcused absence from required classes, may result in revocation of that institution's approved status and denial in the future of Foreign Student Entry Permits under this subsection issued for that institution.

d. A permit issued pursuant to this subsection shall be valid for no more than the approved course of study, and in no event for more than six (6) months, but may be renewed if the applicant continues to meet all conditions of the original issuance. All applicants must comply with paragraphs 3 and 4 of this subsection.

3. Proof of economic condition.

Applicants must prove that sufficient funds are or will be available from an identified and reliable financial source to defray all living and school expenses during the period of anticipated study. Specifically, applicants must prove that they have enough readily available funds to meet all expenses for the period of study including proof of adequate financial capability to defray all health care costs.

4. Application Requirements.

Each applicant for a Foreign Student Entry Permit shall pay a non-refundable application fee of $100 and submit:

a. A permit application, signed under penalty of perjury;

b. a completed biographical form;

c. certified copy of an applicant's passport;

d. certified copy of a police clearance reflecting an applicants criminal record over at least a ten-year period; and

5. Approval of Institutions.[16]

Prior to issuance of any Student Authorization For Entry or Foreign Student Entry Permit, the DOI must approve in writing the school in which a foreign student intends to enroll pursuant to the regulations set forth in this Section 706(H)(5). Such regulations shall only affect a school's ability to accept students who are in the Commonwealth or seeking to enter the Commonwealth under a Foreign Student Entry Permit and shall in no way affect or impinge upon the school's accreditation by the Board of Regents or other accreditations, or the school's operation except as it relates to students who are aliens.

a. Eligibility.

(1) Eligible schools include, but are not limited to, post-secondary institutions, such as colleges, universities, community colleges or junior colleges, offering recognized associate, bachelor's, master's, doctor's or professional degrees, as well as "transitional schools" (as that term is defined in paragraph (2) of this Section), language schools,

[16] Addendum proposed *Commonwealth Register* Vol. 26. No. 1, January 22, 2004, at page 21608, adopted with amendments *Commonwealth Register* Vol. 26, No. 3, March 23, 2004, at page 22190 to 22192.

religious schools, vocational schools, sports schools and professional training programs. Home schools and traditional primary and secondary schools are not eligible.

(2) A "transitional school", meaning a school which specializes in preparing for entry into post-secondary institutions in the Commonwealth or the United States those foreign students who: (i) have successfully completed the full course of publicly-offered secondary education in their home country; and (ii) are at least fourteen (14) years of age as of the date of enrollment but who may not have reached the age of eighteen (18), shall be eligible provided that it shall have satisfied any additional requirements under this Section 706H, and shall have assumed legal guardianship for each foreign student who has not achieved the age of eighteen (18) and who does not otherwise have a legal guardian in the Commonwealth, while the foreign student is in the Commonwealth.

b. Petition.

An eligible school seeking approval as a bona fide school eligible for attendance by foreign students, shall file a petition with the DOI. Such petition shall include:

(1) A letter of intent and request for certification from an authorized representative of the school that describes the basic program, including curriculum, for which certification is requested. The letter shall also include: (i) the number of years the school has existed and operated; (ii) any established affiliation (including student exchange programs) with any other institutions inside or outside the CNMI; (iii) current number of students; (iv) number of foreign students requested and anticipated in the first two years after approval; (v) number of current faculty members (administrators and those holding teaching positions); (vi) number of faculty members anticipated in the first two years after approval (administrators and those to hold teaching positions); and (vii) anticipated or estimated sum total of tuition to be charged to each foreign student for the complete course of study, including any potential scholarships, or tuition waiver programs.

(2) For a school or training program licensed by the Board of Regents of the CNMI under 2 CMC §1316(k), a certification to that effect signed by a member of the Board of Regents who shall also certify that he or she is authorized to do so. The school shall attach as an exhibit to the certification a copy of its submission to, and any findings of, the Board of Regents.

(3) For any other petitioning school or training program: (i) a certification that the school is licensed, approved, or accredited by a recognized authority, signed by an official of such authority who shall also certify that he or she is authorized to do so; (ii) evidence that it confers upon its graduates recognized associate, bachelor, master, doctor, professional, or divinity degrees, or evidence that its credits have been and are accepted by at least three institutions that do confer such degrees; and (iii) a school catalogue, if one is issued, including a printout of any web pages operated by the school that advertise or explain its program. If a catalogue is not issued, or if not included in the catalogue, the school shall furnish a blank application for student

admission, in addition to a written statement describing the size of its physical plant, nature of its facilities for study and training, qualifications and salaries of the faculty (administrators and those holding teaching positions), attendance and scholastic grading policy, and finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses). A charter, authorization to do business, or instrument of incorporation shall not be considered a license, approval, or accreditation.

(4) Transitional schools shall submit an additional certificate, signed by a designated official, as that term is defined in paragraph 5(k) of this Section, stating that prior to the foreign student's arrival in the Commonwealth, the school: (1) has assumed (or will have assumed) legal guardianship for each foreign student who has not achieved the age of eighteen while they reside in the CNMI or that the foreign student has a legal guardian already in the Commonwealth; and (2) can provide adequate room and board, and full-time adult supervision.

c. Interview of petitioner.

An authorized representative of the petitioner may be required to appear in person, under oath, before the DOI prior to the adjudication of the petition concerning the eligibility of the school for approval.

d. Approval of petition.

To be eligible for approval, the petitioner must establish that: (i) it is a bona fide school; (ii) it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses and to provide such other services as are described in the petition; and (iii) it is, in fact, engaged in instruction in those courses and providing such amenities. Upon approval, the DOI shall notify the petitioner in writing. Initial approval for a six (6) month period may, at the discretion of the Attorney General, be granted on a conditional basis and is renewable for an additional six-month period provided that the Attorney General is satisfied that the school has complied with the terms of this Section. An approved school must report immediately to the DOI any material modification to its name, address, or curriculum for a determination of continued eligibility for approval. The approval is valid only for the type of program and students specified in the approval notice. The approval may be revoked in accordance with the provisions of paragraph 5(l) of this Section, and is subject to annual review.

e. Denial of petition and appeal.

If the petition is denied, the petitioner shall be notified of the reasons therefor and of the right to appeal. Any appeal shall be taken within fifteen (15) days after service of the written denial. The reasons for the appeal shall be stated in the notice of appeal, and supported by a statement setting forth the grounds for contesting the revocation of the approval.

f. Recordkeeping requirements.

An approved school must keep records containing certain information and documents relating to each foreign student while the student is attending the school. Such records shall be readily available to the DOI and shall be retained by the school for a period of two years following the departure of the student.

The information and documents that the school must keep on each student are as follows:

(1) Name,

(2) Date and place of birth,

(3) Country of citizenship,

(4) Current address, or an accurate description of where the student and his or her dependents physically reside, and their mailing address,

(5) The student's current academic status,

(6) Date of commencement of studies,

(7) Degree program and field of study,

(8) Termination date and reason, if known,

(9) The number of credits completed each semester,

(10) A photocopy of the student's Passport and Foreign Student Entry Permit,

(11) For a transitional school, an original or certified copy of the document whereby the school or a legal guardian already present in the Commonwealth has assumed legal guardianship of each student who has not achieved the age of eighteen (18).

g. Reporting requirements.

Once every term or session, the DOI shall send each approved school a list of all foreign students who are attending that school. A designated official must certify whether or not each student on the list is a full time student, and give the names and current addresses of all foreign students attending the school that are not listed and other information specified by the DOI. The designated official must comply with the request, sign and return the list to the DOI within thirty days of the date of the request.

h. Additional Reporting requirements.

Schools are required to report to the DOI, within fourteen (14) days of occurrence, the following events:

(1) A foreign student fails to enroll or register for classes following the respective deadlines for enrollment or registration;

(2) A foreign student fails to complete his or her program in the time typically required to complete such program;

(3) A change of the student's or dependent's legal name, mailing address or location of residence;

(4) A student graduates prior to the program end date;

(5) Any disciplinary action taken by the school against a student as a result of the student being convicted of a crime;

(6) Any other request made by the DOI with respect to the academic, legal or immigration status of the student; and

(7) For a transitional school, a student who turns eighteen (18) years of age and for whom the school no longer serves legal guardian.

i. Advertising.

A school must send to the DOI a copy of any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed, reprinted or published, including via the internet, by or for an approved school containing any statement concerning attendance by foreign students. Such copies must be received by the DOI prior to distribution.

j. Issuance of Foreign Student Entry Permit.

A designated official of a school approved under this Section must sign any completed Foreign Student Entry Permit application issued for either a prospective or continuing student. The designated official shall sign the Foreign Student Entry Permit application only if the following conditions are met:

(1) The prospective student has made a written application to the school.

(2) The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student and dependents, and other supporting documents have been received, evaluated and deemed satisfactory by the school.

(3) The appropriate school authority has determined that the prospective student has satisfied the requirements set forth in paragraphs 3 and 4 of this subsection.

(4) The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.

k. Designated official.

"Designated official" means a member of the school administration designated by the president, owner, or head of the school and approved by the DOI, who does not receive commissions for recruitment of foreign students. A designated official may not delegate this designation to any other person. Each school may designate up to three designated officials. Each designated official must sign a certificate stating that the official is familiar with the regulations relating to the requirements for admission and maintenance of status of foreign students and to school approval under this Section, and affirming the official's intent to comply with these regulations.

l. Revocation of approved status.

(1) Revocation on notice.

If a school's approval is revoked on notice pursuant to this paragraph, the school is not eligible to file another petition for approval until one year after the effective date of the revocation. The approval of a petition by a school for the attendance of foreign students may be

revoked on notice by the DOI in its discretion for any valid and substantive reason including, but not limited to, the following:

(i) Failure to immediately notify the DOI if a student falls below full-time status or has more than three consecutive days of unexcused absences.

(ii) Failure to comply with the reporting requirements set forth in paragraphs 5(d), 5(g) and 5(h) of this subsection.

(iii) Failure to comply with the recordkeeping requirements set forth in paragraph 5(f) of this subsection.

(iv) Willful issuance by a designated official of a false statement or certification in connection with an application for approval or other document related to the acceptance for enrollment of a foreign student.

(v) A designated official does not meet or comply with the requirements set forth is paragraph 5(k) of this subection.

(vi) Signing of a Foreign Student Entry Permit application for a foreign student without receipt of proof that the student has met the requirements set forth in paragraphs 1(a), 1(c), and 1(e), or 2(a), 2(c), and 2(e), as appropriate, as well as subsections 3 and 4 of this Section.

(vii) Failure to employ qualified professional personnel, to maintain proper facilities and curriculum, or to maintain such accreditation or licensing as represented in the petition.

(viii) Failure to provide the DOI with the materials as prescribed in paragraph 5(i) of this Section or if the Attorney General finds that such materials contain materially false or misleading statements.

(ix) For a transitional school, failure to assume legal guardianship for foreign students under the age of eighteen who do not have legal guardians already in the Commonwealth, or failure to provide adequate facilities and supervision appropriate to such student's age level.

(x) Any conduct on the part of a school or designated official that does not comply with the regulations set forth herein.

(2) Automatic revocation.

If an approved school terminates its operations, approval will be automatically revoked as of the date of termination of the operations. If an approved school experiences a change in ownership that results in a change of control of the school, approval will be automatically revoked thirty days from the date of change of ownership unless the school files a new petition for school approval. If, upon completion of the review, the DOI finds that the approval should not be continued, the DOI shall institute revocation proceedings in accordance with sub-paragraph 5(l)(3) of this Section.

(3) Revocation proceeding.

(i) Should the DOI believe that an approved school is no longer entitled to approval, a proceeding shall be commenced by service upon the school's designated official a notice of intent to revoke the approval. Such notice shall describe the grounds upon which the withdrawal is based and shall also inform the school that it may, within 30 days of the date of service of the notice, submit a written answer setting forth reasons why the approval should not be revoked and that the school may, at the time of filing the answer, request an interview before the DOI in support of the written answer.

(ii) If the school admits all of the allegations, or if the school fails to file an answer within the thirty (30) day period, the DOI shall revoke the approval and shall notify the designated official. If the school admits to the allegations or fails to file an answer within the thirty (30) day period, it shall have waived its right to appeal.

(iii) If the school denies the allegations, then the school shall, in its answer, provide all information, including all documentary evidence, which shall be included in the record, on which the answer is based.

(iv) Should the school request an interview; the school shall be given notice of the date set for the interview. In the discretion of the DOI, the interview may be recorded.

(v) The DOI shall promptly issue a written decision either revoking approval or granting continued approval, including a discussion of the evidence and findings. The written decision shall be served upon the school or school system, together with the notice of the right to appeal.

(vi) Any appeal of a revocation by the DOI shall be taken within fifteen (15) days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, and supported by a statement setting forth the grounds for contesting the revocation of the approval.

(4) Institutional Certification Appeals.

Whenever a school is authorized to appeal a decision denying or revoking approved status, such appeal shall be taken by filing the required notice of appeal with the Office of the Attorney General. The Attorney General at his discretion may rely solely on the record, or may supplement the record with new evidence. The Attorney General shall confirm or modify the DOI decision in writing within thirty (30) days. The decision of the Attorney General shall constitute a final agency decision for purposes of judicial review.

I. Foreign Press Entry Permit – An alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the Commonwealth solely to engage in such vocation, and the spouse and children of such representative which have joined him may remain in the CNMI for six (6) months. The permit is renewable.

J. Distinguished Merit Entry Permit[17] – An alien who has a resident in a foreign country, which he does not intend to abandon who is of distinguished merit and ability, and who is coming temporarily to the CNMI to perform temporary service of an exceptional nature requiring such merit and ability may remain for up to one year. This permit is renewable indefinitely. Aliens performing services on a contract basis either directly or indirectly for the Federal Government and who otherwise satisfy the requirements of this section may be granted a DMEP upon request by the contracting agency or employer.

