

/S/ August 24, 2004

OFO:IPP (b) (6), (b) (7)(C)

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE OPERATIONS

FROM: Acting Executive Director
Immigration Policy and Programs

SUBJECT: Compact of Free Association, as amended, with the
Federated States of Micronesia

On December 12, 2003, President Bush signed Public Law 108-188, to approve the Compact of Free Association, as amended, between the United States and the Federated States of Micronesia (FSM) and the Compact of Free Association, as amended, between the United States and the Republic of the Marshall Islands (RMI). The United States and the FSM exchanged diplomatic notes on June 25, 2004, bringing into force the amended compact with that country. The United States has already concluded negotiations with the RMI to implement the amended compact, effective May 1, 2004 (See OFO memorandum, dated 04-30-2004, "Compact of Free Association, as amended, with the Republic of the Marshall Islands"). The Compact of Free Association between the United States and the Government of Palau is a separate compact and remains unaffected by P.L. 108-188.

General Provisions for Admission

Pursuant to the Compact of Free Association between the United States and the FSM, as amended, any person in the following categories may be admitted to lawfully engage in employment and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to section 212(a)(5) (labor certification) or (7)(B)(i)(II) (nonimmigrant visa requirement) of the Immigration and Nationality Act (INA):

- (1) A person who, on November 1, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the FSM;
- (2) A person who acquires the citizenship of the FSM at birth, on or after the effective date of the Constitution of the FSM (May 10, 1979);

- (3) An immediate relative of a person referred to in paragraphs (1) or (2), provided that:
- (a) Such immediate relative is a naturalized citizen of the FSM who has been an actual resident there for not less than 5 years after attaining such naturalization and who holds a certificate of actual residence, and
 - (b) In the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) for at least 5 years, and;
 - (c) The U.S. Government is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact.
- (4) A naturalized citizen of the FSM who was an actual resident there for not less than 5 years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the FSM to the Government of the United States, provided, that the United States is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact (the attached list should be safeguarded from general public dissemination); or
- (5) An immediate relative of a citizen of the FSM, regardless of the immediate relative's country of citizenship or period of residence in the FSM, if the citizen of the FSM is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

For purposes of the Compact, terms are defined as follows:

- "Residence" means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the INA, and variations of the term "residence," including "resident" and "reside," shall be similarly construed;
- "Actual residence" means physical presence in the FSM during 85 percent of the 5-year period of residency required by paragraphs (3) and (4) above;
- "Certificate of actual residence" means a certificate issued to a naturalized citizen by the Government of the FSM stating that the citizen has complied with the actual residence requirement of paragraphs (3) or (4);
- "Nonimmigrant" means an alien who is not an "immigrant" as defined in section 101(a)(15) of the INA;
- "Immediate relative" means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

Individuals qualifying under one of the above provisions must be in possession of a valid, unexpired passport but are exempt the nonimmigrant visa requirement. Upon inspection, these aliens are issued a Form I-94 with the classification of "CFA/FSM",

without a period of admission. Although these aliens are admitted as nonimmigrants, there is no limitation on the period of time that such aliens may reside in the United States.

No person who has been or is granted citizenship in the FSM, or has been or is issued a FSM passport pursuant to any investment, passport sale, or similar program is eligible for admission to the United States under the Compact, as amended. The rights of a bona fide naturalized citizen of the FSM to enter the United States, to lawfully work, and to reside as a nonimmigrant do not extend to any naturalized citizen who naturalized primarily to obtain such rights.

A person admitted to the United States under the Compact may accept employment in the United States. An unexpired FSM passport with unexpired documentation issued by the U.S. Government evidencing admission under the Compact is considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the INA.

The provisions of the INA apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where the INA does not apply) under the Compact, including:

- Any ground of inadmissibility or deportability (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of the INA). In addition, an alien admitted under the Compact may be found deportable under section 237(a)(5) of the INA if the alien cannot show that he or she has sufficient means of support in the United States.
- The authority under section 214(a)(1) of the INA providing that admission as a nonimmigrant shall be for such time and under such conditions as may be by regulations prescribed (no regulations have yet been published);
- The requirement for establishing eligibility for employment under section 274A of the INA;
- The provisions of 8 CFR 214.7 regarding habitual residence; and
- The authority to administer and enforce the INA or other U.S. law.

Residence in the United States pursuant to the Compact does not confer on a citizen of the FSM the right to establish the residence necessary for naturalization, or to petition for benefits for alien relatives under the INA. This does not prevent a citizen of the FSM from otherwise acquiring such rights or lawful permanent resident status in the United States.

Any person who relinquishes, or otherwise loses his or her FSM citizenship, is ineligible to enter the United States under the provisions of the Compact. Such person may apply for admission to the United States in accordance with any other applicable laws of the United States relating to immigration of aliens from other countries.

Adoption

A person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact, as amended. This applies to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This provision has no effect on the ability of the U.S. Government or any State of the United States or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

DHS has interpreted this provision to include individuals coming to the United States for the purpose of giving up a child for adoption (whether or not that child has yet been born), as well as children coming for the purpose of being adopted.

Service in Armed Forces of the United States

Any person entitled to travel to the United States under the provisions of the Compact is eligible to volunteer for service in the Armed Forces of the United States, but is not subject to involuntary induction into military service as long as he or she has resided in the United States less than one year. Time engaged in full-time study does not count toward the year. An immediate relative of a citizen of the FSM, if not himself a citizen of the FSM, will be subject to the selective service laws.

The Compact provides that, at any one time, at least one qualified student, nominated by the Government of the FSM, shall be enrolled in each of the United States Coast Guard Academy and the United States Merchant Marine Academy.

Revisions to Chapter 15.13 of the Inspector's Field Manual will be made in the near future. Questions regarding this guidance may be directed to (b) (6), (b) (7)(C) Office of Immigration Policy and Programs at (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) /s/

Attachment