

# H-2B issues delaying local projects

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(Photo: Frank San Nicolas/PDN)

Local projects are being delayed due to the ongoing foreign worker issue.

Guam Housing and Urban Renewal Authority Executive Director Michael Duenas said renovations to the Asutmo Gym were delayed because its contractor lost employees to larger contractor.

"What is happening is contractors are scrambling to hire people," he said.

He said larger contractors with military projects are hiring other small to medium contractor's best workers with higher pay and benefits.

Because GHURA's contractor was scrambling to hire other workers to finish the project it pushed its completion by several months, Duenas said.

GHURA recently celebrated the completion of the project with a ribbon cutting ceremony.

The Guam Contractors Association and 11 affected businesses filed a federal lawsuit last year because of the visa denials. Most of the plaintiffs in the lawsuit no longer have H-2B workers on the payroll. The shortage of construction workers is expected to drive up construction prices, provided companies are able to take on the jobs at all.

The federal government's arbitrary denial of nearly all skilled foreign labor applications for Guam forced unprecedented action by Congress, which passed a national defense budget law that allows up to 4,000 H-2B workers every year on Guam, lawyers representing island businesses said.

"Never in the history of the H-2B program has such a drastic concession been given," attorneys Jeff Joseph and Jennifer Davis said in a filing in the U.S. District Court of Guam related to a lawsuit on H-2B visa denials.

Guam's H-2B population has gone from about 1,500 a year to fewer than 40 as a result of U.S. Citizenship and Immigration Services' denial of new and renewal H-2B petitions for Guam starting in 2015.

Despite the denial of nearly 100 percent H-2B petitions for Guam, USCIS insists there's been no rule change and that there's been chronic abuse of the H-2B program on Guam.

The latest National Defense Authorization Act allows Guam to have up to 4,000 H-2B workers every year, without demonstrating "temporary need" for projects related to the military buildup.

Duenas said he hopes military contractors will avail themselves of H-2B workers to ease the pressure on local contractors so there will be more stability in their work force.

He said if this happens the smaller to medium contractors will be more competitive in pursuing locally funded projects.

Another project GHURA is overseeing is the central police precinct being built in Sinajana.

The facility was slated to be completed by March, but the date had to be pushed back to August because of the same issue, Duenas said.

It will be a 10,000-square-foot building housing the police commander's office, several briefing and interview rooms, separate holding cells for adult and juvenile offenders, a fitness room, lockers and storage, according to a GHURA statement .

The new precinct will serve more than 50,000 residents in Barrigada, Sinajana, Agana Heights, Hagåtña, Mangilao, Asan-Maina, Mongmong-Toto-Maite, Yona and Ordot-Chalan Pago, the statement said.

Jun Espaldon, owner of Quick Service Foods Inc., which owns Wendy's and Cold Stone Creamery franchises, also noticed the situation affecting the opening of the Naval Base Guam location.

The company recently celebrated the opening of the location after several years of work.

"There was also no doubt in 2016, 2017 as it proceeded along we actually saw the effects of the H2 situation where it caused some additional delays," he said.

Several local companies have sued the federal government because of the issue.

Attorneys Joseph and Davis have argued the military buildup can and does impact projects that aren't associated with the military buildup, such as the construction of hotels, warehouses, the Guam Memorial Hospital's labor and delivery wing, and residential homes.

The lawyers said it's anticipated that employers who have military contracts will pull workers from employers working on nonmilitary contracts. This means it will be even harder for employers on nonmilitary projects to meet the demand or even bid on those projects.

Joseph and Davis said what the defense budget law's provision on Guam does is effectively create two classes of H-2B workers — military H-2B workers and nonmilitary H-2B workers.

"Without fair access to the program, those contractors who do not have military realignment projects are at a distinct disadvantage, and possibly harmed even more now by Congress being forced to change the law to allow what was always a reasonable and legal access to the program for decades," the attorneys stated.

Many of the plaintiffs and the proposed class in the H-2B lawsuit are nonmilitary contractors and employers.

"Their needs are not met by the provisions of the NDAA and they will continue to face the same challenges that they have faced for the past two years regardless of the passage of the NDAA," the lawyers said.

Greg Massey, Alien Labor Processing Division administrator for the Guam Department of Labor, said as of Thursday there were 35 H-2B workers.

According to December 2017 data, all 35 H-2B workers are from the Philippines and most of them are working as carpenters.

According to the breakdown the H-2B workers are doing the following:

- 12 cement masons
- 19 carpenters
- 3 bakers
- 1 bakery mechanic

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