

I-129CW Instructions Table of Change
OMB No. 1615-0111
April 5, 2011

Justifications for non-substantive changes to the Form I-129CW Instructions by section:

- (1) Table of Contents was changed to reflect the addition of a new section to the instructions regarding an ‘Initial Grant of CW-1 status.’ (See justification number 6.)
- (2) The addition to the “who may file this form” section that specifies that only one requested action may be made for multiple beneficiary petitions mirrors both current operating capabilities and current Form I-129 instructions released on November 23, 2010 (see instructions in the ‘requested action’ section on page 3 of the Form I-129 instructions).
- (3) The minor edit to the ‘petition always required’ section incorporates language for the new section, ‘Initial Grant of CW-1 status.’
- (4) Edits to the ‘Initial Evidence’ section clarify the regulatory language. It now explains in more detail the definition of which aliens in the CNMI are considered as lawfully present in the CNMI for the purpose of filing per 8 CFR 214.2(w)(1)(v). It now states the sunset date of the program, December 31, 2014, as stated in 8 CFR 241.2(w)(1)(xi). It reiterates that only one requested action may be made for multiple beneficiary petitions.
- (5) The changes to the Classification Supplement instructions were made to mirror the additions and subsequent renumbering made to the rule in 8 CFR 214.2(w)(6)(ii).
- (6) Addition of the section to the instructions entitled ‘Initial Grant of CW-1 Status.’ This additional section clarifies which aliens may be considered lawfully present in the CNMI without a nonimmigrant status and may be granted CW status without departing the U.S. for consular processing. Initial Grant of CW-1 Status is authorized by 8 CFR 214.2(w)(14)(ii). Additionally the section clarifies that the petition for those with a CNMI immigration status must be filed prior to November 27, 2011 per 8 CFR 214.2(1)(v)(A).
- (7) Change of Status Instructions were amended to conform to the differentiation between aliens admitted to the CNMI after 11-27-09 in a federal nonimmigrant status who must request a change of status and those who do not have a nonimmigrant status (and must use the Initial Grant of CW-1 status).
- (8) A minor edit was made to the ‘Extension of Stay’ instructions. The word ‘change’ was edited to ‘extension’ as the section deals with extensions of stay, not change of status; two different terms.
- (9) The ‘When to file’ section was altered as the petitioner may no longer file the petition prior to November 28, 2009.
- (10) The fees were changed to mirror the current I-129CW fee stated as \$325 in 8 CFR 103.7(b)(1)(i)(J) and the current biometrics processing fee stated in 8 CFR 103.7 (b)(i)(i)(C). The fees were changed on November 23, 2010 per the fee rule (RIN 1615-AB80) published in the federal register on September 24, 2010.

(11) Minor grammatical edit made to the ‘Processing Information’ section.

LOCATION	CURRENT	PROPOSED
<p>Page 1: Table of Contents</p> <p>Add red text to Table of Contents section.</p> <p>Re-number pages as appropriate.</p>	<p>Table of Contents Page</p> <p>I. Instructions for Form I-129CW</p> <p>General Information 1</p> <p>Petition Required..... 2</p> <p>Initial Evidence..... 2</p> <p>Change of Status/Extension of Stay..... 4</p> <p>General Evidence..... 4</p> <p>*****</p>	<p>Table of Contents Page</p> <p>I. Instructions for Form I-129CW</p> <p>General Information 1</p> <p>Petition Required..... 2</p> <p>Initial Evidence..... 2</p> <p>Initial Grant of CW-1 Status..... 3</p> <p>Change of Status/Extension of Stay..... 4</p> <p>General Evidence..... 4</p> <p>*****</p>
<p>Page 1: Who May File This Form?</p> <p>Delete yellow highlights.</p> <p>Add red text.</p>	<p>*****</p> <p>Including more that one alien in a petition. Multiple aliens who will seek admission in CW-1 classification may be included on the same petition provided they will:</p> <ol style="list-style-type: none"> 1. All be working in the same occupational category; 2. All be employed for the same period of time; and 3. All be employed in the same location. <p>*****</p>	<p>*****</p> <p>Including more that one alien in a petition. Multiple aliens who will seek admission in CW-1 classification may be included on the same petition provided they will:</p> <ol style="list-style-type: none"> 1. All be working in the same occupational category; 2. All be employed for the same period of time; 3. All be employed in the same location; and 4. All be requesting the same action in part 2 of the Form I-129CW. <p>*****</p>
<p>Page 2: Petition Always Required</p> <p>Delete yellow highlights</p> <p>Add red text.</p>	<p>Petition Always Required</p> <p>You must file for CW-1 classification. A petition for new or concurrent employment or for an extension where there is a change in previously approved employment must be filed with the initial evidence listed below, and with the initial evidence required by the separate instructions for a change of status or extension of stay. However, a petition for an extension based on an unchanged continuation of previously</p>	<p>Petition Always Required</p> <p>You must apply for CW-1 classification. A petition for new or concurrent employment or for an extension where there is a change in previously approved employment must be filed with the initial evidence listed below, and with the initial evidence required by the separate instructions for an initial grant of status, a change of status or extension of stay. A petition for an extension based on an unchanged</p>

