

Governor of Guam
2017 H-2B Task Force

IMPACT OF H-2B VISA DENIALS ON GUAM

August 2017



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FORWARD

The Governor of Guam's 2017 H-2B Task Force has compiled pertinent information in this important report on the impact of H-2B visa denials on Guam. Presented herewith is the first comprehensive assessment of the effects of these denials for Guam since December 2015, including evidence of diminished economic capacity from the reduction of access to skilled temporary workforce.

The study's principal finding is the crippling of the local construction industry and restricted potential growth directly related to the federal government's recent practice of denying critically needed skilled temporary workers. Many Guam employers have been irreparably harmed during a time that they should be prospering from the opportunities stemming from Guam's strong economy and impending military buildup.

Businesses and their employees are critically impacted and deserve major attention. As presented in the body of the report, many Guam businesses are likely not able to provide the goods and services vital to the economy of Guam without the H-2B program. Affected business include small-, medium- and large-sized employers within Guam's key industry sectors. They rely on the program to keep their businesses open and growing, thereby creating and sustaining opportunities for U.S. workers.

As in the mainland, the program continues to receive constant criticisms based all too often on rhetoric and hypothetical scenarios, as opposed to hard economic data and realities. This report presents the relevant data and situational analysis for Guam and its isolated U.S. workforce. Contrary to critics' claims, the H-2B visa program does not depress wages of U.S. workers in similar occupations, and H-2B workers do not take jobs from their U.S. counterparts. Guam's unique program, although similar in many ways, is vastly different from the H-2B program in the U.S. mainland. In addition, Guam is proud of its reputable strong fraud and abuse prevention measures designed and proven to stop potential systemic abuses.

Guam appeals to the Administration to recognize Guam's unique labor market needs and enact regulatory changes for Guam that restores the status quo and facilitates legal continued access to the program. Since 1985, under the stewardship of the Governor of Guam, the H-2B program has been an effective and successful program which benefits the people and economy of the island. Unfortunately, all access to the program has now been administratively blocked by the federal government, despite representations by USCIS of no changes in rules or law.

This report illustrates Guam's unique need and the importance for temporary non-immigrant skilled workers, historically supported by the H-2B program armed by Guam's diligent stewardship. It should serve as a catalyst for meaningful discussions with stakeholders as Guam leaders strive to find resolution to "**Guam's H-2B Crisis**".



EDDIE BAZA CALVO
Governor of Guam



SHIRLEY "SAM" MABINI, Ph.D.
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About the Governor's 2017 H-2B Task Force:

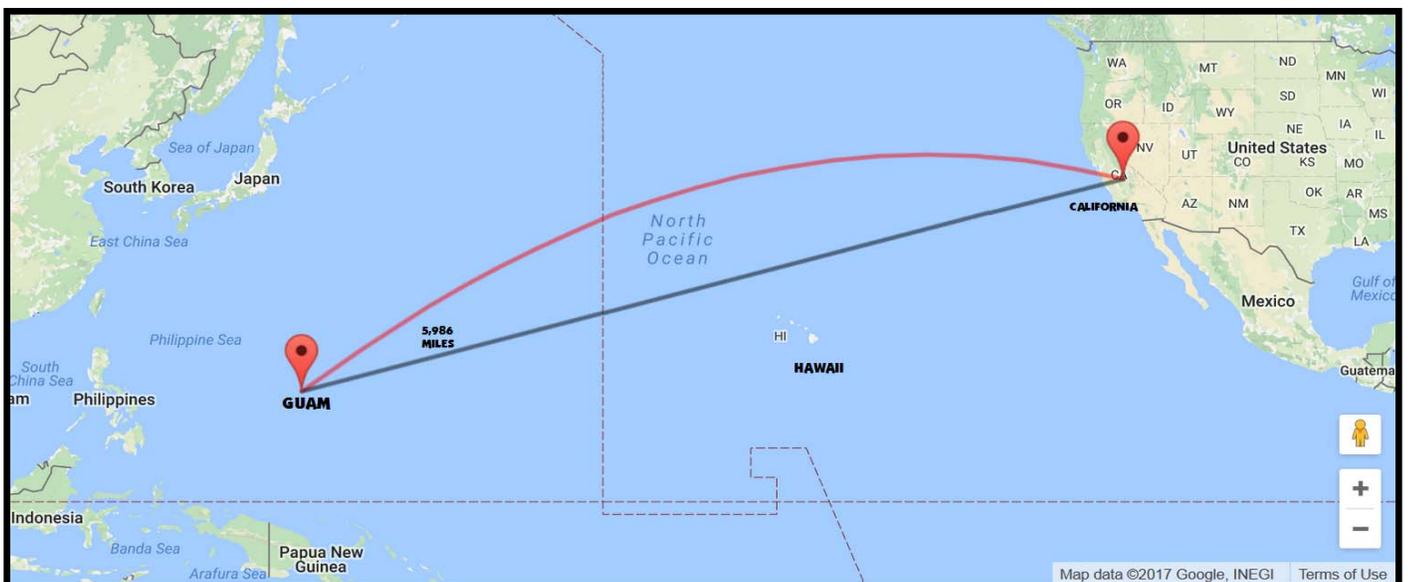
The Governor of Guam's 2017 H-2B Task Force was created in early 2017 in response to the unprecedented denials of H-2B workers for Guam. For over 30 years, Guam employers have had reasonable access to the H-2B program, designed to fill gaps by supplementing the local workforce with skilled Temporary Non-immigrant Workers. That access has been effectively cut off since December 2015.

The Task Force is chaired by the Director of the Guam Department of Labor, Dr. Shirley "Sam" Mabini. The core leadership group is staffed by representatives from the Guam DOL, the Guam Buildup Office and the Guam Economic Development Authority. Note that the Guam Buildup Office worked closely with local U.S. Military representatives directly engaged and concerned with the construction workforce shortage issues. The larger circle of Task Force members are comprised of Government representatives from various agencies and the general membership or "OneGuam Circle." The OneGuam Circle consist of private sector businesses and organizations, such as the Guam Chamber of Commerce, The Guam Contractor's Association, The Guam Hotel & Restaurant Association and the Guam Association of Realtors. This helped ensure Guam's main industries are represented in the study.

The goal of the Task Force is to gather information from all sectors of the economy and develop a comprehensive report on what has been dubbed "**Guam's H-2B Crisis.**" This report consolidates relevant information and data into one reference document that can be used by all, as Guam's leaders attempt to resolve this very critical and growing manpower crisis.

Guam Facts:

- **Remote Location** Approximately 6,000 miles from U.S. West Coast
- Island topography, approximately 30 miles long x 8 miles wide
- Weather conditions: tropical, high humidity, with an average temperature of 86° all year-long
- Population: 170,000
- Residents are U.S. Citizens by birthright
- Remote island economy, isolated from viable pools of domestic U.S. skilled labor



EXECUTIVE SUMMARY

KEY FINDINGS ON THE IMPACT OF H-2B DENIALS

1. 30% loss of overall construction capacity from the inability to supplement key skill sets, primarily in the occupations of Carpenter, Cement Mason and Ironworker.
2. Increased Construction Costs – Budget and funding considerations put future projects in jeopardy.
3. Chilling Effect from workforce uncertainty, causing contractors not to bid thereby hindering ongoing projects, progress on new projects and forcing some businesses to close.
4. According to the Federal District Court in Guam, contractors have suffered irreparable harm to their businesses as a result of H-2B denials thus negatively affecting the economy of Guam.
5. Reduced access to contractor' services, effecting negative impact to Public, Private and Government Sectors through significant project delays and unusually long construction completion timelines
6. Loss in Government Revenues, affecting GDP.
7. Widening Skills Gap – Insurmountable in the short term coupled with an anticipated construction boom.
8. Compromised work quality on existing projects due to skilled worker shortages.
9. Concerns for the potential use of illegal workers by desperate contractors, cut off from previous legal avenues, thereby raising opportunities for or attracting foreign workers who may seek to illegally work.
10. Irreparable harm to many Guam contractors and harm to the Guam economy.



TASK FORCE REPORT CONCLUSIONS

1. Guam's special labor market conditions isolate it from accessing sources of skilled workers in other areas of the United States, thus creating a need for access to temporary workers who may be imported for temporary jobs, and repatriated after those jobs end.
2. The USCIS denial of all H-2B petitions has created a crisis on Guam, which depresses the construction industry and creates negative downstream economic and socio-economic effects which impact the federal government, the Government of Guam, private sector business and the people of Guam. Should the crisis continue, Guam's economy would likely spiral into recession.
3. To immediately overcome this challenge and resolve this crisis, a change in federal regulations is necessary which addresses Guam special temporary need. The optimal solution would be to exempt Guam from the current temporary need criteria and allow the Governor of Guam to determine temporary need using a system developed by the Governor. Long term changes, in the form of a Guam-only temporary workers visa, may need to be made in the future when congress entertains comprehensive immigration reform.



The Impact of H-2B Visa Denials on Guam

INTRODUCTION

Guam's isolated island economy, remote geographic location from the continental United States (CONUS), small jurisdiction, lack of labor union presence and lack of unemployment insurance benefits contributes to Guam's labor market susceptibility related to certain workforce gaps, most notably in the construction sectors. Guam has a long history of necessity for a temporary force of skilled workers, especially in the construction trades, since the virtual destruction of Guam during World War II. Since then and over the last several decades, Guam has had cyclical spurts of development in two of Guam's largest industries -- tourism and the military. As such, the largest construction projects involve hotel and military base development. Guam is currently on the cusp of an extended period of unprecedented growth with the movement of Marines from Okinawa to Guam, topped by a booming tourism industry.

The need for a scalable and reliable construction workforce is vital to the success of future growth and the economic prosperity resulting from completed infrastructure developments. Like CONUS, Guam also faces challenges in hiring and retaining willing and qualified workers, especially for construction jobs. Hence, Guam must have access to its proven source of supplementary temporary foreign workers. It is expected that in the next three to five years, an additional and unprecedented 3,000 - 4,000 skilled workers will be needed to meet workforce demands. Without the supply of these skilled workers, the country's planned U.S. military and local civilian projects cannot be executed and achieved.

Although skills training and apprenticeship programs have been available for decades, U.S. workers in the jurisdiction tend to gravitate toward higher level construction occupations (e.g. Electricians, Plumbers, Equipment Operators), shying away from structural occupations (i.e. Carpenters, Cement Masons & Ironworkers), which are more physically demanding in Guam's extreme tropical climate. Anecdotally, Guam also notes periodic drains of local skilled workforce as locals migrate to CONUS job opportunities, often to highly unionized areas, which offer better pay and benefits. Additionally, this poses another challenge in the retention of skilled trade workers. Guam lacks an Unemployment Insurance system or union shops that offer benefit packages to help tide over skilled construction workers between jobs.

In December 2015, the United States Citizenship and Immigration Service (USCIS) started denying H-2B petitions which had, for the past 30 years, been routinely approved at a rate of about 95%. In FY2017, the island has experienced a 0% approval rate for all H-2B petitions across the board and across all industries, regardless of the employers need, occupation, or situation. This sudden shift to a policy of wholesale H-2B denial has drastically affected Guam's ability to move military construction projects, public infrastructure and private sector development. As such, Guam contractors and employers have experienced serious economic harm to their business as a result of this seemingly arbitrary action by the USCIS. Most importantly, the People of Guam have been harmed by the slow-down of economic growth in a time when the economy was forecasted to accelerate.

**0% USCIS
Approval Rate for
all H-2B petitions
for all categories
since Oct. 2016**

As of the date of this report, many efforts have been made by the Governor and the Guam business community to resolve this H-2B Crisis...to no avail. The leaders recognize how foreign worker programs have become a hot topic on the national stage in recent years, facing strong criticism.

Overcoming unwarranted stereotypes of the program and securing meaningful dialogue with decision makers in Washington D.C. have been very difficult for Guam’s public and private leaders. The need to assess and present Guam’s case prompted the creation of a task force and the development of this report.

This is the first comprehensive report on Guam’s H-2B issue in decades, with a particular focus on the impact of the recent denials resulting in **Guam’s H-2B Crisis.**

Federal Court Recognizes Impact to the Guam Economy:

Elizabeth Barrett-Anderson, the Attorney General of Guam has indicated that a recent filing in Guam’s Federal District Court speaks to the impact to Guam’s economy. She writes:

On August 11, 2017, The Federal District Court of Guam has acknowledged the negative impact of the Guam denials on the public interest of Guam, and upon on-going military buildup efforts:

“Congress manifested its intent to protect the U.S. workforce by imposing a statutory cap on the total number of foreign nations who may be issued an H-2B visa in any given year. Guam, however, is exempt from this cap until December 31, 2019. This exemption was granted to Guam because the island would need a sufficient number of workers to prepare for the transfer of thousands of members of the U.S. Marine Corps from Okinawa to Guam. The court notes that ensuring that the island’s military build-up is not delayed is an important public interest, not only for Guam but for the U.S. military as well. The planned Marine relocation cannot occur until the appropriate facilities are constructed on island, and the Plaintiffs have alleged that related construction projects may be seriously impacted by the recent denials of the H-2B petitions.

“The court concurs that the denials of the H-2B petitions has negatively impacted Guam’s economy.”

Guam Contractors Association et.al. vs. Jefferson B. Sessions III, Civil Case #16-00075, Federal District Court of Guam.

Another public interest at stake is the effect a delay in the military build-up or a shutdown of businesses will have on Guam’s economy. The court concurs that the denials of the H-2B petitions has negatively impacted Guam’s economy.”

*U.S. Magistrate Judge
Joaquin V.E. Manibusan Jr.
District Court of Guam*



The military build-up is intimately woven into Guam’s economy and community. It is impossible to separate the US Marine Corps build-up from its impact in all aspects of our island: infrastructure (roads, water, power), education, criminal justice, hotel and restaurant, commercial and residential accommodations, etc. A build-up “behind the fence” of military installations on Guam must have a corresponding economic equivalent outside the fence in our community. This can only happen with the reinstatement of H-2B visa approvals for Guam.

H-2B PROGRAM IN GUAM

The H-2B program in Guam has allowed employers to bring skilled foreign workers into the United States to fill temporary jobs in sectors other than agriculture. Employers of all sizes, primarily in construction but also in a variety of other industries in smaller numbers, turn to the program when they cannot identify enough skilled U.S. workers to hire.

H-2B visa holders play a small role in the overall Guam workforce (about .02%), but they fill an important skills gap that is present for hard to fill positions. The H-2B workers tend to support important segments within an employer's organization, thus, increasing the employability of available U.S. workers in other or related occupations. It is notable that in Guam's construction workforce, residents tend to shy away from trades that are environmentally difficult and physically strenuous, and gravitate to occupations that offer lighter physical demands or more technical skills.

Many employers who use the H-2B program report that their businesses would have to downsize or close if H-2B workers were not available. They explain that these workers are essential to meet necessary temporary workforce levels in order to effectively bid for and complete projects.

Nationally, the H-2B program has been subject to much criticism from labor unions and others claiming how it allows for the exploitation of foreign workers, while undermining American workers and resulting in



lost wages. However, a 2010 U.S. Chamber of Commerce report on the Economic Impact of H-2B Workers indicated that an economic analysis found no evidence to support such claims. Employers consistently indicate that the program enables them to fill jobs that are not being filled by U.S. workers. Employers also report that using the program enables them to hire more U.S. workers for relatively higher-skilled jobs that support or rely on positions held by H-2B workers.

For Guam, companies must meet a complicated set of requirements before they can hire H-2B visa holders, including making extensive efforts to recruit U.S. workers.

Employers must file documents with three government agencies. They must obtain a temporary labor certification from the Governor of Guam via the Guam Department of Labor (GDOL), then their petition for a foreign worker is forwarded to and must be approved by U.S. Citizenship and Immigration Services (USCIS). Businesses must demonstrate that their need for a foreign worker is temporary, and abide by government-mandated prevailing wages.

These H-2B visa requirements are considered costly and onerous for any company. This is particularly true for small and medium-sized businesses that anecdotal evidence reflect as being the heaviest user of H-2B visas. Still, despite the complex requirements and 30 years of precedence, USCIS continues to deny nearly all H-2B petitions since October 2015. This is irrespective of employers' differing needs, industry, requested occupations or business situation. Since October 2016, USCIS has denied all H-2B petitions citing employers inability to meet USCIS standards for justifying temporary need. Statistically, the denial of all Guam-based petitions is questionable. A 100% denial rate implies a failure to exercise sound review and discretion, and verges on arbitrary action.

Important to note is that when U.S. workers are readily unavailable or unwilling to take on certain jobs, the H-2B program offers an important safety valve for Guam employers needing supplementary skilled workers on a temporary basis. This mirrors situations reported by industries the United States.

Based on the task force fact finding and review, the following statistics and information on impacts to Guam must be considered:

Program Implications

■ **STATISTICALLY, USCIS DENIALS OF GUAM H-2B WORKER VISAS APPEAR ARBITRARY.**

Estimated Typical Approval Rate from 1990 thru 2015 is 95%			
USCIS I-129 Petitions For H-2B Visas	Number of Positions Filed	Number of Positions Approved	Approval Rate
October 2015 thru May 2017 <small>FY16 & 17 Combined</small>	3,728	129	3.46%
*October 2016 thru May 2017 <small>FY17 (to date)</small>	1,004	0	0%

* The FY 2016 & 2017 H-2B visa applications represented 10 industries and 42 types of jobs, i.e.:

INDUSTRY	TYPES OF JOBS
Construction	Carpenter, Cement Mason, Reinforcing Metal Worker, Electrician, Painter, Plasterer, Plumber, Structural Steel Worker, Camp Cook
Hospitality	Chef, Restaurant Manager, Specialty Chef, Spa Manager, Spa Therapist, Guest Relations Host/Hostess
Healthcare	Critical Care Nurses, Biomedical Equipment Specialist, Radiologic Technologist, Nuclear Medicine Technologist
Landscaping	Landscape Gardener
Commercial Bakery	Baker
Mechanical Installation & Repair Services	HVAC Maintenance Technician, HVAC Mechanic, Shutter Fabricator/Assembler, Machinery Maintenance Worker, Assistant Solar (PV) Installer
Personal Service	Fitness instructor/trainer, Floral Designer, Wedding Service Attendant, Caregiver
Ship Repair	Insulator/Lagger, Machinist, QC Inspector Pipefitter, Shipwright Carpenter, Welder/Fitter
Transportation/Maintenance Services	Automotive Master Mechanic, Auto Body Repairer, Heavy Equipment Mechanic
Wholesale	Market Research Analyst

- **UNIQUE LABOR MARKET CONDITIONS** – Guam’s geographic location isolates the island’s local labor market, limiting workforce support options readily available in other CONUS jurisdictions. Employers have no access to pools of skilled domestic workers from local unions or open shops. Similar pools within easy access or affordable commutable distance to Guam are also prohibitive to businesses.
- **TYPICAL H-2B USAGE- CONSTRUCTION and NON-CONSTRUCTION** – Businesses on Guam recognize the availability of unskilled labor on Guam, and that **virtually all of the H-2B positions requested for Guam are for skilled workers** or semi-skilled workers with special job requirements.

This is a significant difference from CONUS H-2B workers, wherein almost all are exclusively *unskilled and low-paid* positions (i.e. housekeepers, landscape or construction laborers). This important distinction is often overlooked, erroneously lumping Guam with the concept of how H-2B workers are universally considered in low paid and unskilled positions. Again, this is not the case for Guam and attention is needed to the fact that essentially only skilled workers are recruited for Guam through H-2B visas.

Specialized workers for certain non-construction occupations are also critical for other industry sectors, representing only about 10% of the total H-2B worker population for Guam (the vast majority in construction occupations). These specialty jobs are found in Ship Repair, Medical Imaging, Healthcare, Hospitality and Renewable Energy. These types of specialized workers are limited in Guam, so foreign labor provides the temporary support needed for businesses to deliver important goods and services.

Guam H-2B positions
are for skilled workers
unlike typical
CONUS H-2B
workers.

■ H-2B WORKERS: ADDRESSING PROPONENTS' AND OPPONENTS' CONCERNS

- Skilled U.S. workers are not interested or willing to take posted temporary jobs on Guam. Employers report that they often have to turn to H-2B workers to fill this gap. According to employers' anecdotal feedback, the physically demanding nature of many of these temporary jobs is unappealing to many U.S. workers. Subsequently, enticing large numbers of U.S. workers into registered apprenticeships and other training programs to meet the skills gap has been problematic in the past. Innovative training programs are being developed to build interest in the trades and overcome a culture where college preparation is preferred over credentialed trade skills.
- H-2B workers *do not take away jobs* from local workers. A statistical analysis conducted for this report reflects how the increase or decrease of the local economy is paralleled by the number of H-2B workers utilized. In essence, H-2B visa use correlates with supply demands of the economy. This, in turn, builds more employment opportunities for U.S. workers in other occupations.
- Access to H-2B workers help employers create jobs for Americans. H-2B workers often allow employers to hire more U.S. workers for skilled, year-round jobs. This claim is consistent with a 2008 case study of the Maryland crabbing industry and with a 2010 Economic Impact Study by the U.S. Chamber of Commerce, both of which found the H-2B program preserved and sustained U.S. worker jobs
- Competition in the market is improved when more businesses are confident in the availability of a reliable workforce. The program provides this workforce option. This helps level the playing field for local or smaller companies that face stiff competition from larger national corporations with greater resources.
- Productivity and reliability of H-2B workforce are hailed, as indicated by surveys of employers that hire both H-2B and domestic workers. Skilled H-2B workers brought into Guam are recognized as having equal competence with U.S. counterparts, which is critical for successful project completions.



- There is no empirical support for claims that the H-2B program adversely affects U.S. workers. Indeed, the GDOL will not approve an employer’s application for H-2B workers unless it concludes that U.S. workers will not be adversely affected, as required in regulations. In 2016 and 2017, of the 85 occupations requested for H-2B Employment, only 14% of the occupations had Prevailing Wage Rates below \$11.00 p/hour. The highest wage rate was \$34.49 p/hour.
- The Guam H-2B program includes significant worker protections for both U.S. and foreign workers.
- Guam touts strong enforcement of existing regulations, thus allaying any concerns about abuses by staffing agencies and foreign recruiters. Guam labor certification requirements do not allow for staffing agencies. Also, close coordination with U.S. State Department and USCIS Fraud Units help prevent foreign recruiter abuses.