K. Nonresident Worker Entry Permit – An alien who is coming temporarily to the CNMI to perform temporary service or labor who has been certified as an eligible nonresident worker by the Department of Labor may be granted an entry permit in accordance with Public Law No. 3-66.

L. Minister of Religion Permit – permits an alien who, for at least two (2) continuous years before seeking admission, has engaged as a minister of religion, and who seeks to enter the CNMI solely for the purpose of engaging in that occupation, provided his or her services are needed by a denomination having a bona fide organization in the CNMI.

M. Religious Missionary – permits an alien who is a bona fide missionary of a religion who seeks to enter the CNMI solely for the purpose of engaging in missionary work provided his or her services are needed by a denomination having a bona fide organization in the CNMI to enter.

N. Long Term Business Entry Permit[18] – allows the holder to enter and exit the CNMI for two (2) years. The permit shall have no effect other than for the purpose of allowing the holder to reside in the CNMI as long as the Commerce Certificate for which the permit is issued is valid.

1. The initial term of the Long Term Business Entry Permit shall be for a period of two (2) years.

2. The Director of Immigration may only issue a long term Business Entry Permit to an alien whose business activity has been approved and certified by the Secretary of Commerce, and who is not an excludable alien.

3. The immediate relatives of the holder may be issued an Immediate Relative Permit for the same duration as the holder, provided that such persons are not excludable aliens.

4. The holder has no absolute right to the renewal of his/her Long Term Business Entry Permit.

5. The immigration privileges of the holder shall be revoked upon written notification by the Secretary of Commerce to the Director of Immigration of the revocation of the holder's Commerce Certificate.

O. Retiree Investor Entry Permit[19] – allows the holder and his or her spouse to stay in the Commonwealth for up to five (5) years, during which time the Alien may exit and re-enter the Commonwealth at any time.

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[17] Amendment proposed *Commonwealth Register* Vol. 25, No. 6, July 15, 2003, at page 20677 to 20681, adopted *Commonwealth Register* Vol. 25, No. 9, October 15, 2003, at page 21444.

[18] Amendment proposed *Commonwealth Register* Vol. 11, No. 9, September 15, 1989, at page 6457 to 6462, adopted *Commonwealth Register* Vol. 12, No. 7, July 15, 1990, at page 7203; amendment proposed *Commonwealth Register* Vol.14, No.7, July 15, 1992, at page 9514 to 9521, adopted *Commonwealth Register* Vol. 14, No. 9, September 15, 1992 at page 9668 to 9673; amendments proposed *Commonwealth Register* Vol. 16, No. 11, November 15, 1994 at page 12585, adopted *Commonwealth Register* Vol. 17, No. 3, March 15, 1995, at page 13040 to 13047.

1. In order to be eligible, an Alien applicant must:

   a. be at least fifty-five (55) years old;

   b. satisfy all CNMI health requirements;

   c. not have been convicted of a felony in the Commonwealth or convicted of a crime outside the Commonwealth that would be considered a felony within the Commonwealth;

   d. have invested a minimum of $150,000 in a single residential property in the Commonwealth.

2. Alien applicants must provide:

   a. Proof of property interest and the value of the property underlying the residence;

   b. Proof of the value of the improvements on the property;

   c. Any other evidence supporting proof of investment;

   d. Police clearance from the Alien's and his or her spouse's previous residences in the previous twenty (20) years;

   e. Proof of health certificate;

   f. Original birth certificate (or equivalent document) as proof of age;

   g. Declaration of the Alien sworn under penalty of perjury that the Alien is not employed in the Commonwealth and does not own 10% or more of a business located in the Commonwealth;

   h. Proof of health insurance with a minimum aggregate coverage of $100,000; and

   i. A non-refundable application fee of $1,000 for a single applicant and $1,500 for an applicant and his or her spouse.

P. Temporary Work Authorization Permit[20] – permits an alien who has received a Special Circumstances Temporary Work Authorization from the Department of Labor or been granted refugee protection pursuant to P.L. 13-61 to legally remain in the Commonwealth while such authorization is in effect and for a period of fifteen (15) days following the expiration, revocation, or termination of such Special Circumstances Temporary Work Authorization.

Q. Comity Entry Permit[21] – permits citizens of a country, which the Attorney General determines provides a comparable permit to citizens of the Commonwealth, to remain in the CNMI for a period of up to ninety (90) days. The Attorney General shall publish a list of countries for which Comity Entry Permits may be issued; such list shall be promptly published in the Commonwealth Register.

   1. No application fee or other charge shall be required for issuance of a Comity Entry Permit.

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[19] Emergency regulations proposed *Commonwealth Register* Vol. 26, No.5, May 24, 2004, at page 22486-22499, adoption pending.
[20] Emergency regulation proposed *Commonwealth Register* Vol. 26, No.5 on May 24, 2004, at page 22486 to 22499, adoption pending.
[21] Emergency regulation proposed *Commonwealth Register* Vol. 26, No.7 on July 26, 2004, at page 22833 to 22835, adoption pending.

2. Aliens present in the Commonwealth pursuant to a Comity Entry Permit may freely depart and return to the Commonwealth during the ninety (90) day period.

3. Applicants for a Comity Entry Permit must be at least fifty-five (55) years old on the date of arrival in the Commonwealth. Immediate family members of an applicant at least fifty-five (55) years old on the date of arrival in the Commonwealth are eligible to apply for Comity Entry Permits, such permits to expire simultaneously with that of the age-eligible applicant.

4. A Comity Entry Permit may not be issued within thirty (30) days of the expiration of any other permit, nor may a Comity Entry Permit be extended or renewed.

5. Aliens present in the Commonwealth pursuant to a Comity Entry Permit cannot conduct business or perform services during their stay; such activities constitute grounds for immediate revocation.

R. Alien Student Attendance Permit[22] –.

1. Enables an alien minor under the age of fourteen, who is the child of an alien parent (or parents) residing legally in the Commonwealth, to remain in the Commonwealth while enrolled in and attending a Commonwealth educational institution provided the following:

   a. The alien parent or parents are in the Commonwealth pursuant to a Short-Term Business Entry Permit, Regular-Term Business Entry Permit, Immediate Relative of a Nonalien Entry Permit, Foreign Press Entry Permit, Distinguished Merit Entry Permit, Minister of Religion Permit, Religious Missionary permit, or Retiree Investor Entry Permit;

   b. The alien parent or parents post twenty thousand dollars ($20,000) as a cash bond with the Commonwealth Treasury or provide a letter of credit in the same amount from a financial institution agreeable to the Attorney General; the Attorney General shall have the right to reimbursement from the aforementioned funds for any expense incurred by the Commonwealth as a result of the presence of the minor alien, and the entire amount shall be forfeited should the Attorney General determine that the alien minor or an alien parent has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;

   c. The alien parent has submitted a sworn affidavit, satisfactory to the Attorney General, detailing the living arrangements for the alien minor and explaining how all costs of living, potential medical costs, as well as tuition and related educational expenses, will be met;

   d. The alien minor is enrolled full time in an established private educational institution, which has been approved by the Attorney General as being qualified to enroll students holding permits under this section 706(R) and has been approved as tax exempt by the Commonwealth Division of Revenue Taxation pursuant to 4 CMC §1205(c)(3), and the principal or president of the school has:

      (1) submitted a sworn affidavit that he or she will: (i) comply with all applicable Commonwealth immigration laws and regulations; (ii) report

[22] Emergency regulation proposed *Commonwealth Register* Vol. 26, No. 9 on September 24, 2004, at pages 22825 to 22835; adoption pending.

any violations of applicable Commonwealth immigration laws and regulations by the alien minor or the alien parent (or parents); (iii) fully cooperate with the Office of the Attorney General in ensuring the alien minor and the alien parent (or parents) are complying with applicable Commonwealth immigration laws and regulations, including providing records of the alien minor which may have bearing on his or her immigration status; (iv) notify the Department of Immigration should the alien minor have three consecutive unexcused absences; (v) acknowledge that a failure to do any of the above will result in an immediate and permanent revocation of any accreditation or qualification of the school under this or any other Commonwealth immigration law or regulation; and

(2) verified to the Attorney General that all tuition and fees for the upcoming school year have been paid by the alien minor in full, in advance.

2. Term of Permit-

a. An Alien Student Attendance Permit shall be valid while the student is enrolled in and attending the educational institution, and for a period of fourteen (14) days before the commencement of classes and fourteen (14) days after the conclusion of classes during a normal school term. The Alien Student Attendance Permit must be renewed prior to the beginning of each school term.

b. Should the attending school have its qualification revoked for a violation of the enumerated requirements under section 706(R)(1)(d)(1) above, the alien minor shall have a period of fourteen (14) days in which time he or she must transfer to another qualified school or otherwise regularize his or her immigration status.

c. If the student intends to be in the Commonwealth for a period of shorter than the normal school term, they must submit an affidavit indicating how long they intend to be in the Commonwealth. In the case of student who intends to attend class less than the normal school term, the Alien Student Attendance Permit will be granted for that specific period of time.

d. Unless forfeited pursuant to these regulations, the cash bond or letter of credit described in section 706(R)(1)(6) shall expire upon satisfactory departure of the alien minor prior to expiration of the Alien Student Attendance Permit, or upon other regularization of the child's immigration status. Any amounts outstanding shall be returned to the alien parents immediately thereafter.

3. Fees-

There shall be a non-refundable application fee of one hundred dollars ($100), paid upon submission of the initial application, and a renewal fee of seventy-five dollars ($75), paid upon renewal before the beginning of each subsequent school term.

4. Revocation-

An Alien Student Attendance Permit shall be revoked, and the alien minor shall be required to immediately depart the Commonwealth upon the occurrence of the following events:

a. The alien parent or parents becomes deportable for any reason under Commonwealth law;

b. The Attorney General determines that the alien parent or parents, the alien child, or the educational institution that the alien child is attending has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;

c. The alien minor fails to inform the Division of Immigration in writing that the alien minor has withdrawn or transferred from the attending school; or

d. The Attorney General determines that the presence of the alien minor is no longer in the best interest of the Commonwealth.

Section 707. Authorization For Entry Application Procedure.

A. Applications for Authorization for Entry permits shall be submitted to the Main Office for Immigration. All applications and supporting documents become the property of the Office of the Immigration. Applications shall be processed within seven (7) days of compliance with all applicable requirements. Authorization For Entry permits will be signed only by the Immigration Officer except for Short-Term Business Entry Permits. All documents shall be filled out under penalty of perjury.

B. Necessary documents for filing:[23]

1. A completed application form,

2. Certified copy of birth certificate,

3. Any document deemed by the Immigration Officer to be necessary to substantiate the applicants entry classification,

4. One and one quarter inch (1-1/4") frontal photograph in either black and white or color.

C. The application fee shall be deposited with the CNMI Treasurer by filing the necessary documents. The fee is non-refundable. Application may be made by mail. Checks must be made to "Treasurer of the CNMI".

D. Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted solely because they have a pending labor, immigration or legal matter. However, once said matter is decided, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the labor, immigration or legal matter.

Section 708. Valid Passport. No entry permit shall be issued for a period of time which, at the time of entry is not covered by a valid passport or other valid travel document recognized by the Director of Immigration.

Section 709. Landing Card.

A. Issuance. All aliens entering the CNMI must complete the Immigration Landing Card Form CNMI-958 prior to the entry. The form shall be affixed in the passport of the alien. All entries are subject to the condition that the 958-Form be kept within the passport until departure.

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[23] Amendment proposed *Commonwealth Register* Vol. 13, No. 11, November 15, 1991, at page 8510 to 8513, adopted *Commonwealth Register* Vol. 14, No. 2, February 15, 1992, at page 8929 to 8933.

B. Collection. An immigration inspector must collect the original white copy of the Form CNMI-958 and entry permit when alien departs the CNMI. The agent must present an immigration inspector with the vessel or aircraft manifest with a 958-Form and entry permit for every departing alien immediately after departure.

1. In the event that the alien claims that he is returning to the CNMI upon the same entry permit, then only the 958-Form, and not the entry permit, shall be collected.

Section 710. Alien Tracking System.

A. The Immigration Officer shall, at all times, keep an accurate and up-to-date record of all aliens who are present in the CNMI. This shall be done by computer, with appropriate backup systems.

B. The Alien Tracking System shall file aliens by departure dates. Within each date's file, the names shall be in alphabetical order. Each day, the 958-Forms collected upon departure shall be compared with the day's file in order to detect overstayers. The file on each overstay shall be delivered by the following day to the Immigration Officer for appropriate action.

Section 711. Denial of Permit. Review.

A. The denial of an entry permit shall be in writing stating the reasons for the denial. This writing shall be provided to the applicant.

B. The denial of an entry permit may be appealed to the Attorney General by the person denied or excluded. The Attorney General in his discretion may rely solely on the documents submitted or may supplement them with additional information. He shall provide the denied alien with all the opportunities to be heard made available in Section 16 of Public Law No. 3-105. He may affirm, modify, or reverse the decision.

Section 712. Renewal or Extension of Permit. No permit shall be renewed or extended unless a completed application is filed with the government before the date of expiration.

VIII. EXCLUSION

Section 801. Threat to Public Health. Any dangerous contagious disease designated by the U.S. Public Health Service and listed at 42 C.F.R. Section 34.2(b) shall be considered a threat to public health. Additionally, any physical condition designated as a threat to public health in the Commonwealth by the Director of Public Health and Environmental Services shall be so considered.

Section 802. Economic Grounds.

A. The following persons will be considered to have no demonstrable means of support:

1. paupers, professional beggars and vagrants,

2. persons who either have no return ticket or do not have sufficient funds to support a stay for the duration of the entry permit, and

3. any person who by reason of poverty, insanity, disease or disability will become a charge upon the public.

B. Entry may be allowed, in the discretion of the Immigration Officer, if relatives or friends in the CNMI will post sufficient cash with Immigration to ensure the alien's support for the duration of the entry permit. The full amount of cash deposited with the Immigration Office shall be kept in a trust account until the departure of the alien.