	<p>approved employment should only be filed with the initial evidence required in the separate extension-of-stay instructions.</p> <p>*****</p>	<p>continuation of previously approved employment, however, should only be filed with the initial evidence required in the separate extension-of-stay instructions.</p> <p>*****</p>
<p>Page 2: Initial Evidence</p> <p>Move blue highlighted paragraph to last paragraph in the “initial evidence” section.</p> <p>Delete yellow highlighted text.</p> <p>Add red text.</p>	<p>*****</p> <p>The CW-1 classification is only available during the transition period. The transition period is the period beginning on the transition program effective date, November 28, 2009, and ending on December 31, 2014, unless the CNMI-Only Transitional Worker program is extended by the U.S. Secretary of Labor.</p> <p>The CW-1 employer must be a legitimate business. A legitimate business is a real, active, and operating commercial or entrepreneurial undertaking that produces goods or services for profit, or is a governmental, charitable, or other validly recognized nonprofit entity. The business must meet applicable legal requirements for doing business in the CNMI. A business will not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law. The U.S. Secretary of Homeland Security will determine whether a business is legitimate.</p> <p>The alien is lawfully present in the CNMI if the alien was lawfully admitted to the CNMI under the immigration laws of the CNMI in a category other than short-term visitor for pleasure or business, or was lawfully admitted to the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted as a visitor for business or pleasure.</p>	<p>*****</p> <p>The CW-1 classification is only available during the transition period. The transition period is the period beginning on the transition program effective date, November 28, 2009, and ending on December 31, 2014, unless the CNMI-Only Transitional Worker program is extended by the U.S. Secretary of Labor.</p> <p>The alien is lawfully present in the CNMI if the alien was lawfully admitted to the CNMI under the immigration laws of the CNMI prior to November 28, 2009 and is still within the authorized period of stay, or was lawfully admitted or paroled into the CNMI under federal immigration laws on or after November 28, 2009, other than an alien admitted or paroled as a visitor for business or pleasure (B-1 or B-2 or under any visa-free travel provision including but not limited to the parole program for certain visitors from Russia and the People’s Republic of China).</p> <p>Employers may file petitions until December 31, 2014. However, the petitioner should file the petition as early as possible to ensure adjudication prior to December 31, 2014 as this is the expiration date of the CW program and all CW status. When filing the petition, an employer may not include more than one requested action on each petition (i.e. initial grant of CW-1 status, change of status, extension of status, or consular processing); doing so may result in delay of the petition.</p> <p>The CW-1 employer must be a legitimate business. A legitimate business is a real, active, and operating commercial or entrepreneurial undertaking that produces goods or services for profit, or is a governmental, charitable, or other validly recognized nonprofit entity. The business must meet applicable legal requirements for doing business in the CNMI. A business will not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law. The U.S. Secretary of Homeland Security will determine whether a business is</p>

