

**Northern Mariana Islands (NMI) Chapter
of the Society of Human Resource Management
General Monthly Meeting
CW-1 Visa Temporary Departure Requirement
May 26, 2022
Post-Meeting Questions and Answers**

Temporary Departure Requirement

Q1. Do all CW-1 workers who are not qualified as CW-1 Long Term workers need to comply with the departure requirements?

A1: In general, all CW-1 workers (other than long-term workers) are subject to the temporary departure requirement. This means that a CW-1 worker is required to remain outside the United States after a second renewal period (extending up to a total of three years of CW-1 status) before another petition for CW-1 classification may be filed. This requirement does not apply to “CW-1 long-term workers” who were admitted to the CNMI, or otherwise granted status, as a CW-1 worker during fiscal year 2015 and during each of fiscal years 2016 through 2018.

Q2. When will the touchback be in effect?

A2: USCIS will only consider CW-1 petitions approved on or after June 18, 2020, when applying the requirement that certain CW-1 nonimmigrant workers depart the CNMI for a period of at least 30 continuous days. For example, any noncitizen approved on or after June 18, 2020, for a one-year CW-1 validity period beginning Oct. 1, 2020, will be eligible for two more consecutive petition validity periods after the first period of validity expired on Sept. 30, 2021.

Q3. Is the touchback yearly or upon every renewal?

A3: A beneficiary may not be granted CW-1 status beyond three consecutive petition validity periods unless the beneficiary has departed and remained outside of the United States for a continuous period of at least 30 days after the expiration of the third consecutive petition validity period and before the filing of any new petition on behalf of the beneficiary. This requirement does not apply to “CW-1 long-term workers.”

If a worker departs the CNMI in compliance with the departure requirement, then this resets the three consecutive petition validity periods, meaning that the CW-1 worker may be eligible for two more extension petitions before being subject to the temporary departure requirement again. The worker does not need to repeat the touchback yearly or upon every renewal.

Q4. Do we have to send the employees back all at one time or can we space them out? When do they go back, before renewal or after we submit and have been approved?

A4: CW-1 employees may not be granted CW-1 status beyond three consecutive CW-1 validity periods. It is possible that an employer may have multiple CW-1 employees whose third consecutive validity period expires at the same time. A new CW-1 petition cannot be filed for those employees unless they have departed and remained outside the United States for a continuous period of at least 30 days. It is possible, though, that employers may have CW-1 employees whose validity periods expire at different times, and therefore, in these circumstances, employees may depart the United States at different times. A CW-1 employee must depart the CNMI before his or her CW-1 nonimmigrant status expires, which is 10 days after the end of the petition validity period.

Q5. Would it be possible to shorten a renewal term, in a situation where there are many workers expiring in a month in order to avoid losing all employees at once?

A5: If a petitioner wishes to shorten the validity period of an approved petition, the petitioner would need to file an amended petition. As mentioned above, it is possible that employers may have CW-1 employees whose validity periods expire at different times, and therefore, in these circumstances, employees may depart the United States at different times. When filing a CW-1 petition, keep in mind that employers don't have to request the maximum 1 year (or 3 years for a long-term worker) and don't have to request the same end date for their employees. By requesting differing validity period end dates, employers may be able to avoid "losing all employees at once."

Q6. If a CW-1 worker departs the CNMI two (2) months earlier prior to the work permit expiration date, will this be considered as a departure in compliance with the 30-day "touchback" requirement?

A6: A CW-1 worker is required to depart *after* three consecutive petition validity periods. It is the petition validity period end date that is controlling. If a petitioner wishes to shorten the validity period of an approved petition, the petitioner will need to file an amended petition.

Q7. If an employee transfers from one employer to another, prior to expiration, would they still need to leave the island?

A7: The temporary departure requirement applies to employees who have been the beneficiary of three consecutive petitions approved on or after June 18, 2020, whether or not those petitions have all been for the same employer. In other words, a change of employer petition requesting extension of status would not be approvable if it is the

fourth consecutive petition. The new employer could not petition for that prospective employee until the employee had departed for at least 30 days after the expiration of the third petition. If an employee has not yet been the beneficiary of the three consecutive approved petitions, the temporary departure requirement would not immediately apply to a change of employer petition but would still apply after that beneficiary's third consecutive petition validity period. A change of employers does not, by itself, "reset" the beneficiary's three consecutive petition validity periods.

Q8. Do we need to process a new Department of Labor Temporary Labor Certification (TLC) for those beneficiaries that are covered by the departure requirement?

A8: While being subject to the departure requirement does not in itself mean that an employer necessarily has to obtain a new TLC, the employer will need an approved TLC covering the requested employment when filing a CW-1 new petition.

Q9. If a CW-1 worker is subject to the touchback, will the worker's CW-2 dependents also be subject to the touchback as well?

A9: The temporary departure requirement does not apply to CW-2 dependents. However, a dependent's CW-2 status generally expires on the same day as the principal nonimmigrant's CW-1 status and can be extended when the CW-1 status is extended.

Q10. Regarding those CW-1s who need to touch back, what category should they choose when they file the I-129 Petition (New or Renewal)?

A10: When filing a petition for a worker subject to the temporary departure requirement – that is, a worker who has left the CNMI for at least 30 days after expiration of the third consecutive petition validity period – the employer should select box 1.a., New Employment, in Part 2 of the Form I-129CW, even if the employer seeks to employ the worker in the same position for which CW-1 employment was previously approved. And since the worker will be outside the CNMI without a currently valid CW-1 visa, the employer will need to request consular processing.