Section 803. Record of Examination. An examiner shall prepare a summary of the essential information obtained in the interview. Following this shall be the decision of the examiner written in a separate section.

Section 804. Threat to Public Safety.[24]

A. Discontinuance of Entry Permits.

The Attorney General at his discretion may discontinue issuance of entry permits to nationals, citizens, subjects or residents of any country, or any state, province, subsection, territory, division or subdivision thereof, if the Attorney General determines: (i) that the government of such country, state, province, subsection, territory, division or subdivision is unable to provide adequate information regarding backgrounds of the persons embarking from that location; (ii) that the Commonwealth is unable to promptly and accurately assess the backgrounds of such persons; or (iii) that admission of such persons poses an unacceptable risk to the security, health and welfare of the Commonwealth.

B. Publication of Notice.

Determinations made pursuant to Section 804(A) may take effect immediately, but shall in every case be published in the next printed edition of the Commonwealth Register and shall be subject to bi-annual review and renewal. The discontinuance of entry permits may be terminated by future order of the Attorney General, may be renewed indefinitely, or may be for a set period of time.

C. Preliminary Waiver.

The Attorney General at his discretion may issue a preliminary waiver, on a case-by-case basis, of the exclusion of a person from an excluded country, state, province, subsection, territory, division or subdivision, provided that the person has satisfied all other requirements for entry under the applicable laws and regulations, and has provided evidence that the following additional conditions have been satisfied prior to embarkation:

1. Except as set forth in Subsection (C)(2) below, if the person is coming to the Commonwealth for purposes of tourism, or under a Short-Term Business Entry Permit, Regular-Term Business Entry Permit, Immediate Relative of a Nonalien Entry Permit, Immediate Relative of Alien Entry Permit, Foreign Student Entry Permit, Foreign Press Entry Permit, Distinguished Merit Entry Permit, Nonresident Worker Permit, Minister of Religion Permit, Religious Missionary permit, or Retiree Investor Entry Permit the person must:

   a. provide, or have his or her sponsor provide, a bond issued by an approved bond company for the sum of Five Thousand Dollars ($5,000), or an equivalent surety satisfactory to the Attorney General, such amounts to be used to offset any expense reasonably incurred by the Commonwealth should the person be convicted of any crime or should the person violate any condition of entry; and

   b. if the person is embarking from an excluded country which the Attorney General determines has repeatedly caused undue delays or refused to accept the return of its nationals, citizens, subjects or residents, such person must bear an original, written statement, bearing the official seal of the relevant immigration or government authority in the excluded country, declaring that such country will unconditionally accept the return of the person without delay, such letter to be

[24] Emergency regulation proposed *Commonwealth Register* Vol. 26, No. 1, January 22, 2004, at page 21523 to 21525, adopted with amendments *Commonwealth Register* Vol. 26, No. 3, March 23, 2004, at page 22170 to 22174.

signed by a person authorized to expedite entry into that country and including the title and official contact information of said signatory.

2. If the person coming to the Commonwealth is a medical professional seeking to enter the Commonwealth for the purpose of rendering medical services or is the spouse or child of said medical professional, is the spouse or child of a U.S. national or citizen currently residing in the Commonwealth whose purpose for coming to the Commonwealth is to reside permanently with said U.S. national or citizen, or is an official government representative traveling to the Commonwealth for the sole purpose of conducting official government business or is the spouse or child of said government representative, such person must obtain a certification to that effect from the Attorney General.

   A signed letter issued by and bearing the seal of the Office of the Attorney General, and imposing any additional conditions as the Attorney General may see fit, shall be delivered to the applicant and shall evidence the issuance of a waiver under this Section.

D. Exempt Aliens.

The following Aliens shall be exempt from the requirements of this Section 804:

1. United States permanent residents who present a valid, un-expired Form I-551 – Permanent Resident Card, Form I-551 – Alien Registration Receipt Card, or a valid un-expired passport containing a valid un-expired temporary residence stamp ("Processed for I-551 Temporary Evidence of Lawful Admission");

2. Any alien who holds the equivalent of U.S. Lawful Permanent Resident status, or holds status as a temporary resident authorized to work in and unconditionally return to a country that is listed on the Visitor Entry Permit Exempt List pursuant to Immigration Regulation 703(B)(3);

3. Any alien with a valid United States entry visa which is valid for at least sixty (60) days from the date of entry into the CNMI provided that the United States visa permits re-entry back into the United States after entry and departure from the CNMI;

4. Any alien legally in the Commonwealth on the effective date of this regulation, provided such alien remains continuously in legal status. Such aliens may freely depart and return to the Commonwealth subject to compliance with other applicable law and regulation; or

5. Children of an alien legally traveling to or residing in the Commonwealth who will be under the age of twelve (12) on the date of departure from the Commonwealth.

IX. FOREIGN INVESTORS VISA

Section 901. Definitions.

A. "Approved Investment" means an investment made by an Alien Investor in the Commonwealth pursuant to a Certificate of Foreign Investment issued by the Secretary of Commerce .

B. "Alien Investor" means any individual, but not legal entities such as corporations, partnerships or other entities existing solely by virtue of the law. An "Alien Investor" is a person without United States citizenship, Commonwealth permanent residency or certificate of identity, or Trust Territory citizenship, that qualifies as a holder of a Certificate of Foreign Investment issued by the Secretary of Commerce .

C. "Certificate of Foreign Investment" means a Certificate issued by the Director of Commerce and Labor pursuant to rules and regulations issued by the Director of Commerce and Labor. The

Certificate constitutes proof of the holder's participation as an Alien Investor in an Approved Investment in the Commonwealth of the Northern Mariana Islands.

D. "Director" means the Director of Immigration in the Office of the Attorney General for the Commonwealth of the Northern Mariana Islands.

E. "Family" of a holder of a Certificate of Foreign Investment means the holder's spouse, the holder's children by blood and the holder's children by adoption effective one (1) year prior to the date of application for Certificate of Foreign Investment.

F. "Foreign Investment Visa" means a Visa issued by the Director to a holder of a Certificate of Foreign Investment that complies with the conditions of issuance of a "Foreign Investor Visa" provided herein. The Visa is issued for purposes of providing entry into and exit from the Commonwealth of the Northern Mariana Islands for a holder of a Certificate of Foreign Investment, as long as the Certificate remains in force and effect. A "Foreign Investor Visa" is issued to any holder of a valid Certificate of Foreign Investment, and members of the holder's family complying with the conditions enumerated below.

Section 902. Foreign Investor Visa.

A. The Director shall issue a Foreign Investor Visa to any Alien Investor (and members of his family):

1. who represents to the Office of the Director a current Certificate of Foreign Investment issued to himself or to a person of such relation that the applicant would be considered a member of a Certificate holder's family,

2. who submits evidence of good moral character in seeking such permit, which evidence shall be obtained from a competent authority of and certified by an officer in the United States Consulate, or law enforcement official, of the country in which the Alien Investor permanently resides, and

3. who submits payment of non-refundable application fee for issuance of a Foreign Investor Visa, as specified below, and

4. who presents a currently valid passport or certificate of identity for himself and any member of his immediate family seeking such permit.

B. The Foreign Investor Visa shall allow the Alien Investor entry and exit, of any frequency or duration, to and from the Commonwealth of the Northern Mariana Islands. The Visa shall have no effect other than for the purposes of Foreign Investment shall not vest in the holder thereof, or his immediate family, any rights to permanent residence for reasons unrelated to operation of an Approved Investment, or rights to CNMI citizenship or United States citizenship.

C. The Foreign Investment Visa shall be valid for an indefinite period of time, subject to revocation upon the conditions specified below.

D. The Director shall review and take action (issuance or denial) within fifteen (15) days following receipt of a complete application.

E. In the event the Director denies the Alien Investor's application for a Foreign Investor Visa, he shall state the reasons for the denial, in writing, within the time period specified in Section 902(D).

Section 903. Revocation of Foreign Investor Visa.

A. Upon written notification from the Director of Commerce and Labor that a Certificate of Foreign Investment has been revoked, the Director shall revoke the Visas of the holder and his family

provided, however, that the revocation shall not take effect until six (6) months following the date of revocation for the Certificate of Foreign Investment.

B. Upon written notice from the Director of Commerce and Labor of the revocation of a Certificate of Foreign Investment, the Director shall send notice of revocation of the Foreign Investor Visas for the Certificate holder and his family to the Certificate holder. This written notice shall specify the date of termination of the Visas which shall be six (6) months from the date of revocation of the Certificate of Foreign Investment.

Section 904. Schedule of Fees.

A. An application for a Foreign Investor Visa shall be accompanied by:

1. a non-refundable application fee of five hundred dollars ($500.00) for the holder of the Certificate of Foreign Investment, and

2. a non-refundable application fee of five hundred dollars ($500.00) for each member of the holder's family for which he or she desires issuance of a Foreign Investment Visa.

X. HEARINGS

Section 1001. Procedures. Hearings on certificates of identity and permanent residence shall be conducted in accordance with the CNMI Administrative Procedures Act (1 CMC Section 9101).

XI. EFFECT OF REGULATIONS

Section 1101. Grandfather Clause. All entry permits validly issued upon the effective date of these regulations shall remain valid until their expiration date. The renewal of any entry permit shall for the purpose of these regulations be treated as an initial application.

Section 1102. Severability. If any provisions of these regulations, or order issued under these regulations, or the application of any rule, regulations or order to any person or circumstances shall be invalid by a court of competent jurisdiction, the remainder of these rules, regulations, or orders issued under these rules and regulations, or the application of such rule, regulations, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

XII. FEES

Section 1201. Fees. The following schedule of non-refundable fees shall apply:[25]

A.	Vessel or Aircraft Permission to Land	$100.00
B.	All Other Entry Permits (applications, extensions, renewals)	$100.00
C.	Alien Registration Card	$25.00
D.	Duplicate Copies of Permits, Alien Registration Cards	$25.00

[25] Amendment proposed *Commonwealth Register* Vol. 13, No. 11, November 15, 1991, at page 8510 to 8513, adopted *Commonwealth Register* Vol. 14, No. 2, February 15, 1992, at page 8929 to 8933; amendment proposed *Commonwealth Register* Vol. 14, No. 1, July 15, 1992, at page 9514 to 9521, adopted *Commonwealth Register* Vol. 14, No. 9, September 15, 1992, at page 9668 to 9673; amendment proposed *Commonwealth Register* Vol. 16, No. 7, July 15, 1994, at page 12234 to 12236, adopted *Commonwealth Register* Vol. 18, No. 7, July 15, 1996, at page 14206 to 14208.

XIII. PERMANENT RESIDENCE

Section 1301. Definition. Permanent residence refers only to the status granted under Public Law No. 5-11.

Section 1302. Permanent Resident Identification Card.

A. A permanent resident shall receive a tan-colored card with a blue seal of the CNMI government that states in green ink "Commonwealth of the Northern Mariana Islands Permanent Resident". This shall be the only recognized proof of permanent residence.

B. The Director shall forthwith issue said cards to person who qualify for permanent residence under Public Law No. 5-11 upon submission of a green card and sufficient proof of eligibility.

C. Holders of white cards issued under INO Regulations 11.8(b) shall not be considered permanent residents.

XIV. PROTECTION FROM REFOULEMENT[26]

Section 1401. Protection from Refoulement.

A. Applicability. The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement ("MOA") entered between the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the United States Department of Interior, Office of Insular Affairs, executed on September 12, 2003, as well as Public Law 13-61. These regulations provide procedures for determining whether an alien subject to removal is eligible for protection under 3 CMC § 4344(d), which implements the nonrefoulement obligations set forth in Article 33 of the 1951 United Nations Convention relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees ("Refugee Protocol"),[27] and Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").[28] As used herein, protection from *refoulement* pursuant to the Refugee Protocol will be referred to as "Refugee Protection," and protection from *refoulement* pursuant to the CAT will be referred to as "CAT Protection" or, under certain circumstances, will be referred to as "CAT Deferral." Collectively, these protections will be referred to as "*Nonrefoulement* Protection."

1. Eligible Applicants. These procedures shall apply only in situations wherein a foreign national (as used herein, the term "foreign national" refers to persons defined as "aliens" elsewhere in Commonwealth law and regulations) has been ordered deported by the Commonwealth Superior Court pursuant to 3 CMC § 4341, or has been denied entry at a Commonwealth port of entry ("POE"), pursuant to 3 CMC § 4331 *et seq.*, and prior to removal from the Commonwealth the individual expresses fear of persecution or torture in the designated country of removal.

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[26] Proposed *Commonwealth Register* Vol. 26, No. 5, May 24, 2004, at page 22504 to 22526; re-proposed with amendments *Commonwealth Register* Vol.26, No. 6, June 24, 2004, at page 22645 to 22670; adopted with amendments *Commonwealth Register* Vol. 26, No. 9, September 24, 2004, at page 22855 to 22894.

[27] United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

[28] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

2. No Affirmative Applications. A foreign national shall not be entitled under any circumstances to submit an application or other assertion of entitlement to *Nonrefoulement* Protection unless that individual is subject to an order of deportation by a court of competent jurisdiction, is being denied entry to the Commonwealth at a POE or is included as an immediate relative seeking derivative status on an application pursuant to Section C(1) of these regulations.

B. Procedural Mechanism.

1. Refugee Protection Office. Pursuant to the obligations of the Attorney General as set forth in Public Law 13-61, there is hereby created an Office for Refugee Protection ("ORP") within the Office of the Attorney General ("OAG"). The Attorney General shall staff the ORP with full-time or part-time personnel as necessary in order to perform the duties set forth in these regulations, and to otherwise implement Public Law 13-61.

2. Exclusion. Any foreign national attempting to enter the Commonwealth who is determined to be excludable pursuant to 3 CMC § 4322, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.

3. Deportation. Any foreign nationals against whom a deportation order has been entered by the Superior Court pursuant to 3 CMC § 4341, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.

