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## No H-2s by 2017?

### DOL warns of drastic decrease

John O'Connor | Post News Staff Updated 11 hrs ago



BELOW 100: Greg Massey, administrator of the Guam Department of Labor's Alien Labor Processing and Certification Division, says visa workers may fall below 100 individuals – and potentially even drop to zero – by the end of December. Post file photo

## Dwindling numbers

The number of H-2B workers on Guam in 2016 by month:

- March: 1,514
- April: 1,463
- May: 1,400
- June: 1,346
- July: 1,263

*Source: Guam Department of Labor*

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There are about 1,200 H-2B visa workers currently on Guam, but that number may drop drastically by the end of the year if there is no change in how visa requests are being processed, according to Greg Massey, administrator of the Guam Department of Labor's Alien Labor Processing and Certification Division. He said the number of H-2B visa workers may fall below 100 – and may even drop to zero – by the end of December.

While a congressional solution for military-related projects is contained in a provision in the Fiscal 2017 National Defense Authorization Act, the law likely won't be implemented until April 2017 at the earliest.

There have been only two H-2B visa approvals out of 670 requests since January, Massey said, setting the approval rate at a nearly zero since the beginning of the year. The remaining 1,263 H-2B workers on the ground are expected to leave near the end of the year through the standard expiration of their visas. It is difficult to gauge what the decline will be month over month because of pending decisions on visa applications and extension requests, but Massey said his department's "best guess" is that Guam will have 100 temporary workers or fewer by December 2016 or January 2017.

### **Precursor to a denial**

The lack of approvals is unprecedented for Guam, which has enjoyed a nearly 100 percent approval rate in the past. Guam is also supposed to be exempt from the annual national cap of 66,000 H-2B visas. Approvals may be few, but there has also been little movement on visas overall. In May, Massey said most visa petitions were issued requests for evidence (RFEs). These requests are used to clarify certain aspects of a petition but the benchmark seems to have been set unusually high, Massey said in June. The RFE process can take an unusually long amount of time as well, putting petitions on hold.

Regardless, an RFE is essentially a precursor to a denial, Massey has said previously.

A release from the Office of the Governor on Aug. 22 stated that despite repeated attempts at communication, there is no indication that federal officials will reverse the current trend. A representative from the U.S. Citizenship and Immigration Service told the Post in May that there have been no policy or procedural changes to how the office handles petitions.

"I can tell you that USCIS is aware of the importance of the H-2B program to Guam and is committed to ensuring the H-2B program functions as it is intended within the statutory and regulatory framework," the representative stated.

There has been some change in the office's adjudicators, however, and Massey has stated that this change may have also resulted in a shift in thinking and increased scrutiny.

Gov. Eddie Calvo is meeting with U.S. Department of Labor and Office of Economic Adjustment representatives this week to discuss short-term and long-term alternatives, the governor's release stated.

The House and Senate are still reconciling their versions of the NDAA, Massey said. Guam Delegate Madeleine Bordallo managed to include a provision in the House version of the bill that extends Guam and the CNMI's exemption from the national H-2B cap until Oct. 1, 2029. The provision specifically provides support for military-related projects and the health care industry.

"We make the case that our health care industry helps to support the realignment and broader Department of Defense/Veteran's Affairs mission on Guam by providing specialty services that may not be provided on base," a representative from Bordallo's office stated in May.

## Looming labor shift?

Meanwhile, local private construction projects unrelated to the military have few options with the current situation. These include housing and school projects, such as the contested renovation of the Simon Sanchez High School campus. Mark Mamczarz, vice president of accounting and finance at Black Construction Corp., predicted a looming labor shift with the adoption of the NDAA and its provision, in which more H-2B workers are hired to work on military projects while companies competed for what remains of the local U.S. workforce.

This could lead to smaller construction companies losing more projects as H-2 workers had allowed them to compete with large contractors. It could also mean higher costs for projects as companies pay more to keep their workers, Massey said during a presentation at the Rotary Club of Northern Guam in June.

"The governor's office, and us and the congresswoman's office ... we haven't stopped on this," he said yesterday. "We're pounding the pavement and doing what we can to find a governmental fix."

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Reporting on utilities, healthcare, education and other topics.