

OFFICE OF BUSINESS LIAISON

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

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The following is not intended to be legal advice pertaining to your situation and should not be construed as such.
The information provided is intended merely as a general overview with regard to the subject matter.

I. Introduction

Following World War II, the United States was named as Administrator of the United Nations Trust Territory of the Pacific Islands (TTPI). The TTPI included territory in what are now the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the Republic of Palau. These three countries are often referred to collectively as the “Freely Associated States” (FAS). In 1986, the United States entered into a Compact with the FSM and the RMI, and in 1994, a separate Compact with the Republic of Palau. As discussed below, the Compact with the RMI and the FSM was recently amended, and there are now in effect separate U.S.-FSM and U.S.-RMI Compacts. The Compact with the Republic of Palau was not amended.

Under the three Compacts, most citizens of these countries enjoy broad, but not unlimited, access to the United States as nonimmigrants to live, work, or study without the need for a visa. To seek admission to the United States, citizens of the FSM and the RMI need only possess a valid FSM or RMI passport, while citizens of the Republic of Palau need only to possess an appropriate travel document, such as a valid passport or a certified birth certificate. At the U.S. port-of-entry, a Form I-94 (Arrival/Departure Card) is issued with a notation reflecting that the person has been admitted for “duration of status” or “D/S” and is from an FAS country. With certain limited exceptions, citizens of the FAS admitted under the Compacts have had, and continue to have, authorization to work on the “open market” for any employer in the United States.

II. Employment Authorization for Citizens of the Freely Associated States

Recent changes to the Compact with the FSM and the RMI effectively override current 8 CFR 274a.12(a), as it applies to citizens of those two countries. As the Compact with the Republic of Palau was not amended, citizens of the Republic of Palau who are admitted under the Compact are not affected by these changes.

Current 8 CFR 274a.12(a)(8) provides that “*an alien admitted to the United States as a citizen of the Federated States of Micronesia or of the Marshall Islands pursuant to agreements between the United States and the former trust territories,*” must obtain an employment authorization document issued by the Service.” This rule also covers citizens of the Republic of Palau, although it does not specifically refer to them.

As noted below, pursuant to recent amendments to the Compact with the RMI and FSM, the EAD requirement has been eliminated for aliens of the RMI and FSM. Because the U.S.-Palau Compact has not been amended, however, citizens of the Republic of Palau continue to need a valid EAD. The Department of Homeland Security intends to amend 8 CFR 274a.12(a)(8) to reflect these changes in requirements for FSM and RMI citizens and to make specific reference to citizens of the Republic of Palau.

III. Amended Compacts of Free Association

On December 7, 2003, President George W. Bush signed legislation approving amended Compacts of Free Association (CFA) with the FSM and RMI. These Compacts went into effect on May 1, 2004, with respect to the RMI, and June 30, 2004, with respect to the FSM. The newly signed agreements extend substantial levels of U.S. funding to the two Pacific nations for the next 20 years. In addition, the amended CFA revises the immigration provisions of the previous Compact in various ways (for example, RMI and FSM citizens will no longer be exempt from passport requirements for travel to the United States), while preserving the generous nature of the nonimmigrant admission without visa and employment eligibility provisions for citizens of the two countries. While 8 CFR 274a.12(a)(8) required citizens of the RMI and FSM to obtain an EAD as evidence of their eligibility to work in the United States, the new agreement now provides that a person admitted to the United States from the FSM or RMI under the CFA “*shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired...passport with unexpired documentation issued by the Government of the United States evidencing admission under the compact or the compact as amended shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1324a(b)(1)(B).*” In other words, under the U.S.-FSM and U.S.-RMI, FSM and RMI (as appropriate) passports with U.S. admission documentation under the Compacts are authorized to be “List A” documents that newly hired employees may show as evidence of identity and employment eligibility when completing the Form I-9.

Effective immediately, citizens of the FSM and the RMI no longer need an employment authorization document (EAD) to work in the United States. An unexpired passport with unexpired documentation showing admission under the CFA is valid proof of work authorization for citizens of the FSM and the RMI. Citizens of the FSM will no longer need an employment authorization document to work in the United States. With respect to the FAS, only citizens of the Republic of Palau will continue to need an EAD to work in the United States. This change gives FSM citizens the same documentation options that citizens of the RMI already enjoy.

IV. Conclusion

Effective May 1, 2004, with respect to the RMI and June 30, 2004, with respect to the FSM, employers may (and should) accept unexpired RMI or FSM passports together with an unexpired admission document (i.e. a Form I-94) issued at the port of entry by the U.S. government as evidence of both identity and employment eligibility for Form I-9 purposes. These documents should be entered under Section 2 as List A documents. Expiration dates should be recorded, and reverification conducted upon expiration of either document (note that a Form I-94 for Compact entry may indicate “D/S” (duration of status) or otherwise lack a specific expiration date. An annotation on the Form I-94 indicating “CFA/MIS” shows admission of an RMI citizen under the Compact (other annotations showing Compact admission may be encountered). A passport with a Form I-94 showing a specific nonimmigrant status under the Immigration and Nationality Act, though (for example, B1/B2 visitor) is not an acceptable List A document for this purpose (note that although most RMI citizens in the United States are Compact entrants, not all are). As in all employment verification situations, employers should not request employees to show specific documentation, and should accept documentation that appears to be genuine and to relate to the individual. An EAD is no longer required for citizens of the RMI or the FSM admitted under the Compact to be employed in the U.S., although RMI and FSM citizens having a valid EAD may continue to use it as evidence of work authorization. Such person may also apply for an EAD in the future, if they so desire.

Documentation options for Palau citizens have not changed; such persons are still required to obtain an EAD as evidence of their eligibility to work in the United States.