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Contractors Association: H-2B decision 'a partial victory'

Kevin Kerrigan | The Guam Daily Post 9 hrs ago



LABOR FORCE: The local construction industry faces a challenge meeting labor needs after an increase in denials of petitions for foreign workers on H-2B visas. Post file photo

It's unclear whether the preliminary injunction issued by the Guam District Court on Wednesday applies to all Guam employers in need of H-2B workers, or just the 12 plaintiffs who filed the lawsuit.

The order was handed down by Chief Judge Frances Tydingco-Gatewood. It requires the U.S. Citizenship and Immigration Services to reverse its previous denials of H-2B worker petitions and stop the blanket denial of future petitions, at least temporarily until the merits of the case have been decided.

Guam Contractors Association President James Martinez called the court's decision "a partial victory," but he's concerned about the process going forward, given the uncertainty over the court order.

The association is among the 12 Guam plaintiffs who filed the class action lawsuit in October 2016 in the wake of the USCIS' near total denial of all H-2B applications for Guam.

One of the plaintiff's attorneys, Jennifer Davis, confirmed that Tydingco-Gatewood's order does not grant class status to the lawsuit. "The motion for class certification is still pending, no decision yet," she wrote in an email to The Guam Daily Post.

"We know for sure that the order applies to the 12 plaintiffs, and it could possibly apply to a broader group," said Greg Massey, administrator for the Guam Department of Labor's Alien Labor Processing and Certification Division.

Even though class-action status has not been granted, Massey said the language in the order suggests that other employers in need of H-2B workers may be covered. He said nonplaintiffs should apply and "see how USCIS reacts."

Process can take months

Beyond the question of who is covered by the preliminary injunction, it'll still take at least three months before any new H-2B workers can be brought to Guam.

"Even if we can begin getting visas approved again," said AmOrient Engineering President John Robertson, "that doesn't mean they can walk in the door next week."

Robertson is chair of the committee overseeing the contractor association's H-2B litigation.

"The visas that were applied for and denied are stale now." That's because each H-2B worker application must state the specific construction job the person is being brought to Guam to work on, he said.

The projects listed on the old applications have either been canceled, or completed by other workers, explained Robertson. And the foreign workers whose visa applications have been denied since December 2015 have, in all likelihood, moved on to other jobs, he said.

"The whole process takes about three months to get workers over here, once they have been cleared," said Robertson. "We have to start the process all over again."

Robertson is concerned that the wait may be even longer. "I suspect that USCIS will have to come up with some approach to satisfy the court's order," he said, "but they may still put more strict terms on who applies, and how they apply."

Employers have to reapply

"Even though the judge said all the previous denials were vacated, their visas still expired," said Massey. "All the workers are gone. You can't extend someone who's not here."

As of this week, Massey said, there are only 35 H-2B workers left on Guam and "I think they'll all be gone by May." That's down from more than 1,000 just a few years ago.

Massey confirmed that any employer seeking H-2B labor will have to reapply. "They're going to have to start over and import brand-new workers."

The three-month estimate to bring in new workers is "the best-case scenario," said Massey. "From the time you apply to the time you have boots on the ground, you're looking at anywhere between 90 to 120 days."

The cost to bring in an H-2B worker varies widely depending on the number of workers needed and their specialty skills.

But on average Massey said, employers bring in between 15 and 20 workers at a time, in three different trades. "In that scenario, the cost from beginning to end, is about \$2,200 per worker."

More litigation expected

Contractors and many other businesses have been hurt by the immigration services' denial of H-2B visas over the past two and half years.

Robertson said, "It's had a negative impact on the Guam economy. I can't put a dollar figure on it, but it's a lot."

Contractors, "by far," have been hurt the most, he said.

"I've not heard of a case where a contractor has gone out of business, but they've all been hurt," he said. "Some have just stopped bidding on work. They can't get the labor so they don't bid on jobs."

It's too soon to say how long it will take to get back to normal, said Robertson. He points out that the injunction is only temporary, and there is more litigation ahead.

“There are still unanswered questions and we need for the attorneys to give us some guidance on how we go forward,” said Robertson. “It seems logical to me that (USCIS) will have to follow the judge’s order, and then maybe they’ll appeal.”

“We’ve spent almost \$100,000 on legal fees so far,” said Robertson, “but we’re not done. ... This victory will help us raise more money for the future.”