		<p>legitimate.</p> <p>****</p>
<p>Page 2 Basic Requirements</p> <p>Change the regulation citation as indicated</p>	<p>Basic Requirements. An employer must file the petition. The employer must: *****</p> <p>3. Submit evidence demonstrating that the petitioner meets the definition of an employer as defined by 8 CFR 214.2(w)(1)(ii), including but not limited to a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien may be employed; and</p> <p>****</p>	<p>Basic Requirements. An employer must file the petition. The employer must: *****</p> <p>3. Submit evidence demonstrating that the petitioner meets the definition of an employer as defined by 8 CFR 214.2(w)(1)(iii), including but not limited to a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien may be employed; and</p> <p>****</p>
<p>Pages 2 - 3, CW-1 Classification Supplement</p> <p>Change regulation citations as indicated.</p> <p>Add red text.</p> <p>Renumber appropriately.</p>	<p>CW-1 Classification Supplement *****</p> <ol style="list-style-type: none"> 1. Qualified U.S. workers are not available to fill the position; 2. The employer is doing business as defined in 8 CFR 214.2w)(1)(i): 3. The employer is a legitimate business as defined in 8 CFR 214.2(w)(1)(v); 4. The beneficiary meets the qualifications of the position; 5. The beneficiary, if present in the CNMI, is lawfully present in the CNMI; 6. The position is not temporary or seasonal employment and the petitioner does not reasonably believe it to qualify for any other nonimmigrant worker classification; and 7. The position falls within the list of occupations designated by the Secretary at 8 CFR 214.2(w)(1)(viii). <p>*****</p>	<p>CW-1 Classification Supplement *****</p> <ol style="list-style-type: none"> 1. Qualified U.S. workers are not available to fill the position; 2. The employer is doing business as defined in 8 CFR 214.2w)(1)(ii): 3. The employer is a legitimate business as defined in 8 CFR 214.2(w)(1)(vi); 4. The employer is an eligible employer as described in 8 CFR 214.2(w)(4) and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs any CW-1 nonimmigrant worker; 5. The beneficiary meets the qualifications of the position; 6. The beneficiary, if present in the CNMI, is lawfully present in the CNMI; 7. The position is not temporary or seasonal employment and the petitioner does not reasonably believe it to qualify for any other nonimmigrant worker classification;

		<p>and</p> <p>8. The position falls within the list of occupations designated by the Secretary at 8 CFR 214.2(w)(1)(ix).</p> <p>*****</p>
<p>Page 3:</p> <p>Add new section before “Change of Status” section.</p> <p>New section is entitled “Initial Grant of CW-1 Status”.</p>		<p>Initial Grant of CW-1 Status</p> <p>An alien who was admitted to the CNMI prior to November 28, 2009 may not currently hold a Federal nonimmigrant classification that permits a change of status. However, under the CNMI-Only Transitional Worker regulations the petitioner may in certain situations request that the alien be granted an <i>initial</i> CW-1 status in the CNMI. This will allow certain beneficiaries who were present in the CNMI prior to the transition date to be granted an initial CW-1 status without having to depart the CNMI. Additionally, an alien who is currently in parole status in the CNMI may also be granted an <i>initial</i> CW-1 status in the CNMI.</p> <p>A petition for a <i>grant of initial</i> CW-1 status for a beneficiary currently in the CNMI whose lawful status is solely based upon a CNMI issued permit must be filed on or before November 27, 2011. In addition to the initial evidence for the CW-1 classification, a petition requesting an initial grant of CW-1 status must be accompanied by evidence that each beneficiary is currently lawfully present in the CNMI.</p> <p>If you are requesting that the beneficiary be granted initial CW-1 status in the CNMI, you must check box “a” in part 2, question 2 and check box “b” in part 2, question 5. Additionally, you must check the sub-category box “1” in part 2, question 5.</p> <p>NOTE: Dependent aliens (i.e., qualifying family members of a CW-1 beneficiary) must use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for an initial grant of CW-2 status.</p> <p>Please note that an alien present in the CNMI with an unexpired nonimmigrant classification (such as F-1 or H-2B) should file the petition requesting a Change of Status as discussed in the Change of Status section below.</p>

