

GREGORIO KILILI CAMACHO SABLAN
NORTHERN MARIANA ISLANDS

COMMITTEE ON NATURAL RESOURCES
RANKING MEMBER, SUBCOMMITTEE ON FISHERIES,
WILDLIFE, OCEANS AND INSULAR AFFAIRS
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON CONSERVATION, ENERGY, AND FORESTRY
SUBCOMMITTEE ON NUTRITION AND HORTICULTURE

Congress of the United States
House of Representatives
Washington, DC 20515

423 CANNON HOUSE OFFICE BUILDING
(202) 225-2646
TOLL FREE: 1 (877) 446-3465
P.O. Box 504879
SAIPAN, MP 96950
(670) 323-2647/8
P.O. Box 1361
ROTA, MP 96951
(670) 532-2647
GENERAL DELIVERY
TINIAN, MP 96952
(670) 433-2647
www.Sablan.house.gov
kilili@mail.house.gov

February 14, 2013

The Honorable Seth D. Harris
Acting Secretary
United States Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Harris:

I write to request that you extend for five years the transition period established by Public Law 110-229, during which the U.S. Citizenship and Immigration Services (USCIS) administers a CNMI-only transitional worker (CW) program in the Northern Mariana Islands. The current period ends on December 31, 2014. I also ask that you make the decision regarding an extension within the next six months in order to alleviate ongoing uncertainties about the future availability of labor and the composition of the islands' population, which are detrimental to individuals, businesses, and investment in the Northern Marianas.

The Secretary of Labor is statutorily mandated to ascertain current and anticipated labor needs of the Northern Mariana Islands and determine whether to grant an extension of the transition period to ensure that an adequate number of workers will be available for legitimate businesses there. 48 U.S.C. 1806(d)(5). The law provides for consultation in the determination with the Secretary of Homeland Security, the Secretary of Defense, the Secretary of the Interior, and the Governor of the Commonwealth. The law also sets out a number of factors that the Secretary may take into consideration. These include government, industry, or independent workforce studies reporting on the need, or lack thereof, for alien workers in the Commonwealth's businesses; unemployment data regarding U.S. workers and foreign workers in the Northern Marianas; any good faith efforts to locate, educate, train, or otherwise prepare U.S. workers to assume jobs currently occupied by foreign workers; evidence tending to show that U.S. workers already in the Commonwealth are not willing to accept jobs of the type offered; the extent to which admittance of alien workers will affect the compensation, benefits, and living standards of existing workers; and the prior use, if any, of alien workers to fill industry jobs, and whether the industry requires alien workers to fill those jobs.

A grant of the 5-year extension would not subvert the goal of P.L. 110-229 to replace foreign workers in the Northern Mariana Islands with U.S. workers. Employers would continue to be required to demonstrate there is no qualified U.S. worker available for any given job. Likewise, USCIS would continue to monitor the overall need for

available CW permits. An extension of the transition period would simply better fit the phase-out of foreign workers to an economically realistic timeframe, an adjustment that the law anticipated could be necessary.

That the phase-out cannot be realistically accomplished by the end of 2014 seems apparent. In a September 2012 report¹ to Congress the Government Accountability Office estimates that foreign workers still comprise approximately 54 percent of the Northern Mariana Islands workforce and concludes that “[t]he CNMI economy remains dependent on foreign workers.”² USCIS appears to have determined that the requirement for foreign workers to supplement the local workforce may even increase. As of December 2012 USCIS had received petitions for 12,300 foreign workers to receive CW status, yet the agency set the annual numerical limit for 2013 at 15,000 based on “actual demonstrated need for foreign workers within the CNMI” and in order to “accommodate possible economic growth that might lead to a need for additional CW workers.”³

In fact, it does appear that the economy of the Northern Mariana Islands has begun to improve and, thus, could require a continuing supply of CW workers. The Hotel Association of the Northern Mariana Islands recently reported occupancy rates of 91 percent, the highest since 1997. Room rates, as well, have returned to 1998 levels. Our community’s first EB-5 Regional Center was recently approved by USCIS, another positive sign.

Uncertainty over the availability of labor beyond 2014, however, could impede any recovery. Decisions to enlarge facilities or expand services in the tourism industry in light of increasing demand hinge on having an adequate workforce. Tourism, the islands’ primary economic activity, is particularly sensitive to the availability of labor because requirements for workers in this industry are so inelastic. But for all businesses not knowing what the size and composition of the workforce may be beyond 2014 is an impediment. As the September 2012 GAO reported noted:

CNMI businesses’ uncertainty about future access to foreign workers, due to the limited availability of information regarding future work permit allocations and any extension of the transition period, may be creating disincentives for investment. ... When facing uncertainty, businesses tend to delay investments that cannot be easily recovered, such as investments in expanding a hotel or building a new golf course; by delaying

¹ Commonwealth of the Northern Mariana Islands: Additional DHS Actions Needed on Foreign Worker Permit Program, GAO-12-975.

² Ibid, p. 22.

³ 77 FR 71287.

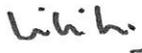
investments, businesses keep their options open until more information becomes available.”⁴

This uncertainty does not represent the minimization of adverse economic and fiscal effects that Congress contemplated when approving P.L. 110-229, nor does the prospect that half of the Northern Mariana Islands workforce (and approximately 20 percent of the islands’ population) would be removed over the 22 months remaining before the end of 2014, as would occur in the absence of an extension. Rather the law requires that, to the greatest extent possible during the phasing-in of Federal responsibilities over immigration in the Northern Mariana Islands, implementation be conducted in a manner that maximizes future economic and business growth in the islands.

Further contributing to the statutory goal of encouraging economic growth would be an early decision of whether to extend the transition period – ideally within the next six months. Information published by USCIS indicates that the vast majority of the approximately 9,100 individual CW permits that were approved through the end of 2012 occurred between May and September 2012. Permits generally expire one year after approval. USCIS has recommended that employers submit renewal applications between 90 and 180 days prior to permit expiration. Thus, employers will be considering future employment needs again in late 2013 and early 2014. It is critical that employers know prior to the onset of this timeframe whether the transition period will be extended. Given the consultative process that the Department of Labor is mandated to engage in and the need for the Department to gather and analyze data prior to the making its determination, it is imperative that this process begin now, so that it can be completed later this year, when the cycle of business decisions regarding CW applications commences.

Thank you for your consideration of this request. In the event your staff have questions or require clarification regarding these matters, they should contact my Chief of Staff, Bob Schwalbach, or my Senior Legislative Assistant, Frances Diaz, at 202-225-2646 or via email at bob.schwalbach@mail.house.gov, or frances.diaz@mail.house.gov.

Sincerely,



GREGORIO KILILI CAMACHO SABLAN
Member of Congress

⁴ Ibid, p. 24.