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DRAFT: May 22, 1974

Paper of the Marianas Political
Status Commission Regarding Immigration

The Joint Communique of June 4, 1973, stated that the applicability of the immigration laws of the United States "may be dealt with explicitly in the formal agreement establishing the future political status" of the Marianas. The issue was not raised by either party at the December 1973 round of negotiations. The Commission now wishes to present its concerns about this very important and sensitive issue to the U.S. Delegation.

I. Nature of the Concern

The basic problem is that the application of the U.S. immigration laws could very well have a serious and detrimental impact on the economic progress, social stability, and traditional culture and values of the people of the Marianas. The U.S. immigration laws were written against the background of a county with vast land area and a population of over 200 million persons. In that context, the admission of 170,000 immigrant aliens from the Eastern Hemisphere each year, for example, has little impact. But the probable impact on the Marianas is far different, for the Marianas are located much closer than is the mainland, to those countries which provide substantial numbers of aliens, and the Marianas have a small population and a very limited amount of land --a goodly portion of which will be made available for the national

defense. In addition, the expense of travel to the mainland makes it very likely that those aliens who are admitted to the Marianas and who have the right of travel will not be distributed fairly throughout the U.S., but will be concentrated in the Marianas.

For these reasons --the nature of the immigration laws themselves; and the size, population and geographical location of the Marianas --the people of the Marianas are extremely concerned about the application of the U.S. immigration laws to these islands. The experience of the other territories and of Hawaii, all of which are far larger, more populous, and more developed economically than the Marianas, demonstrates that these concerns are valid.

II. Possible Solutions

The Commission has devoted a very substantial amount of time to studying and discussing the problems raised by the immigration laws. We believe that the problems raised by the application of these laws are very difficult and we know that the issue is a sensitive one among our people. Accordingly, we hope to work with the U.S. Delegation develop a position which is mutually satisfactory. We are looking forward to hearing your suggestions with respect to immigration. Our own thoughts are as follows:

In the pretermination period, we believe that the local government should have the same control over immigration

as the TTPI now exercises. This seems consistent with the U.S. position as reflected in the draft Covenant, which, while it does not speak directly to the immigration issue, provides that the laws of the United States generally will not become applicable until termination. We are prepared to discuss the pretermination aspect of the immigration issue with you now, or during our talks on separate administration. In this connection, are also prepared to discuss whether additional provisions are desirable either in the status agreement or in the document establishing the separate administration, to assure that the local authority during this period is exercised in a way which prevents the admission into the Marianas of a person who would not be eligible for admission to the United States. We are further prepared to discuss whether there should be provisions which permit the United States to bring parolees into the Marianas for military construction purposes during this period, after consulation with the local government and the issuance of a labor certification, as is done in Guam.

The question of the applicability of the U. S. immigration laws after termination is more complex, in part because we cannot know with certainty when termination will occur and what the economic and social conditions will be at that time. There is one point which does seem to us to be

clear, however. We believe it is desirable to adjust the application of the U.S. nationality and naturalization laws so that residence or physical presence in the Marianas after termination would satisfy any requirement of those laws to the same extent as residence or physical presence in a State for the following persons only: children, spouse, parents, brothers and sisters of U.S. citizens or nationals who are domiciled in the Marianas; persons born outside of the U.S. of parents either or both of whom is a citizen or national of the U.S. domiciled in the Marianas; and U.S. nationals. This is essentially the same proposal we put forward at the last round in connection with the discussion of citizenship. And it is somewhat similar, though less restrictive, than the treatment of American Samoa. This position is reflected in Section 304 of the Draft Commonwealth Agreement.

The naturalization provisions are related to but do not resolve the immigration issue. We could try to resolve that issue in these negotiations --we could, that is, how immigration will be dealt with after termination, and reflect in the status agreement our conclusion. We could agree, for example, on a mechanism which grants to the Commonwealth government the initial decision-making authority with respect to the admission of aliens in accordance with U.S. immigration policies and perhaps with limited U.S. review to assure that the local decisions were not arbitrary or capricious. Or we could agree on numerical limitations which would be applicable to the Marianas, taking into account its available land area

and its population. The Commission has discussed these possibilities. For your information, there is attached a description of one post-termination mechanism we have considered in detail. We are willing to discuss this or any other scheme.

But before discussing the details of any post-termination mechanism or numerical limitation or other scheme, we ought to consider whether it is be preferable instead to agree now --and have that agreement reflected in our formal document --that the post-termination applicability of the immigration laws will be determined at the time of termination by consultations between the local government and the U.S. Government. This procedure would assure that the decision whether the U.S. immigration laws ought to apply in full force or with certain modifications will be made when all the facts are available and when the post-termination economic and social structure of the Marianas can more clearly be seen. This suggestion avoids the difficulties of trying to determine now what if any modifications in the U.S. immigration laws will be needed then to protect the legitimate concerns of the people of the Marianas. In order to assure that there is no gap in immigration controls, it could be provided that the

same controls which exist before termination would continue until there is agreement on how to proceed and Congress passes legislation dealing with immigration in the Marianas.

III. Conclusion

We have presented to the U.S. Delegation our thoughts about immigration, rather than a firm position on this topic, because we seek your help and expertise is resolving this sensitive and important issue. Approval of the final status agreement by the people of the Marianas may turn in good part on successful resolution of this issue. We look forward to your response and comments.

ATTACHMENT A

A mechanism to give the Commonwealth Government the initial decision-making authority with respect to the admission of aliens could be constructed as follows: The U.S. immigration laws would apply to the Marianas. But, except for those aliens who are exempted from the requirement and except for those for whom the Commonwealth waives the requirement, no alien otherwise qualified for admission*/ could come into the Marianas unless the Commonwealth certified that the alien "will perform necessary labor for which there are not sufficient workers in the Marianas, and that the employment of such alien will not adversely affect the wages and working conditions of workers in the Marianas." The Commonwealth could waive certification if it found it in the best interests of the Marianas and the United States

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*/ In view of the Marianas certification requirement, no additional labor certification would be required of aliens desiring admission to the Marianas, even if required by U.S. law or regulation.

to do so--for example, for persons not coming to the Marianas to work, but whose admission was desirable. The decision of the Marianas Government either to refuse certification or to refuse to waive certification would be reviewable by an appropriate official of the United States Government and could be reversed if it were arbitrary or capricious. Certain classes of aliens could be admitted without a Marianas certification or a waiver thereof, if otherwise qualified under U.S. law. These aliens are (1) those immigrants and nonimmigrants who, under U.S. law, receive preferential admission because of their familial relationship to a citizen or permanent resident of the United States, but only if that citizen or resident is domiciled in the Marianas; (2) those nonimmigrant aliens falling into the following categories: temporary visitors for business or pleasure; transit aliens; alien crewmen; diplomats; students; representatives of international organizations or foreign media; participants in a program approved by the Secretary of State and so-called treaty traders or substantial investors;*/ and (3) parolees brought

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*/ The suggestion that the treaty trader and substantial investor be exempt from the Marianas certification requirement is tentative, and a final decision will depend on additional fact finding in Guam.

in for military construction purposes (these aliens would be subject to the same labor certification process as parolees brought into Guam).