▪ **AFFECTS TO THE NATIONAL INTEREST AND NATIONAL SECURITY**

DEPARTMENT OF DEFENSE

- MILCON – Ability to add or modify existing military installations is hindered by the inability of local contractor’s to source skilled workers needed for larger military construction (MILCON) projects, which are essential to national security.
- Maintenance of Bases – Base Operations Support (BOS) contracts for the Air Force and Navy may be in jeopardy, as local contractors seek to fill their workforce needs through unusually aggressive recruitment efforts. Recruitment successes by local businesses which shift U.S. workers away from BOS contractors could reduce defense readiness, compromising national interests.
- Treaty Agreement with Government of Japan on Marine Relocation – This agreement commits the U.S. Government to the movement of Marines from Okinawa to Guam and elsewhere. The Government of Japan has invested billions of dollars toward this movement. The Department of the Navy has officially designated this activity as a National Security issue.

Navy Report says without H-2B workers:

“...there is a substantial risk that the program construction timeline would be un-executable.”

Excerpts from:

DEPARTMENT OF THE NAVY REPORT TO CONGRESS on Workforce Issues for Relocation of Marines to Guam - March 2017



“However, given the magnitude of the construction required for the relocation and the limited supply of U.S. labor in the region, the inability of construction contractors to obtain sufficient labor will result in program impacts. If Guam employers supporting the realignment of U.S. Marines to Guam are unable to hire sufficient H-2B workers, there is a substantial risk that the program construction timeline would be un-executable.”

Also in the report:

“The realignment to Guam and other DoD initiatives in the CNMI are vitally important to our national security in support of our enduring military presence in the region. DoD requires a robust available labor pool which is essential to achieving DoD goals for the development of a geographically dispersed, operationally resilient, and politically

sustainable United States military posture in the Asia-Pacific region. The construction necessary to support the relocation of Marines to Guam will require large increases in construction workers on Guam. Unless construction is slowed to match the available workforce, and absent an option for contractors to utilize the H-2B visa program for skilled construction workers, the DoN expects construction costs to rise significantly due to the higher cost of importing U.S. construction workers. Guam relocation costs are capped at \$8.725 billion, and the DoN believes additional H-2B worker flexibility is necessary to ensure the relocation projects are completed on time and on budget.”

“One Guam” Pillar of the Programmatic Agreement for Marines Relocation – Based on the Marine Relocation SEIS and subsequent Record of Decision, it appears difficult to differentiate the Marines Relocation program activity from other construction and infrastructure work being done in Guam. The reason is that projects relate either directly or indirectly, as in through induced impacts resulting from associated business activity or increased population spurred by federal activities.

ONE GUAM APPROACH

The Department of Defense’s Marine Location project, commonly known as the *Guam Military Buildup*, is a multi-billion dollar project funded by the DOD and the Government of Japan. Although there is a specific funding source and associated Record of Decision for this activity, it is important to understand that this activity induces many other projects and activities that span all sectors of Guam’s community and economy.

Consideration must be given to the infrastructures needed to house and accommodate the civilian workers for the actual projects. Also, there is the increased population resulting from services supporting worker accommodation, health care, importation and transportation of materials and entertainment.

Induced economic activity is also substantial. Developers are building houses, apartment buildings, retail outlets, warehousing facilities and building capacity in hospitality and entertainment businesses. This private sector build-up is spurred not by organic growth, but from the anticipated growth of 8,000 servicemen, their families and supporting civilian personnel.

On the Government of Guam side, the preparation is even greater as local infrastructure must be built up before or in sequence with the military program. Prime examples include roads that must be ready to transport materials from the Port of Guam to the various construction sites. Water, waste water and power systems are in the process of being upgraded to handle the new military installations and the increased population resulting from the Military Buildup. Public Health and safety resources must be augmented and be in place before the peak of construction activity happens.

On a practical level, it is virtually impossible to separate the Military Buildup from local civilian activities. The “inside the fence and outside the fence” term is unrealistic as the military depends on Guam’s public and private sector resources. This was recognized as the Marine Relocation plans were finalized and the “OneGuam” concept was formed.

The Guam Military Buildup appears to be one large comprehensive project. However, in actuality, there are numerous inherent parts that make up this major initiative. These numerous moving parts have their unique separate needs, requirements, scope and timeline. Federal officials must recognize and understand **that each construction contract is an individual and separate event of short duration, meeting a specific temporary need.** It appears that adjudicators at USCIS have arbitrarily decided that the Guam Military Buildup is not a temporary event, erroneously concluding that all Guam constructors have a purely permanent need for workers. These projects do not just aggregate into a long-term permanent need.

Anecdotal Evidence of Negative Effects to the Military:

- Two aircraft hangar projects on Anderson AFB currently appear to be stalled due to lack of manpower to move the project forward.
- Reports of a \$22.2 million dollar MILCON project receiving no bidders seems to confirm the Chilling Effect on bidding and the beginning of real impact on the military's contracting ability.



OTHER FEDERAL ACTIVITIES AFFECTED:

- HUD – Community development projects and affordable housing
- Federal Highways Road Projects – Supports buildup with Defense Access Roads
- Federally funded Infrastructure Development or activities funded by federal funding and grants
 - Port Authority of Guam
 - Guam International Airport- FAA and DHS funded activities
 - Department of Education- DOI and US DOE funded projects and activities
 - Myriad of federal funded activities under grants which require facilities and maintenance

■ **IMMIGRATION CONCERNS**

➤ **Value of Legally Authorized Temporary Foreign Workers**

Employers who use the H-2B program are employers determined to follow the law, expending significant funds in the process. H-2B and other temporary worker programs provide a legal workforce for U.S. companies when U.S. workers are unavailable. The programs historically and effectively allow foreign workers the ability to earn an honest living by entering the country via a safe and controlled process. In essence, the programs support Guam employers and the economy, while promoting an effective border security.

Illegal foreign workers are not a common sight on Guam due to strong local and federal oversight.

➤ **Risk of Illegal or Unauthorized Foreign Workers**

Demand for skilled workers will continue to rise, potentially compelling employers to rely on other sources of labor to survive. Based on media accounts, usage of illegal foreign workers is common in many U.S. jurisdictions, but it is not as common on Guam where enforcement and oversight exists over foreign worker employment. With illegal immigration, chances increase for Human Trafficking and labor abuses by unscrupulous employers who may engage in attracting illegal labor pools.

PROPOSED RESOLUTION STRATEGIES

Preferred Solution - U.S. Government- Trump Administration:

The Governor is seeking **regulatory change** through DHS that would further support the Governor's Certifying Authority, including a binding determination on Temporary Need using a Guam devised system which would take into account Guam's unique labor market, business situation and need. In essence, a change in Guam only regulations at 8 CFR 214.2(h)(6)(v)(A) would only affect Guam petitions.

Ongoing Efforts - U.S. Congress:

Congress is considering **partial statutory relief** through the 2018 National Defense Authorization Act (NDAA). Although this is one positive step, this provides relief **only for military-related contract activities**. The concern with this approach is that it completely disregards local government and private sector activities which are inherently necessary as they directly support the military relocation and construction, including resulting business activities generated from increased population spurred by the military.

If passed, the NDAA in this form would counter the Programmatic Agreement between the U.S. and Guam, which called for an inclusive "OneGuam" approach. So, although the partial statutory relief may allow for some H-2B workers to be hired, there will be obvious disparity in some sectors of the economy. Worst still, it would foster the "Inside the fence/ Outside the fence" mentality, which contradicts the "OneGuam" spirit.



In a letter to the Governor of Guam on February 7, 2011 Undersecretary of the Navy, Robert O. Work, stated:

"I would like to reiterate the four pillars which guide the DoD's approach to the military buildup."

"First, through our "One Guam" initiative, the Department is committed to improving the quality of life for the people of Guam and the military personnel who will call Guam home. We have secured, and will continue to seek, funding for infrastructure upgrades directly and indirectly associated with the military buildup, and will continue to advocate for federal investment in Guam's other socio-economic needs."

RATIONALE FOR PREFERRED RESOLUTION THROUGH TRUMP ADMINISTRATION:

As mentioned above, it is proffered that a change in federal regulations for Guam would be the best short- to mid-range solution. The preferred change would expand the Governor's responsibilities on the Temporary Labor Certification, to include determining an employer's temporary need through a rigorous system devised by the Governor. To make this work, regulatory language would also have to include how:

- Guam petitions are not subject to the four existing types of temporary need (i.e. Seasonal, Intermittent, Peakload and One-time Occurrence), but to be determined using the Governor's criteria.
- USCIS adjudicators shall accept the Governor's temporary need determination, unless misrepresentation or fraud is detected, at which time they may invalidate the labor certification.

In support of this regulation change, it is noted that President Trump has already ordered a review:



April 18, 2017

Presidential Executive Order on Buy American and Hire American

“Sec. 5. Ensuring the Integrity of the Immigration System in Order to “Hire American. (a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse” [emphasis added].

Statutory Authority not needed to resolve the crisis:

A change in regulation versus a legislative remedy would be the easiest path as immigration-related provisions have recently been a hot topic and tend to be unsuccessful in the end.

8 U.S.C. 1101(a)(15)(H)(ii)(b) defines an H-2B worker as:

“(b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession” [Emphasis added].

The process as to what defines “temporary” is found in the Code of Federal Regulations (CFR). Since rule making is initiated by the Administration, and if Guam could secure buy-in from USDOL and DHS on the Secretariat levels, then USCIS may be inclined to assist in Guam’s plight and initiate necessary rulemaking.

Without resolution, employers in Guam would be unable to facilitate growth of Guam’s economy, and avoid a recession as seen in other island economies like Puerto Rico.

A change in the unique
Guam-Only
H-2B regulations by the
Trump Administration is
the preferred solution.

DHS has recently taken action to resolve similar issues, setting precedence for H-2B relief. Their action responded to the risks of irreparable harm to businesses and the economy. In recent rulemaking responding to legislatively decreased H-2B cap limitations, the DHS wrote:

“The Secretary of Homeland Security’s determination to increase the numerical limitation is based on the conclusion that some businesses face closing their doors in the absence of a cap increase . Some stakeholders have reported that access to additional H-2B visas is essential to the continued viability of some small businesses that play an important role in sustaining the economy in their states, while others have stated that an increase is unnecessary and raises the possibility of abuse.”



“The Secretary of Homeland Security has deemed it appropriate, notwithstanding such risk of abuse, to take immediate action to avoid irreparable harm to businesses; such harm would in turn result in wage and job losses by their U.S. workers, and other adverse downstream economic effects.”

Source: *Federal Register*, Volume 82, Issue 137 (Wed., July 19, 2017)

Department of Homeland Security, Docket No. USCIS-2017-0004

RE: Exercise of Time-Limited Authority To Increase the Fiscal Year 2014 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program

The rationale given for relief to U.S. mainland businesses seems to mirror that being encountered by Guam employers. It would appear that with the two national actions mentioned above, a small change in a Guam-only H-2B regulation is reasonable. This would have no effect on any labor markets or businesses in the Mainland.

Economic Impacts from H-2B Denials: _____

■ INCREASED CONSTRUCTION COSTS

- Overall Construction Labor Cost increase of 25% per Guam Contractor's Association.
- Combination of increased cost, manpower capacity and extended construction schedules are creating adverse downstream economic effects in other sectors of the economy.



■ INCREASED HOME PRICES

- Increased Construction Costs from \$80/Sq. Ft. to \$155/Sq. Ft.
- Less Competition leading to higher prices in new home construction
- Impact to house and apartment rental inventory, especially affecting affordable housing program.

Excerpt from 8-2-17 Email from **Guam Association of Realtors (GAR)**:

"...Please find below what I have gathered from our leadership.

While we don't have specific data on the current effect of the H2B labor shortage due to the federal policy on Guam's H2B visa applications, we can assert the following three adverse conditions to prevail, if the current policy remains:

(1) Construction costs will rise dramatically -Conversations with general contractors has led us to believe that labor costs are expected to increase up to 50% which would result in an overall increase in construction costs to \$155 per square foot"[from \$80 per square foot].

(2) The bidding climate will be non-competitive. Recent bids for GWA and DPW projects have been severely and adversely affected by the federal policy on H2B Visa applications for Guam . The recent bid of the DPW Aplacho Bridge Reconstruction project had no bidders. The recent bid of the GWA Asan-Adelup-Hagatna Sewerline Rehabilitation and Replacement project had a single bidder with a bid amount that was 60% higher than the government estimate.

(3) Real Estate prices will rise. As a result, the real estate industry will experience a significant increase in the cost of construction of new homes, the cost of leasehold improvements and a rise in the cost of utilities. All of this will also impact the rental market as the rental market is extremely tight now as it is. There are no units available for Section 8 tenants at their present rate. Therefore, if this sector of the community is going to find a place to live, the Federal subsidized amounts will have to increase, thereby placing a heavier burden on the government and the tax payer.

These three adverse conditions will obviously impact many other major parts of our economy ... mainly the military and the tourism industry also. Therefore, we expect this disastrous trend in the construction industry on Guam to continue until the H2B Visa issue is resolved in Guam's favor."

Peggy Araullo Llagas
Chief Executive Officer **and** Government Affairs Director
Guam Association of **REALTORS**

■ **SLOW DOWN IN CONSTRUCTION**

There is a notable slow down in construction activity since the ensuing H-2B visa denials. According to industry experts, in determining construction volume, a strong indicator is looking at concrete sales. According to leaders in the concrete industry, sales are down 30% - 40%.

Additionally, there are indicators from the Port Authority of Guam that suggest that construction material shipments may also be down. These indicators seem to confirm that projects have slowed and materials necessary for future projects are not being planned.

Guam DOL, Alien Labor Processing & Certification Division (ALPCD) inspectors toured the island to visually survey ongoing project sites. The report entitled “**ALPCD Report on Construction Site Visits – April-May 2017**” showed that there has been a notable impact to ongoing private sector construction projects.



Stalled construction site in Talofoto, Guam



Stalled construction site in Sinajana, Guam



Example of decreased manpower – a site this size at this phase, would typically have 3-5 workers versus the one worker observed on the site

Excerpts from the ALPCD Inspection Report:

PURPOSE:

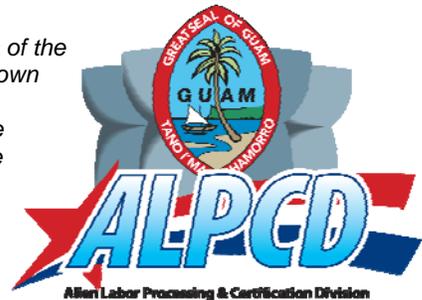
View actual real-time construction projects to see how such project sites are progressing and gauge impact from the perspective of inspection personnel who routinely observe project sites on an ongoing basis.

SITE INSPECTION FINDINGS:

ALPCD inspectors visited 62 construction sites in the central and northern areas of the island from April 24 – May 05, 2017. Sites visited were a mixture of previously known construction projects and other projects discovered along the main roads and highways in the areas. It is noted that not all projects on island were visited as the inspection does not include a sampling of the southern 1/3 of the island, nor more remote inner village roads.

Breakdown of inspection findings:

- 62 - Sites visited
- 30 - Project sites with no workers (48%)
- 38 - Projects that have stopped or slowed down (61%)



CONCLUSION

Based on the inspections conducted during this 10-day period, it is evident that there are many construction projects currently ongoing however we noted that of the sites visited, about half of the sites did not have any workers actively working on them. Of the project sites that had active workers present, inspectors found that the total number of workers per site has decreased from an average of about 3-5 workers, to an average of 1-3 workers per job site. Observations of current on-going project sites also found an increase in the number of legal Chinese nationals and COFA citizen workers on the job sites. COFA citizen workers in previous years had been observed performing more unskilled laborer duties such as clearing the job sites of construction debris. Encounters at current projects noted that they are now, under supervision, performing more skilled work like mixing concrete and laying blocks. With the increased observation of Chinese and COFA citizen workers, there is also a notable and visible decrease in the number of Filipino workers found at smaller construction sites.

The overall observations of the site inspections lead us to believe that the large majority of small to medium sized projects have been significantly delayed, with several projects having stopped completely for several months. During this exercise inspectors also observed a rise in home renovation / existing structure extension projects compared to previous years.

The conclusions in the report raise concerns over workmanship and capacity being factors contributing to increased construction cost and longer project durations. Semi-skilled workers would likely not perform to the same standards and output levels inherent with fully skilled and experienced workers.

▪ **POTENTIAL LOSS OF INCOME TAX REVENUE TO THE GOVERNMENT OF GUAM AS A RESULT OF DENIED H-2B PETITIONS**

An analysis was conducted on the positions which were denied by USCIS during this Crisis. The annual straight time wages for all denied positions, based on the prevailing wage rate, was computed and Guam withholding taxes were estimated at a rate of 8%.

Loss of Potential Withholding Taxes	FY 2016	FY 2017	FY 2016 & FY 2017 Combined (Duration of Crisis)
Annual Wages of All Denied Positions	\$98,127,161.60	\$30,282,740.80	\$128,409,902.40
Guam Withholding Taxes estimated @ 8%:	\$ 7,850,172.93	\$ 2,422,619.26	\$ 10,272,792.19

Since the vast majority of the workers denied were from the Philippines, no analysis was done for potential losses in FICA as H-2B workers from the Philippines are exempt from Social Security taxes.

▪ **CHILLING EFFECT ON CONSTRUCTION BIDDING**

Contractors report that with the uncertainty surrounding the availability of skilled workers, there is a reluctance towards bidding for work, especially larger projects. Costs implications are high. This “Chilling Effect” is more prevalent with medium and small sized contractors, but also has definite effects on large contractors who also depend on smaller contractors to perform sub-contract work.

Private developers and Government agencies have also experienced impacts from this Chilling Effect which translate into increased costs and less competition for projects put out to bid.

79.3% of local contractors interviewed have declined to bid on projects due to inability to source skilled workers

For small business and the general public, we have noted higher than normal prices for daily or short term work. We have also seen that availability for skilled workers for these daily jobs is very limited and stories of unusually long waits for services are becoming more common.

Of 29 employers contacted and asked about this subject, 79.3% of the contractors indicated that they have declined to accept work or bid on projects due to their inability to source skilled construction workers needed for these projects. Of the 29 employers, 23 reported that they are affected by the H-2B worker crisis.

■ **CONSTRUCTION VOLUME PROJECTED:**

* Source – Guam Build Up Office- CIP Projects Listing 8-12-17

GovGuam and Partial Private Sector Projects

Ongoing: \$ **951,718,702.00**

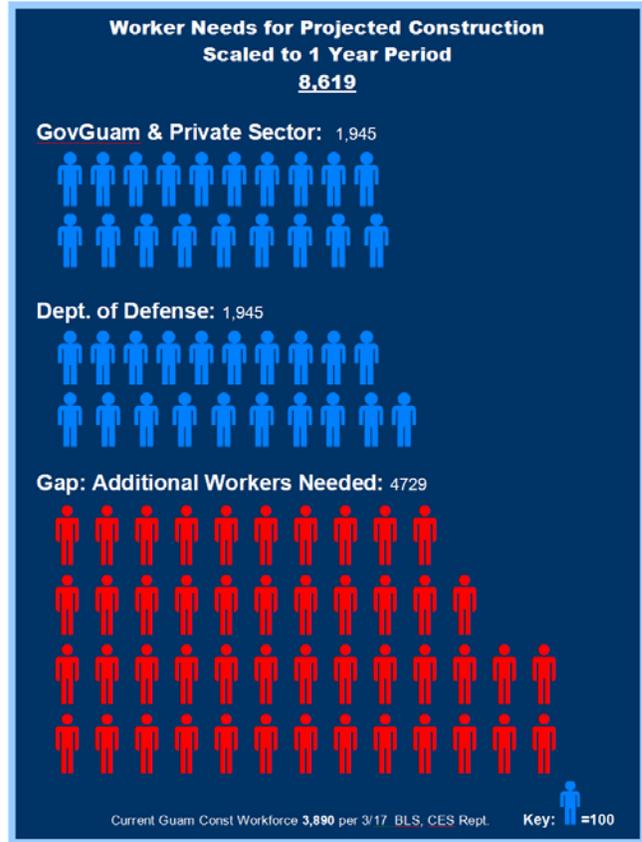
Planned/ Future 2017-2022: **\$1,494,010,792.00**

TOTAL: \$2,445,729,494.00

Department of Defense Projects

2017- 2022: **\$3,300,000,000.00**

POTENTIALLY AFFECTED PROJECTS
GRAND TOTAL: **\$5,745,729,494.00**



Without access to skilled workers, a vast majority of these projects will be negatively affected through a combination of factors including:

- Delayed completion schedule
- Increased sub-contractor costs
- Compromised construction performance as company’s increase reliance on semi-skilled workers
- Increased risk of un-executable projects due to limited funding to cover higher construction costs or uncertain or delayed completion.
- Loss of competition due to Chilling Effect – price and availability

■ **GEDA ESTIMATES FOR A \$300 MILLION DOLLAR STALL IN CONSTRUCTION PROJECTS**

Excerpts from GEDA Report- Guam: H-2B Facts & Figures, 6/23/17

“All together quantified (rough estimation), if Guam loses its ability to launch up to \$300 million annually in construction work over the next five years--GDP will likely exhibit negative annual growth (somewhere between 1% to 3%), income tax revenues will fall, gross business receipts (BPT) will also decrease. Considering the loss of multiplier spending generated through construction income and expenditure, wholesale, retail and service sectors will feel major setbacks.”
Baseline Indicator:



→ 3,000 to 4,000 H-2B Workers required to sustain peak construction period in Guam

→ This equates to a workforce able to sustain \$300M in building project (demand side)

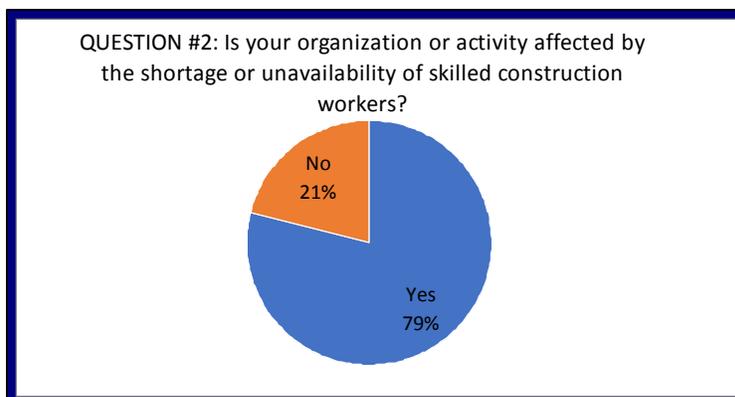
→ Loss of \$300M to the local economy translates into:

- \$13.5M loss in Business Privilege Tax revenues annually (throughout buildup phase)
- Consumer spending base would contract (say 20% of \$300M)
- Personal income tax revenues – up to \$12.0 million annually
- Corporate income taxes – up to \$15 million each year
- Decrease in GDP (between 1% to 3%?)
- Opportunity costs due to inadequate manpower (How much in projects declined or lost)
- Overall rise in the normal cost of building homes and basic infrastructure (by up to 25 percent)

■ GEDA / GDOL H-2B IMPACT SURVEY

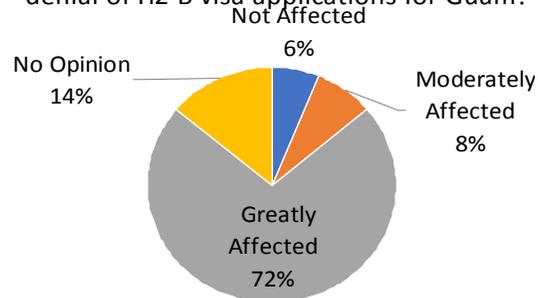
In a survey of H-2B employers conducted for this report by the Guam Department of Labor and the Guam Economic Development Authority, the vast majority of respondents indicated that they were negatively affected by the denial of H-2B workers, specifically:

- 79% indicated that they were affected by the skilled labor shortage.
- 72% of respondents indicated that they were “greatly affected” by the crisis.
- 71% indicated that they anticipated increased cost for projects
- 85% indicated that they did not believe that Guam would be able to meet labor needs with the exclusive use of U.S. workers
- When asked about strategies to mitigate the H-2B dilemma, the majority of respondents agreed that increased efforts in manpower development coupled with continued efforts to find resolution with the federal government were preferred.
-

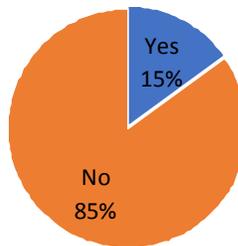


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QUESTION #4: To what extent are you affected by the United States Citizenship & Immigration Services (USCIS) denial of H2-B visa applications for Guam?