<p>Page 3: Change of Status</p> <p>Amend section by:</p> <p>(1) addition of the paragraphs in red text.</p> <p>(2) Deletion of yellow highlighted text.</p>	<p>Change of Status</p> <p>In addition to the initial evidence for the CW-1 classification, a petition requesting a change of status for an alien in the CNMI must be submitted with a copy of the employee’s Form I-94, Nonimmigrant Arrival-Departure Record.</p> <p>NOTE: Dependent aliens (i.e., qualifying family members of a CW-1 beneficiary) must use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status.</p> <p>A nonimmigrant, who must have a passport to be admitted, must keep that passport valid during his or her entire stay. If a required passport is not valid, include a full explanation with your petition.</p>	<p>Change of Status</p> <p>A beneficiary who was lawfully admitted to the CNMI under Federal immigration laws on or after the transition program effective date of November 28, 2009 and who currently holds an unexpired, eligible nonimmigrant status may change status to CW-1 status with this petition.</p> <p>In addition to the initial evidence for CW-1 classification, a petition requesting a change of status for an alien in the CNMI must be submitted with a copy of the employee’s Form I-94, Nonimmigrant Arrival-Departure Record.</p> <p>If you are requesting a change of a Federal nonimmigrant status to that of CW-1 status you must check box “a” in part 2, question 2 and check box “b” in part 2, question 5. Additionally, you must check the sub-category box “2” in part 2, question 5.</p> <p>NOTE: Dependent aliens (i.e., qualifying family members of a CW-1 beneficiary) must use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status.</p> <p>A nonimmigrant who must have a passport to be admitted must keep that passport valid during his or her entire stay. If a required passport will not be valid for the entire requested period of stay, include a full explanation with your petition.</p>
<p>Page 4: Extension of Stay</p> <p>Add red text.</p>	<p>A petition requesting an extension of stay for an employee in the CNMI may be filed only if the original petition has not expired. Requests for extensions of CW-1 status may be granted for periods of 1 year until the end of the transition period, subject to numerical limitations.</p> <p>*****</p> <p>NOTE: Dependent aliens (i.e., qualifying family members of a CW-1 beneficiary) must use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status.</p>	<p>A petition requesting an extension of stay for an employee in the CNMI may be filed only if the original petition has not expired. Requests for extensions of CW-1 status may be granted for periods of up to 1 year until the end of the transition period, subject to numerical limitations.</p> <p>*****</p> <p>NOTE: Dependent aliens (i.e., qualifying family members of a CW-1 beneficiary) must use Form I-539, Application to Change/Extend Nonimmigrant Status, to</p>

		apply for an extension of status.
<p>Page 4: When To File?</p> <p>Delete yellow text.</p>	<p>When To File?</p> <p>Generally, Form I-129CW may not be filed more than six months prior to the date employment is scheduled to begin. Petitioners should review the appropriate regulatory provisions in 8 CFR that relate to when the petitions may be filed prior to November 28, 2009.</p>	<p>When To File?</p> <p>Generally, Form I-129CW may not be filed more than six months prior to the date employment is scheduled to begin.</p>
<p>Page 5: What is the Filing Fee?</p> <p>Delete yellow text.</p> <p>Add red text..</p>	<p>*****</p> <p>What Is the Filing Fee? The base filing fee for this petition is \$320.</p> <p>Public Law 110-229 requires a supplemental CNMI education funding fee of \$150, per beneficiary, per year.</p> <p>An employer filing Form I-129CW for a CNMI-Only Nonimmigrant Transitional Worker must submit the \$320 petition filing fee, and an additional \$150 for the supplemental CNMI education fee.</p> <p>An additional biometric fee of \$80 per beneficiary is required if the alien is present in the CNMI when filing for initial CW-1 status. After submission of the form, USCIS will notify the beneficiary about when and where to go for biometric services.</p> <p>*****</p>	<p>*****</p> <p>What Is the Filing Fee? The base filing fee for this petition is \$325.</p> <p>Public Law 110-229 requires a supplemental CNMI education funding fee of \$150, per beneficiary, per year.</p> <p>An employer filing Form I-129CW for a CNMI-Only Nonimmigrant Transitional Worker must submit the \$325 petition filing fee, and an additional \$150 for the supplemental CNMI education fee.</p> <p>An additional biometric service fee of \$85 per beneficiary is required if the alien is present in the CNMI when applying for an initial grant of CW-1 status. After submission of the form, USCIS will notify you about when and where to go for biometric services. See 8 CFR 103.7(b).</p> <p>*****</p>
<p>Page 6: “Processing Information” section</p> <p>Second to last paragraph in section</p> <p>Delete yellow text.</p>	<p>*****</p> <p>Requests for more information or interview. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals documents instead of copies. We will return these originals when they are no longer required.</p> <p>*****</p>	<p>*****</p> <p>Requests for more information or interview. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the original documents instead of copies. We will return these originals when they are no longer required.</p> <p>*****</p>