4. Determinations of Manifestly Unfounded Claims.

a. Interview. Interviews shall be conducted by the Attorney General or her designee, who shall have received specialized training in protection law, relevant country conditions, and in conducting protection-oriented interviews. If requested by either party, an interpreter qualified pursuant to Section B(10)(c), shall be provided. Interviews to determine whether a claim is manifestly unfounded shall be recorded electronically.

b. Decision. The manifestly unfounded decision shall be made by the Attorney General or her designee who has received specialized training in protection law and relevant country conditions. The basis for finding that a claim is manifestly unfounded shall be detailed in a written report. For purposes of this section, "manifestly unfounded" shall mean that the claim is clearly fraudulent or not related to the criteria for the granting of *Nonrefoulement* Protection. Neither mandatory bars to protection under Section B(14)(b) nor internal relocation alternatives shall be considered in making the manifestly unfounded determination.

c. Review. The applicant may, upon written request filed prior to departing the Commonwealth, obtain a review of a determination of a manifestly unfounded claim by an APJ. The decisionmaker shall advise the applicant of this right upon delivery of the determination. The APJ may rely solely on the written record or may request additional information or conduct a hearing. The decision of the APJ shall be final and unreviewable, not subject to further judicial or administrative proceedings. The applicant shall have the right to remain in the

Commonwealth pending a decision of the APJ, but may be required to remain in detention.

5. Advisements.

a. Right to Protection. A foreign national who has been ordered deported by the Commonwealth Superior Court or who has been excluded at the POE shall be (i) advised that he or she may obtain a Protection Hearing if he or she has a fear of persecution or torture in the designated country of removal that is not manifestly unfounded; (ii) advised of the right to representation at their own expense; and (iii) provided with contact information for the CNMI Bar Association and other organizations approved by the OAG which have indicated availability to assist foreign nationals with their claims. This advisement will be given in writing by way of a pre-printed form, and/or verbally, either by the Attorney General or her designee. Verbal advisements shall be duly recorded, electronically or with a written acknowledgement from the foreign national. All reasonable efforts will be made to ensure that the foreign national understands the substance of this advisement, including without limitation translation of the advisement into an appropriate language, and providing assistance for those with reading difficulties.

b. Other Rights and Obligations. Unless the Attorney General or her designee has determined that the claim is manifestly unfounded, the OAG shall provide the foreign national with appropriate application forms and instructions on how to fill out the forms.

6. Application.

a. Initial Application. Upon receiving the application form and instructions, the foreign national shall have ten (10) business days to file the completed application and any supporting documents with the ORP, at which time the foreign national shall have formally entered Protection Hearing proceedings. This period may be extended at the discretion of the APJ upon a showing of good cause for failure to apply within the requisite time period. The initial application must: (i) give the applicant's true identity; (ii) list all immediate relatives seeking derivative status under Section C(1); and (iii) state the basis for seeking *Nonrefoulement* Protection. Failure to include the information in (i) and (iii) may be grounds for denying a claim.

b. Amended Application. The application may be amended once, provided it is submitted with any supporting documents to the ORP not less than ten (10) business days prior to the scheduled date of the Protection Hearing. Failure to submit the initial or amended application by the date due may be grounds for denying a claim. Supporting evidence submitted less than ten (10) business days prior to the Protection Hearing may only be admitted by leave of the APJ.

c. Government. Any documents or other evidence submitted by the OAG shall be submitted not less five (5) business days prior to the scheduled date of the Protection Hearing. Evidence submitted less than five (5) business days prior to the Protection Hearing may only be admitted by leave of the APJ.

d. Scheduling of Protection Hearing. On the same day that the foreign national submits his or her initial application, or as soon as possible thereafter, the ORP shall set a date for the Protection Hearing, allowing a reasonable amount of time for the foreign national to amend the application as needed to fully and fairly present his or her case. The ORP shall immediately notify the applicant of the

date of the Protection Hearing. The date of the Protection Hearing may be extended for good cause, in the discretion of the ORP.

e. Failure to Appear. Failure to appear for a scheduled hearing shall be considered abandonment of the application and the application shall be denied, except upon a finding by the APJ of exceptional circumstances or failure to provide proper notice of the scheduled interview.

7. Detention.

a. Excluded Persons. If appropriate, and pending a determination on the applicant's request for *Nonrefoulement* Protection, the Attorney General or her designee may decide to detain the foreign national or may allow their temporary admission, in her discretion and under such conditions as will ensure the person's availability for further proceedings. For purposes of Commonwealth immigration laws, applicants granted parole under this provision shall be considered to be temporarily admitted to the Commonwealth consistent with 3 CMC § 4337.

b. Deported Persons. The decision to detain applicants who have been ordered deported but who are awaiting a determination on the applicant's request for *Nonrefoulement* Protection shall be in the discretion of the Attorney General or her designee, under such conditions as will ensure the person's appearance for further proceedings, or as determined by the Superior Court in accordance with the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq*.

8. Fingerprinting and background security checks. The Division of Immigration ("DOI") shall obtain each applicant's name, photograph, date of birth, fingerprints and other information that DOI deems relevant in order to perform a background security check or to otherwise adjudicate the application for protection and administer the immigration laws.

a. Excluded Persons. In the case of a foreign national excluded at a POE, such individual shall not be released from the custody of the DOI until this information has been obtained to the satisfaction of the DOI, unless so ordered by a court of competent jurisdiction.

b. Cooperation Required. Failure to cooperate with the DOI in providing identity and other background information, or to comply with all instructions of the DOI or the OAG relating to the collection of this information, shall be grounds for denial of the protections described herein, and for arrest and removal from the Commonwealth consistent with Commonwealth immigration law. The Attorney General or her designee may waive any of these requirements under exceptional circumstances, for humanitarian reasons.

c. Conditional Grants. In the event that an individual is deemed to qualify for *Nonrefoulement* Protection but a background check has not yet been completed to the satisfaction of the OAG, the APJ may conditionally grant protection pending completion of the background check. Any such conditional grant of protection shall be temporary and for no specific duration of time. The OAG may re-assess a conditional grant of protection, and/or issue a final determination as to the protection requested, at any time.

9. Administrative Protection Judge.

a. Appointment. The term "Administrative Protection Judge" ("APJ") means an attorney who has received specialized training in conducting Protection Hearings, and who the Attorney General appoints as an administrative judge under the authority of the Office of the Attorney General. An APJ shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe. The Attorney General delegates to the APJ the authority under 3 CMC § 4344(d) and these regulations to conduct Protection Hearings and to decide whether *Nonrefoulement* Protection is mandated in a particular case.

b. Protection Consultant. Pursuant to the MOA, the APJ will work with the "Protection Consultant" in conducting Protection Hearings and making protection determinations under 3 CMC § 4344(d) during the first two years that these regulations are effective.

c. Certification. The APJ shall have the right to certify a case to the Attorney General for her review and disposition.

10. Protection Hearing.

a. Right to Counsel. The applicant has a right to counsel or other form of representation, provided said other form of representation has been previously approved by the Attorney General, at no expense to the government. Any attorney or representative appearing at any proceeding under these regulations shall file a notice of appearance. Service of process, notice, or any other documents upon the individual filing a notice of appearance herein shall be deemed service upon the applicant provided the applicant has duly acknowledged the notice of appearance.

b. Appearance. The applicant must bring to the Protection Hearing any immediate relative then present in the Commonwealth to whom he or she would like any protection to apply derivatively under Section C(1) of these regulations, unless the applicant demonstrates good cause for the failure to appear. The APJ may question immediate relatives seeking derivative status. Such questioning may take place outside the presence of the applicant.

c. Interpreters. An applicant who is unable to proceed with the hearing in English, Chamorro or Carolinian will be provided a qualified interpreter. The applicant may also provide his or her own interpreter, however, the decision to allow the applicant to proceed with his or her own interpreter, as opposed to the appointed interpreter, shall be in the exclusive control of the APJ.

(1) General qualifications. An interpreter must be at least eighteen (18) years of age, and may not be the applicant's representative or attorney of record, a witness testifying on the applicant's behalf, a relative of the applicant, a person having a financial or other personal interest in the outcome of the applicant's case, or an employee or representative of the country or countries concerning which the applicant has expressed a fear of return.

(2) Specific qualifications. In addition to the general qualifications, before allowing an interpreter to provide interpreting services to an applicant during a Protection Hearing, the APJ must find the interpreter qualified pursuant to the requirements set forth by the ORP.

(3) Interpreter's Oath. Before allowing an interpreter to provide interpreting services in a Protection Hearing, the APJ shall administer an oath to the interpreter establishing that the interpreter (i) will translate fully and accurately to the best of their ability; (ii) will keep confidential all information (including the identity of the applicant) obtained during the Protection Hearing; and (iii) meets the qualifications set forth for interpreters as set forth by the ORP.

d. Record. The Protection Hearing will be recorded so that a record of the proceeding will be preserved. The only recording equipment permitted in the proceeding will be the equipment used by the APJ to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding. The ORP shall, in the event of an appeal, make a copy of the recording available to the applicant.

e. Confidentiality of Proceedings. The Protection Hearing shall not be open to the public, unless (i) the applicant states for the record that he or she wishes to waive a closed hearing or submits a written statement indicating the same; and (ii) the OAG does not oppose the waiver.

f. Oath. Testimony of witnesses appearing at the hearing shall be under oath or affirmation, declaring, under penalty of perjury under 6 CMC § 3306, that he or she will testify truthfully.

g. Evidence. The Commonwealth Rules of Evidence do not apply in a Protection Hearing, but may be cited by either party as persuasive authority with respect to the procedure to be employed by the APJ and/or the weight that the APJ should attach to certain evidence. The APJ may make any procedural decisions necessary for the fair and orderly discharge of these proceedings, including but not limited to the exclusion of irrelevant and/or repetitious testimony or documentary evidence. The APJ, at her discretion, may allow telephonic or video testimony of witnesses who cannot reasonably attend, provided the requesting party bears the expense of providing such testimony. If the APJ denies the admission of such testimony, or any other evidence, she shall give the reason for the disallowance on the record. Nothing in this section is intended to limit the authority of the APJ to properly control the scope of evidence admissible in the Protection Hearing.

h. Procedure. The purpose of the hearing shall be to elicit all relevant and useful information bearing on the applicant's eligibility for protection. While the burden of proof rests with the applicant, the APJ should endeavor to ascertain and evaluate all the relevant facts and play an active role in introducing evidence regarding current country conditions. The APJ conducting the Protection Hearing will (i) verify the applicant's identity and ask him or her basic biographical questions; (ii) ask the applicant about the reasons he or she is requesting protection; (iii) ask the applicant questions to determine whether he or she meets the legal requirements for protection and whether any grounds for mandatory denial exist; and (iv) may conduct any other examination of any witness as may be appropriate in the APJ's discretion.

i. Opportunity to Present Evidence.

(1) Applicant. The applicant shall have the fair opportunity to present the applicant's full case, including the right to present all relevant documentary evidence timely submitted, in any form, as well as oral testimony of witnesses or of the applicant, including expert evidence

concerning country conditions. Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation, printed legibly or typed, and a certification signed by the translator. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

(2) Government. An assistant attorney general appearing on behalf of the Commonwealth government (hereinafter, in this context, the "Government") shall have the right to appear and to present evidence, to call and cross-examine witnesses, and to cross-examine the individual applicant.

(3) Reliance on information compiled by other sources. In deciding whether an applicant has established eligibility for the *Nonrefoulement* Protections described herein, the APJ may rely on material provided by the Department of Homeland Security, Department of State, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

(4) Limitations. Nothing in this section shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents or employees of the OAG or DOI, or the Department of Justice, Department of State, or the Department of Homeland Security. Persons may seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 *et seq.*

11. Confidentiality.

a. Right of Privacy. In most cases arising under these regulations, an individual's right of privacy as guaranteed by the law and Constitution of the Commonwealth will be clearly invoked. Further, in many cases, safety and protection of an applicant will require that information obtained in connection with such an application must remain confidential. Accordingly, all information contained in or pertaining to any application for protection under these regulations that reasonably indicates or infers that the particular individual has requested protection shall not be disclosed without written consent of the applicant, except as permitted by this Section or at the discretion of the Attorney General.

b. Limitations. This Section shall not apply to any disclosure to:

(1) Any Commonwealth or United States government (federal or state) official or contractor having a need to examine information in connection with:

(i) The adjudication of applications for protection under these regulations;

(ii) The defense or prosecution of any legal action arising from or relating to the adjudication of, or failure to adjudicate, an application for protection under these regulations;

(iii) The defense or prosecution of any legal action of which an application for protection under these regulations is a part; or

(iv) Any Commonwealth or United States government (federal or state) law enforcement activity concerning any criminal or civil matter; or

(2) Any Commonwealth, or Federal, State, or local court in the United States concerning any legal action:

(i) Arising from the adjudication of, or failure to adjudicate, an application for protection under these regulations; or

(ii) Arising from the proceedings of which an application for protection under these regulations is a part.

12. Decision. A written decision shall be made within a reasonable time after the Protection Hearing. Prior to concluding the hearing, the APJ shall give written notice to the applicant of the date and time that they are to appear to receive the decision, and if the applicant is not in detention, he or she shall be required to return to the ORP to receive the decision. If the ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision to the Attorney General under Section B(16) of these regulations within fifteen (15) business days from the date on which the applicant receives the decision. The Government may likewise appeal the decision within that fifteen-day period. If there is no appeal, the ORP's decision shall become final and not subject to further judicial or administrative review. In the case of a denial, the applicant shall be removed from the Commonwealth according to applicable law. In the case of a grant of protection, the applicant shall not be removed to the country where the applicant would more likely than not be persecuted or tortured, subject to Section B(17) of these regulations.

13. Substantive law. The following substantive law shall be applied at the Protection Hearing. U.S. law and the law of other jurisdictions applying the treaty protections set forth above may be consulted as persuasive authority, but are not binding on the decision-maker.

a. Refugee Protection: The burden of proof is on the applicant for Refugee Protection under these regulations to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) Past threat to life or freedom.