QUESTION #9: Do you believe that Guam will be able to meet its short term and long-range skilled labor requirements or needs through the exclusive use of U.S. citizens or Lawful Permanent Resident's (LPR)?



■ SOCIO-ECONOMIC IMPACTS

As the Crisis continues, it is probable that Socio-economic impacts will increase. The total scope of these impacts is unknown, but the increased construction costs will have definite downstream economic effects which will affect government infrastructure, private sector home and dwelling development and entrepreneur challenges. Ultimately, this leads to cost of living and quality of life issues to the general public.

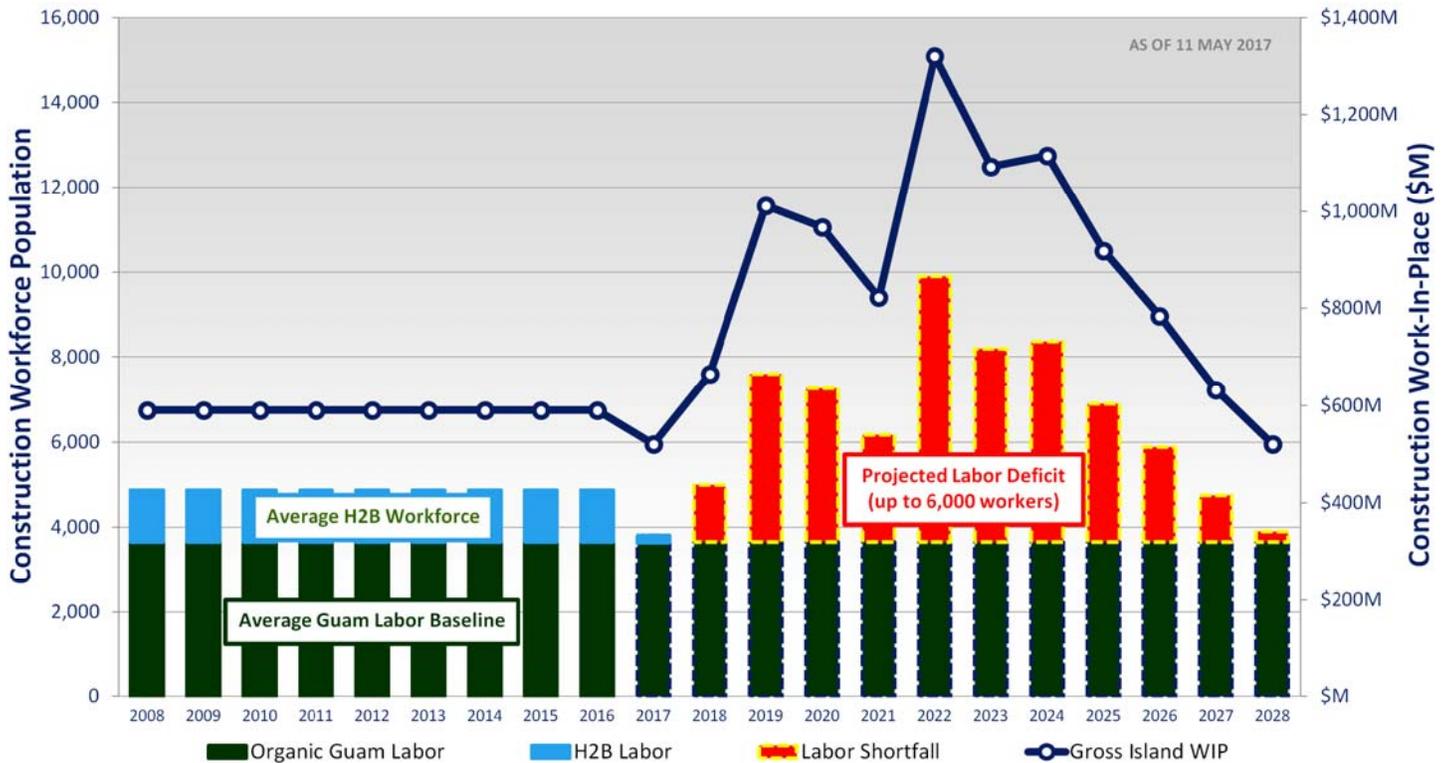
■ SKILLS GAP AND TRAINING CHALLENGES

Without access to traditional sources of skilled foreign labor, Guam employers will only have access to U.S. domestic workers. Skilled workers are already limited in the U.S. Mainland and contractors there have their own skills gap challenges.

Paradigm shift is needed and is being addressed in Guam Education system to encourage and grow interest in the Trades. As in CONUS, there is a movement to emphasize apprenticeship in the trades and other high demand occupations. This is in response to the national crisis in workforce shortages for key industries.

With the H-2B crisis stressing the Guam labor pool, it has become more apparent that the lack of skilled workers also creates negative pressure on employers' ability to successfully engage in apprenticeships and job training program where job shadowing is crucial to on-the-job training activities.

WORKER DEFICITS



Caveat: Chart was created in May 2017 with information, available at that time, on project work-in-place. Not all projected project are included.

Survey Findings:

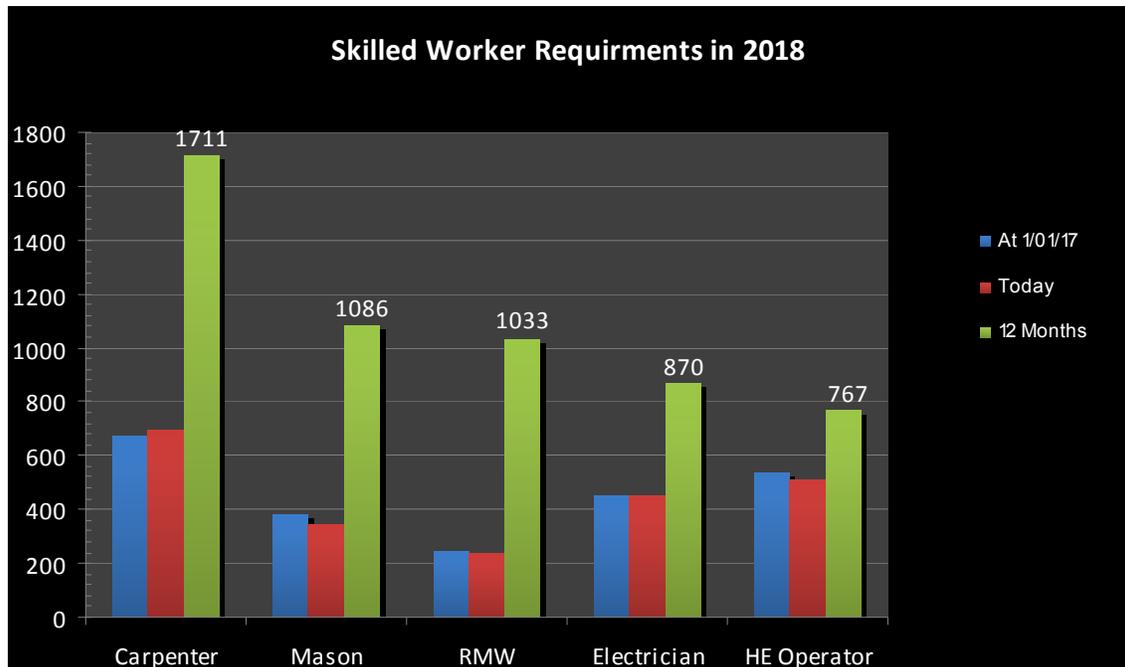
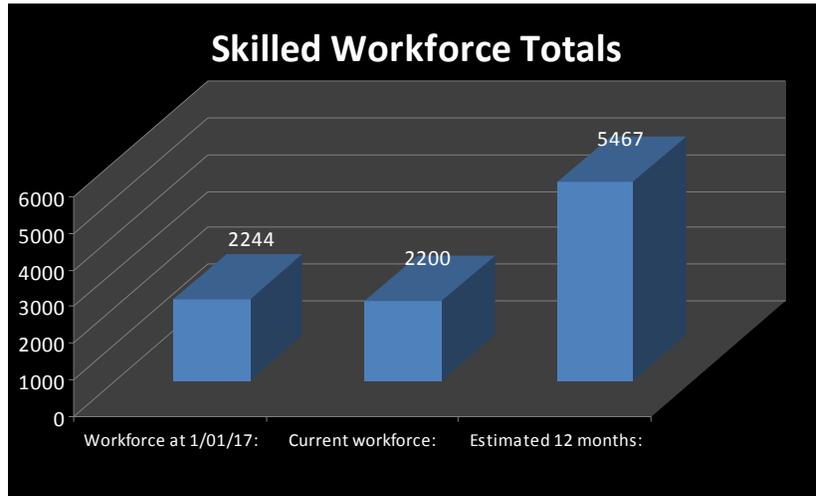
ALPCD SKILLED WORKER SURVEY – 2017

ALPCD conducted a survey of Guam licensed contractors from February 2017 to June 2017. Part of the procedure to obtain or renew a contractors license is approaching various agencies to obtain a clearance. While requesting clearance at ALPCD, contractors were asked to complete a shorts survey form eliciting information in current and expected levels of certain skilled workers in their organizations.



The survey concentrated on 5 occupations in which skills gaps exist based on historical H-2B usage. There was a total of 726 respondents to the survey. After analyzing the results, there were 215 contractors who indicated that they currently employed or expected to employ workers in the targeted occupations. Those contractors reported that they intended to hire 3,267 additional workers based on their estimate of future work in the next 12 months. It is notable that many contractors mentioned to survey staff that their estimates would change as more information regarding future projects comes available.

To keep these statistics in context, it is important to consider that most contractors are generally not aware of the huge volume of future projects that are on the horizon. Media accounts and industry rumor give a general idea that volume will be up, but contractors are typically not privy to information gathered through fact finding for this report. This being the case, contractor workforce estimates would likely be on the low end of the spectrum.



Total Estimated Skilled Workers Needed in 12 Months (6 /2018):	Total	5467	Workers
Carpenter	1711		
Cement Mason	1086		
Reinforcing Metal Worker (RMW)	1033		
Electrician	870		
Heavy Equipment Operator	767		

Comparison w/ Bureau of Labor Stats OES Survey:	May-16	May-15	May-14
Carpenter	1140	1340	1420
Cement Mason	640	580	700
Reinforcing Metal Worker (RMW)	140	120	130
Electrician	490	610	510
Heavy Equipment Operator	180	70	90
Total OES Skilled Workers:	2590	2720	2850

Based on the numbers from the survey, contractors anticipate the need to more than double the number of skilled workers in occupations where skills gaps exist compared to the most recent Bureau of Labor Statistics numbers from May 2016. When looking at individual occupations, the Carpenter, Cement Mason and Reinforcing Metalworker occupations had the most notable increases thus validating the need for such occupations and confirming the existence of a skills gap that need to be filled in the Guam workforce.

▪ **COSTS OF CONSTRUCTION CRAFT WORKERS FROM CONUS**

A study conducted by the Guam Contractors Association (GCA) in March 2017 White paper entitled “Workforce Crisis in Guam” analyzed the situation and concluded:

“Two things stand - out from the history and analysis reported below. (1) The construction industry cannot transition to an all - US workforce without considerable increase in cost of construction. Beyond cost of construction, it has proven unworkable in the past and will be difficult to impossible to implement in the future. And (2), the Department of Defense is in a key position to exercise influence in resolving this important issue. The DoD is the largest user of construction services on Guam. A decision has been made at highest levels of government to pivot to the Pacific, and that requires a temporary workforce for the necessary construction on Guam.”

Information extracted from Exhibit A and Exhibit B which indicated that the factors for Union Shop Hawaii resident workers was 3.0 and Open Shop U.S. mainland workers was 2.4

Recruiting Outside of Guam Workforce Wage Study Results H-2B vs. Imported U.S. Worker		
	Cost Per Hour	Total Annual Cost
Hawaii U.S. Worker- Union Shop	\$95.75	\$253,725.00
U.S. Mainland Worker- Open Shop	\$78.59	\$208,254.00
Guam Deployed H-2B Worker	\$21.54	\$ 57,089.00

The GCA whitepaper also spoke to many factors involved, with a focus on affects to MILCON and Marine Relocation activities.

In considering the cost implications in the GCA report, although there may be a possibility to attract U.S. skilled workers using higher wages and relocation incentives, it would seem that the increased cost on a small level may be palatable but on the higher levels of 50-300 workers needed for larger projects, it appears that the increased cost may make projects un-executable due to budgetary considerations.

■ **UNIQUE LABOR MARKET IS A FORMIDABLE CHALLENGE**



Three idle unfinished towers in Tamuning, Guam

Guam's geographic location isolates the island's local labor market, limiting workforce support options readily available in other jurisdictions. Employers have no access to pools of skilled domestic workers from local unions or open shops. Similar pools within easy access or affordable commutable distance to Guam are also prohibitive to businesses.

Guam maintains an average skilled construction workforce of about 5,000 U.S. workers. However, during times when construction activity is robust, contractors are faced with the need to access more workers. Without the availability of local U.S. workers willing and able to fill the gap, employers turn to temporary skilled workers to supplement their local workforce. Since the nearest possible pool of domestic skilled labor is 6,000 miles away, Guam employers have traditionally had very little success in attracting large numbers of U.S. workers from the mainland in the most needed construction occupations. This situation has been particularly challenging, considering that mainland contractors are also experiencing the same lack of skilled construction workers.

The Trump Administration's plans to expand infrastructure and other activities will require more skilled trades workers nationally. Thus, it is a concern that attracting the small number of available seasoned skilled workers is and will continue to be a challenge for Guam. Although there is a significant push for Apprenticeships and Trades Training, the length of time it would take to realize these goals is problematic. The demand is occurring today. New workers typically need 4-years of training and hands-on experience to build proficiency. Although such apprenticeships are needed, it does not address the immediate workforce needs of the businesses working to grow the economy.



Experts agree that H2B visa denials are the biggest threat to our economy



Posted: Jul 18, 2017 5:27 PM
Updated: Jul 18, 2017 5:27 PM
By Nestor Licanto [CONNECT](#)

Economic experts from the public and private sectors appeared before the legislative appropriations committee to provide their best assessment of the economic outlook for the next fiscal year. As usual, tourism and military spending will continue to drive the economy, but the panel also agreed that the biggest threat to growth will be the continued visa denials for H2B foreign workers.

Bank of Guam Chief Economist Joseph Bradley stated, "It's already slowing down construction work and increasing construction costs and that can be an inhibiting factor on our economy and our economic performance in the fiscal year, but also on the progress of our economic development over the intermediate and long term future."

Officials estimate there are now less than a hundred H2 workers here, down from about 15-hundred a year ago. The committee is seeking input on Guam's economic conditions ahead of hearings on the administration's revenue projections. The projections, in turn, set the table for the government's budget allocations and spending.



New Hotel Construction in Tumon Guam

GUAM'S H-2B EQUATION :

Understanding the unique nature of the importance of the H-2B Program for Guam requires an expounding of key elements. This includes the historically effective and rigorous H-2B visa application process in Guam, or the "Program", the island's economy, its employers and workers. This makes up the "H-2B Equation" inherent to Guam.

The Program- 'Only on Guam'

Guam is the only jurisdiction in the United States that has been delegated authority over the Temporary Labor Certification portion of the H-2B process through regulations at 8 CFR 214.2 (H)(6)(V). This resulted from INS rulemaking in 1984 which transferred the authority to make determinations on Temporary labor certifications for the Territory of Guam from the Secretary of Labor to the Governor of Guam. The change provided for closer control and monitoring of the certification process and assures that local employment statistics and other information will be available and, used in the certification process.

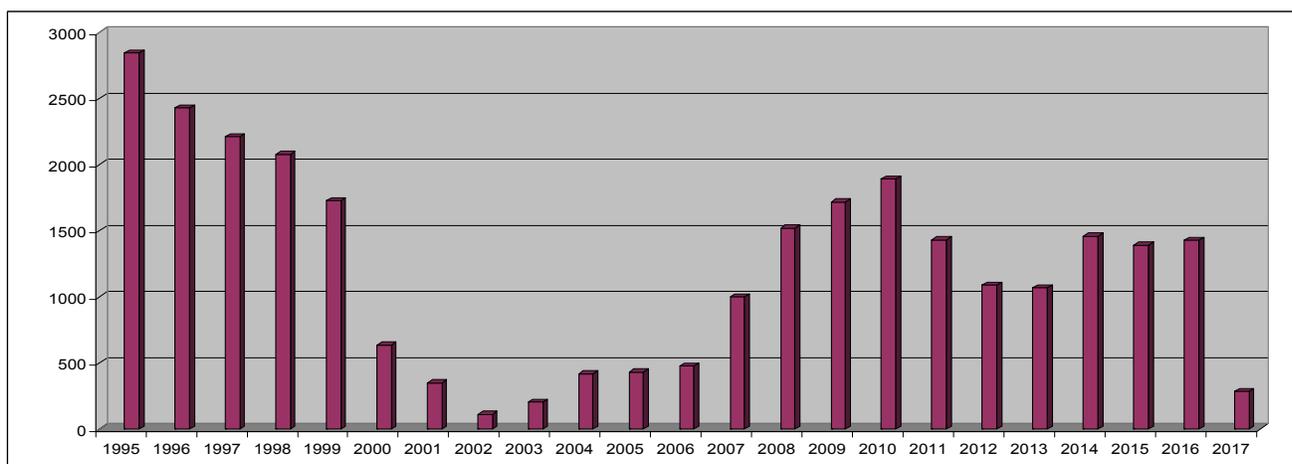
*8 CFR 214.2 (H)(6)(V)
contains the Governor of
Guam's delegated
authority to issue labor
certifications for Guam.*

Thus, the requirements for obtaining a Prevailing Wage Determination and a labor certification are substantially different from the USDOL process handled in other jurisdictions. The Certifying Officer for Guam is the Governor of Guam.

The H-2B program allows Guam employers to hire foreign workers to fill nonagricultural jobs on a temporary basis. An H-2B visa allows an employer to bring a foreign worker into the U.S. for up to a year at a time. Although the H-2B category is most widely used for relatively low-skilled work in CONUS, Guam employers very rarely are successful in obtaining a labor certification from the Governor of Guam for unskilled workers. The vast majority of H-2B workers imported into Guam are for skilled positions or for semi-skilled positions which have special skill requirements justified with business necessity (e.g. Dive Instructors who read, write and speak Japanese).

The H-2B program is part of the alphabet soup of U.S. immigration policy, one of the three principal programs that allow employers to bring temporary workers into the United States. The other two most widely used temporary worker visa programs are H-2A, which allows employers to bring in low-skilled agricultural workers for up to one year, and H-1B, which allows employers to bring in professional workers with college degrees or specialized knowledge for at least three years. A worker with an H-2B visa can typically work for a U.S. employer for up to ten months, although the worker can move to other H-2B certified jobs and remain in the U.S. for up to three years.

Guam H-2B Workers
Fiscal Year 1995 thru 2017



The Guam H-2B Process – Temporary Labor Certification

The H-2B process involves a complicated set of requirements and deadlines that businesses and foreign workers must meet. Guam is the only jurisdiction in the United States that has local control over the labor certification process.

