

Judge grants preliminary injunction; H2-B visa applications to be reprocessed

By **Janela Carrera** - January 24, 2018



Guam – Local contractors can now breathe a sign of relief now that a decision in federal court could mean a green light for them to hire H2-B workers for the island.

For local contractors who have been suffering the consequences of near-100 percent denials, it is a victory. Chief District Court Judge Frances Tydingco-Gatewood's granted the plaintiffs: the Guam Contractors Association and 11 other local companies, a preliminary injunction.

But Judge Gatewood's decision does not quite put a clear stamp of approval on H2-B visa applications.

"The government has to reopen all of the H2-Bs that were denied from the named plaintiffs and those petitions basically need to be adjudicated," explained GCA legal counsel Atty. Jeffrey Joseph.

In granting GCA's preliminary injunction and enjoining the U.S. Citizenship and Immigration Service from relying on temporary need as a basis for H2-B denials, all visa applications

previously submitted that were denied based on temporary need will need to be revisited.

“So in other words, the government could possibly deny it on other grounds, but they cannot deny it on temporary need. And that’s what all of the applications were denied on,” said Josep

“If they were to remove that temporary need as a finding to deny visa applications and let’s just say there’s no fraud involved in any of these applications or overstay—perfect application besides the temporary need aspect; and because they can’t use temporary need as a reason to reject these applications, what else would they be left with to use as a means of denying these applications,” asked PNC.

“Nothing. They should approve them,” Joseph said.

Judge Gatewood’s order also applies prospectively, Attorney Joseph says. That means any future applications submitted by local contractors to the USCIS cannot be denied based on temporary need. With a preliminary injunction against the USCIS, Joseph says the case will now proceed to the merits.

Another order issued by Judge Gatewood is on the employers’ labor certifications, which will remain valid.

“One of the ways that they could deny, they could simply say, ‘Well the labor certification you received from Guam has since expired and therefore we cannot approve your H2-B application and it would’ve been an easy out for the government. So anticipating that, we specifically requested that in order for the plaintiffs to be put back in a position they would’ve been in prior to 2015, that the labor certification issued for Guam would also have to be sort of *nunc pro tunc* validated through the period of the petition,” explained Joseph.

Although the judge denied GCA’s motion to dismiss, she acknowledged, as did the U.S. Magistrate judge in his recommendation, that these visa denials have caused irreparable harm.

“The public interest weighs in the employers’ favor...The absence of preliminary relief here poses various massive, concrete and imminent risks of harm for the employers and the public more generally, from domino-like webs of bankruptcies and public health crises to environmental harms and stalled and substandard completion of projects critical to the nation’s security and defense,” Judge Gatewood said in her opinion.

For the plaintiffs, it's a huge sigh of relief.

"They've been unbelievably patient and sort of waiting for this happen and we're not talking about small potatoes here, we're talking about millions and millions of dollars in litigated damages and so tonight is the first night where they can kind of sleep soundly knowing that they're not going to be looking at violating contracts and laying workers off and possibly going bankrupt," Joseph noted.

You can read the judge's decision [here](#).

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