(i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in that country on the basis of the original claim. This presumption may be rebutted if the APJ finds by a preponderance of the evidence that:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any

of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Government shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (1)(i)(A) or (1)(i)(B) of this subsection.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the APJ finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the APJ shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) Reasonableness of internal relocation. For purposes of determinations under paragraphs (a)(1)(i)(B) and (a)(2) of this subsection, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; the quality of the administrative, economic, or judicial infrastructure in the place of proposed relocation; geographical limitations on the applicant's ability to relocate; and social and cultural constraints, such as age, gender, health, and social

and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Government establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

b. CAT Protection and CAT Deferral: The burden of proof is on the applicant for CAT Protection to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

(1) "Torture" defined.

(i) Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

(ii) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

(iii) Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.

(iv) In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:

(A) The intentional infliction or threatened infliction of severe physical pain or suffering;

(B) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) The threat of imminent death; or

(D) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.

(v) In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.

(vi) In order to constitute torture an act must be directed against a person in the offender's custody or physical control.

(vii) Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

(viii) Noncompliance with applicable legal procedural standards does not *per se* constitute torture.

(2) Consideration of Evidence. In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:

(i) Evidence of past torture inflicted upon the applicant;

(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;

(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and

(iv) Other relevant information regarding conditions in the country of removal.

(3) Order of Review. In considering an application for CAT Protection, the APJ shall first determine whether the applicant is more likely than not to be tortured in the country of removal. If the APJ determines that the applicant is more likely than not to be tortured in the country of removal, the applicant is entitled to CAT Protection. An applicant entitled to such protection shall be granted all privileges provided for such individuals under Section C of these regulations, unless the applicant is subject to mandatory denial of protection under Section B(14)(b) of these regulations.

(4) Effect of mandatory denial. If an applicant otherwise entitled to CAT Protection is subject to a mandatory denial under Section B(14)(b), the applicant's removal shall be deferred under Section B(14)(b)(2)(ii), and will be referred to as a CAT Deferral.

14. Approval or denial of application.

a. General. Subject to paragraph (b) of this Section, an application for Refugee Protection or CAT Protection shall be granted if the applicant's eligibility is established pursuant to Sections B(13)(a) or (13)(b) of these regulations.

b. Mandatory denials.

(1) Scope. An application for Refugee or CAT Protection shall be denied if:

(i) The applicant ordered, incited, assisted or participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) The applicant has been convicted of a particularly serious crime and the APJ determines that the applicant constitutes a danger to the community;

(iii) There are serious reasons for believing that the applicant has committed a serious nonpolitical crime outside the Commonwealth, prior to arrival of the alien in the Commonwealth;

(iv) There are reasonable grounds to believe that the individual is a danger to the safety or security of the Commonwealth or the United States. Such grounds shall include but not be limited to persons who have engaged in terrorist activity, as that term is defined by 8 USC 1182(a)(3)(B)(iii).

If the evidence indicates the applicability of one or more grounds for denial of withholding enumerated in this subsection, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(2) Effect of Mandatory Denial.

(i) Refugee Protection. An applicant who qualifies for Refugee Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (b)(1) of this subsection shall be removed forthwith pursuant to Commonwealth exclusion and deportation law, unless the applicant also qualifies for CAT Protection, in which case removal will be pursuant to paragraph (b)(2)(ii) of this subsection.

(ii) CAT Deferral. An applicant who qualifies for CAT Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (b)(1) of this subsection shall be

granted deferral of removal to the country where he or she is more likely than not to be tortured.

(A) Effect. Deferral of removal under this subsection:

(I) Does not confer upon the foreign national any lawful immigration status in the Commonwealth;

(II) Will not necessarily result in the foreign national being released from the custody of the OAG;

(III) Is effective only until terminated; and

(IV) Is subject to review and termination if the APJ or the Attorney General determines that it is not likely that the foreign national would be tortured in the country to which removal has been deferred, or if the foreign national requests that deferral be terminated.

(B) Termination of CAT Deferral.

(I) At any time while a CAT Deferral is in effect under this subsection, the Government may move the APJ to conduct a hearing to determine whether the CAT Deferral should be terminated, or the APJ may sua sponte conduct such a hearing. The APJ shall grant the Government's motion to reopen if the motion is accompanied by evidence that is relevant to assessing the likelihood that the foreign national would be tortured in the country to which removal has been deferred and that such evidence was not presented at the previous hearing, regardless of the previous availability of the evidence. The APJ shall provide notice to the foreign national and the Government of such hearing and shall allow both parties the opportunity to submit supplemental evidence for use in the determination of whether it is more likely than not that the foreign national will be subject to torture in the country of removal.

(II) The APJ shall make a *de novo* determination based on the record in the initial proceeding and any new evidence provided as to whether it is more likely than not that the foreign national will be tortured in the country of removal. This determination shall be made under the standards for eligibility set forth in Section B(13)(b). The burden remains with the foreign national to establish that it is more likely than not that he or she will be

tortured in the country to which removal has been deferred.

(III) If the APJ determines that the foreign national is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall remain in place. If the APJ determines that the foreign national has not established that he or she is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall be terminated, and the foreign national may be removed to that country. Appeal of the APJ's decision shall lie with the Attorney General in accordance with the procedures set forth in Section B(16).

(IV) At any time while removal is deferred, the foreign national may request to the APJ in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submissions of the foreign national and of the Government, or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

15. Removal to third country.

a. Applicability. This section applies to any foreign national subject to an order of deportation under 3 CMC § 4341 or to a determination of excludability under 3 CMC 4322 whom the Commonwealth intends to remove to a country not designated during the deportation or exclusion proceedings ("undesignated country").

b. Notice. The Commonwealth shall provide the foreign national with written notice that it intends to remove the foreign national to an undesignated country. The notice shall also advise that the alien may request *Nonrefoulement* Protection from removal to the undesignated country pursuant to these regulations.

c. Referral for Manifestly Unfounded Determination. If the foreign national requests *Nonrefoulement* Protection from the undesignated country within seven (7) calendar days of receiving the notice described in paragraph (b) of this subsection, the foreign national shall be immediately referred to the OAG for an interview to determine whether the foreign national's asserted fear of removal is manifestly unfounded in accordance with Section B(4) of these regulations.

d. Decision. The Commonwealth shall not remove the foreign national to an undesignated country for at least seven (7) days following the Commonwealth's service of the notice upon the foreign national. If the foreign national requests *Nonrefoulement* Protection from removal to the undesignated country during that period, the Commonwealth shall not remove the foreign national to that country until there has been a final determination that the *Nonrefoulement*

Protection claim is manifestly unfounded or, if the claim is finally determined not to be manifestly unfounded, that the foreign national is not eligible for *Nonrefoulement* Protection from removal to the undesignated country.

16. Appeals. Either the applicant or the Government may appeal the ORP's decision to grant, deny or terminate *Nonrefoulement* Protection to the Attorney General or her designee within fifteen (15) business days of service upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially. The applicant shall be entitled to remain in the Commonwealth pending the outcome of the appeal but may be required to remain in detention.

a. Notice of Appeal. An appeal pursuant to this section is taken by filing a written notice with the OAG, which is signed by the appealing party or his or her counsel, and which states the relief requested. The appealing party, or his or her counsel or representative, may also include a concise statement of the grounds for the appeal.

b. Certification of record. Upon timely receipt of a notice of appeal, the OAG shall request that the ORP promptly certify and transmit to the Attorney General the entire record, including the original recording of proceedings, if any.

c. Form of Appeal. The appeal and all attachments must be in English, Carolinian or Chamorro, or accompanied by a certified English translation.

d. Procedure for Review. Upon review, the Attorney General may, at her discretion, take any of the following actions: (1) restrict review to the existing record; (2) permit or request legal briefs or supplement the record with new evidence; (3) hear oral argument; or (4) hear the matter *de novo*, in which case the hearing shall be conducted pursuant to Section B(10) through Section B(12) of these regulations.

e. Decision. Upon completion of review, the Attorney General shall affirm, reverse, or modify the findings, order, or decision of the APJ in writing within ten (10) business days, or as soon thereafter as reasonably practical. The Attorney General may remand under appropriate instructions all or part of the matter to the APJ for further proceedings, *e.g.*, the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

f. Finality. The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review. A case may only be reopened upon a motion from the Government or sua sponte by an APJ pursuant to Section B(17) of these regulations, or upon a motion by the applicant establishing *prima facie* eligibility due to a fundamental change of circumstances.

17. Reconsideration of grant of protection. A grant of protection is for an indefinite period, but does not bestow upon an applicant a right to remain permanently in the Commonwealth. The ORP may reopen a case, either sua sponte or upon motion from the Government, and re-evaluate a grant of CAT or Refugee Protection. Such re-evaluation may be performed either on a systematic, periodic basis (*i.e.*, every two years, etc.), or in a specific instance if country conditions have changed in a fundamental and durable way that affects the likelihood that the Grantee will be persecuted and/or tortured, if another country is identified in which the applicant can reside free from persecution or torture, if the applicant has committed certain crimes or engaged in other activity that triggers a

Mandatory Denial set forth in Section B(14)(b) above, if the ORP determines that the applicant engaged in misrepresentation of a material fact in connection with his or her application, or if the ORP determines that there are serious reasons for believing that the foreign national no longer requires protection under Public Law 13-61.

a. Procedure. Except with respect to conditional grants of protection pursuant to Section B(8)(c) of these regulations, the OAG will not terminate CAT or Refugee Protection pursuant to this section unless the individual has been provided notice, in person or by mail to the last known address, as well as the opportunity for a hearing before an APJ, at which time the OAG must show by a preponderance of the evidence that the individual no longer qualifies for such protection.

b. Appeals. A foreign national or the Government may file an appeal to the Attorney General of any decision under this section, pursuant to Section B(16) of these regulations, within fifteen (15) business days of service of the decision upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.

c. Effect of Termination of Refugee or CAT Protection. In the event that an order terminating Refugee or CAT Protection is issued by the ORP, and no appeal is taken or the termination order is affirmed on appeal, the individual whose protection is terminated shall be required to depart the Commonwealth forthwith pursuant to Commonwealth immigration laws.

18. Employment authorization. Applicants requesting protection do not have a right to work in Commonwealth and shall not be given the opportunity to apply for employment authorization at the time they request protection. They may, however, request temporary work authorization ("TWA") before a final decision, meaning all appeals have been exhausted, is made on their case if ninety (90) calendar days have passed since the initial request for protection and no final decision has been made, or if they have been granted a conditional grant of protection pursuant to Section B(8)(c) above. The TWA application process shall be governed by the Department of Labor's Special Circumstances Temporary Work Authorizations regulations.

19. Right to Travel. Applicants (along with any potential derivative family members) must obtain advance permission from the DOI and the ORP before leaving the Commonwealth if they wish to return. Failure to obtain such permission creates a presumption that the applicant has abandoned his or her request with the ORP, and he or she may not be permitted to return to Commonwealth. If an applicant obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her request, unless he or she can show compelling reasons for the return.

C. Implications After Refugee or CAT Protection Is Granted

1. Derivative protection for immediate family. Immediate family members of an applicant whose request for Refugee Protection or CAT Protection is granted ("Grantee"[3])[29] will automatically receive the same status, provided that the family member is present in Commonwealth, was included on the initial application, and is not barred from relief pursuant to Section B(14)(b)(1) of these regulations. This includes the Grantee's spouse and unmarried children under twenty-one (21) years of age as of the date of submission

of the form of application for *Nonrefoulement* Protection. Common-law marriages shall qualify, provided that such unions are legally recognized in the applicant's country of origin. A Grantee must establish a qualifying relationship to any immediate family member by a preponderance of the evidence. Family members outside the Commonwealth are not entitled to derivative protection. "Grantee" shall not refer to individuals granted deferral of removal pursuant to Section B(14)(b)(2)(ii) above. In light of the temporary nature of such deferral of removal, applications will be handled on a case-by-case basis.

2. Identification documents. A Grantee and immediate family members who are accorded derivative protection shall be issued Commonwealth identification documents evidencing status.

3. Work authorization. A Grantee may be granted a temporary work authorization, which shall be renewable on an annual basis upon a finding of continuing refugee status by the Attorney General. For purposes of this paragraph, a Grantee shall not be considered a nonresident worker as defined pursuant to the Nonresident Workers Act but shall be granted an entry permit pursuant to Section 706(P) of the Immigration Rules and Regulations.

4. Right to travel. Grantees (along with any derivative family members) must obtain advance written permission from the DOI before leaving Commonwealth in order to return. Failure to obtain such permission creates a presumption that the Grantee has abandoned his or her protection in Commonwealth, and he or she may not be permitted to return. If a Grantee obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her protection in Commonwealth, unless he or she can show compelling reasons for the return.

5. Right to Assistance. Nothing in these regulations shall prevent a person from applying for or receiving public benefits, including but not limited to health care, public education, or living assistance, for which they may be eligible under law to the same extent as other foreign nationals lawfully residing in the Commonwealth.

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Division of Environmental Quality
P.O. Box 501304 C.K., Saipan, MP 96950-1304
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NOTICE AND CERTIFICATION OF ADOPTION
OF
AMENDMENTS
TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
WELL DRILLING AND WELL OPERATIONS
REGULATIONS

The Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), pursuant to the *Commonwealth Groundwater Management and Protection Act (CGMPA)*, 1988, 2 CMC §§3311 to 3333, Public Law 6-12, of the Commonwealth of the Northern Mariana Islands, and in accordance with the Administrative Procedures Act (1 CMC §9101, *et seq.*) hereby notify the general public that the proposed Amendments to the Commonwealth of the Northern Mariana Islands Well Drilling and Well Operations Regulations as published in the Commonwealth Register, Volume 26, Number 10, October 26, 2004, at pages 22996 through and including 23008, and after expiration of appropriate time for public comment, have been adopted without modification or amendment.