1. The first step is to determine the prevailing wage for the specific occupation. Most construction occupations are on the Common Construction Prevailing Wage Rates notice which is revised every two years and approved by USCIS. For occupations not on the Common Construction list, an employer must request for a Prevailing Wage Determination from the Guam Department of Labor. This process typically takes between 3- 7 business days. The prevailing wage is the mean wage paid to workers in a given occupation on Guam, as determined by GDOL using USDOL Bureau of Labor Statistics OES survey data as published on the USDOL ICERT website.
2. The employer will complete an application for Temporary Labor Certification (Form GDOL 750) and attach the extensive set of supporting documents. The application is then filed with the Guam DOL's

Alien Labor Processing and Certification Division (ALPCD). Caseworkers will review the application for completeness and, once complete, will instruct the employer to begin recruitment.

Supporting documents for a Guam labor certification are extensive and include:

- Proof of Recruitment Efforts Made Prior to Filing the Application
- Proposed Three Day Advertisement
- Proposed Employment Contract
- Barracks/ Housing Location Sketch
- Project Summary Sheet
- Project Location Sketch
- Project Contracts – Prime & Sub
- Building Permits
- Worksite/Office Location
- Audited Financial Statement
- Written Submittal Justifying the Need for Temporary Alien Workers
- Contractor's License or Business License (for non-construction)
- Articles of Incorporation or Partnership Agreement
- Completed Clearance Sheet
- Notarized Statement of Employer's Assurances
- Wage Bond
- Repatriation Bond
- Statement of Temporary Nature



3. Companies must then recruit U.S. workers to fill open positions. The recruitment is closely supervised by the Guam Department of Labor. An employer must publish an advertisement for three consecutive days in the newspaper of largest general circulation in Guam and the advertisement must direct applicants to apply through the America's Job Center. The employer must also post the job with the State Workforce Agency through www.hireguam.com and that posting must remain active for a period of 30 days. None of this required recruitment can begin more than 120 days before the need for the H-2B worker. The company must keep detailed records of the recruitment process, hire all qualified, willing and available U.S. workers who apply and document the number of positions it was unable to fill. The employer must submit recruitment results to the Guam DOL after the 30 day labor market testing period is complete. Guam DOL caseworkers will review the results and do further fact finding to ensure that the employer recruited in good faith, and that all suitable applicants were considered fairly and in accordance with laws and regulations.

4. If a company's labor certification application is approved, the employer then can petition the Department of Homeland Security (DHS) to admit a specified number of H-2B workers. Employers file their petition for a "nonimmigrant," or temporary, worker (form I-129) with the DHS' U.S. Citizenship and Immigration Services division. The fee is currently \$460 plus an additional \$150 for fraud prevention and detection. The employer must submit supporting documents to justify their need for the workers.

5. Guam H-2B petitions are currently exempt from national cap limitations, however in the rest of the country, USCIS accepts petitions for consideration only if the H-2B visa cap for the year has not yet been reached.

6. After the employer's petition is approved, USCIS will send a notice of the approval to the U.S. Embassy in the country in which the employer wishes to recruit the foreign workers from.

7. A foreign worker who is outside the U.S. must apply to the State Department for an H-2B visa. This typically requires an in-person interview at a U.S. embassy or consulate. The prospective worker must be able to demonstrate that he or she intends to return home after his or her visa expires.

If approved, the foreign worker receives an H-2B visa and can then apply to U.S. Customs and Border Protection for admission.

Note that exorbitant costs are normally incurred by employers to complete the H-2B petition process. For instance, a \$600,000 construction project with a request to fill 3 occupations can cost the business about \$40,000. This would include local Wage & Repatriation bonding costs, immigration attorney fees, USCIS fees and costs associated with mandated recruitment of U.S. workers.

EXEMPTION FROM THE NATIONAL H-2B CAP:

Guam is currently exempt from the national H-2B cap limits. Although exempted, it is important to understand what the cap is and how it affects the program on the national stage. Guam's H-2B Cap exemption will sunset in 2019. Unless this is reauthorized in federal law, Guam will experience possible additional complications in employers' ability to source sufficient skilled labor.

Guam was exempted from the cap in anticipation of the Guam Military Buildup. Studies done by the Department of Defense counted on the availability of workers through the H-2B program to ensure that the Buildup construction projects would proceed on schedule and that socio-economic impacts for Guam were minimized. To accomplish this Congress passed legislation that exempted Guam from the H-2B cap.

Guam is exempt
from the national
H-2B Cap of
66,000 visas per
year

It is Guam's position that Congress has spoken with regards to the need for Guam employers to be able to access the program in a more liberal manner than the rest of the country and also speaks to the unique nature of the Guam situation.

H-2B Process – Program Enforcement

The Government of Guam also enforces many regulatory program conditions of the H-2B program, primarily with regards to the employment and housing of workers by a Guam employer. Control and management of the alien worker is within the purview of the U.S. Department of Homeland Security.

Local Regulations- Over the decades, Guam has developed local statute, rules and regulations guiding Guam companies' employment of H-2B workers. The most notable rules are:

- An H-2B worker may only work for the petitioning employer.
- The H-2B worker may only work in the occupation in which the worker was petitioned.
- The H-2B worker may only work on the job sites listed in the labor certification.
- The H-2B worker must be registered with DOL before reporting to work and shall possess an ID card proving such registration.
- The H-2B worker must display their H-2B ID card while working on a jobsite.
- The employer must meet all conditions of the labor certification including wages, job duties and assurances regarding labor law compliance.
- Worker housing must be in compliance with federal and local regulations.

H-2B Worker Registration:

Within 24 hours of arrival in Guam, an employer must submit an Application for Registration with the Guam Department of Labor. Supporting documents to the application include:

- Valid Passport with H-2B Visa
- Print out of I-94 Arrival Record
- Signed Employment Contract

The application and documents are reviewed to verify the foreign worker's identity and status. Once verified, the employer pays a yearly registration fee of \$1,091 and the worker is issued a DOL H-2B ID Card.

The registration process allows Guam DOL to have actual contact with each individual worker after arrival.

If workers are extended, then the ID card must be renewed and Guam DOL has another mandatory opportunity to interact with the worker. A video briefing is currently provided to workers in English and in their foreign language. This video advises workers of their rights and responsibilities as well as where they can go to file complaints should they have concerns.

ALPCD registration staff are typically also trained Labor Law Enforcement Specialists and are engaging with workers during the ID picture taking. If a concern is detected, the worker may be interviewed by investigative staff members in an effort to detect labor law violations or worker abuses.



Reporting Requirements:

ALPCD staff review report and conduct fact finding investigations to ensure compliance with rules and regulations.

- Employers Workplace Monthly Report- Mandatory monthly report which provides a snapshot of the employer's workforce including names of all employees, their wages, names of all workers terminated or who changed status and what projects foreign workers are assigned on.
- Exit Clearance- Report giving advance notice for each worker who will depart and assurances that all wages are paid. Certain clearances and conditions apply.



Routine Inspections:

ALPCD has a cadre of inspectors who do regular job site inspections, typically every week, to monitor job site and ensure that H-2B worker are performing authorized work, as well as providing opportunities for contact with workers. Inspectors' goals are balanced between labor law compliance and seeing to the welfare of Guam's guest workers. When issues are detected, inspectors commonly coordinate with other local and federal agencies to include Guam Contractor's License Board, US ICE and OSHA.

Investigators will also entertain complaints and follow up on investigative tips. Prevention of wage abuses, abuse of workers and human trafficking are top priorities for Labor Law Enforcement Specialists who do the inspections and investigations. ALPCD has staff trained in the detection of human trafficking and have networks in place with appropriate agencies to respond to any situations that may be detected. Close working relationships have been fostered with federal and local law enforcement agencies so that quick responses are possible when violations are detected that may be criminal in nature.

For violations of the regulatory requirements, ALPCD may take a variety of corrective actions which typically start with education and labor clinics to develop the employer's program knowledge. However, in some cases employers are cited and must pay civil penalties for violations. In the most severe cases, local law allows for the disbarment of an employer for up to three years.



Housing inspections are also conducted to complement inspections done by Guam Department of Public Health & Social Services. Ensuring that worker housing is adequate and conforming to OSHA labor camp standards is of great importance to Guam officials.

“The Gold Standard”

During a Labor Law Compliance Conference in 2012, Sherman Grandy, a manager from the Fraud Prevention Unit of the U.S. Embassy in Manila Philippines, commented on the strong enforcement program on Guam. Before the conference, Mr. Grandy had an opportunity to be fully briefed in on Guam's program. He was impressed with Guam's monitoring and enforcement systems, compared to those in the U.S. mainland.



Mr. Sherman Grandy,
US State Dept., Manila Embassy Fraud Prevention Manager- 2012
at the Guam DOL Labor Law Compliance Conference

“...Guam has the Gold Standard of all H-2B programs in the nation.”

The Employer's Challenge

The Skills Gap:

Guam employers are faced with significant labor pool issues as a result of Guam's isolated island labor market. The business challenge is huge with a projected 300% - 400% increase in labor costs to recruit skilled workers from US domestic sources. Compounding the challenge is the lack of skilled workers in the mainland. A very informative article on the issue helps validate how difficult the situation is for contractors in Guam.



Excerpts from:

FACING THE SKILLS GAP by Terry McDonough

From Construction Today

<http://www.construction-today.com/sections/columns/2944-facing-the-skills-gap>

Even as construction spending is on the rise in the U.S., the construction industry, like many others, is facing a significant challenge: a growing industry skills gap.

In fact, the challenge facing the construction industry might be even more acute than the skills gaps confronting others. The ripple effect of the construction industry skills gap includes altering the way some firms do business, as well as project delays and price increases for many of the businesses and consumers relying upon them. A 2015 survey by the Associated General Contractors of America (AGC) found that 86 percent of nearly 1,400 firms surveyed were having difficulty filling available positions. The survey found that carpenters, sheet metal installers, concrete workers, project managers and supervisors were particularly hard to find.

The AGC survey also found that the labor shortages are changing the way some construction industry employers do business, leading some to raise wages or rely more heavily on subcontractors or temporary labor firms. A particularly troubling finding was that some construction industry companies felt the labor shortages had the potential to put worker safety at risk.

Feeling the Impact

The impact of the construction industry skills gap is felt not only by industry employers, but other businesses and consumers as well. Shortages of skilled workers can have a significant impact on project timing and pricing. The findings of the Special Questions on Labor and Subcontractors' Availability reported last year by the National Association of Home Builders (NAHB) as part of its Housing Market Index (HMI) showed the labor shortages over the prior 12 months had caused 61 percent of the builders surveyed to raise home prices, 58 percent to have difficulty completing projects on time, made some projects unprofitable for 26 percent and caused 23 percent to turn down some projects. The cost and availability of labor topped the list of problems facing homebuilders in NAHB's HMI when they were asked to rank the challenges they faced in 2015 and expected to see in 2016.

In today's construction market, the skills shortage is so significant that one hears anecdotal accounts of contractors in hot markets seeing subcontractors trying to renegotiate prices upwards between the time initial agreements are reached and work actually begins.

Meanwhile, the pace of construction in the United States continues to grow following the Great Recession. The U.S. Census Bureau reported that during the first seven months of this year construction spending stood at \$647.7 billion, up 5.6 percent from the same period in 2015. And the Bureau of Labor Statistics projects employment of construction laborers and helpers to grow 13 percent from 2014 to 2024, faster than the average for all occupations.



Several rounds of fact finding were conducted by the GDOL ALPCD through surveys and personal interviews with over 700 employers. Many contractors stated that although they have not used H-2B workers before, they acknowledge that they are an important source of workers in their industry. They explain that it is a huge issue because the H-2B worker typically are skilled to handle the high number of hard “outside jobs” that contractors have trouble sourcing locally.

Of the active employers, the majority indicated that they are greatly affected and that without the program, they may have to lay off workers and possibly close business. ALPCD has noted that some contractors have ‘gone dark’ and are no longer contactable. They can only surmise that these businesses have become inactive in the economy.

When asked about impact to his company, Mr. Jack Kim of Korando Corporation said:

“With bids and costs for projects skyrocketing - some nearly double what it was before the H2B crisis - the island's economy and its people will be gravely affected. Home construction and public works projects will face an inevitable downturn affecting the community.”

Mr. Kim stated that it was difficult to determine how much money they have lost as a result of the crisis as they are still in talks with their clients. He did estimate a lost opportunity cost of approximately \$300,000 to \$400,000 based on previous years trends in their project volume.

Guam employers are the lifeblood of the local economy. When the company is healthy and thriving, people are employed and productive. Guam employers sometime have to deal with sourcing hard-to-fill positions to keep their businesses running.

In the case of the H-2B program, these hard to fill positions are typically in Construction. Though, other industries have gaps that need to be filled. Guam employers have had to source workers in the ship repair industry, healthcare, medical imaging and service industries. Because of the associated costs and program regulations and processes, employers tend to choose the H-2B program as a last resort. Employers repeatedly explain, without exception, that they would prefer to hire Guam resident, U.S. workers. However, they are dismayed by the skills gap and resulting challenge to fill such occupations.

Gsm/ 8-28-17
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**IMPACT OF H-2B VISA
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August 2017

APPENDIX A
**ALPCD SKILLED WORKER SURVEY
2-2017 THRU 6-20**



Skilled Worker Survey

In Connection with Contractor's License Clearance

Survey Period: 2/01/17 - 6/30/17

Note: Survey excludes H-2B data

Total Number of Surveys:	726	
Unlikely Contractor with Target Occupations:	128	
Likely Contractor with Target Occupations:		598
Contractor w/no target workers & w/future estimates:		389
Contractor w/target workers & w/future estimates:	213	Employers

Target Workforce at 1/01/2017:		2244 Workers
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Carpenter	673
Cement Mason	379
Reinforcing Metal Worker (RMW)	242
Electrician	413
Heavy Equipment Operator	537

Target Workforce Today (Between 2/01/17 thru 6/30/17):	Current	2200 Workers
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Carpenter	699
Cement Mason	342
Reinforcing Metal Worker (RMW)	234
Electrician	415
Heavy Equipment Operator	510

Target Estimated Additional Workforce in 12 Months:	New Hires	3267 Workers
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Carpenter	1012
Cement Mason	744
Reinforcing Metal Worker (RMW)	799
Electrician	455
Heavy Equipment Operator	257

Total Estimated Targeted Workforce Needed in 12 Months	Total	5467 Workers
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Carpenter	1711
Cement Mason	1086
Reinforcing Metal Worker (RMW)	1033
Electrician	870
Heavy Equipment Operator	767

Comparison w/OES Survey <u>Including H-2B Data:</u>	May-16	May-15	May-14
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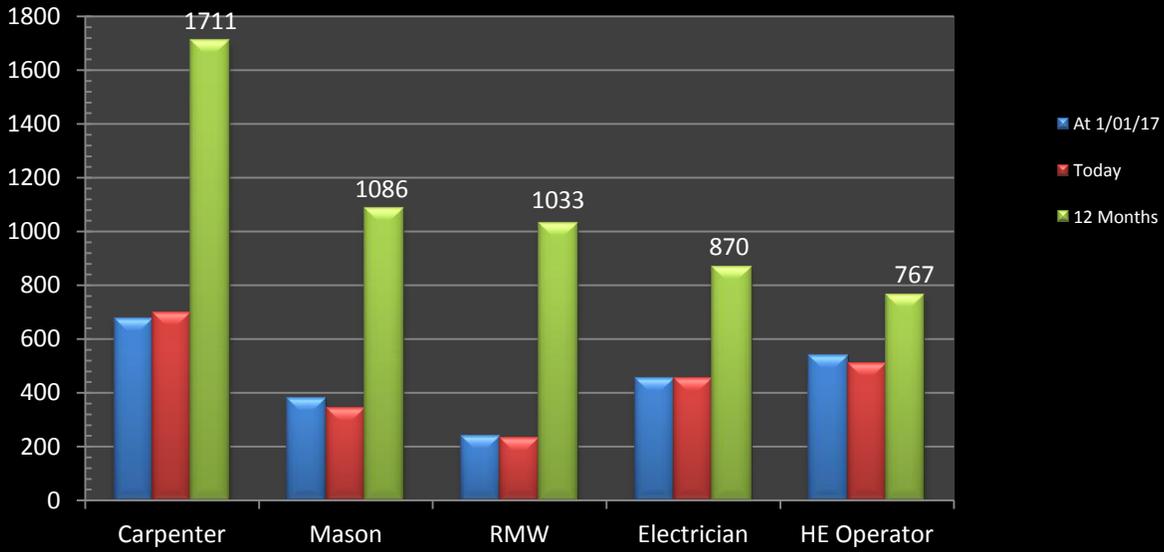
Carpenter	1140	1340	1420
Cement Mason	640	580	700
Reinforcing Metal Worker (RMW)	140	120	130
Electrician	490	610	510
Heavy Equipment Operator	180	70	90

Total OES Targeted Workers:	2590	2720	2850
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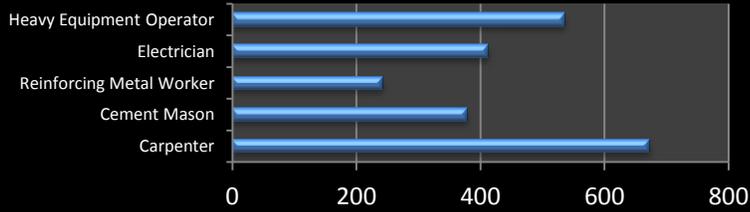
CONCLUSION:

Based on contractor responses, 5,467 workers will be needed by July 2018. We noted an increase of **3,267** workers from the date of the survey to the one year target date. This number represents the employers anticipated need for additional workers in the target occupations.

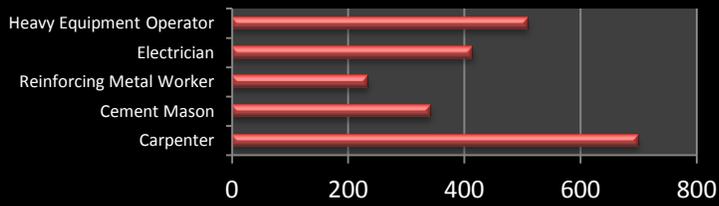
Skilled Worker Requirments in 2018



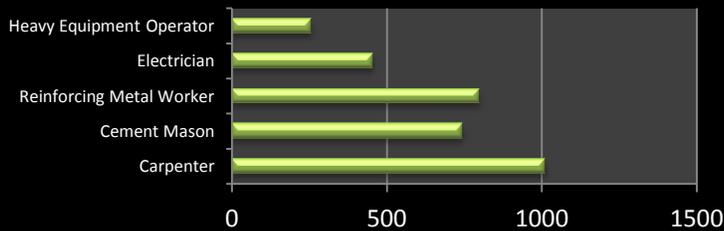
Number of Workers Present at 1/01/17



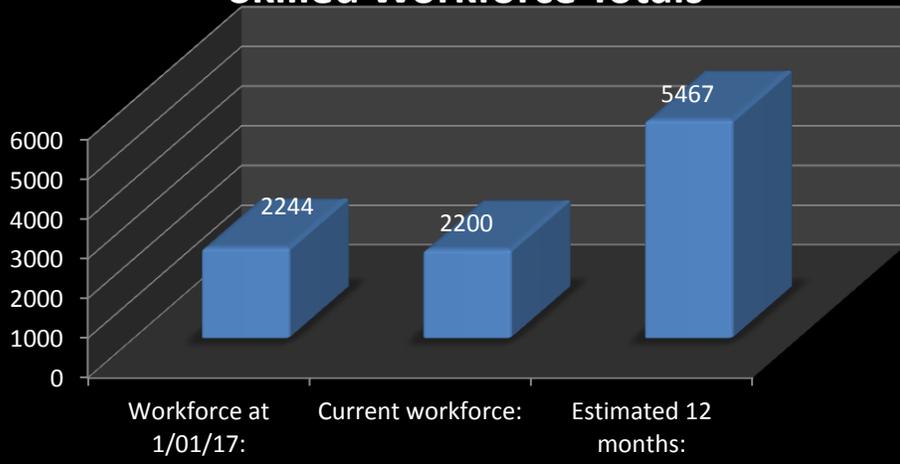
Number of Workers Present at Time of Survey



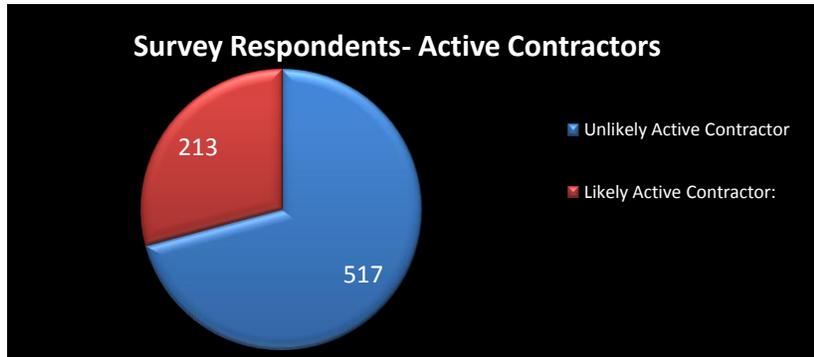
Estimated New Workers Added in 12 Months



Skilled Workforce Totals



Survey Respondents- Active Contractors





DEPARTMENT OF LABOR
Alien Labor Processing & Certification Division

ANALYSIS OF ALPCD SKILLED WORKER SURVEY

In this study, “Targeted Skilled Workers” is defined as workers within the 5 occupations identified in the surveys, as listed below:

1. Carpenter
2. Cement Mason
3. Reinforcing Metal Worker
4. Electrician
5. Heavy Equipment Operator

Data collected was only for U.S. workers and did not include any H-2B data.

ANALYSIS:

1. Targeted Skilled Workforce Totals :

Total U.S. skilled workforce in 01/01/2017 was 2,244. At the time of the survey the total workforce was 2,200 which means that the total number of employed U.S. skilled workforce dropped by 44. The estimated total number of new workers needed by July 2018 is 3,267.

2. Contractors Likely To Have Targeted Skilled Workers:

Out of 726 respondents (contractors), 598 of them had licenses which show activity that may require Targeted Skilled Workers and 128 of them were in business activities unlikely to employ Targeted Skilled Workers.

3. Workforce At 01/01/2017:

- a. Number of Carpenters at 01/01/2017 is 673.
- b. Number of Cement Masons at 01/01/2017 is 379.
- c. Number of Reinforcing Metal Workers at 01/01/2017 is 242.
- d. Number of Electricians at 01/01/2017 is 413.
- e. Number of Heavy Equipment Operators at 01/01/2017 is 537.