Q11. Based on the CW-1 Departure Requirement Table that was shared on the power point slides:

- **If initial petition validity period is: 10/01/2020 – 09/30/21**
- **And 2nd petition validity is: 10/01/2021 – 09/30/2022**
- **And 3rd petition validity is: 01/01/2023 – 12/31/2023**
 - **Will the worker still maintain lawful presence in the CNMI?**

- **Eligible to apply for two (2) more renewal petitions from:**
 - **01/01/2024 – 12/31/2024**
 - **01/01/2025 -12/31/2025**
 - **Then touchback will take effect by 12/31/2025 for the 3rd CW-1 renewal?**

A11. The third petition (01/01/23-12/31/2023) was not consecutive to the previous second petition. Therefore, the departure requirement resets, and, assuming the employer and worker otherwise comply with the immigration laws (for example, the CW-1 worker must have departed the CNMI or otherwise changed nonimmigrant status during the period between the second petition validity and the third petition validity (10/01/2022 – 12/31/2022, minus any additional periods of admission after and before those respective dates), then the employer may file the two additional extension petitions covering calendar years 2024 and 2025, as described in the question. The departure requirement would then need to be satisfied before an additional petition could be filed.

Q12. Can the touchback provision be amended and allow beneficiaries to exit while their CW-1 is still valid and allow the employer to file the petition as soon as possible?

A12: The temporary departure requirement is part of the Northern Mariana Islands U.S. Workforce Act of 2018 (the Workforce Act) signed by then President Trump on July 24, 2018 and would not allow for this under the existing statutory language. USCIS does not have the authority to amend this law.

10-day Admission Requirement

Q13. Can we get clarification on the 10-day admission period?

A13: USCIS may, in its discretion, send the petitioner a notice of intent to revoke (NOIR) the petition in certain circumstances; for example, if the beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period if the petition has been approved for consular processing. If USCIS decides to issue a NOIR, the petitioner would receive notice and the opportunity to respond. In the response, the petitioner may submit additional evidence and explain why the petition should not be revoked. There is also an appeal process, please see information at www.uscis.gov/administrative-appeals/appeals-resources.

Q14. On the 10-day admission requirement:

- **What actions/accomplishments constitute “application”?**
- **Having set an appointment with the U.S. Embassy?**

- **Being processed by the U.S. Embassy or being interviewed by the case officer?**

A14: USCIS may, in its discretion, send the petitioner a notice of intent to revoke (NOIR) the petition if the beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period if the petition has been approved for consular processing. “Apply for admission” means physically appearing before U.S. Customs and Border Protection (CBP) at the airport to request entry into the CNMI. Actions taken before physically appearing before CBP, such as setting up an appointment with the U.S. Embassy, are not considered applying for admission.

Q15. Will there be a consideration given to employers and CW-1s due to the COVID-19 global public health emergency?

A15. USCIS has provided several flexibilities in response to COVID-19. Please see a full list of these flexibilities at www.uscis.gov/about-us/uscis-response-to-covid-19.

Specifically, regarding the CW-1 10-day admission requirement, USCIS may, in its discretion, send the petitioner a notice of intent to revoke (NOIR) a petition approved for consular processing if the beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period. However, USCIS is aware that the pandemic has affected the ability to travel in some cases and has no immediate intent to pursue revocations on this basis.

Additional Questions

Q16. Can I put all 3-years on the petition, or does it have to be yearly?

A16: In general, CW status is valid for up to one year, and may be extended in increments of up to one year, for a maximum total of three years (if the three consecutive petition validity periods are each for 1 full year) before the temporary departure requirement takes effect. However, long-term workers may be granted status for up to three years based on a single petition approval if the underlying temporary labor certification has been approved for the same duration.

Q17. If a CW-1 Long-Term worker was approved with a three (3) year term, will the expiration date on the CW Visa that is stamped in the beneficiary’s passport also expire on the same year? Does the beneficiary have to go through consular processing each time the beneficiary travels to his/her home country even though the CW-1 work permit is valid for a 3-year period?

A17: USCIS defers to the U.S. Department of State on questions about validity periods when issuing CW-1 visas. If a CW-1 worker departs the CNMI, the worker will need a CW-1 visa within its period of validity in order to return to the CNMI, regardless of how

long the petition is valid. If the worker's visa expires, the worker will need to obtain a new visa in order to travel to the CNMI.

Q18. What happens to a CW-1 beneficiary whose petition has not yet been adjudicated?

A19. In the case of a petition to extend status with the same employer, the worker has up to 240 days of additional employment authorization while the petition is pending. In the case of a change of employer petition filed in accordance with the regulations at 8 C.F.R. 214.2(w)(7), the worker may work for the new employer while the new petition is adjudicated.

Q19. Do we need to file Semi-Annual Reports? How often do we have to file them?

A19: If you have a currently approved CW-1 petition with a validity period of 6 months or more, you must file a semi-annual report on Form I-129CWR with USCIS every 6 months after the petition validity start date. Employers use this report to certify the continued employment and payment of each worker under the terms and conditions of the approved petition. If you fail to comply with the semiannual reporting requirement, USCIS may revoke an approved petition or deny subsequent petitions. Additional information on filing semi-annual reports is available in the "[Most CW-1 Employers Must File Required Semiannual Report \(Form I-129CWR\)](#)" web alert.