I, John I. Castro, Jr., Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), which is promulgating the Amendments to the Commonwealth of the Northern Mariana Islands Well Drilling and Well Operations Regulations, published in the Commonwealth Register, Volume 26, Number 10, October 26, 2004, at pages 22996 through and including 23008, by signature below hereby certify that the Amendments to the Commonwealth of the Northern Mariana Islands Well Drilling and Well Operations Regulations attached hereto and published herewith, are a true, correct, and complete copy of the Amendments to the Commonwealth of the Northern Mariana Islands Well Drilling and Well Operations Regulations adopted by DEQ. I further request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 6th day of December, 2004 at Saipan, Commonwealth of the Northern Mariana Islands.

for

John I. Castro, Jr., Director
Division of Environmental Quality

SECTION 2. PURPOSE

2.6 Provide that groundwater resources be put to the highest beneficial use for which they are capable;

2.7 Designate groundwater management zones; and

2.8 Protect Public health by protecting and enhancing the quality of existing and potential groundwater resources used for human consumptive purposes.

SECTION 25. GROUNDWATER MANAGEMENT ZONES

25.1 Applicability

25.1.1 These amendments establish groundwater management zones (GMZs) for the island of Saipan only. Specific requirements for activities in GMZs are not being promulgated under these amendments at this time. Section 27 of these regulations is reserved for future addition of requirements for certain activities in GMZs. Some existing requirements for activities in designated GMZs are found in other CNMI regulations (e.g., Underground Storage Tank Regulations, Water Quality Standards, Wastewater Treatment and Disposal Regulations) for which the GMZs are applicable.

25.1.2 Requirements for wellhead protection, such as those under Section 6 of these regulations, apply regardless of GMZ classification. Where GMZ requirements are adopted that are more stringent than specific wellhead protection requirements, the more stringent GMZ requirement shall apply.

25.1.3 In the event that the precise location of a GMZ boundary is called into question for any activity, where such activity lies within 300 feet of a delineated GMZ boundary, the Director shall determine, on a case-by-case basis, which GMZ the proposed activity lies within. In making such determination, the overriding principal shall be protection of groundwater resources. Any decision to designate a lower classification of GMZ protection shall only be made on the basis of hydrogeologic evidence clearly demonstrating that the groundwater underlying the activity in question does not warrant the higher level of GMZ protection. Provision of such evidence shall be the responsibility of the proposing party, in the form of a report prepared and certified by a registered geologist. The burden of proof shall rest with the proposer to demonstrate a

basis for delineation of a less stringent GMZ. In the absence of such evidence, the higher GMZ protection classification shall be presumed to apply.

25.2 Designation of Groundwater Management Zones

Groundwater management zone ("GMZ") classifications have been designated on the basis of groundwater quality, availability of recharge, susceptibility to degradation, and present and future land use. For the purposes of these regulations, chloride concentrations (milligrams per liter, or mg/l) shall be used as an indicator of water quality to delineate GMZs.

25.2.1 Class I Groundwater Management Zones

Class I GMZs are established as critical groundwater protection areas capable of supplying high quality fresh water, and shall receive the highest level of environmental protection. Class I GMZs represent the most important groundwater resources and are considered vital for current and future water supplies. Because of the value of the resource and the permeable nature of the overlying geologic formations typical to the CNMI's geology, Class I GMZs are considered particularly vulnerable to degradation and contamination. Class I GMZs have been delineated to include the following:

(a) All existing and potential areas of high-level (perched) groundwater. Groundwater that is encountered in high-level aquifer systems is of a near-pristine quality because it overlies low-permeability volcanic formations and is therefore not in direct contact with seawater. In the CNMI, such high level aquifers occur primarily beneath permeable limestone formations, and are highly susceptible to degradation and contamination.
(b) Municipal well fields. Degradation of public water well fields clearly poses a severe threat to CNMI municipal water supplies, and thus these areas, as mapped by the USGS with the cooperation of the Commonwealth Utilities Corporation (CUC), have been included under the Class I GMZ designation.
(c) Watersheds contributing surface infiltration to springs and fresh surface water systems. Several springs in the CNMI have been developed as important public water supplies, and several other springs and surface water streams (e.g. Talofofo) are planned for future development. Such springs and streams are largely fed by recharge through shallow soil and weathered rock systems overlying the parent volcanic rock, and are highly susceptible to contamination.

25.2.2 Class II Groundwater Management Zones

Class II GMZs are established as important protection areas considered capable of supplying good quality groundwater, but generally of lower quality (e.g. higher chloride concentration) than Class I GMZs. Class II GMZs include relatively high quality basal groundwater lens resources with chloride concentrations less than roughly 500 mg/l. The 1-ft. contour line for the elevation of basal lens aquifers roughly corresponds to a basal groundwater lens thickness of 40 feet, and is generally considered to be the limit, seaward of which it becomes rapidly more difficult to obtain useable quantities of water with a chlorides concentration of less than 500 mg/l.

25.2.3 Class III Groundwater Management Zones

Class III GMZs are areas providing recharge to primarily brackish aquifers, having some intrinsic value as a resource to supply desalination plants, but primarily of lower value than groundwater found in Class I and II GMZs. Class III GMZs include the groundwater resources with chloride concentrations in excess of 500 mg/l, as delineated by the 1 ft. groundwater surface elevation described above under "Class II GMZs." The Class III GMZs are primarily coastal groundwater that has been significantly impacted by saltwater intrusion or mixing with salty groundwater.

25.3 Saipan Groundwater Management Zones

25.3.1 Basis for GMZ Designation

Groundwater Management Zones for the Island of Saipan are designated as shown in Figure 25.1. GMZs for Saipan are based on: maps published by the United States Geological Survey (USGS) in their report Ground-Water Resources of Saipan, Commonwealth of the Northern Mariana Islands, by Robert L. Carruth, USGS Water-Resources Investigations Report 03-4178, 2003; and topographic information published on the Topographic Map of the Island of Saipan, Commonwealth of the Northern Mariana Islands, USGS, 1999. In the event that there is a discrepancy between the narrative description and the mapped GMZs, the attached regulatory map (Figure 25.1) depicting the GMZs shall govern and shall supercede all narrative descriptions of GMZ boundaries.

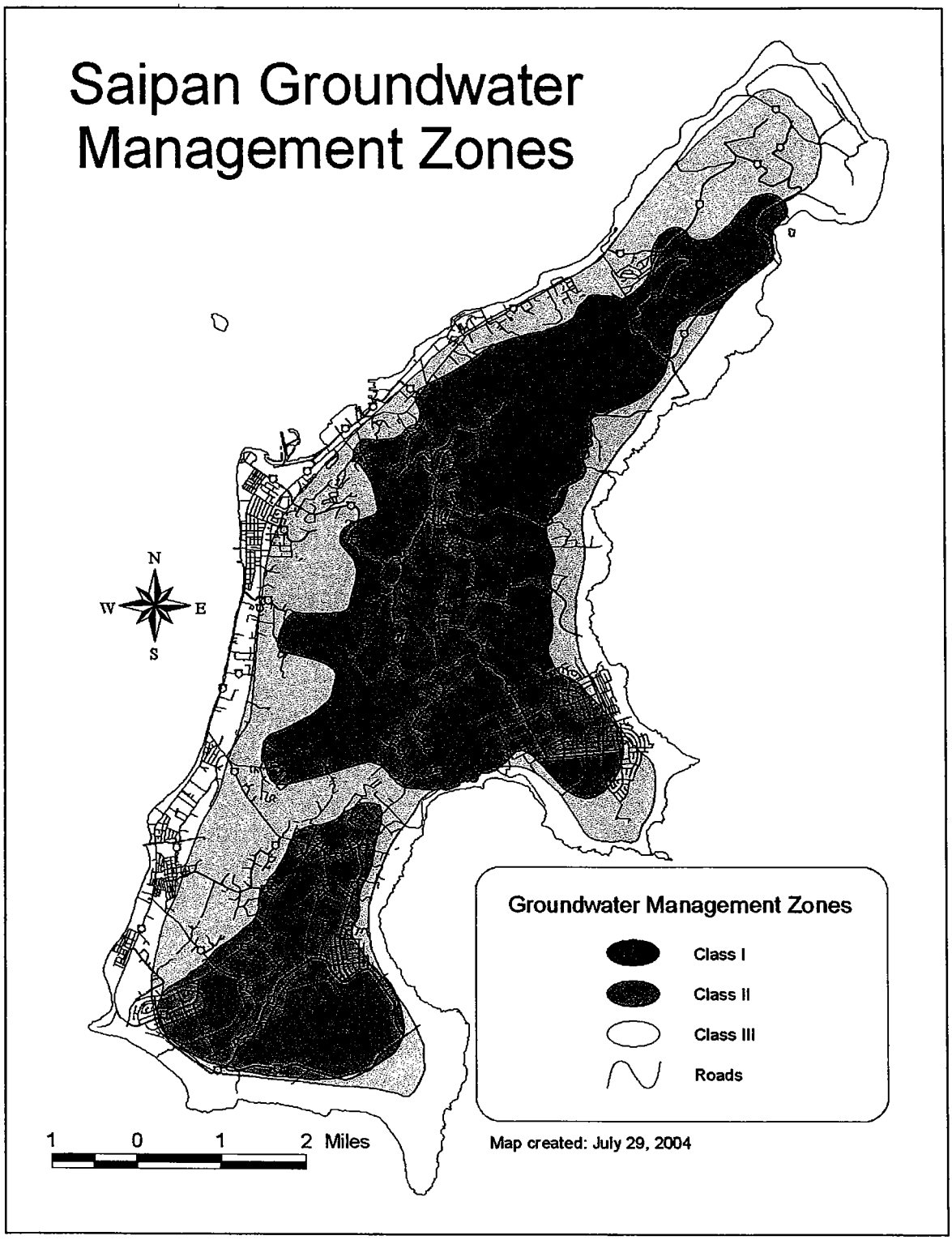
(a) Class I GMZs for the island of Saipan have been delineated using the USGS maps showing municipal well fields, low-permeability volcanic rocks at or above sea level (indicating the

potential for high-level aquifers), and topography delineating the watershed boundaries of springs and fresh surface water systems. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.

(b) Class II GMZs for Saipan have been delineated as lying between the Class I boundaries and the 1 ft. water-table contour as mapped by USGS. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.

(c) Class III GMZs for Saipan have been delineated as lying between the 1 ft. water-table contour as mapped by USGS, and the coastline. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.

FIGURE 25.1 GROUNDWATER MANAGEMENT ZONES
ISLAND OF SAIPAN



25.4 Tinian Groundwater Management Zones

RESERVED

25.5 Rota Groundwater Management Zones

RESERVED

25.6 GMZ Maps

DEQ shall maintain the GMZ map(s) described in this section in electronic form, as data layers in a Geographic Information System (GIS) format. DEQ shall provide access to the GIS maps and shall provide GMZ determinations upon request. In the event that there is a discrepancy between the narrative description and the mapped GMZs, the attached regulatory map (Figure 25.1) depicting the GMZs shall govern and shall supercede all narrative descriptions of GMZ boundaries.

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OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION

MEMORANDUM

To: Governor — ATTORNEY GENERAL OPINION 04-14

CC: Secretary of Finance; Secretary of Labor

From: Attorney General

Date: December 1, 2004

Re: Kidong Choi/Rifu Corporation – Purchase of Island Apparel, Inc. Stock

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Richard Pierce, attorney for Kidong Choi, by letter dated October 14, 2004, has informed the Office of the Attorney General that Mr. Choi, associated with Rifu Corporation, intends to purchase 100% of the common shares of Island Apparel, Inc. According to the letter, after the purchase, Mr. Choi will cause Rifu, of which he is a major shareholder and President, to transfer employee and quota slots to Island Apparel.

It should be noted that upon reviewing records at Business Licensing, an application for business license was received on October 19, 2004 from UMDA. Attached to the license application was an Assignment and Assumption Agreement entered into between Island Apparel, Inc. as seller and UMDA as buyer. According to recitals in the Agreement, buyer and seller are parties to a certain Asset Purchase Agreement dated September 17, 2004 for "substantially all the assets of Seller." Section 2 of the Assignment Agreement provides as follows:

> Seller does hereby sell, assign, and transfer to Buyer all of the Seller's right, title and interest in and to the intellectual property, licenses, franchises, permits, leases, and other agreements listed in Exhibit "A" hereto; together with the intangibles of the Company as provided in Exhibit "B" hereto (collectively the "Assigned Licenses, Contracts and Intangibles").

An Exhibit "A" is attached, however it lists the Intangibles that are being assigned. There is no attachment which lists the "intellectual property, licenses, franchises, permits, leases, and other agreements." Representatives from the Business Licensing Section have contacted UMDA to obtain a copy of the exhibit listing the intellectual property, and licenses. Subsequently, the Asset Purchase Agreement was provided to Business Licensing.

UMDA has applied for business licenses for the following activities under the dba of Island Apparel: (1) Wholesale General Merchandise; (2) Retail General Merchandise; (3) Import/Export; and (4) Manufacture: Screen Printing.

I spoke with Cindy Adams, attorney for UMDA, who informed me that UMDA bought all assets of Island Apparel, except the garment license, and that UMDA took assignment of most of the employees. She has further indicated that only the garment license and the corporation itself have not been bought by UMDA. When asked about the employees, she indicated that Island Apparel had 20 employees, 15 of whom transferred to UMDA, with the assistance of Adam Turner of the Governor's Office. One employee did not renew, one left Island Apparel and possibly island, and two were in the process of being renewed, so they could not transfer to UMDA at that time. She further indicated that only one of the 20 employees was classified as a sewing machine operator, and one was classified as an embroiderer digitizer. The rest of the employees were graphic artists. She also understood that a Korean Company was attempting to purchase the garment license and transfer employees into Island Apparel, however Ms. Adams indicated UMDA would not allow a transfer of garment employees into the company until they had transferred all their employees to UMDA and the sale between UMDA and Island Apparel was complete.