4. Workforce Today (Between 2/01/2017 thru 6/30/2017):

- a. Number of Carpenters at present is 699. The number of US Skilled Carpenters employed increased by 26 since 01/01/2017.
- b. Number of Cement Masons at present is 342. The number of employed US Skilled Cement Masons dropped by 37 since 01/01/2017.
- c. Number of Reinforcing Metal Workers at present is 234. The number of employed US Skilled Reinforcing Metal Workers dropped by 8 since 01/01/2017.

- d. Number of Electricians at present is 415. The number of US Skilled Electricians employed dropped by 2 since 01/01/2017.
 - e. The number of Heavy Equipment Operators at present is 510. The number of employed US Skilled Heavy Equipment Operators has dropped by 27 since 01/01/2017.
5. Estimated Workers Added in 12 Months:
- a. Estimated additional hires for Carpenters by 07/2018 is 1,012.
 - b. Estimated additional hires for Cement Masons by 07/2018 is 744.
 - c. Estimated additional hires for Reinforcing Metal Workers by 07/2018 is 799.
 - d. Estimated additional hires for Electricians by 07/2018 is 455.
 - e. Estimated additional hires for Heavy Equipment Operators by 07/2018 is 257.

In total, employers report that they expect to hire 3,267 new workers by 2018.

6. Total Number of Surveys:
- Out of 726 respondents, only 213 respondents provided data and workforce estimates. All others reported "0" on all questions in the survey.

CONCLUSIONS:

1. At the time of the survey, the total Targeted Skilled Construction workforce is 2,200. Currently, employers are finding it difficult to fulfill existing manpower needs for ongoing projects. By July 2018, there is an anticipated need for an additional 3,267 Skilled Construction Workers which Guam employers must be prepared to meet.
2. The anticipated population of Targeted Skilled Construction Workers by July 2018 is 5,467. This population is more than double, compared to 2016 numbers (per OES Survey data) where the Targeted Skilled Worker population was only 2,590.
3. The number of jobs available represents a serious skills gap in the local construction workforce. The situation seems insurmountable without access to a large pool of available skilled labor. Entertaining possible U.S. workers from the mainland is an option, but still problematic without a ready source of Skilled Workers who are willing and able to take jobs in Guam.
4. Skills gaps exist primarily in the occupations of Carpenter, Cement Mason, and Reinforcing Metal Worker positions, which will require 2,555 workers by 2018.
5. Out of the 726 respondents who are contractors, only 598 of these employ, or have a need for skilled workers targeted in this survey.

Prepared by:
Darlene C. Isip
Dept of Labor - ALPCD
July 27, 2017

Department of Labor
Alien Labor Processing and Certification Division

SURVEY COLLECTION ANECDOTES:

During contact with survey respondents, ALPCD staff interacted with contractors and noted general observations

- 1.** 128 contractors show "0" workers in all questions are non-construction companies or not general contractors.
- 2.** Some contractors that show '0" workers in all questions are mostly sole contractors, meaning they do not have any employees and do contracted work alone.
- 3.** We noted that some contractors which show "0" workers in all questions have stated that they are "inactive" and are only maintaining their license because it is more practical to "maintain" their Contractor's License than to start the application process all over and have to pay a larger application fee.
- 4.** Some construction companies have "0" in the field "Estimation of how many workers you will hire within the next 12 months" because they do not have projects or the number of workers they will hire will depend on if they have a project or not.
- 5.** Some construction companies have said that they are not bidding on projects because they are fearful of not having enough workers to complete the project.
- 6.** There are several new companies hence they do not have any employees yet and reported "0".
- 7.** The field "Estimation of how many workers you will hire within the next 12 months" refers to, how many additional workers contractors want to hire within the next 12 months aside from their existing number of workers.
- 8.** Contractors who completed their clearances after June 30, 2017 were not included in the survey. Survey period v

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DENIALS ON GUAM**
August 2017

APPENDIX B
Guam Contractor's Association
Workforce Crisis in Guam
3/17/17

Workforce Crisis in Guam

GUAM CONTRACTORS ASSOCIATION



John M. Robertson PE – Principal Author

AS APPROVED BY THE GCA BOARD OF DIRECTORS | 07 MARCH 2017

GUAM CONTRACTORS ASSOCIATION

WHITE PAPER

WORKFORCE CRISIS IN GUAM

Two things stand-out from the history and analysis reported below. (1) The construction industry cannot transition to an all-US workforce without considerable increase in cost of construction. Beyond cost of construction, it has proven unworkable in the past and will be difficult to impossible to implement in the future. And (2), the Department of Defense is in a key position to exercise influence in resolving this important issue. The DoD is the largest user of construction services on Guam. A decision has been made at highest levels of government to pivot to the Pacific, and that requires a temporary workforce for the necessary construction on Guam.

Since the Fall of 2015, construction contractors for projects on military bases and in the civilian community have been facing extraordinary difficulty employing competent workers for their construction projects because of inability to use alien workers under the H-2B program. Other employers on Guam are experiencing similar difficulty. The problem stems from an unannounced change in policy or practice implemented by the U.S. Citizenship and Immigration Service (USCIS) taking a different stance in relation to H-2B workers entering the United States, and in particular Guam, as temporary workers. The key word being “temporary”. The USCIS Director denies there has been a change in policy and advised Guam Congresswoman Bordallo’s office that the governing law needs to be amended by the Congress to better define the meaning of “temporary” before action in relation to Guam can be taken. Congressional action could take years instead of months. As of this writing, the new Trump presidential team has been organizing itself and the path they may take on this issue is unknown.

The change in the manner of processing visas was driven by events in the mainland U.S. and not Guam. Employers in the 50 states are limited to employing no more than 66,000 temporary alien workers per year under the H-2B visa program. Employers there petitioned the USCIS to quadruple the number of temporary alien workers because of a shortage in American workers willing to accept low paying unskilled positions. Guam employers are thus being damaged by the unintended consequences of actions being taken on the mainland – over which they did not contribute and over which they have no control.

Initial studies concerning the military buildup on Guam anticipated the use of an H-2B workforce as being consistent with the history of military construction on Guam and the CNMI. This is borne out in the EIS and the SEIS. There follows an excerpt from the Government Accountability Office document GAO-10-72 dated October 2009 and titled “Defense Infrastructure: DoD Needs to Provide Updated Labor Requirements to Help Guam Adequately Develop Its Labor Force for the Military Buildup”.

“ . . . The Navy estimates that the remaining construction workforce could consist of as many as 8,000 H-2B visa workers. Federal law provides no more than 66,000 H-2B visas may be issued to qualified foreign workers each fiscal year. However, under the Consolidated Natural Resources Act of 2008, during an initial period that ends December 31, 2014, qualified nonimmigrant workers may be admitted to Guam or the Commonwealth of the Northern Mariana Islands under the H-2B visa process established in accordance with the Immigration and Nationality Act without counting against the 66,000 numerical limitations referenced above. . . .” [The exemption has since been extended until 2019]

BACKGROUND

Guam is an unincorporated Territory of the United States, located closer to Asia than to any other U.S. state or territory. It is four time zones and 8 hours flying time west of Hawaii. It is nine time zones and 18 hours flying time west of Washington DC. The Island of Guam was ceded to the United States along with the Philippine Islands in 1897 at conclusion of the Spanish American war. Guam remains a U.S. Territory while the Philippines became a fully independent Republic in 1946. Guam was invaded a few hours after the attack on Pearl Harbor on 8th December 1941 and was under control of the Imperial Japanese military until it was liberated by American forces on 21st July 1944.

During and immediately after World War II, the Navy Seabees built infrastructure on the island that exists until the present day. Subsequently, construction was carried out by contractors that used an Asian workforce sourced primarily from the Philippines. Many of those workers became American citizens and they and their offspring form a major part of the current local workforce. Under the H-2B visa program, Philippine tradesmen became and are still favored because of geographic and cultural proximity to Guam. Most workers bring with them needed general and specialized experience from prior employment in Guam or the Middle East.

Guam is often referred to in military terms as the “Tip of the Spear” because of its location nearest to potential adversaries in the Western Pacific. Joint Region Marianas headquarters located on Nimitz Hill in Guam has a vast area of responsibility encompassing Saipan and the Northern Mariana Islands to the north, Guam, The Federated States of Micronesia to the south, the Marshall Islands to the East and Palau to the west. It is an area larger than the continental United States. Navy Base Guam with newly renovated wharves and warehouses at center of the island, the Navy Computer and Communications Center to the northwest and Andersen AFB with two newly renovated runways and new hangars to the northeast are fully prepared for any contingencies. A new Marine Corps base has been under planning for more than 12 years and is to be constructed in the North to relieve overcrowding in the vicinity of Futenma Marine Corps Base in Okinawa. This conforms to an agreement between the governments of the United States and Japan wherein Japan will pay a substantial portion of the \$8.7 Billion cost. In total, the military controls 27% of the islands land mass.

The absence of a robust workforce on Guam has consequences not only to the military but also the civilian community with construction projects delayed or postponed. Businesses other than construction are being similarly impacted.

Note that the issue of work visas extends not only to H-2B Temporary Non-Agricultural Workers but also to the H-1B program. The H-1B visa program was established to employ foreign workers in specialty occupations that require the theoretical or practical application of a body of highly specialized knowledge, including but not limited to scientists, engineers, or computer programmers. Effective from March 3rd, 2017, the USCIS suspended the expedited processing of H-1B visas.

ALTERNATIVES FOR ACQUIRING A GUAM WORKFORCE

U.S. Workers from Hawaii or Continental U.S.: This is often touted as the ideal solution. It provides jobs for unemployed Americans and gets the job done right. Contractors have always used Americans for most management, supervisory and engineering positions. American workers are also used routinely for some specialized trades and to ramp up for a short-term requirement. For example, an American concrete paving crew was used in all key positions for rebuilding the North Runway at Andersen AFB in 2006 – 2007. Each worker was paid \$90.00 per hour and international travel cost was reimbursed. Specialist drywall and masonry crews were used at the new Navy Hospital on Guam during the 2013 – 2014 time frame. These workers were paid at the rate of \$85.00 per hour and international travel cost was reimbursed. These rates are well above Davis Bacon wage rates for the region and above normal pay rates used on Guam and the mainland.

Contractors have attempted in the past to bring in American workers and, while it has proven workable in small numbers and for short term assignments, it has been unsuccessful in the long term. Recruiting is difficult because Americans are in general opposed to being so far away from family and friends and the ability to drive on the open road to near and far destinations. Guam is an island that is 30 miles north-south and 6-12 miles east-west with limited attractions other than WW-2 battle sites and monuments. The unfortunate tendency is for recruited workers to return home almost immediately or within 3 to 6 months after arrival. Some others adopt a beach bum life style or become addicted to alcohol. In any case, approximately 20% of recruited workers can be expected to abandon their jobs before completing a 12-month contract. The employer thus loses the recruiting and mobilization expense which is quantifiable plus the cost of retraining a replacement which is not quantifiable. American workers can be expected to be more productive than Asian workers, but, because of the tropical climate and other circumstances, the factor can be no greater than 1.5 to one. Meaning, one American worker should be able to replace 1.5 Asian workers.

The all-in cost for an American workforce is substantially higher than that of an Asian counterpart.

For union workers recruited from Hawaii, **the factor is 3.0**. See Exhibit “A” attached
For open shop workers recruited from the U.S., **the factor is 2.4**. See Exhibit “B” attached

The calculation is based on the possibility of using a union workforce from Hawaii which entails other difficulty in Guam where unions have, in general, been shunned by local tradesman. There are no union tradesmen in the construction industry at the present time. The calculation for the mainland U.S. is based on the possibility of using open shop workers from areas of less economic activity and lower wages. That would exclude states such as California and New York.

For the above reasons, an Asian workforce has been the norm for construction trades and other work in Guam since the end of World War II. The option of using U.S. workers is becoming even less viable because of improving demand for construction workers in the mainland U.S. While unemployment in the construction industry was above 18% in 2008, it is now close to zero. Plans by the new Trump administration to build up the military and repair and upgrade infrastructure systems means that more workers will need to be trained for projects there. Contractors will need H-2B workers for temporary positions in the U.S. where there are gaps.

Train a Local Guam Workforce: The Guam Community College has offered training for skilled workers, including the construction trades, for many years. In 2006, the Guam Contractors Association launched

its “GCA Trades Academy” for providing specialized training for construction and maintenance tradesmen. All courses lead to transferrable certification using NCCER curricula which is the standard for the construction industry. NCCER is supported and funded by the top engineering-construction firms in the business today as well as construction user associations such as CURT (Construction Users Round Table). More than 3,000 individuals from Guam, Saipan, the Federated States of Micronesia and Palau have been touched by this program. It includes some Americans that have taken up residence here. The Trades Academy was launched in part because of the impending military buildup on Guam. Also, because the workforce used to construct military facilities after the war were aging and leaving the workforce.

Although the Trades Academy has fulfilled an important role since its founding, it cannot be expected to offer the total solution. Workers from off-island are still needed.

A major deterrent to training a local workforce is funding. There is a large number of individuals that have migrated to Guam from the outer islands of Palau, Yap, Chuuk, Pohnpei, Kosrae and the Marshall Islands. They generally arrive on Guam with minimal education or working knowledge of the English language. Each of those islands have their own languages. A funding source was available in the late part of the last decade but has since gone away. These individuals could be taught to work safely in lower skilled trades if funding could again be made available. There are also those in the local community that prefer to live from entitlement benefits rather than work – same as many other locations.

Contractors and other employers have found that H-2B workers are highly reliable, skilled and trainable.

IMPACTS ON THE MILITARY IN GUAM

The military buildup on the islands of Guam, Tinian and Pagan was first announced in 2004. After much planning and conducting environmental impact assessments, the program is currently facing a degree of uncertainty by four things: 1.) The H-2B visa issue, 2.) the high cost of clearing unexploded WW-2 ordnance, 3.) a biological survey in the northern part of the island and the 4.) CNMI Joint Military Training EIS/OEIS which faces a legal challenge. The one that should be easiest to resolve is the H-2B visa issue. The other three can be worked around until a solution emerges.

The military has plans to spend \$8.7 Billion to build a Marine Corps Base on Guam between the present day and 2029. Over and above that, there are requirements for improvements to Air Force and Navy facilities. For that, a robust and sustainable workforce is essential. There follows a partial summary of projects planned and in progress:

NAVFAC Defense Program Realignment Initiative (DPRI) Projects:

Completed	\$304.0 Mil
Awarded and Under Construction	\$158.0 Mil
Solicitation Pending Award	\$400 ~ \$850 Mil
FY 16 Small Business Achievement	\$315.0 Mil
FY 17 Investment in Environmental Stewardship	\$20.1 Mil
FY 16 MILCON Program	\$405 ~ \$925 Mil
FY 17 MILCON Program	\$225 ~ \$750 Mil
FY 17 Special Projects Program	\$11 ~ \$30 Mil
FY 17 MACCs & IDIQs	\$990.0 Mil

In addition to the foregoing for FY 17, there are 29 identified SRM (Sustainment, Repair and Modernization) projects at Andersen AFB and 17 SRM projects on Navy Base Guam. Also, housing projects at both bases.

The majority of these projects cannot be executed without a substantial workforce that is currently not available on island because of the new restrictions in the approval of H-2B visas. On the other hand, work might proceed with hopes of using an American workforce but with difficulty as explained below and a hefty premium – see Exhibits A and B attached.

- For recruiting and using Hawaii Tradesmen, the factor on labor cost element would be X3.0
Thus, a \$100 Mil project would cost an additional \$50.0 Mil for a total of \$150.00 Mil
- For recruiting and using U.S. mainland tradesmen, the factor on labor cost element would be X2.4
Thus, a \$100.0 Mil project would cost an additional \$35.0 for a total of \$135.0 Mil

INITIATIVE BY THE CONSTRUCTION INDUSTRY IN GUAM

In early 2016, employers and the Guam Department of Labor recognized that almost all applications for H-2B visa renewals and H-2B visas to fill new positions were being disapproved. It was then thought to be a temporary matter. By mid-year, it had become clear that there was a shift in USCIS policy or at minimum a change in the manner of processing visa applications at the California Service Center. On July 8th, GCA organized a meeting at the Dusit Thani Hotel, attended by a large number of business representatives affiliated with the Guam Contractors Association, the Guam Chamber of Commerce and the Guam Hotel & Restaurant Association. Four local immigration attorneys explained the current situation and advised that the new approach to determining temporariness of positions needing to be filled had become the new norm. On July 15th, GCA organized a strategy meeting at the Santa Fe Hotel attended by contractors and others from the community with interest in the subject. At that time, there were 40 construction firms and 37 non-construction firms using H-2B workers. There were then 1,166 construction H-2B workers and 234 non-construction H-2B workers. That compares with a total of 200 H-2B workers as of 1 March 2017 – a number that is declining as visas expire. A relatively small number of applications are currently being approved $\pm 4\%$.

The GCA Board of Directors called a special meeting and decided to support a Class Action Lawsuit against relevant parties in the U.S. Government and to hire a specialized immigration attorney. That assignment went to Jeff Joseph Esq, Senior Partner of Joseph Law Firm, P.C. in Aurora, Colorado. The lawsuit was filed in Guam District Court in October 2016 with the Guam Contractors Association, six small business construction contractors and six non-construction employers as named Plaintiffs. Named Defendants were the Attorney General of the United States, the Secretary of Homeland Security, the Director of the USCIS, the Associate Director for Service Center Operations and the Director of the California Service Center.

Hearing in Guam District Court: The Class Action case was heard before the Honorable Joaquin V.E. Manibusan, U.S. Magistrate Judge on 17th January 2017. The GCA and other Plaintiffs requested a Preliminary Injunction requiring the Department of Homeland Security and U.S. Citizenship & Immigration Services to resume the processing of work visas for Guam in the manner conducted for the past 30 years and prior to December 2015. The matter hinges on the interpretation of temporariness of a position needing to be filled.

Attorney for the Class Action, Jeff Joseph Esq argued among other things that:

- There has been a substantial change in policy as a de-facto change without hearings and without publication in the Congressional Record. This being contrary to the Administrative Procedures Act and it is arbitrary and capricious. Furthermore, USCIS has provided retraining of its personnel to conform to this change.
- For the past thirty years USCIS has been approving H-2B petitions filed by Guam employers based on the same operative facts and law. All applications have been on the basis of “Peak Load” or “One Time Occurrence” as required for “temporary” workers. The H-2B regulations clearly anticipate that an employer may have a recurrent need for H2B workers and allows for certification in those circumstances.
- USCIS has denied there has been any change in its policies for determining temporariness and state only that they are providing training on the evidentiary requirements for proving temporariness.

- Attorney Joseph pointed out that special consideration has been given to Guam because of its unique situation, such as removal of Guam from the 66,000 visas per year cap required in CONUS. The military buildup will require 10,000 foreign workers, according to the Navy's EIS.
- Adjudication of applications from Guam employers that include certifications by the Guam Department of Labor, are being processed by USCIS personnel in California that are unfamiliar with the Guam situation. They should have rightly given deference to the certifications by Guam DOL. He also noted there has been a minimum of abuse connected to H-2B visas on Guam due to stringent monitoring and enforcement of the H-2B requirements by Guam DOL, which is generally not the situation in CONUS.

The government case was presented by Attorney Glenn Girdharry Esq, deputy head of the U.S. Department of Justice, Office of Immigration Litigation, District Court Section based in Washington DC.

- He started by saying the practical aspect of this situation is unfortunate but there has been no change in policy. He repeated that statement three additional times.
- It is an interpretation of "Temporary". He said the Plaintiffs could not demonstrate temporary need as opposed to permanent.
- They could not demonstrate severe damages from the denials.
- By regulation only the USCIS can determine whether a position requested was for a temporary need.
- Judge Manibusan interrupted repeatedly and advised that USCIS should give deference to Guam DOL. Their opinions should be given greater weight. He pointed out that since World War II, Guam has depended on foreign workers in construction and other industries.
- Attorney Girdharry made one point that might be damaging to the GCA case, if correct. A case involving the Administrative Procedures Act cannot be decided by this court but instead should go to the Halls of Congress. Judge Manibusan responded that there is a higher purpose here. Congress has decided to move Marines to Guam. In order to accomplish that purpose, a workforce is needed to build the base. Judge Manibusan indicated that Congress has already spoken on this issue when it removed Guam from the 66,000 visas per year cap required in CONUS so that H-2B workers could come to Guam to help with the U.S. Military Build-up.
- Attorney Girdharry responded that he was not able to connect the two. That is above him. Judge Manibusan pointed out that this court could change the decision of an agency if it is arbitrary and capricious. He noted that Guam has no possibility of securing workers other than through the H-2B visa program.

The Judge advised that if arbitrary and capricious actions have been taken by an agency of the Federal Government, this Court is the correct jurisdiction to consider such a case. Judge Manibusan advised that his court would take the case under submission and make recommendation to the Chief Judge.

Settlement Offer: A total of three proposals for settlement were submitted by Attorney Joseph to Attorney Girdharry. In essence, the proposals focused on the following: "In making temporariness determinations, the Governor can utilize advisory opinions, consultations, and must be provided by officially sanctioned groups which reflect a balance of the interests of the public and private sectors, government, unions and management. The memo would indicate that Governor of Guam is in the best position to make temporariness determinations given its remote location, unique workforce, and military importance to the U.S." The settlement proposal was presented by Attorney Girdharry to his client, the

Director of the USCIS. The proposal was rejected on the basis that only USCIS is authorized to determine temporariness of a position.

The Way Forward: There were three motions before the court. First, the Plaintiffs motioned for a temporary injunction to put things back as they were until a final determination can be made – the Defense objected. Second, the Plaintiffs motioned for Certification of the Class – the Defense objected. Third, the Defense made a motion to dismiss the case. The Plaintiffs objected.

Depending on the outcome of the ruling on these motions, the next court hearing is to be in May 2017 at which time motions for Summary Judgment from either or both sides will be heard. If the Class certification is denied, Attorney Joseph will want to add as many parties to the case as are interested in being named Plaintiffs.

