U.S. Citizenship and Immigration Services

USCIS Provides Details on H-1B and H-2B Cap Exemptions for Work Performed in the CNMI and Guam Questions and Answers

Introduction

Workers in H-1B and H-2B classifications who are admitted to perform labor and services in the Commonwealth of the Northern Mariana Islands (CNMI) and Guam are exempt from the H-1B cap and H-2B cap from November 28, 2009 to December 31, 2014. The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, provides a special exemption to the statutory numerical limitations (or "caps") for temporary workers in H nonimmigrant classifications mentioned in Section 214(g) of the Immigration and Nationality Act (INA).

Questions and Answers

Q. Who may qualify for this CNMI and Guam H cap exemption?
A. Nonimmigrants admitted as H-1B and H-2B workers for labor or services in the CNMI and/or Guam. To qualify for this exemption in H-1B classification, the prospective employer's petition must include a Labor Condition Application (LCA) listing employment or services in the CNMI and/or Guam only. To qualify for this exemption in H-2B classification, the petition must include a temporary labor certification (TLC) listing labor or services in the CNMI and/or Guam only.

Q. What fees are required if I am filing a petition for this CNMI and Guam H cap exemption?
A. The fees required are the same as those required for a petition filed from any other U.S. location. Please see the Instructions to the Petition for Nonimmigrant Worker, (Form I-129) for more information.

Q. Can a worker in H classification who will work or perform services in the CNMI or Guam and an additional U.S. state or territory qualify for this H cap exemption?
A. **No.** This H cap exemption does not apply to any employment to be performed outside of Guam or the CNMI. As such, a petition for H-1B or H-2B classification that is requesting employment outside of the CNMI or Guam, even for partial employment outside of the CNMI or Guam, cannot qualify for this exemption.

For example, an H-1B petition filed by a petitioner requesting employment for a worker who will work partially at the employer's CNMI office and partially at the employer's office in Hawaii cannot qualify for this H cap exemption.

Additionally, please note that all work locations must be listed on the LCA or TLC submitted to USCIS with the petition for H-1B or H-2B classification. Failure to do so is a violation of the terms and conditions of employment listed on the LCA or TLC.

Q. Can a worker granted H classification under this cap exemption travel to another U.S.

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location outside of Guam and the CNMI?
A. **Yes**. A worker in H classification for employment in the CNMI and/or Guam may freely travel to any U.S. state or territory. However, like any other worker in H classification, his/her employment authorization is limited to the locations authorized by the U.S. Department of Labor on the LCA or TLC.

The only exception is for H-2B workers performing services solely in Guam, who are limited to the locations of employment authorized by the Guam Department of Labor on their TLC.

Q. If a worker is granted H classification under this cap exemption and his/her employer would like him/her to work at another U.S. location outside of the CNMI and Guam, does the employer need to file another petition with USCIS?
A. **Yes.** Since employment performed in a U.S. location outside of the CNMI and Guam is not included in this cap exemption, the employer must file a new petition with USCIS to be counted against either the H-1B or H-2B cap before the worker may perform labor or services at that additional location. No employment location outside Guam or the CNMI is authorized under a cap-exempt petition approval for those jurisdictions, and such employment will always be considered a material change requiring a new cap-subject petition.

Q. If a worker is granted H classification under this cap exemption and is assigned different duties in the CNMI or Guam, does the employer need to file another petition with USCIS?
A. **Yes** in certain circumstances. Under the rules and procedures applicable to all H employment, a new petition is required if the H nonimmigrant seeks to change employers, or if there are any material changes in the terms and conditions of employment with the original petitioner, including (but not limited to) any change of work location to a location not previously authorized by the U.S. Department of Labor on the LCA or TLC. The Guam and CNMI H cap exemption applies to the cap only. All other provisions of the H program are unchanged. Therefore, if an employer elsewhere in the United States would normally be required to file a new petition to obtain approval of a material change in the beneficiary's employment, an employer in Guam or the CNMI would also be required to file a new petition. As discussed above, any employment outside Guam or the CNMI will require a new petition; a change of location or duties within Guam or the CNMI (including a change from Guam to the CNMI or vice-versa) may or may not require a new petition, depending on whether the change is a material change to the terms and conditions of employment previously approved. If a new petition is required for approval of a material change of employment, but the new employment is still limited to Guam and the CNMI, then the new petition will also be cap-exempt during the transition period.

Q. Can the spouse and children of an H worker under this cap exemption qualify for H-4 "dependant of an H worker" classification?
A. **Yes.** The spouse and qualifying children of an H worker may apply for H-4 "dependant of an H worker" classification. There is no cap for H-4 classification. Family members seeking H-4 classification may apply directly at the U.S. Embassy or Consulate for a visa. Subsequent requests for an extension of stay must be filed with USCIS on an I-539, Application to Change or Extend Nonimmigrant Status.

Q. Can the spouse and children of an H worker under this cap exemption that have qualified for H-4 "dependant of an H worker" accept employment?
A. **No.** Nonimmigrants in H-4 classification do not have employment authorization and cannot work in the United States. The spouse or child of an H worker may only work in the United States if he or she enters the United States in a nonimmigrant classification that provides for employment authorization.

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