A review of the Asset Purchase Agreement between UMDA and Island Apparel, Inc. provides for a trademark assignment in Section 8.3. That is, as part of the transfer of intangible property to UMDA, Island Apparel, Inc. is transferring ownership of certain trade names and other intangible property including the right to restrict any third party to the use of trade names. Significantly, the business license for garment manufacturing, which UMDA is not purchasing, is issued to Island Apparel, Inc.

On August 11, 2004, Cliff Shoemake, former president of Island Apparel, Inc., formed a new corporation known as Island Apparel II, Inc. Its Articles of Incorporation indicate that one of the corporation's purposes is to "engage in the general business of manufacturing, decorating and selling apparel and other related products." To date, Island Apparel II, Inc. has not applied for a business license. Pam Halstead of the Business Licensing office has indicated that if Island Apparel II, Inc. applies for a business license for garment manufacturing, it will be denied.

As a result of the letter from Mr. Pierce outlining the proposed purchase of Island Apparel, Inc.'s stock, an issue has arisen as to whether Island Apparel, Inc. has a business license to conduct the activity of garment manufacturing and whether such license may be transferred to Mr. Choi.

Business License for Garment Manufacturing

In order to engage in the activity of garment manufacturing, the business must have a general business license issued by the Department of Finance[1] pursuant to 4 CMC §5611 and 4 CMC §5701 *et seq.* 4 CMC §5702, prior to amendment by PL 12-11 in August 2000 provided as follows:

> Except as otherwise provided in this chapter, the Department of Finance shall not issue or cause to be issued to any applicant a business license for the purpose of garment manufacturing.

[1] Prior to March 19, 1999, the Department of Commerce was responsible for issuing business licenses. PL 11-73, effective March 19, 1999 transferred that responsibility to the Department of Finance.

The term "business license" is defined in 4 CMC §5701(a) to mean "that license required to engage in or conduct business under 4 CMC §5611." Thus, unlike some industries such as banking and insurance, which require a specialized license in addition to the general business license, a garment manufacturer is only required to have one license – a general business license.

Furthermore, 4 CMC §5611(c) provides that "licenses issued under this section are valid for one year and are not transferable." Legislative history indicates that at one time, the Legislature considered allowing the transfer and sale of business licenses for garment manufacturing. *See* H.B. 12-39 CS-1. However, the provision allowing the sale or transfer of the license was removed from H.B. 12-39, CS2, SS1, CD1, which was later passed into law as PL 12-11. Thus it is clear that a business license for garment manufacturing may not be transferred or sold.

Island Apparel – Business License for Garment Manufacturing

Island Apparel was incorporated on June 16, 1995. On June 22, 1995, it submitted its initial application for a business license. This application was limited to the activity "manufacture: screen printing." On October 26, 1995, it amended its business license application to include two additional activities and subsequently received licenses to conduct import/export activities and garment manufacturing activities. Although this amendment and the application for these two additional activities was made on October 26, 1995, the licenses issued pursuant to that amendment was given a retroactive effective date to June 22, 1995. According to the business license, the initial business license to conduct garment manufacturing was effective for one year, or until June 20, 1996.

In 1996, Island Apparel timely renewed its business license, which allowed it to engage in garment manufacturing.

PL 10-9 Garment Industry Moratorium Act of 1996

PL 10-9 became effective May 28, 1996. This law placed a moratorium on any expansion of the garment manufacturing industry in the CNMI, and prohibited the issuance of new business licenses for garment manufacturing and placed a limitation on the number of alien workers in the garment industry. 4 CMC §5703, as enacted by PL 10-9 and prior to amendment by PL 1-73 and 12-11 provided for the restriction on renewal of business licenses. This section, as then in effect, provided:

> Notwithstanding any other provision of law, the Department of Commerce shall not renew or cause to be renewed to any applicant a business license for the purpose of garment manufacturing unless the applicant is a qualified garment manufacturer and can show one of the following:
> (a) that the applicant held a valid business license for the purpose of garment manufacturing and was engaged in the manufacturing of textiles or textile products prior to January 1, 1995; or
> (b) that the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995 and the effective date of this Act and that the applicant is engaged in *substantial construction or manufacturing* on the effective date of this Act.

Thus, in order for Island Apparel to renew its business license for garment manufacturing, it had to show that it was a qualified garment manufacturer, was issued a valid business licensing between January 1, 1995 and May 28, 1996, and that it engaged in substantial construction or manufacturing on May 28, 1996.

4 CMC §5701(e) defines "Qualified garment manufacturer" as "a garment manufacturer engaged in manufacturing textiles or textile products."

4 CMC §5701(b) as promulgated by PL 10-9 defined the term "engaged in substantial construction or manufacturing" as follows:

> (b) "Engaged in Substantial Construction or Manufacturing" means:
> (1) that manufacturing of textiles or textile products has begun or will begin on or before the end of the fourth month following the effective date of this Act; and
> (2) the applicant provides evidence of the required working capital (cash) in an amount of not less than one million dollars (1,000,000) and proof of its deposit in a CNMI banking institution; and
> (3) one of the following requirements:
> (i) the applicant has executed a lease or leasehold agreement or otherwise acquired an interest evidenced in writing in real property within the Commonwealth for the purpose of erecting thereon a facility for the manufacture of textiles or textile products; or
> (ii) the applicant has entered into a written contract(s) for the construction (including prefabrication) of a facility to be utilized for the manufacture of textiles or textile products on real property in the Commonwealth acquired for such purpose; or
> (iii) the applicant has purchased or executed contract(s) for the purchase of necessary capital equipment designed for and typically employed in the manufacture of textiles or textile products; or
> (iv) the applicant has recruited or caused by binding agreement to be recruited on its behalf at least eighty percent of nonimmigrant alien workers skilled in the manufacture of textiles or textile products; or
> (v) the applicant has made timely application to permitting authorities of the Commonwealth government (e.g. DEQ, CUC, CRM) for any permits required by law to be issued as a condition for the operation of a garment factory evidenced by a Department of Finance receipt of payment of the applicable fees.

Thus, under the statute in order to renew its business license for garment manufacturing, Island Apparel had to show it had engaged in substantial construction or manufacturing; that is, show it had begun

manufacturing textiles or textile products by September 30, 1996, that it had a working capital in the amount of $1,000,000 and proof of its deposit in a CNMI bank and meet one of five other conditions. With respect to the required working capital, it is unclear from the statute whether after such a deposit has been made the money can be spent or moved elsewhere or at what point in time the deposits have to be in the account.

On May 3, 1996, Island Apparel submitted an application to renew its business license for garment manufacturing. According to records at the Business Licensing Section at the Department of Finance, a license was issued to Island Apparel for garment manufacturing on June 21, 1996, and was valid through June 20, 1997.

On June 11, 1997, the Secretary of the Department of Commerce, who was charged with issuing business licenses at that time, sent a letter to Island Apparel acknowledging receipt of their business license application for renewal of their garment license which was set to expire on June 20, 1997. The letter referenced the new requirements imposed by PL 10-9 which Island Apparel had to prove in order to renew its license.

Apparently in response to the Secretary's request, the file for Island Apparel at Business Licensing shows it produced bank statements for the period June 30, 1996 – June 1, 1997. Most of these statements showed deposits of over $100,000, however some statements showed deposits less than that amount. The average statement balance for all statements ranged from $21,315 to $45,606. It appears that the Business License Section added all up the total amount of deposits made from June 1996 until May 1997. According to the Business Licensing Section's calculation, Island Apparel had made a total of $1,318,120.49 in deposits over that period of time. As indicated above, it is unclear from the statute whether the deposits of $1,000,000 had to be maintained at all times or whether the deposits could be spent or moved elsewhere

In order to show that Island Apparel, Inc. is engaged in manufacturing, the business licensing file also reflects a sales invoice issued on July 16, 1996 to Mayland Co. Inc. in Guam for the sale of 96 bandanas at a cost of $240, which was shipped to Guam. It is questionable, however, whether such invoice is or should be sufficient proof of manufacturing textiles. There is no evidence that Island Apparel cut or sewed these bandanas or otherwise manufactured them. Finally, the file had a copy of a lease agreement entered into between Jeanette D. Sablan and Island Apparel, Inc., lessee, for the lease of a warehouse on Airport Road in an apparent attempt to meet the requirement of 4 CMC §5701(b)(3)(i).

Although in retrospect it is questionable whether Island Apparel met the requirements of 4 §5701(b)(1) and (2), nevertheless, the Department of Commerce renewed Island Apparel's business license for garment manufacturing on June 21, 1997. Subsequent renewals were granted on June 1, 1998 through June 21, 1999.

PL 11-73 Amendment

PL 11-73, effective March 19, 1999 amended 4 CMC §5703. Specifically it provided that the Department of Finance was now responsible for renewing business licenses. Additionally, it required that garment manufacturers had to show the following:

> That the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995, and May 28, 1996, and that the applicant was engaged in substantial construction or manufacturing on May 28, 1996.

The business license file for Island Apparel does not contain any information showing that it was "engaged in substantial construction or manufacturing on May 28, 1996," other than that information provided for the 1996 renewal discussed above. Island Apparel applied for a renewal of business license for garment manufacturing on May 25, 1999. This renewal was issued on July 12, 1999 effective June 21, 1999 through June 21, 2000. A subsequent renewal was granted on June 16, 2000 for the period June 21, 2000 through June 21, 2001 despite a lack of proof regarding whether it was engaged in substantial construction or manufacturing on May 28, 1996.

PL 11-76 Amendment

PL 11-76, effective March 26, 1999, imposed a cap on the total number of non-resident alien workers in the garment manufacturing industry and established a quota for each licensed garment manufacturer. 4 CMC §5708, as enacted by PL 11-76 provided as follows:

> (a) There is imposed on the garment industry in the Commonwealth a cap of not more than 15,727 non-resident alien workers pursuant to Schedule A which is incorporated by reference into this Act. The cap includes positions in all job categories, from management to line worker, in the garment industry.
> (b) Each licensed garment manufacturer shall be allocated to a quota of non-resident alien workers pursuant to Schedule A.
> (c) If a license for garment manufacturing is revoked, not renewed, or otherwise permitted to lapse, the quota allocated to that licensee shall also lapse and the total cap for the industry shall be permanently reduced.

PL 11-76 also amended 4 CMC §5701(f) to define the term "quota of a Manufacturer". That term was defined as "the number of non-immigrant alien workers allowed to be employed by each qualified licensed garment manufacturer pursuant to as established by law (sic)." The phrase "as established by law" appears to mean the allocation of non-resident worker made under Schedule "A". Island Apparel was not included in Schedule A, thus it does not appear that any non-resident worker they employed could be employed to conduct garment manufacturing activities. Such a reading is entirely consistent with the Findings and Purpose section of PL 11-76. The Legislature intended to establish a quota for each licensed garment manufacturer. As stated in Section 1 of PL 11-76:

> The Legislature finds that to control the expansion of the garment industry and reduce the number of alien workers in that industry, it is necessary to impose a cap on the number of non-resident alien workers in the garment manufacturing industry and establish a quota for each licensed garment manufacturer for the employment of alien workers.

Special Committee Report No. 11-4 issued by the House of Representatives on H.B. 11-315 which was subsequently signed into law as PL 11-76 reiterates the intent to limit the number of alien workers for each garment manufacturer. This Report states in part:

> The Committee finds that to control the expansion of the garment industry and to reduce the number of alien workers in that industry, it is necessary to impose a cap on the number of non-resident alien workers in the garment manufacturing *industry and to establish a quota for each licensed garment manufacturer for the employment of alien workers.* The Legislature's previous effort in this regard, specifically the enactment of Public Law 10-9, succeeded in limiting the number of licenses for garment manufacturers, *but did not control the number of alien workers allowed to work in the industry, or for specific employers.* The Committee finds that the imposition of an absolute cap of 15,727 non-resident alien workers in the industry, distributed among the licenses garment manufacturers is necessary to establish control over the number of non-resident workers in the garment industry. This number chosen was arrived at after discussions with members of the garment industry, and should not decrease their production, or give them incentive to move elsewhere.

House Special Committee Report No. 11-4 (emphasis added).

Thus, under PL 11-76, only garment manufacturers listed on Schedule "A" were allocated a quota of non-resident alien workers in the garment manufacturing industry. Island Apparel was not listed on Schedule "A". As such, Island Apparel should not have been allowed to employ any alien workers for the purpose of garment manufacturing.

PL 11-76 also provided criminal penalties for any employee of the CNMI government who knowingly or willfully issues or causes to be issued any official document that would facilitate either the entry of an alien into the Commonwealth or the employment in violation of the provisions of PL 11-76 or any regulation promulgated thereunder.

PL 11-76 also amended 3 CMC §4601 by amending subsection (a) and adding a new subsection (f). 3 CMC §4601(a) reads as follows:

> There is hereby enacted a moratorium on the hiring of nonresident workers in the Commonwealth subject to the following terms, conditions, and limited exceptions:
>
> (a) Garment Industry. The provisions of Public Law 10-9, the "Garment Industry Moratorium Act of 1996," 4 CMC § 5707, et seq. *shall be strictly construed and adhered to.* There shall be no new hire of nonresident workers for the garment industry except as provided for in subsection (f) of this section. Renewals and replacement hires are permitted as provided under subsections (b) and (c) of this section. Hiring under subsections (d) and (e) of this section shall not be permitted in the garment industry.
>
> .....

(f) Garment industry licensees who received a garment factory business license before May 28, 1996, the effective date of Public Law 10-9, and who have in good faith invested at least $1,000,000 or more in the Commonwealth to build or develop a new garment factory may bring into the Commonwealth and employ the number of employees including non-resident alien workers necessary to meet their quota listed under Schedule A provided that:

(1) The licensee has complied with all other Commonwealth laws and regulations relative to the employment of nonresident aliens; and,

(2) The licensee has previously complied with the requirements of Public Law 10-9 which may be demonstrated by the renewal of their license to manufacture garments; and,

(3) All nonresident aliens are employed and brought into the Commonwealth within one year of the effective date of this Act. One year or more after the effective date of this Act the licensee may not bring into the Commonwealth any nonresident alien to meet the licensee's quota under Schedule A.