Cost of Litigation: The GCA has estimated that the cost of litigation through May 2017 will be at minimum \$100,000. A special Trust Fund has been set up with an escrow agent to receive and manage the funds. As of 1st March, \$68,000 had been collected and \$60,000 had been paid out for legal and other expenses. Another fund-raising drive is planned. Major donations have been received from the Guam Contractors Association, the Guam Chamber of Commerce, the Employers Council and members of those business associations.

OTHER INITIATIVES

The local Guam Government and the local business community are fully behind the initiative to put things back as they were before in relation to the use of alien workers on Guam as being necessary.

Congresswoman Bordallo: Guam Congresswoman Bordallo and her staff have pressed this issue at every opportunity and especially before the House Armed Services Committee (HASC). She has written letters to the USCIS Director and other high officials in Washington. She authored an amendment to the FY 2017 National Defense Authorization Act (NDAA) to provide an exemption for H-2B workers needed for Department of Defense projects in Guam. The amendment was incorporated into the House version of the FY 17 NDAA but was stricken by the Senate Armed Services Committee (SASC). That measure would have resolved a portion of the workforce shortage on Guam but not local infrastructure or civilian projects such as planned hotels. The Congresswoman is expected to continue the fight on this important issue.

Governor Calvo: The Guam Governor and his administration, and especially the Department of Labor, have left no stone unturned in pursuing this issue with logic and determination. The Guam Department of Labor has interacted with counterparts at the U.S. Department of Labor and USCIS but with no offer of intervention. The Governor has addressed letters to President Obama, Department of Homeland Security Secretaries Jeh Johnson and John Kelly, Department of Defense Secretary Mattis, and former USCIS Director Leon Rodriguez in an attempt to resolve this matter but to no avail. Responses have been business like but with no offer to intervene on behalf of Guam. In January, 2017, the Governor spoke with CNO ADM Richardson, who was not aware of the crisis but assured Governor Calvo that he would investigate the matter. In late February 2017, the Governor also met with officials in Washington D.C. to discuss this issue. Of note, Governor met with USCIS Acting Director Scialabba and staff, to which USCIS stated that applicants have been citing the “military buildup” as justification for temporary need, when “the military buildup has been discussed for years, but is still pending”. USCIS also cited that “bakeries and other businesses” are using the military buildup for justification. Governor Calvo corrected USCIS, stating that the Guam military buildup is underway, with hundreds of millions of dollars already awarded. Additionally, the Governor stated that the military buildup supports collateral industries – like bakeries – through the additional need for subsistence contracts that support increased military exercises in the region.

Guam Chamber of Commerce: Members of the door-knock delegation of the Chamber’s Armed Forces Committee took this issue to high officials in Washington DC in their Spring visit in 2016. They will do so again in April 2017.

SUMMARY AND CALL TO ACTION

Current Condition:

1. Guam has a special requirement for foreign workers because of its location in the far Western Pacific. The situation cannot be compared to any other state or territory. This applies to both professionals under H-1B visas and workers under H-2B visas.
2. Over a period of many years, the Guam construction industry has relied on aliens from Asia to fill gaps in the workforce for peak load requirements and for one-time need for projects requiring a large contingent of skilled and semi-skilled tradesmen.
3. There has never been a threat to homeland security by using alien workers in Guam. That is because recruited workers are vetted in ways far beyond methods used in CONUS.
4. Other Guam industries have relied on using skilled workers from Asia such as nurses, medical technicians, food preparation and other. The privately-operated Guam Regional Medical City has been forced to curtail certain activities because of staffing issues related to H-2B visas.
5. The Guam economy has been damaged over the past year as result of businesses not being able to fill temporary positions as in the past. If hospitality businesses are forced to recruit and hire personnel from the mainland or Hawaii, the sudden increase in cost could wreck that vital industry to the local economy. Guam is a location with relatively low wages and high cost of living as compared to most locations in CONUS. That cannot be changed, if at all, except after good planning and a smooth transition.
6. The construction industry cannot transition to an all-US workforce without considerable increase in cost of construction as discussed in the foregoing. Beyond cost of construction, it has proven unworkable in the past and will be difficult to impossible to implement in the future, and especially, considering the large number of workers needed.
7. The current restriction on using alien labor on Guam under the H-1B and H-2B visa programs just does not make sense for the situation on Guam. Without the ability to use H-1B engineers and H-2B workers, all construction on Guam will cost substantially more and take longer.

A Call to Action:

1. The Guam Government, the Guam Contractors Association and the local business community as a whole will continue the fight to correct the wrong that has been instituted by the U.S. Homeland Security and U.S. Citizenship and Immigration Services.
2. As outlined in the foregoing, the Guam community, supported by local officials, has bent over backward and invested much to resolve this alien work visa issue for the military buildup and other infrastructure and civilian projects on Guam.
3. The Department of Defense is in a key position to exercise influence in resolving this important issue. The DoD is the largest user of construction services on Guam. A decision has been made at highest levels of government to pivot to the Pacific and that requires a temporary workforce for the necessary construction on Guam. The DoD is part of the same government as the Department of Homeland Security and should be able to present its case at Cabinet level, or convince the President of the United States, if necessary, to resolve the matter in the best interest of the peoples of the United States including Guam.

Guam Contractors Association

EXHIBIT "A" - Wage Study - H-2B Workforce vs Hawaii Workforce

Based on one year renewable contract for Hawaii workers with signing and completion bonuses. Allow 20% attrition rate.
 Based on two year renewable contract for H-2B workers. Figure 10 visa applications per category. Allow 2% attrition rate.
 Assume camp accommodation with food for H-2B workforce + bus transport. Assume apartment + car allowance for HI workforce
 by J Robertson with Board Approval 01 March 2017

	Description	H-2B Average Medium-Skilled Worker				Hawaii Average Medium-Skilled Worker			
		Quantity	Unit	U.C.	Amount	Quantity	Unit	U.C.	Amount
1	On-Island Recruiting Expense	0.50	LS	\$650.00	\$ 325	1	LS	\$650.00	\$ 650
2	GDOL: Manpower Development Fund	1.00	LS	\$1,099.00	\$ 1,099				\$ -
3	Visa Application and Processing	1.00	LS	\$670.00	\$ 670				
4	Off-island Agency Fee incl Vetting	0.50	LS	\$650.00	\$ 325	1	LS	\$1,500.00	\$ 1,500
5	Mob/Demob from Manila	0.50	LS	\$450.00	\$ 225				\$ -
6	Mob/Demob from Hawaii				\$ -	1	LS	\$1,800.00	\$ 1,800
7	Signing/Commencement Bonus				\$ -	1	LS	\$1,500.00	\$ 1,500
8	Annual Wage at Hrly Rate: 2,000 ST + 650 OT	2,650	HRS	\$15.50	\$ 41,075	2,650	HRS	\$41.75	\$ 110,638
	Hawaii Union Fringe Benefits					2,650	HRS	\$28.60	\$ 75,790
9	Incentive Overtime	650	HRS	\$7.75	\$ 5,038	650	HRS	\$20.88	\$ 13,572
10	Holiday Pay for US Citizens	0	HRS	\$15.50	\$ -	80	HRS	\$41.75	\$ 3,340
11	SSI taxes - FICA and Medicare	0	\$	7.65%	\$ -	113,978	\$	7.65%	\$ 8,719
12	W/C + Health & Welfare	12	MO	\$50.00	\$ 600	12	MO	\$0.00	\$ -
13	Camp Accommodation w/ Food	12	MO	\$180.00	\$ 2,160				\$ -
14	Housing Allowance - Apt Rental				\$ -	12	MO	\$1,850.00	\$ 22,200
15	Ground Transportation by Bus	12	MO	\$460.00	\$ 5,520				\$ -
16	Automobile Allowance				\$ -	12	MO	\$450.00	\$ 5,400
17	Contract Completion Bonus				\$ -	1	LS	\$7,500.00	\$ 7,500
18	Attrition: Resignations/Terminations	2,644	\$	2.00%	\$ 53	5,583	\$	20.00%	\$ 1,117
					\$ -				\$ -
					\$ -				\$ -
	Totals	2,650	HRS	\$21.54	\$ 57,089	2,650	HRS	\$95.75	\$ 253,725

Figure that Hawaii workforce is more efficient by factor of 1.5 : 1. Therefore $\$95.75 / (\$21.54 \times 1.5) = 2.96$ increase in labor cost.
 Rounded increase in labor cost is then a factor of say 3.0. Figure that the labor cost of prime + subs is 25% of total project cost.

Guam Contractors Association

EXHIBIT "B" - Wage Study - H-2B Workforce vs States Side Workforce

Based on one year renewable contract for US workers with signing and completion bonuses. Allow 20% attrition rate.
 Based on 2 year renewable contract for H-2B workers. Figure 10 visa applications per category. Allow 2% attrition.
 Assume camp accommodation with food for H-2B workforce + bus transport. Assume apartment + car allowance for US workforce
 by J Robertson with Board Approval 01 March 2017

	Description	H-2B Average Medium-Skilled Worker				U.S. Average Medium-Skilled Worker			
		Quantity	Unit	U.C.	Amount	Quantity	Unit	U.C.	Amount
1	On-Island Recruiting Expense	0.50	LS	\$650.00	\$ 325	1	LS	\$650.00	\$ 650
2	GDOL: Manpower Development Fund	1.00	LS	\$1,099.00	\$ 1,099				\$ -
3	Visa Application and Processing	1.00	LS	\$670.00	\$ 670				
4	Off-island Agency Fee incl Vetting	0.50	LS	\$650.00	\$ 325	1	LS	\$1,500.00	\$ 1,500
5	Mob/Demob from Manila	0.50	LS	\$450.00	\$ 225				\$ -
6	Mob/Demob from CONUS				\$ -	1	LS	\$2,600.00	\$ 2,600
7	Signing/Commencement Bonus				\$ -	1	LS	\$1,500.00	\$ 1,500
8	Annual Wage at Hrly Rate: 2,000 ST + 650 OT	2,650	HRS	\$15.50	\$ 41,075	2,650	HRS	\$50.00	\$ 132,500
9	Incentive Overtime	650	HRS	\$7.75	\$ 5,038	650	HRS	\$25.00	\$ 16,250
10	Holiday Pay for US Citizens	0	HRS	\$15.50	\$ -	80	HRS	\$50.00	\$ 4,000
11	SSI taxes - FICA and Medicare	0	\$	7.65%	\$ -	148,750	\$	7.65%	\$ 11,379
12	W/C + Health & Welfare	12	MO	\$50.00	\$ 600	12	MO	\$125.00	\$ 1,500
13	Camp Accommodation w/ Food	12	MO	\$180.00	\$ 2,160				\$ -
14	Housing Allowance - Apt Rental				\$ -	12	MO	\$1,850.00	\$ 22,200
15	Ground Transportation by Bus	12	MO	\$460.00	\$ 5,520				\$ -
16	Automobile Allowance				\$ -	12	MO	\$450.00	\$ 5,400
17	Contract Completion Bonus				\$ -	1	LS	\$7,500.00	\$ 7,500
18	Attrition: Resignations/Terminations	2,644	\$	2.00%	\$ 53	6,375	\$	20.00%	\$ 1,275
					\$ -				\$ -
					\$ -				\$ -
	Totals	2,650	HRS	\$21.54	\$ 57,089	2,650	HRS	\$78.59	\$ 208,254

Figure that U.S. workforce is more efficient by factor of 1.5 : 1. Therefore $\$78.59 / (\$21.54 \times 1.5) = 2.43$ increase in labor cost.
 Rounded increase in labor cost is then a factor of say 2.4. Figure that the labor cost of prime + subs is 25% of total project cost.

Governor of Guam
2017 H-2B Task Force
**IMPACT OF H-2B VISA
DENIALS ON GUAM**
August 2017

APPENDIX C
Guam Economic Development Authority
Guam: H-2B Facts and Figures
July 2017

GUAM: H-2B FACTS & FIGURES

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Guam: H2-B Facts and Figures

INTRODUCTION

Since the 1940's, H-2B workers play an important role to Guam's construction industry. They build our homes and offices for both military and civilian construction projects. In May 2015, the Guam Daily Post reports, "There have been virtually no approvals of H-2B visa applications or extension requests since December 2015". In addition, the Guam Department of Labor, statistics show that out of 2,475 applications only six were approved, which is a 99 % denial rate. As of August 14, 2017, there are currently 89 H-2B worker's on-island.

IMPACT ON CONSTRUCTION INDUSTRY

Employers within the construction industry are primarily the most affected in the shortage of H-2B workers, due to the fact that there are already a shortage of skilled construction workers on-island. In order to resolve the issue, we would have to hire U.S. workers with wages *three or four times that of foreign workers, which eventually lead to higher rates.

The impact will cause smaller construction companies to lose more projects, & higher costs for companies to pay more to keep their workers. Masons, carpenters, electricians, structural steel workers and plumbers are among foreign workers on H-2B visas who have been part of the Guam construction industry's labor force for decades.

Reports show that more than 98% of these workers are from the Philippines. Guam's construction industry used to bring in workers from China, but the federal government no longer allows workers from China to be brought into the United States on H-2B visas.

Some businesses, such as 5M Construction Corporation are now having to put operations entirely on hold and been forced to stop accepting projects altogether, as a result of being denied H-2B workers. The company loses \$5,000 every day for the duration of the project being on hold.

Local agencies such as, Department of Public Works and the Guam Waterworks Authority also have felt some impact from the shortage of foreign workers. Fewer companies are interested in submitting bids or are submitting at higher-priced bids because of the labor shortage.

If the H-2B issue is not resolved soon, prices will rise so high that available homes become unaffordable or the lack of new construction could crash the market. Either way, Guam's economy is at higher risk.

** changes as per DOL*

POLICY AND ECONOMIC TREND AND IMPACT: GUAM AND THE U.S

Policy Slant - Washington

• **H-2B under Trump – Direction is clear on the illegal immigrant problem. However, the *legal* immigration matter remains somewhat foggy at best.** “Immigration remains a topic at the front as President Trump ran a campaign that was intensely focused on stopping illegal immigration and securing America’s borders, but his policies on legal immigration procedures were often not as clear. Many publications like [The New York Times](#) pointed out that a number of Trump’s businesses have utilized the H-2B program in the past to recruit seasonal immigrant workers. To some, this was proof that Trump was amenable to supporting visa programs. To others, this merely indicated that the Trump administration is sending mixed signals.”

• **Trump is moving toward a merit-based system.** America is moving toward an inflow of high-skilled immigrants, and Trump enforcement policies would be aimed at discouraging low-skilled people to immigrate or stay in the U.S. illegally. Requiring E-Verify for job applicants and establishing a visa-tracking system which might require legislation but might be partly accomplished by regulation, would allow the country to benefit from a more highly skilled (and legally sanctioned) immigrant population.

• **Trump’s Executive Order 13769 – No impact on H-1B or H-2B programs** -- GOP leadership was not included in the process of developing and drafting the now infamous E.O. signed by Donald Trump. Essentially, this points to a troubling lack of communication between the White House and Capitol Hill. Even more troubling is that it confirms only a small fraction of Capitol Hill employees were aware of the immigration law, which the courts are citing as unconstitutional in its present form and nature.

Impact on the Guam Economy

- Severely impedes the timely progress and completion of on-going projects in the federal and civilian sector
- Reduces the flow of discretionary spending at local retail and service outlets.
- Losses in tax revenues collected –income, corporate, business privilege.
- Losses in business revenue to many small business especially in building equipment and supplies.
- Significant losses related to opportunity cost in the construction sector (cut-back, downsizing, company capacities, lost bid opportunities, etc.)
- GDP- drop in income accounts, local and federal government output, local services, etc.
- Income losses attributed to trickle-down, multiplier spending and revenues.
- Real property development and physical asset valuation slows.
- Reduced marginal labor capacity and added cost of U.S. skilled labor
- Cost of building escalates (inflationary effect in Guam and some states)
- Creates inter-competitive labor market between federal and non-federal (local government and private sector) construction projects

Seasonality of Labor Demand. The availability of H-2B workers allows Guam to cope with the seasonal fluctuation of labor demand in the construction industry through the minimization of surplus skilled workers during times of low construction periods. Historical data shows the natural tendency of the Guam labor market to right-size itself during fluctuating periods of demand. This phenomenon works best without regulatory interference and policy adjustment on the fly as the Guam economy is relatively closed to regional or even global disruption. In other words, the practice of “laissez faire” has proven adequate in the past, and thus, “if it ain’t broke...

Trigger for Recession. The U.S. government’s control of Guam immigration poses a precarious political dilemma for the island. Not only is this oversight and authority highly irregular but impractical and uncommon in the relationship between any governing nation and its territories/colonies past or present. Guam is a unique case in point. This adverse relationship supports the case of relinquishing such rights to occupied nations or territories.

Unclear and reactionary immigration policy is causing extensive and multiplied adverse effects in Guam but most specifically in the local construction industry; resulting in a number of negative economic scenarios as mentioned earlier.

All together quantified (rough estimation), if Guam loses its ability to launch up to \$300 million annually in construction work over the next five years--GDP will likely exhibit negative annual growth (somewhere between 1% to 3%), income tax revenues will fall, gross business receipts (BPT) will also decrease. Considering the loss of multiplier spending generated through construction income and expenditure, wholesale, retail and service sectors will feel major setbacks.

ROUGHLY SPEAKING, \$300 MILLION IN STALLED AND OR LOST CONSTRUCTION ACTIVITY WOULD MEAN...

Baseline Indicator:

- 3,000 to 4,000 H-2B Workers required to sustain peak construction period in Guam
- This equates to a workforce able to sustain \$300M in building project (demand side)
- Loss of \$300M to the local economy translates into...
 - **\$13.5M loss in Business Privilege Tax revenues annually (throughout buildup phase)**
 - **Consumer spending base would contract (say 20% of \$300M)**
 - **Personal income tax revenues – up to \$12.0 million annually**
 - **Corporate income taxes – up to \$15 million each year**
 - **Decrease in GDP (between 1% to 3%?)**
 - **Opportunity costs due to inadequate manpower (How much in projects declined or lost?)**
 - **Overall rise in the normal cost of building homes and basic infrastructure (by up to 25 percent)**

Socio-economic Impact

<u>Areas of Concern</u>	<u>Short-term</u> 3 to 5 yrs.	<u>Long-term</u> 5 yrs. or more	<u>Construction</u> <u>\$ Funding</u>
Healthcare facilities (upgrade)	✓	✓	25M to 40M
Education facilities (new schools)	✓	✓	100M
Highway construction	✓	✓	27M
Seaport maintenance and expansion	✓	✓	6M to 10M
Airport maintenance and expansion	✓	✓	167M
Commercial and industrial building	✓	✓	N/A-TBD
Visitor industry accommodations	✓	✓	N/A-TBD
Utilities infrastructure (GPA and GWA)	✓	✓	275M
Telecommunications	✓	✓	N/A-TBD
Housing (Affordable and high-end)	✓	✓	60M

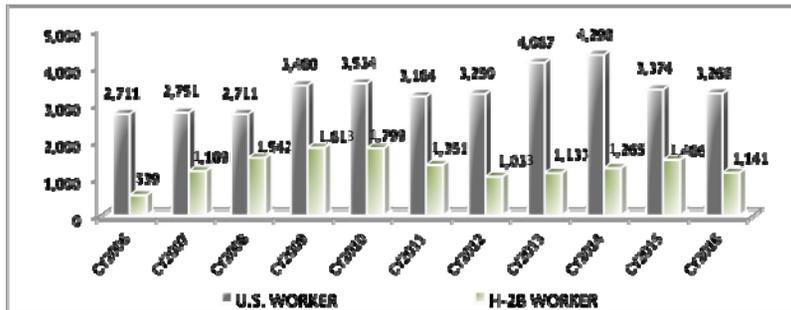
Deducing the overall impact due to stalled efforts or non-capacity to construct indicates the following:

- Quality of healthcare services declines
- Inadequate number of classrooms for students
- Deterioration of public roadways
- Transport system for goods and travellers inadequate
- Insufficient number of commercial, visitor and industrial floor space
- Forced power rationing, load-shedding and blackouts
- Water delivery system inadequate
- Insufficient number of home units for families (all income ranges)

IN CONCLUSION...

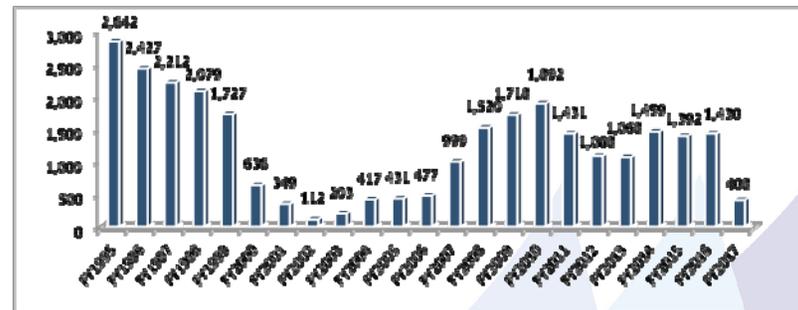
MANY GUAM BASED CONTRACTORS ARE CURRENTLY REELING FROM THE IMMIGRATION POLICY ISSUE OF THE U.S. ALTHOUGH A LAWSUIT HAS BEEN LAUNCHED, IT IS BELIEVED THAT THE LOSSES WILL CONTINUE TO ACCRUE INTO THE REST OF 2017 UNTIL RELIEF IS ATTAINED. IT IS SIMPLY UNREALISTIC TO ASSUME THAT THE U.S. ARMED SERVICES WILL ACHIEVE IT STRATEGIC DEFENSE INITIATIVE WITHOUT THE USE OF H-2B WORKERS OTHERWISE ALL ENGINEERING PROJECTS WILL REQUIRE HIGHER LABOR COST RATIOS BY UP TO 30% OF BASELINE PROJECT ESTIMATES. IRONICALLY, THE FEDERAL GOVERNMENT IS THE MAIN CATALYST BEHIND THIS PROBLEM WHICH WILL COST GUAM BILLIONS OF DOLLARS AND THE AMERICAN TAXPAYER EVEN MORE.

