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Labor 'crisis': Civilian work projects could further stall

Kevin Kerrigan | The Guam Daily Post 7 hrs ago



ROADWORK: Construction work continues with the goal to widen and add lanes on Route 3 in Dededo. The planned Marine Corps base will have a gate along Route 3. David Castro/The Guam Daily Post

The removal of the Philippines from the list of countries whose residents are eligible for H-2B visas may not have a major impact on the military's need for skilled foreign labor on Guam, according to Guam immigration attorney Jennifer Davis.

On Saturday, the U.S. Department of Homeland Security, "with the concurrence of the Secretary of State," posted a notice in the Federal Register that the Philippines no longer meets "the regulatory standards" for its citizens to apply for H-2B visas. The Philippines will remain off the list for at least 12 months until DHS updates the list one year from now.

The notice was prompted by what Homeland Security called a high number of Filipinos who have stayed behind in the United States after their temporary work authorization expired, as well as those who became human trafficking victims after being issued H-2B visas.

However, Davis said her impression is that the U.S. Citizenship and Immigration Services “will consider applications filed under the (National Defense Authorization Act) for Philippine H-2B workers favorably.”

Davis referred to the paragraph in the DHS notice that states: “For example, USCIS may favorably consider a beneficiary of an H–2B petition who is not a national of a country included on the H–2B eligibility list ... if the petition qualifies under Section 1045 of the National Defense Authorization Act.”

Section 1045 allows USCIS the flexibility to grant up to 4,000 H-2B visas to Guam employers seeking to bring in skilled foreign laborers to work on construction projects or facility services directly related to, or associated with, the military buildup on the island.

“They’re not guaranteeing it by any means,” said Davis, “but I hope they are signaling to us that they are going to allow us to bring H-2B workers from the Philippines if the petitions are filed” under the 2019 National Defense Authorization Act.

The administrator of the Guam Department of Labor Alien Labor Processing Division echoed her view.

“It’s a matter of concern, it needs attention,” said Greg Massey, but “I don’t think we’re going to take too big of a hit,” at least not on petitions for H-2B visas to work on military buildup-related projects.

However, Massey cautioned, “we still need to see some test cases.”

Massey said there are a few Guam employers who have pending H-2B applications for military-related projects ready to file in the next few days.

“So we should be able to see what USCIS’ reaction is going to be within the next 15 to 30 days,” he said.

Not OK for nonmilitary projects

Massey and Davis agree it’s a different story for private contractors seeking H-2B workers for nonmilitary-related projects. Those petitions are already at a standstill, and the DHS notice removing

the Philippines from eligibility sets them back even further.

The Guam Contractors Association and 11 other Guam employers filed a class-action lawsuit against USCIS in October 2016 after its yearlong, near-100 percent denial of all petitions for skilled foreign workers under the H-2B visa program

The GCA won a decision from Chief Judge Frances Tydingco-Gatewood of the District Court of Guam in January 2018 ordering USCIS to reverse its previous denials of H-2B worker petitions and to stop the blanket denial of future petitions.

Yet not a single H-2B petition from any Guam contractor for nonmilitary-related work was granted until GCA filed a motion asking the court to hold the USCIS in contempt in October 2018.

One nonmilitary-related approval

Since then, USCIS has granted one employer's application for an H-2B visa to work on a nonmilitary-related project, Massey said.

The DHS notice will only make an already bad situation worse, said John Robertson, AmOrient Engineering president and chairman of the committee overseeing the Guam Contractors Association's litigation.

"It'll have a big impact – very big," he said.

"The Philippines is to Guam what Mexico is to California," said Robertson. Whether it's for construction work or for harvesting agricultural products, the demand for foreign labor is great, Robertson said.

"There are alternatives to the Philippines," said Robertson.

Non-English speakers

Taiwan, Korea and Thailand are on the list of eligible countries, but the costs to hire workers from those nations is higher than the costs to bring in workers from the Philippines, Robertson said, and generally they don't speak English.

"It causes complications, especially when you have a mixed group of workers from different parts of the world," he said.

English is widely spoken in India and Malaysia, but similar to the Philippines, they are not on the list of 81 countries eligible to take part in the H-2B visa program.

Robertson hopes Gov. Lou Leon Guerrero and Guam Del. Michael San Nicolas can reverse the DHS decision.

"This crisis remains a priority, especially given the denial of nearly all petitions over the last few years," the governor said in a statement on Tuesday.

Leon Guerrero said she will raise the issue directly with President Donald Trump and communicate with Homeland Security Secretary Kirstjen Nielsen to restate Guam's need for skilled labor from the Philippines for both military and civilian projects.

San Nicolas issued a statement saying, "It is clear that the tit-for-tat of using lawsuits to address Guam's H-2B issues is only going to further complicate matters. I look forward to an opportunity to reset the dialogue."

"We need to work with the concerns of the State Department and approach the issue not as adversaries but as partners with the federal government," San Nicolas said.

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