



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

Two Pacific Island nations, the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) attained independence in 1986 under a Compact of Free Association (CFA) with the United States, which previously administered them. Pursuant to the provisions of the Compact, most citizens of the FSM and RMI were afforded broad access as nonimmigrants to the United States to live, work, or study with no U.S. visa requirement. A third Pacific Island nation, the Republic of Palau, has a similar Compact with the United States. These three nations are often referred to collectively as the “Freely Associated States” (FAS).

In order to enter the United States, eligible citizens of the FAS have needed only to possess an appropriate travel document such as an FSM or RMI 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 is from an FAS country. Citizens of the FAS admitted under the Compacts have had, and continue to have, “open market” employment authorization to work for any employer in the United States.

II. Employment Authorization for Citizens of the Freely Associated States

8 CFR 274a.12(a) provides a list of sixteen classes of aliens who are employment authorized incident to status. This means that aliens who belong to any of these classes “*are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes.*”

One such class is found in subsection (8) pertaining to “*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, as evidenced by an employment authorization document issued by the Service...*” This rule also covers citizens of Palau, although it does not specifically refer to them.

Under this subsection, the FAS citizen is required to submit a Form I-765 (Application for Employment Authorization) for adjudication by the U.S. Citizenship and Immigration Services in order to be issued an Employment Authorization Document (EAD).

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. The newly signed agreements extend expiring 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 U.S., the new agreement now provides that a person admitted to the U.S. 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 new versions of the Compacts, RMI and FSM 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.

Although the legislation was signed last December, the actual entry of force of the amended Compacts requires additional diplomatic agreement between the United States and into the RMI and FSM. That process has been completed with the RMI effective May 1, 2004. It has not yet been completed with the FSM and, although implementation of the amended Compact with the FSM is expected later this year, no specific date has yet been established. It is also important to note that no amendment of the existing Compact with Palau has been negotiated or approved by Congress at this time.

IV. Conclusion

Effective May 1, 2004, employers may (and should) accept unexpired RMI passports together with an unexpired admission document (i.e. an I-94) issued at the port of entry by the U.S. government as evidence of both identity and employment eligibility for 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 an I-94 for Compact entry may indicate “D/S” (duration of status) or otherwise lack a specific expiration date. An annotation on the 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 an 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 admitted under the Compact to be employed in the U.S., although RMI citizens having a valid EAD may continue to use it as evidence of work authorization.

This new List A documentation option applies at this time only to RMI citizens. While a similar option for FSM citizens is expected within the near future, it is not yet in effect. Employers will be advised of extension to the FSM when that happens. Documentation options for Palau citizens have not changed.