Thus, under PL 11-76, each garment manufacturer was allocated a quota of non-resident workers in Schedule A. Schedule "A" contains a listing of 34 garment manufacturers and allocates a particular number of the 15,727 non-resident workers to each of those manufacturers listed on Schedule "A". As discussed above, Island Apparel, Inc. was not included on Schedule "A". Thus for the period after enactment of PL 11-76 until its amendment by PL 12-11, it is unclear how Island Apparel was permitted to hire non-resident workers to work as garment workers when it was not allocated a portion of the 15,727 employees under Schedule "A". Furthermore, with respect to the amendments made by 3 CMC §4601(f), it is unclear when Island Apparel hired their "garment" non-resident workers, and how they did so with the limitations imposed by 3 CMC §4601(f) in place which limits their non-resident worker hiring to the number provided by Schedule "A". Given the Legislative History of PL 11-76 and the statements contained in the Findings and Purpose section of that law, Island Apparel should not have been allowed to hire non-resident workers for the purpose of garment manufacturing.

PL 12-11 Amendments

PL 12-11, effective August 3, 2000 made substantial changes to 4 CMC §5703. As amended by PL 12-11, that section now read as follows:

Notwithstanding any other provision of law, the Department of Finance shall not renew or cause to be renewed to any applicant a business license for the purpose of garment manufacturing unless the applicant is a qualified manufacturer and can show the following:

(a) that the applicant held a valid business license for the purpose of garment manufacturing and was engaged in the manufacturing of textiles or textile products prior to January 1, 1995; or

(b) that the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995 and the effective date of this Act; and

(c) that the garment manufacturer's operations in the Commonwealth employs, on a full time basis, at least 20% US citizens, who are also residents of the CNMI, in management or supervisory positions, provided further that the garment manufacturer shall provide the necessary training to ensure compliance with this section. Failure to comply with this provision will be grounds for the Department of Commerce to refuse to renew or cause to be renewed the garment manufacturer's license, subject to an administrative proceeding. A garment manufacturer found to be in violation of this subsection or any other provision of law applicable to the business license of a garment manufacturer is subject to a civil penalty not to exceed $5,000 per day of noncompliance, the payment of which shall be a condition for license renewal.

The term "qualified garment manufacturer" is defined in 4 CMC §5701(e) as "a garment manufacturer engaged in manufacturing textiles or textile products." The file at Business Licensing does not reveal any proof that Island Apparel is a "qualified garment manufacturer" nor does it have proof that Island Apparel employed on a full time basis at least 20% US Citizens who are also residents of the CNMI, in management or supervisory positions from 2000 to the present.[2] Mr. Pierce states in his letter dated October 14, 2004 the following:

> In this calendar year, Island Apparel made three shipments of garments to the mainland USA, one of which was at the request of the CNMI government, executive branch.... Island Apparel's export of textile products is not new. Island Apparel has consistently exported textile products from the CNMI since its inception in 1995. *See* the enclosed Business Gross Revenue Tax Quarterly Returns from quarter ending December 1995 until quarter ending September 1997.

The certificates of origin, which were enclosed, indicate Island Apparel did import fabric from Hawaii and assemble it into 83 Aloha shirts were sold to the Office of the Governor and shipped to California in September 2004. A second certificate of origin and an accompanying letter from Rifu Apparel shows that Rifu Apparel received an import of knit fabric from Korea in May, 2004, and transferred that fabric to Island Apparel on July 7, 2004. According to this certificate of origin, the

[2] On October 29, 2004, I verified this with Pam Halstead at Business Licensing. She indicated that Business Licensing does not verify whether a garment manufacturer employs on a full-time basis at least 20% U.S. Citizens. Rather, she indicated the verification is Labor's responsibility and the Division of Labor issues a certificate. When asked whether Labor provides Business Licensing with the certificate, she indicated that they do not. On May 28, 2004, Island Apparel was issued its business license for the period June 21, 2004 – June 21, 2005. It is unclear whether Island Apparel met the 20% hiring requirement imposed by PL 12-11 in order to renew their most recent license. A further investigation would have to be conducted by Labor, and license revocation proceedings should be considered if Island Apparel failed to meet the requirements imposed by 4 CMC §5703 as amended by PL 12-11.

fabric was made into ladies tops and manufactured on or about July 26, 2004. The third set of documents shows that Rifu Apparel imported 1251 yards of material and transferred the material to Island Apparel on or about July 19, 2004. Like the other two certificates of origin, this one claims that Island Apparel did the following: checking; cutting of fabric; sewing; washing & drying; trimming; inspection; iron; finishing; packing; and final inspection. The fabric was converted into ladies wearing knit apparel and exported to the U.S. on July 26, 2004. All three certificates, and manufacturing occurred during the term of the current business license. There has been no documentation of manufacturing activity during the prior business license period, June 2003 – June 2004.[3]

Despite the fact that the record lacks any documentation showing Island Apparel is a "qualified garment manufacturer" or they hire 20% U.S. Citizens in management or supervisory positions, Island Apparel's business license for garment manufacturing was renewed on June 4, 2001 effective through June 21, 2002. It has continued to timely renew its business license for garment manufacturing, with its current license expiring on June 21, 2005.

Notably, PL 12-11's amendment to 4 CMC §5703 repealed the requirement that a garment manufacturer had to be "engaged in substantial construction or manufacturing." Although that term remains in the definition section, the term is no longer used in 4 CMC §5703. Instead, under PL 12-11 a garment manufacturer must be (1) a "qualified manufacturer"; (2) have a valid business license for the purpose of garment manufacturing issued between January 1, 1995 and August 3, 2000; and (3) employ on a full-time basis, at least 20% U.S. citizens who are also residents of the CNMI, in management or supervisory positions.

PL 12-11 also amended 4 CMC §5708 as enacted by PL 11-76. As amended by PL 12-11 this section now provides:

> (a) There is imposed on the garment industry in the Commonwealth a cap of not more than 15,727 non-resident alien workers. The cap includes positions in all job categories, from management to line worker in the garment industry.
> (b) Each licensed garment manufacturer shall be allocated to a quota of non-resident alien workers pursuant to Schedule A. Provided, however, that the Secretary of Labor and Immigration shall, by regulation, establish a mechanism for the reallocation of non-resident alien workers among manufacturers based on need. To offset the cost of increased administration, the Secretary may assess a reasonable reallocation fee.

[3] The attached tax returns do not shed much light on their garment manufacturing activity. It appears that the majority of the manufacturing and export activity was from their silk-screening activities. This fact was brought out in Civil Action No. 01-0110B, *Island Apparel, Inc. v. Secretary of Finance.* In that case, the Secretary of Finance denied a refund of excise taxes on certain shirts that were silk-screened in the CNMI and exported to Guam. Island Apparel prevailed in the suit because the Court found that silk-screening shirts did not entail "using" them in the CNMI prior to export. Thus, the Court permitted a refund of excise tax paid on those shirts.

(c) If a license for garment manufacturing is revoked, not renewed, or otherwise permitted to lapse, the quota allocated to that to that licensee shall be reallocated, at the discretion of the Secretary of Labor and Immigration, to another qualified manufacturer.

The Senate issued Standing Committee Report No. 12-10 on H.B. 12-039, CS2, SS1 and commented on Section 6 of the Bill. This section is identical to Section 6 in H.B. 12-039, CD2, SS1, CD1 which was passed into law as PL 12-11. With respect to Section 6 of the Bill, which was codified at 4 CMC §5708, the Senate stated in part:

> Although Schedule A is retained, the Secretary of Labor and Immigration is given the authority to reallocate nonresident workers among manufacturers based on need. Likewise, if a garment manufacturer's license is either revoked, not renewed, or otherwise allowed to lapse, the nonresident workers allocated to the garment manufacturer are not lost. Rather, the Secretary of Labor and Immigration is given the authority to reallocate such workers among other qualified garment manufacturers."

Senate Standing Committee Report No. 12-10 at paragraph 4.

Although the Secretary of Labor is allowed to reallocate non-resident workers among garment manufacturers, the Legislature, by retaining Schedule "A", has indicated that the intent of 4 CMC §5708(b) is to limit the reallocation of those workers to those garment manufacturers listed in Schedule "A". With the amendments made by 12-11, it remains unclear how Island Apparel was permitted to hire non-resident workers, who were classified as garment factory employees when Island Apparel was not included in Schedule "A". Additionally, it is unclear whether Island Apparel may have received a reallocation of non-resident alien workers from the Secretary of Labor based "on need" as provided by 4 CMC §5708(b). Given the legislative history, Island Apparel should not have been allowed to receive a reallocation of non-resident alien workers because they were not included in Schedule "A".

Sale of Stock to Kidong Choi

According to Mr. Pierce's letter dated October 14, 2004, Kidong Choi will purchase 100% of the stock of Island Apparel and will transfer employees to Island Apparel. According to Ms. Adams, counsel for UMDA, UMDA has not purchased the corporation nor has it purchased the stock. It has, however purchased all assets, including the personal and real property of Island Apparel. At this point, all that seems to exist is the corporate shell and the stock of the corporation.

A review of most recent annual report filed in February 2004 with the Registrar of Corporations shows the corporation remains in existence with its shareholders being Cliff and Denice Shoemake who hold 1,000 shares of common stock.

Shares of stock of a corporation are generally considered personal property, which may be transferred like any other property unless the transfer is restrained by the charter, articles of association, or statutes. *Harman v. Willbern,* 374 F. Supp 1149 (Kan. 1974), *aff'd* 520 F.2d 1333 (10th Cir.1975). Furthermore,

corporations generally have perpetual existence and generally, corporate existence will be presumed to have continued until the contrary has been established. *Box v. Crowther,* 473 P.2d 417 (Wash. App. 1970). Thus, in the instant situation, even if Mr. Choi purchases all stock of Island Apparel, the corporation will continue to exist until dissolution. The only change is that he, instead of the Shoemakes, will be the majority shareholder.

While the corporation Island Apparel, Inc. may continue to exist, use of that name has been purchased by UMDA as part of the sale of intangible assets. Furthermore, UMDA also has the right to restrict the use of that name by any third parties. The business license for garment manufacturing has been issued to Island Apparel, Inc. and although UMDA has not purchased the business license for garment manufacturing, the name associated with that license is tied to Island Apparel, Inc. Furthermore, Rifu would be obtaining 100% of the stock of a corporation whose name is owned by a third party. Thus, it is questionable how Mr. Choi, as a result of a stock purchase, will be able to obtain the rights to a business license issued to Island Apparel, Inc., whose name has been sold to another buyer.

Mr. Pierce's June 25, 2004 letter to Joaquin A. Tenorio, Secretary of Labor further compounds the confusion. On page 2 of his letter, he states as follows:

> Rifu seeks your advance approval for the transfer of employees and quota slots to Island Apparel. Rifu has a business reason for this proposal, which reason is related to the demands of a particular customer. There will be no wholesale transfer of workers and slots at one time. Because of the large costs involved, Rifu would probably transfer works (sic) and slots on a month-to-month basis as contracts expired. Also there would be no new facility or disruption of employee lives. *Essentially, Rifu would take its name off of one of its present facilities and place a new name on the same building.*

(Emphasis added). Thus, Mr. Pierce acknowledges that while it would be obtaining the business license issued to Island Apparel, the licensee somehow would be transferred to Rifu because Rifu is not allowed to use the Island Apparel name. Transfer of a business license is prohibited under 4 CMC §5611(c).

Conclusion

There are many unresolved issues regarding the former employees at Island Apparel, specifically whether they were truly garment workers and confusion as to why Island Apparel was not included on Schedule "A", thus receiving an allocation of garment workers within the cap. Additionally, it is questionable whether renewal of Island Apparel's business license for garment manufacturing should have been allowed[4] and whether such renewal is in fact valid. With respect to the most recent renewal this year, the Business License office has no proof from either Island Apparel or Labor, that Island Apparel did in fact

[4] For the time period 1996 – 2000, (PL 10-9 until enactment of PL 12-11) Island Apparel was required to show it was engaged in substantial construction or manufacturing" in order to renew its business license. After enactment of PL 12-11 in August 2000, it was required to show it (1) was a qualified garment manufactured, (2) it held a valid license for the purpose of garment manufacturing between 1995 and August 2000, and (3) it employed on a full-time basis 20% U.S. citizens residing in the CNMI in management or supervisory positions.

hire on a full-time basis, 20% U.S. citizens residing in the CNMI in supervisory or management positions. Island Apparel, Inc. has the burden of proving certain requirements in order to renew their license. It is questionable whether that burden was met, although the business license was eventually issued. Further review of the U.S. citizen hiring requirements should be conducted.

Additionally the issue of whether Island Apparel had properly classified garment workers conducting garment-manufacturing activities should be examined. Given the fact that Island Apparel was not included in Schedule "A", it should not have been allowed to hire non-resident alien workers in its garment manufacturing business. It is recommended that the Department of Labor review Island Apparel's non-resident employees and verify whether Island Apparel had properly classified employees, according to Labor's requirements, who could perform garment-manufacturing activities, or were these employees working outside the scope of their job titles and descriptions. Labor should further review these two issues in order to determine whether the current license should be revoked.

This particular case also raises unique circumstances with the sale of all of Island Apparel, Inc.'s assets to UMDA, including the name of the company. The business license is issued to Island Apparel, Inc. and the business licenses are non-transferable. Rifu is proposing to buy the stock of Island Apparel, however the license will continue to remain issued to Island Apparel, a name owned by UMDA. Given the mandate of 3 CMC §4601(a), that Garment Industry Moratorium Act of 1996, 4 CMC § 5707, et seq. shall be strictly construed and adhered to, its seems that allowing this transaction to occur would violate the mandate of Garment Industry Moratorium Act. Finally, because Island Apparel was not included in Schedule "A", it does not appear that it can receive a reallocation of non-resident alien workers as provided by 4 CMC §5708(b).

Sincerely,

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Assistant Attorney General

Concurred by:

Pam Brown
Attorney General