



October 4, 2023

PA-2023-28

## Policy Alert

**SUBJECT:** Extension of the Temporary Need Exemption for Certain H-2B Workers on Guam and in the Commonwealth of the Northern Mariana Islands

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to reflect the extension of the current exemption from the temporary need requirement for petitions for temporary nonagricultural H-2B nonimmigrant workers on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI), as provided in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023.<sup>1</sup>

### Background

The temporary nonagricultural worker (H-2B) nonimmigrant visa classification applies to a noncitizen seeking to perform temporary nonagricultural labor or services in the United States when U.S. workers are not available.<sup>2</sup> Previous NDAA's created and expanded upon an exemption from the requirement that the nonagricultural labor or services be temporary in nature for petitioners of certain H-2B workers on Guam and in the CNMI.

The FY 2023 NDAA, which took effect on December 23, 2022, extended the current exemption from this temporary need requirement for an additional year, through December 30, 2024. USCIS is updating policy guidance to reflect this extension.

This guidance, contained in Volume 2 of the Policy Manual, amends the Policy Manual to align it with relevant changes made by the most recent NDAA. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

### Policy Highlights

- Explains that a petitioner meeting one of the NDAA criteria may qualify for an exemption to the requirement that the nonagricultural service or labor be temporary in nature if the employment start date is before December 31, 2024.

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<sup>1</sup> See Section 5901 of the FY 2023 NDAA, [Pub. L. 117-263](#), 136 Stat. 2395, 3440 (December 23, 2022) (amending Section 6(b)(1)(B) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)).

<sup>2</sup> See [INA 101\(a\)\(15\)\(H\)\(ii\)\(b\)](#).

- Affirms that petitions with employment start dates on or after December 31, 2024, are subject to adjudication under the law and regulations that apply to petitions for H-2B workers at that time.

### **Summary of Changes**

Affected Section: Volume 2 > Part I > Chapter 11 > Section A, Temporary Workers on Guam and in the Commonwealth of the Northern Mariana Islands

- Revises language in Subsection 1 (General Eligibility Requirements).
- Revises the title of Subsection 2 (FY 2021 NDAA Exemption Eligibility Involving Military Realignment) to remove the reference to FY 2021.
- Provides other minor technical revisions throughout to reflect the extended dates of the exemption.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

### **Citation**

Volume 2: Nonimmigrants, Part I, Temporary Agricultural and Nonagricultural Workers (H-2), Chapter 11, Temporary Nonagricultural Worker (H-2B) Petitions Requiring Special Handling [[2 USCIS-PM I.11](#)].