U.S. PERMANENT RESIDENT CONSTRUCTION WORKER'S VS. H-2B CY2006 – CY2016



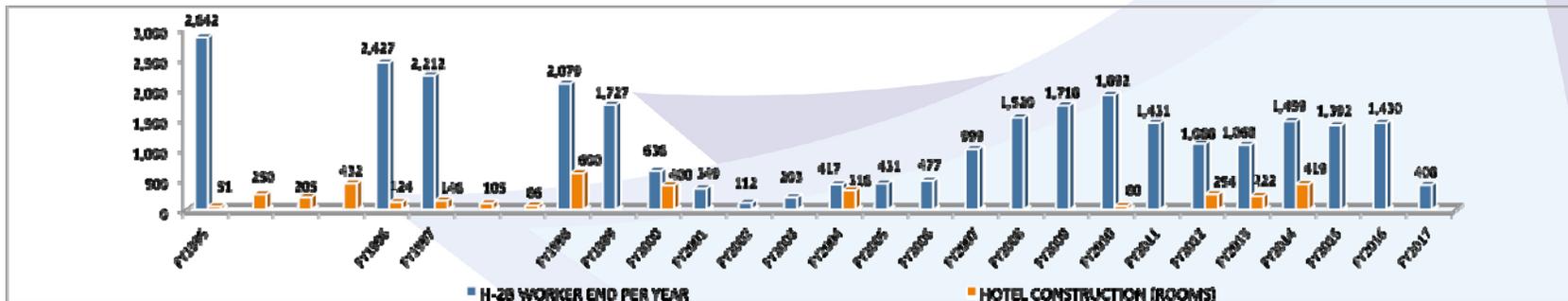
Source: Guam Department of Labor - Alien Labor Processing & Certification; Monthly Workforce Statistics CY2006 - CY2016

GUAM H-2B WORKERS: FISCAL YEAR ENDING REPORT FY1995 - FY2017



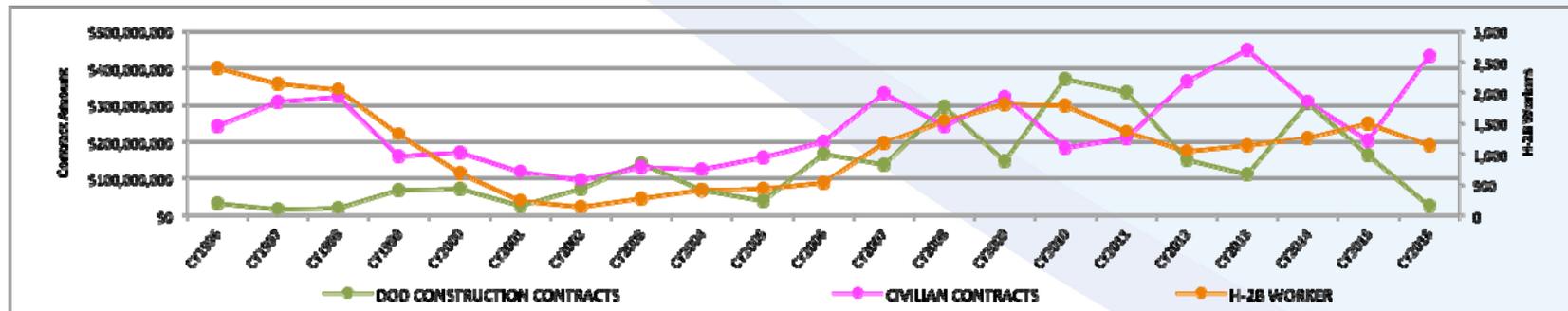
Source: Guam Department of Labor - Alien Labor Processing & Certification; Guam, Monthly Workforce Statistics FY1995 - FY2017

HOTEL CONSTRUCTION VS. H-2B WORKERS PRESENCE FY1995 – FY2017



Source: Guam Department of Labor - Alien Labor Processing & Certification; Guam, Monthly Workforce Statistics FY1995 - FY2017
Guam Economic Development Authority (GEDA)

H-2B WORKERS VS. DOD CONSTRUCTION & CIVILIAN CONTRACTS CY1996 – CY2016



Source: Guam Department of Labor - Alien Processing & Certification Division; H-2B Worker Monthly Statistical Report / Department of Labor DOD Contracts & Building Permits

Governor of Guam
2017 H-2B Task Force
**IMPACT OF H-2B VISA
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August 2017

APPENDIX D
Guam Economic Development Authority
H-2B Survey Results
2017

FINAL H-2B PERCENTAGE CALCULATION: ALL RESPONSES

(JUNE 01, 2017 - JUNE 16, 2017)
AS OF 7-05-17

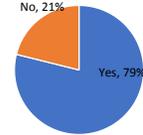
Q# 1 COMPANY INFORMATION

OPTIONS	RESPONSE PERCENTAGE	RESPONSES
Company	100%	72
Name (First & Last)	100%	72
Email Address	100%	72
Work Phone	100%	72
Total Responses: 72	Answered Responses: 72	No Opinion: 0

Q# 2 Is your organization or activity affected by the shortage or unavailability of skilled construction workers? (If you responded "NO" to this question, proceed to Questions #9 - #11)

OPTIONS	RESPONSE PERCENTAGE	RESPONSES
Yes	79%	57
No	21%	15
No Opinion	0%	0
Total Responses: 72	Answered Responses: 72	No Opinion: 0

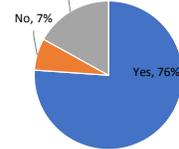
QUESTION #2: Is your organization or activity affected by the shortage or unavailability of skilled construction workers?



Q# 3 Do you believe that the availability of and/or access to H2-B workers may assist you in meeting your building project deadline(s)?

OPTIONS	RESPONSE PERCENTAGE	RESPONSES
Yes	76%	55
No	7%	5
No Opinion	17%	12
Total Responses: 72	Answered Responses: 60	No Opinion: 12

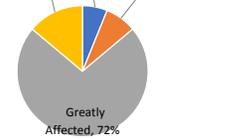
QUESTION #3 Do you believe that the availability of and/or access to H2-B workers may assist you in meeting your building project deadline(s)?



Q# 4 To what extent are you affected by the United States Citizenship & Immigration Services (USCIS) denial of H2-B visa applications for Guam?

OPTIONS	RESPONSE PERCENTAGE	RESPONSES
Not Affected	6%	4
Moderately Affected	8%	6
Greatly Affected	72%	52
No Opinion	14%	10
Total Responses: 72	Answered Responses: 62	No Opinion: 10

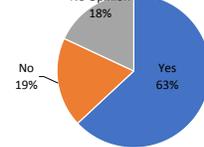
QUESTION #4 To what extent are you affected by the United States Citizenship & Immigration Services (USCIS) denial of H2-B visa applications for Guam?



Q# 5 Do you have on-going (current) projects that are impacted by the shortage of skilled construction workers?

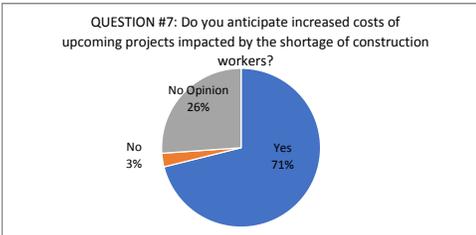
OPTIONS	RESPONSE PERCENTAGE	RESPONSES
Yes	63%	45
No	19%	14
No Opinion	18%	13
Total Responses: 72	Answered Responses: 59	No Opinion: 13

QUESTION #5: Do you have on-going (current) projects that are impacted by the shortage of skilled construction workers?



Q# 6 What is the aggregate or total value of your construction projects that require (1) the use of skilled construction trade workers and, (2) is adversely affected by the current USCIS actions?

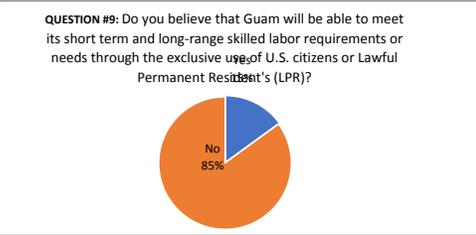
Q# 7 Do you anticipate increased costs of upcoming projects impacted by the shortage of construction workers?				
OPTIONS	RESPONSE PERCENTAGE	RESPONSES		
Yes	71%	51		
No	3%	2		
No Opinion	26%	19		
Total Responses: 72		Answered Responses: 53	No Opinion: 19	



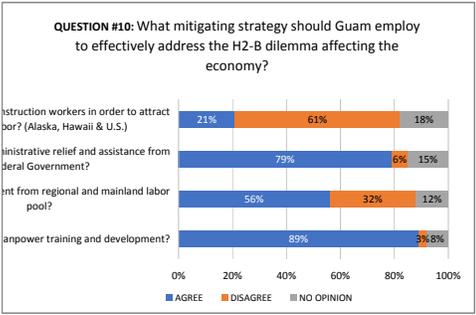
Q# 8 Please list project names and their total cost affected. To indicate type of funding, type "F"-Federal Funding, "G"-Government Funding & "P"-Private Funding. (Example: Route 4 Construction - \$36,000 - "F")

To view Project Listing, please see the attached sheet.

Q# 9 Do you believe that Guam will be able to meet its short term and long-range skilled labor requirements or needs through the exclusive use of U.S. citizens or Lawful Permanent Resident's (LPR)?				
OPTIONS	RESPONSE PERCENTAGE	RESPONSES		
Yes	15%	11		
No	85%	61		
No Opinion	0%	0		
Total Responses: 72		Answered Responses: 72	No Opinion: 0	



Q# 10 What mitigating strategy should Guam employ to effectively address the H2-B dilemma affecting the economy?				
OPTIONS	AGREE	DISAGREE	NO OPINION	
Increase efforts in manpower training and development?	89%	3%	8%	
Aggressive recruitment from regional and mainland labor pool?	56%	32%	12%	
Continue to pursue administrative relief and assistance from the federal Government?	79%	6%	15%	
Increase wages of construction workers in order to attract off-island labor? (Alaska, Hawaii & U.S.)	21%	61%	18%	
Total Responses: 72		Answered Responses: 33	No Opinion: 39	

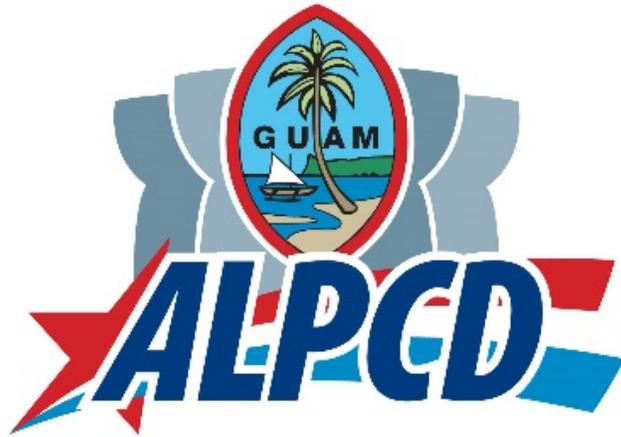


Q# 11 Please add any comment, observation or recommendation you feel is relevant to the issue of H2-B workers and the situation impacting Guam or your organization specifically. Also, please include any anecdotes that illustrate impacts your company/organization may be experiencing as a result of the H-2B crisis.

To view Comments, please see attached sheet.

Governor of Guam
2017 H-2B Task Force
**IMPACT OF H-2B VISA
DENIALS ON GUAM**
August 2017

APPENDIX E
ALPCD Report on Construction Site Visits
April – May 2017



Report on Construction Site Visits

April-May 2017

GUAM DEPARTMENT OF LABOR

Alien Labor Processing & Certification Division

PURPOSE:

View actual real-time construction projects to see how such project sites are progressing and gage impact from the perspective of inspection personnel who routinely observe project sites on an ongoing basis.

SITE INSPECTION FINDINGS:

ALPCD inspectors visited 62 constructions sites in the central and northern areas of the island from April 24 – May 05, 2017. Sites visited were a mixture of previously known construction projects and other projects discovered along the main roads and highways in the areas. It is noted that not all projects on island were visited as the inspection does not include a sampling of the southern 1/3 of the island, nor more remote inner village roads.

Breakdown of inspection findings:

- 62 - Sites visited
- 30 - Project sites with no workers (48%)
- 38 - Projects that have stopped or slowed down (61%)

CONCLUSION

Based on the inspections conducted during this 10-day period, it is evident that there are many construction projects currently ongoing however we noted that of the sites visited, about half of the sites did not have any workers actively working on them. Of the project sites that had active workers present, inspectors found that the total number of workers per site has decreased from an average of about 3-5 workers, to an average of 1-3 workers per job site.

Observations of current on-going project sites also found an increase in the number of legal Chinese nationals and COFA citizen workers on the job sites. COFA citizen workers in previous years had been observed performing more unskilled laborer duties such as clearing the job sites of construction debris. Encounters at current projects noted that they are now, under supervision, performing more skilled work like mixing concrete and laying blocks. With the increased observation of Chinese and COFA citizen workers, there is also a notable and visible decrease in the number of Filipino workers found at smaller construction sites.

The overall observations of the site inspections lead us to believe that the large majority of small to medium sized projects have been significantly delayed, with several projects having stopped completely for several months. During this exercise inspectors also observed a rise in home renovation / existing structure extension projects compared to previous years.

Prepared by: Scott Anderson

Date: 05/08/2017

ALPCD Project Site Report: 04/24/17 - 05/05/17

Mangilao (Department of Agriculture)



Guam Department of Agriculture building in Mangilao shows evidence of stalled work on their 2nd story addition for the Wildlife Resources Building. Project contractor GR Construction LLC were affected by the mass H-2B denials during the past year. Very few workers observed at the project compared to prior site visits. ***(8 projects in total found in Mangilao)***

Barrigada Heights



Several projects found in Barrigada Heights. Two of the projects appear to have stalled with no real signs of progress over the past few months. Other two projects located near Mobil Gas Station entrance have signs of workers present however the volume is much smaller than during previous inspections. ***(4 project sites found in Barrigada Heights) Photos: Site Visit-025 -027 (ALPCD Log)***

Barrigada



Several projects found in Barrigada. Most appear to have work being performed although at a slower pace than would be expected. **(8 projects found in Barrigada)**. Photos: Site Visit-028-032 (ALPCD Log)

Sinajana



Renovation project in Sinajana. Building Permit issued on 02/22/2016. Project has not been worked on for months and appears to be halted.



Another project in Sinajana, near the Friary also shows signs of slowed work. Project is still active but the number of workers observed working has been reduced.

Pago Bay



Three story project in Pago Bay. Previous site inspections over the past several months normally found 2 to 3 workers present (FSM & Chinese). Last site visit found only 1 worker.



Yona



Single family home construction in Yona. Project contractor identified as Jianhua Construction Inc. Two Chinese workers present during last inspection.

Ipan, Talofoto



One worker observed at Asian Construction project site in Ipan. Prior inspections found several workers present on a regular basis. This location is supposed to consist of six houses. To date, 2 are finished, two others are being worked on (at a slowed pace), and remaining homes have yet to begin any work. Building Permit from 1st home to be completed has an issue date of 09/05/2015.

Rancho Camacho (Talofofa)



Single family home construction in Rancho Camacho, Talofofa. Project contractor identified as Noo Ree Construction. Project actively being worked on. No workers present during ALPCD site visits. Will return to conduct data gathering on individuals working on project.

Windward Hills



Ella Builders project in Windward Hills. Project is active. Local and Filipino workers observed. During a prior site inspection, one worker fled the site upon arrival of ALPCD Investigators. Worker believed to be illegal (possibly H-2B absconder).

Cross Island Road, Santa Rita



Several active projects observed along Cross Island Road. Projects up hill in new development area do not appear to have many workers however work is being performed and new projects show signs of start-up.

Development project along the main road leading out of Cross Island was noted to have stalled for several months, however since the last inspection in January, four single family homes have been erected and are being actively worked on. Observations of the site found about a dozen Chinese workers working simultaneously on all four houses.

Project site located on the next street also is noted as having active work being conducted. Previous inspection found two Chinese workers on the site. A previous site inspection in 08/2016 found two absconded H-2B workers who were subsequently arrested by ICE for immigration violations.

Agana



Project at Agana Shopping Center. Number of visible workers appears to have decreased over the past few months.

Sinajana



The Honorable
THOMAS BALA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor

public works
Glenn Leon Guerrero
Director
Felix C. Banzon
Deputy Director

OFFICE OF BUILDING INSPECTION & PERMIT
TERRITORY OF GUAM

BUILDING PERMIT

DATE: April 7, 2017 PERMIT NO: B17000354

APPLICANT: W.K. CONSTRUCTION CONTRACTOR LIC. NO: 1037

ADDRESS: P.O. BOX 7472 TAMUNING GUAM

PERMIT TO: C OF C 1 STORY PROPOSED USE: Residential 1 UNITS

LOCATION: SINAJANA ZONING DISTRICT: C

TRACT: LOT: 19-1-A-7-1 BLOCK:

BUILDING DIMENSIONS: FT. WIDE BY FT. LONG BY IN HEIGHT

TYPE: II USE GROUP: R3 FOUNDATION: CONCRETE

REMARKS: CHANGE OF CONTRACTOR
REF: B16601503

AREA OR VOLUME: COST: \$20.00 PERMIT FEE: \$20.00

OWNER: WON SUN MIN

ADDRESS: P.O. BOX 6547
TAMUNING, GUAM

BUILDING OFFICIAL: *Joseph D. Guerrero*
Joseph D. Guerrero
Building Inspection & Permit Administration

BUILDING PERMIT SHALL EXPIRE IF THE WORK AUTHORIZED IS NOT COMMENCED WITHIN THREE (3) MONTHS OR IS SUSPENDED OR ABANDONED FOR A PERIOD OF THREE (3) MONTHS AFTER WORK HAS BEEN COMMENCED.

147 North Marine Corps Drive, Tamuning, Guam 96913 • T: (771) 545-3131 • Fax: (771) 549-3178

05/05/2017 10:14

New renovation project. Building Permit issued April 2017. Five workers encountered. Micronesian and Korean.

Tamuning



Multiple commercial projects in Tamuning appear to have slowed down with much fewer workers observed compared to the same period last year.

Dededo



Several renovation projects found in Dededo. Many sites did not find active work being done. Projects that were actively being worked on were observed to have FSM workers on the sites.

Yigo



Mega United stopped project. One of 4 home construction projects that have stalled for more than several months.



Numerous projects found throughout Yigo (Marine Drive & Back Gate to Andersen), both new construction and renovation projects. Many of the projects were observed not to have workers on the site and others seemed to have slowed down in progress. A few home construction projects in La

Chance, Yigo were noted to have stopped completely and have been stopped for months. Contractors of these projects are identified as former H-2B contractors Mega United and West Enterprises, Inc.

Prepared by: Scott Anderson: _____ Date: 05/08/17

Paul Miyasaki: _____ Date: 05/08/17

Governor of Guam
2017 H-2B Task Force
**IMPACT OF H-2B VISA
DENIALS ON GUAM**
August 2017

APPENDIX F
2010 U.S. Chamber of Commerce Report
The Economic Impact of H-2B Workers

THE ECONOMIC IMPACT OF H-2B WORKERS



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

ImmigrationWorks
USA



ABOUT THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing more than 3 million businesses of every size, sector, and region. The Chamber's Labor, Immigration & Employee Benefits Division formulates and analyzes the Chamber's policy in the areas of labor law, immigration, pension and health care. The Division regularly participates in, and sometimes chair, national coalitions to help define and shape national labor, immigration and employee benefits policy. More information at www.uschamber.com/issues/lieb_policy.



ABOUT IMMIGRATIONWORKS USA

ImmigrationWorks USA is a national federation of small business owners advocating immigration reform. The organization links 25 state-based, pro-immigration business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. IW coordinates and supports these groups as they fight for better immigration law in Washington and in the states. The organization's twin goals: to educate the public about the benefits of immigration and build a mainstream grassroots constituency in favor of reform.

FOREWORD

October 28, 2010

The Labor, Immigration & Employee Benefits division of the U.S. Chamber of Commerce and ImmigrationWorks USA are pleased to present this important study of the economic impact of the H-2B visa program.



Many American businesses could not function without the H-2B program. Small, medium-sized and large employers in every region of the country count on it to keep their businesses open and growing, and to create opportunities for U.S. workers.

Yet the program is under constant attack by critics, who all too often make a case based on rhetoric and hypothetical scenarios, not hard economic data.

This report uses original economic analyses to examine the true economic effects of the H-2B program.

The study's principal findings: that contrary to critics' claims, the H-2B visa program does not depress wages of U.S. workers in similar occupations, and H-2B workers do not take jobs from their U.S. counterparts.

Supplementing these core findings is testimony from employers who use the program and also several illustrative profiles – of an H-2B employer, an H-2B worker and a community that depends on an H-2B workforce. This anecdotal material demonstrates the many benefits of the program but also the frustrations of dealing with its bureaucratic and regulatory complexity.

Employers who use the H-2B program are employers determined to follow the law. H-2B and other temporary worker programs provide a legal workforce for U.S. companies when U.S. workers are unavailable. The programs also allow foreign workers looking for an honest way to make a living to enter the country in a safe, controlled manner. In other words, the programs don't just keep the U.S. economically competitive, they also contribute to border security and enhance the rule of law.

Congress and the administration should be looking for ways to expand and improve temporary worker programs – not adding layers of bureaucracy and additional regulations that make the programs all but impossible to use.

This report leaves no doubt about what must be done: cut burdensome regulation, streamline processing and make temporary worker programs more sensitive to changing U.S. labor market needs.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce



Tamar Jacoby
President & CEO
Immigration Works USA



THE ECONOMIC IMPACT OF H-2B WORKERS

EXECUTIVE SUMMARY

The H-2B program allows employers to bring low-skilled foreign workers into the United States to fill temporary and seasonal jobs in sectors other than agriculture. Large and small employers in every state and in a wide variety of industries turn to the program when they cannot hire enough U.S. workers.

H-2B visa holders play a small role in the U.S. economy. The number of visas is capped at 66,000 per year, and H-2B workers account for less than one-tenth of one percent of total U.S. employment.

Despite the small size of the program, many employers who use it say their businesses would have to downsize or close if H-2B workers were not available. And H-2B visas are essential to several regional seasonal industries that sustain the economy in their states: seafood processing on Maryland's Eastern Shore, restaurants and inns on Nantucket and ski resorts in Colorado, among other businesses.

The H-2B program is subject to much criticism from labor unions and others who claim that it allows employers to exploit foreign workers and undermines American workers whose wages suffer as a result. Economic analysis conducted for this report finds no evidence to support these claims. This study does, however, find that the program could be significantly improved by streamlining its complex requirements and making it more responsive to market forces.

Companies must meet a complicated set of requirements before they can hire H-2B visa holders, including making extensive efforts to recruit U.S. workers. Employers must file paperwork with four government agencies. They must obtain temporary labor certification from the Department of Labor (DOL), and their petition for a foreign worker must be approved by U.S. Citizenship and Immigration Services (USCIS). Businesses must demonstrate that their need for a foreign worker is temporary, and they must pay at least the government-mandated prevailing wage for the job.

These requirements are onerous for any company, but particularly for the small and medium-sized businesses that anecdotal evidence suggests make the heaviest use of H-2B visas. (Large corporations and staffing agencies also use the program, but the average employer applies for just 15 workers a year.)

Still, despite the complex requirements, the demand for H-2B workers exceeds the number of visas available almost every year.

The H-2B program offers an important safety valve for employers who need workers on a temporary basis when U.S. workers are not available.

- In a survey of H-2B employers conducted for this report by ImmigrationWorks USA and the U.S. Chamber of Commerce, respondents indicated that they hire H-2B workers primarily because few U.S. workers are interested in temporary or seasonal work. According to employers, the physically demanding nature of many seasonal jobs also makes them unappealing to many U.S. workers.
- An original economic analysis conducted for this report concludes that the number of H-2B workers increases when local labor markets tighten. In other words, far from taking jobs from Americans, H-2B visa use correlates with *higher* U.S. employment rates. The analysis compared state-by-state data on H-2B admissions with state unemployment and employment growth during the period from 2006 to 2009. The comparison



showed that the number of H-2B workers admitted increases as unemployment rates fall and employment growth accelerates. Specifically, in the average state, when employment growth increased by 1 percentage point, employers brought in 216 additional H-2B workers. This is consistent with responses to the ImmigrationWorks-Chamber survey indicating that the H-2B program helps employers fill positions when U.S. workers are scarce.

- Employers report that the benefits of using the program go beyond providing them with needed workers.
- According to survey respondents, H-2B workers create jobs for Americans. By augmenting the volume of business being done by the company, visa holders often allow employers to hire more U.S. workers for skilled, year-round jobs. This claim is consistent with a 2008 case study of the Maryland crabbing industry that found the H-2B program preserved and sustained jobs.
- The program can reduce uncertainty for employers who struggle to meet customer demand with an uncertain and fluctuating local workforce. Survey respondents commented that if the H-2B program did not exist, they would have to turn away business when not enough U.S. workers are available.
- Survey respondents praised H-2B workers' reliability and productivity. Many commented that H-2B workers are as competent as U.S. workers.
- Hiring the same workers year after year helps reduce businesses' recruitment and training costs.

There is no empirical support for claims that the H-2B program adversely affects U.S. workers. Indeed, the DOL will not approve an employer's application for H-2B workers unless it concludes that U.S. workers will not be adversely affected. And shrinking or eliminating the program would likely hurt Americans more than it would help them, reducing job opportunities for U.S. workers.

This report addresses many concerns and misconceptions about the H-2B program.

- A second original economic analysis conducted for the report shows that increases in the number of H-2B workers do not negatively affect U.S. workers' employment or earnings growth. The analysis compared wages in sectors that rely heavily on H-2B visa holders with wages in other industries that hire few or no temporary workers. The results: according to the analysis, the number of H-2B workers in a given field has no negative effect on U.S. workers' employment or earnings. Specifically, the results indicate that a 1 percentage point increase in H-2B workers in a given occupation in a given year is associated with wages in that occupation increasing 0.05 percentage points faster than they otherwise would have over the next calendar year, and with employment also increasing 0.05 percentage points faster. These are small effects – not surprising since H-2B is a small program. But the fact is, the direction is positive – the H-2B program is not having an adverse impact on U.S. workers.
- One-third of the respondents to the ImmigrationWorks-Chamber survey said they would reduce operations or close completely if they were not able to hire H-2B workers. Doing so would reduce jobs for U.S. workers.
- The H-2B program includes significant worker protections for both U.S. and foreign workers.
- Concerns about abuses by staffing agencies and foreign recruiters can be addressed through enforcement of existing regulations without major changes to the program.

Employers who hire H-2B workers make some valid complaints about the program. Addressing these concerns would make it more efficient.



- Respondents to the ImmigrationWorks-Chamber survey reported that in most years the annual cap of 66,000 H-2B visas is too low to meet business needs.
- Respondents complain that the program is so complicated and difficult to apply for that it discourages many small businesses from using it.
- The program’s complexity creates a market for staffing agencies, which bring in large numbers of H-2B workers and subcontract them out to smaller companies.
- Streamlining and simplifying the program’s requirements would make it more efficient and reduce the burdens it imposes on employers. Streamlining would also reduce the need for staffing agencies and the problems associated with them.
- Making the cap more flexible and basing it on the fluctuations of the market would make the program more efficient and enhance its economic benefits.

The economic analysis conducted for this report demonstrates that the H-2B program does not adversely affect U.S. workers’ employment or earnings. Employers consistently indicate that the program enables them to fill jobs that are not being filled by U.S. workers. Employers also report that using the program enables them to hire more U.S. workers for relatively higher-skilled jobs that support or rely on positions held by H-2B workers.

Despite these benefits, the number of H-2B workers is capped at a very low level, and employers must jump through a complex and onerous set of hoops in order to have access to visas. The program’s economic benefits could be significantly enhanced by simplifying these complex requirements and making the cap more flexible and responsive to market forces.

THE H-2B PROGRAM

The H-2B program allows U.S. employers to hire foreign workers to fill nonagricultural jobs on a temporary basis. An H-2B visa allows an employer to bring a foreign worker into the U.S. for up to 10 months at a time. Most of these workers are relatively low-skilled and work in seasonal jobs, often in geographic areas where the number of available U.S. workers is limited.

Employers’ use of the H-2B program has grown significantly since it was created by the 1986 Immigration Reform and Control Act (IRCA) – to the point that H-2B workers are now essential to the operation of several U.S. industries. The landscaping industry is the largest employer of H-2B workers. Other sectors that depend heavily on the program include the crabbing industry on Maryland’s Eastern Shore, the hospitality sector on Nantucket, ski resorts in Colorado, and nursery and forestry operations in all 50 states. In addition to hiring H-2B workers for seasonal jobs, all of these industries also hire U.S. workers, both during their peak seasons and year-round.

The H-2B program is part of the alphabet soup of U.S. immigration policy, one of the three principal programs that allow employers to bring temporary workers into the United States. The other two most widely used temporary worker visa programs are H-2A, which allows employers to bring in low-skilled agricultural workers for up to one year, and H-1B, which allows employers to bring in skilled workers with college degrees or specialized knowledge for at least three years. A worker with an H-2B visa can typically work for a U.S. employer for up to ten months, although the worker can move to other H-2B certified jobs and remain in the U.S. for up to three years. Unlike H-1B workers, an individual on an H-2B visa cannot apply for permanent residence while living and working in the U.S.



The H-2B Process

The H-2B process involves a complicated set of requirements and deadlines that businesses and foreign workers must meet.

- First, a company must request the prevailing wage for the specific occupation and geographic area from the Department of Labor’s National Prevailing Wage and Helpdesk Center. This process can take up to 30 days. The prevailing wage is the average wage paid to workers in a given occupation in a given area, as determined by DOL.
- Companies must then recruit U.S. workers to fill open positions. At a minimum, an employer must run two ads for the job in a newspaper in the area of intended employment, including in a Sunday edition if possible. The employer must also post the job with the State Workforce Agency. None of this required recruitment may begin more than 120 days before the need for the H-2B worker. The employer must advertise for at least ten days. The company must keep detailed records of the recruitment process, hire all qualified U.S. workers who apply and document the number of positions it was unable to fill. The employer must keep recruitment records for three years and may be audited by DHS or DOL at any time.
- If an employer is unable to fill the advertised job with a U.S. worker, the company may file an application with DOL for temporary labor certification (ETA Form 9142). This six-page form requires employers to demonstrate that their need for foreign workers is temporary – either a “one-time occurrence” or a “seasonal” or “peak-load” or “intermittent” need. They must specify precisely what the desired workers’ job duties and wages will be, detail their efforts to recruit U.S. workers and attest that similarly-employed U.S. workers will not be adversely affected by employment of H-2B workers. Historically, it has taken an average of 60 days for DOL to process an application.
- If a company’s labor certification application is approved, the employer then can petition the Department of Homeland Security (DHS) to admit a specified number of H-2B workers. Employers file their petition for a “nonimmigrant,” or temporary, worker (Form I-129) with the DHS’ U.S. Citizenship and Immigration Services division. The fee is currently \$320 plus an additional \$150 for fraud prevention and detection. The I-129 form is 26 pages long, at least nine pages of which must be completed by employers petitioning for an H-2B visa.
- USCIS accepts petitions for consideration only if the H-2B visa cap for the year has not yet been reached. The cap was reached every fiscal year between 2004 and 2008, typically within four months of the start of the filing period.
- After the employer’s petition is approved, there are further requirements for the foreign worker – a third application process, this one at the State Department.
- A foreign worker who is outside the U.S. must apply to the State Department for an H-2B visa. This typically requires an in-person interview at a U.S. embassy or consulate. The prospective worker must be able to demonstrate that he or she intends to return home after his or her visa expires. If approved, the foreign worker receives an H-2B visa and can then apply to U.S. Customs and Border Protection for admission.



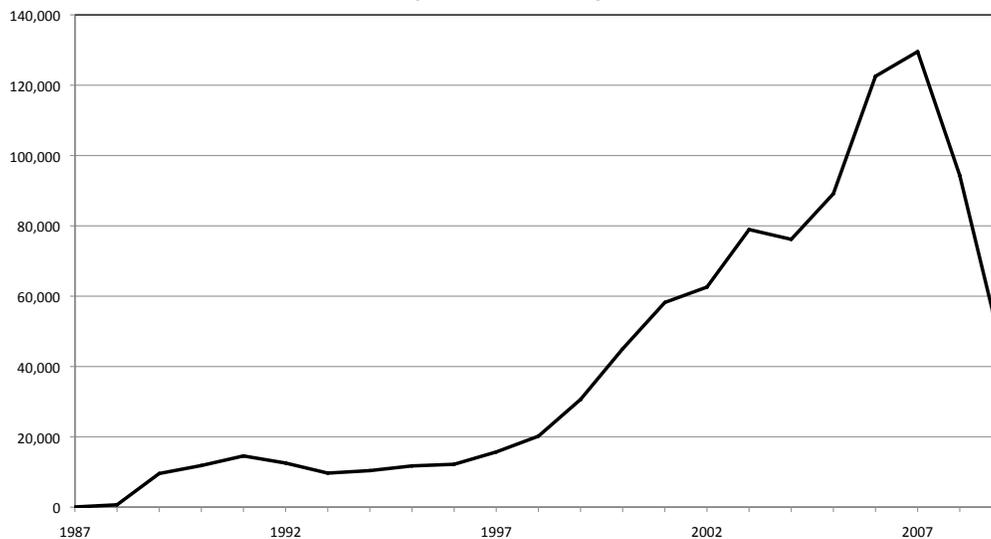
Like almost all temporary and permanent visas, the H-2B program is limited: there’s a quota on the number of visas available each year. In 1990, Congress capped H-2B visas at 66,000 per fiscal year. This cap was hit first in FY 2004 and then again in each of the following four years. Once the cap is hit, USCIS stops accepting temporary worker petitions, and no more visas are issued until the next fiscal year. If USCIS has already accepted more petitions than the number of visas available by the time the cap is hit, the agency holds a lottery to allocate the visas.

In 2005, in response to complaints about the binding visa cap and its possibly devastating effects on several specific seasonal industries, Congress passed the Save Our Small and Seasonal Businesses Act, making two important changes to the H-2B program. The first change split the 66,000-visa annual quota in two and allocated each half to one half of the fiscal year, making 33,000 visas available on a first-come, first-served basis in October and another 33,000 available in April. This helps ensure that employers whose need for H-2B workers begins relatively late in the fiscal year – for example, summer resorts – have an equal chance of securing H-2B workers. Unused visas do not roll over to the next fiscal year, but since 2005 any visas not used in the first half of a fiscal year have rolled over to the second half.

The second change, passed on a more experimental basis – it would expire after a year if not renewed – allowed employers to bring in significantly more H-2B workers each year by exempting workers who had participated in the program in previous years from counting against the annual visa cap. From 2005 through 2007, “returning” H-2B workers who had already been counted against the cap in the previous three years were granted H-2R visas and were exempt from the cap of 66,000. The exception led to a large increase in the number of H-2B visas issued in 2006 and 2007 (see *Figure 1*). The returning worker exemption was renewed once, in 2006, but it expired at the end of the 2007 fiscal year and has not been reauthorized by Congress in the years since.

Figure 1

**H-2B VISAS ISSUED
(FY 1987 - 2009)**



The number of visas rose steadily in the late 1990s, then fell dramatically in 2007 with the expiration of the returning-worker exemption and the onset of the recession.

Includes H-2B renewals and H-2R visas issued from 2005 through 2008.
Data for 2009 are preliminary estimates.
SOURCES: www.travel.state.gov/xls/NIVIssuedFYs1989-2009-Detailed.xls and www.travel.state.gov/pdf/NIVClassIssued-DetailedFY1987-1991.pdf.

The H-2B program started off small but has grown dramatically over time.

The program got off to a slow start, probably for two reasons. First, the legislation that created it also legalized almost three million unauthorized immigrants already living and working in the U.S., providing an ample supply of low-skilled foreign workers for seasonal employers to draw on. Second, employers were initially reluctant to use



the H-2B program because of its complexity. Over time, IRCA legalization beneficiaries moved into other jobs, so employers needed a new source of unskilled workers. Employers eventually became more familiar with the H-2B program, and the application process was streamlined under the Bush administration.

As *Figure 1* shows, demand exploded in the late 1990s, and the number of H-2B visas issued each year rose steadily until the end of the H-2R program and the onset of the recession in 2007. The H-2B program's growth reflects the country's relatively strong economic growth during much of this period. As U.S. unemployment rates fell and labor markets tightened, the program became increasingly important to businesses in seasonal and other economic sectors. With the economy booming, employers needed more workers. U.S. workers found it possible to move easily into other, better jobs. And more and more employers turned to the H-2B program, which more than quadrupled in size from 1997 through 2007, but has dropped since the recession.

Employers must meet a complex set of requirements before they can hire H-2B workers. These include recruiting U.S. workers, paying the prevailing wage and receiving approval from DOL, USCIS and the State Department. (See *p.5, The H-2B process, for details.*)

- Under certain circumstances, a temporary position being filled by an H-2B worker can be extended – to last for up to three years instead of the typical ten months. In such cases, the employer must retest the labor market annually to see if any U.S. workers are interested in the position before the company can hire an H-2B worker again.

Foreign workers also must meet certain requirements. Most importantly, prospective workers must be able to demonstrate to a U.S. embassy or consulate that they do not have “immigrant intent” – that they intend, that is, to return home after their H-2B visas expire. This is not easy. In FY 2009, according to the State Department, more than 30 percent of prospective foreign workers who applied for H-2B visas were turned down. Foreign workers must come from an approved list of countries. Mexicans accounted for the lion's share of workers admitted in FY 2009 – more than all of the other sending countries combined. But workers also came from Jamaica, Guatemala, the Philippines, South Africa and the United Kingdom, among other nations. Any worker who has held an H-2B visa for three years is required to leave the U.S. and remain outside the country for at least three months before seeking readmission under the H-2B program.

All in all, hiring an H-2B worker requires dealing with four separate government agencies: the State Workforce Agency, DOL, DHS and the State Department. Within DOL, employers must deal with the National Prevailing Wage and Helpdesk Center and the National Processing Center. Within DHS, employers must get permission from USCIS and workers must gain approval from Customs and Border Protection. The level of detail and complexity in all four agencies' H-2B regulations is astounding. The instructions for the labor certification application, ETA Form 9142, run ten pages, while the DOL final rules for the labor certification process issued in December 2008 fill 50 pages in the Federal Register. The instructions for Form I-129, the USCIS petition for a nonimmigrant, or temporary, worker, run 23 pages.

“Even though we hire an agent to guide our H-2B petition through the four government agencies involved, it is very time-consuming for our office staff. There are many government hoops to jump through, much paperwork is required and the requirements change each year.”

–Landscape in Texas





THE EMPLOYER

Jorge Maldonado, 49, the owner of Maldonado Landscape & Irrigation in New Braunfels, Texas, has been in the landscaping business all of his adult life.

He started out as a teenager, working for his father in Kerrville, Texas, then moved with the family business to New Braunfels, a small city between San Antonio and Austin. The company provides a range of services, from mulch and topsoil work to installing irrigation systems.

Maldonado said H-2B workers have been essential to the growth of the business over the years. The company does a lot of work for nearby military bases and public schools, which often need large jobs done quickly.

“They expect and demand high quality,” Maldonado said. “Without H-2B workers, we couldn’t rely on getting the job done.”

Maldonado says he has tried to hire local workers but cannot find enough who want to do seasonal work. So he turned to the H-2B program twelve years ago. He generally employs between 20 and 30 foreign workers each year, and they do everything from watering and digging to working with heavy equipment.

Several of his H-2B employees have been with the company “from the get-go,” Maldonado says, and they return every year, enabling him to give them more complex tasks as they gain experience.

He watches over them carefully in their first and second years to see if they are on time and reliable and catch on quickly to their assigned tasks. Those who do are rewarded with more responsibility when they return the third year.

Much as he appreciates the H-2B program, Maldonado also complains bitterly about it. Paperwork that needs to be processed if he is to get workers on time is frequently delayed by one government agency or another – he has to deal with four to obtain every visa. He would prefer it if workers could stay for 10 months out of the year, but usually it’s only eight.

Worst of all, Maldonado says, is the uncertainty. He’s never sure that his annual application is going to get through the process before the program’s annual cap of 66,000 visas is reached and the Department of Homeland Security stops issuing visas.

“If that cap were to be expanded, all employers would feel a lot more at ease,” he said.

Maldonado is also troubled by restrictions that the state of Texas imposes on H-2B workers. What frustrates him most: in Texas, visa holders cannot get drivers’ licenses for their personal use. Maldonado hires drivers to transport his workers from place to place, but he believes they should have the right to drive legally to get to and from work and see their families.

“It’s not a fair shake,” he said. “We as a community and a country are benefitting from the work they do. They pay taxes. They contribute to Social Security. And we’re benefitting more than we imagine. People need to understand - we’re talking about legal immigrants who are contributing to society.”



The H-2B process requires precise and exacting timing on the part of employers. The windows during which they must advertise for workers and file the recruiting report required for a labor certification are specified and short. An employer cannot begin recruiting workers more than 120 days before the company is going to need an H-2B worker, and the firm must advertise for at least 10 days.

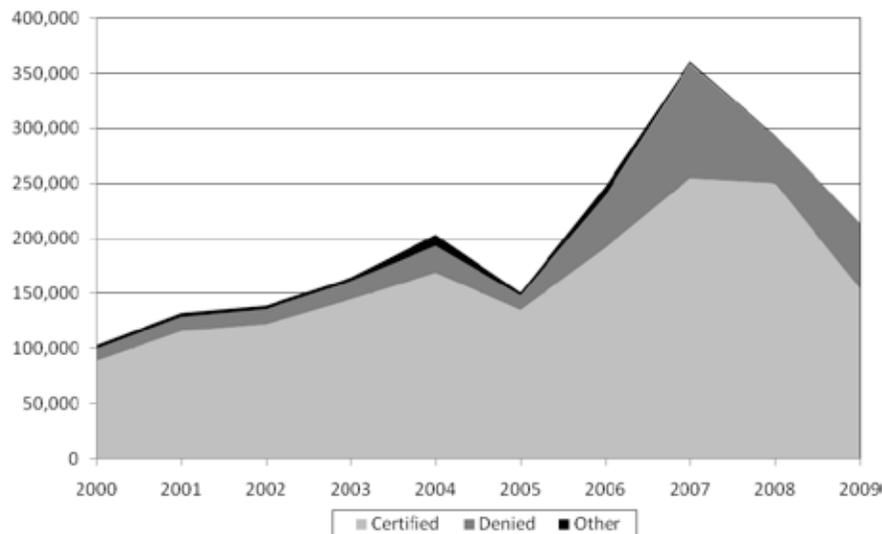
The clock can easily run out on employers seeking temporary workers. A company cannot submit its labor certification application until it has completed the recruitment process and found it impossible to hire enough U.S. workers. Historically, it has taken an average of 60 days for DOL to process these applications, leaving the employer just 50 days before its need for temporary workers kicks in – a need often determined by inexorable seasonal changes. During that period, the employer must still file a temporary worker petition, get it approved by USCIS and find an appropriate foreign worker for the job. Then that worker must apply to DHS and to the State Department, receive approval from both agencies and travel to the United States.

Despite the difficulties involved, the demand for H-2B workers usually far outstrips the limited number of visas available. *Figure 2* shows the number of positions for which H-2B workers were requested each year since FY 2000. (The numbers are based on labor certification applications filed with DOL.) Although only 66,000 visas were available in most of these years, in FY 2009 employers submitted requests for more than 214,000 positions. Indeed, the number of labor certification applications has far exceeded the number of visas available every year for the past decade.

The DOL does not simply rubber-stamp applications – on the contrary. The light gray area in *Figure 2* is the number of positions approved each year. The dark gray area is the number of positions rejected. (“Other” positions are those for which the application was remanded or withdrawn). The bigger the dark area relative to the total in a given year, the higher the denial rate was that year – a rate that has increased dramatically over time. In FY 2009, more than 25 percent of applications were denied.

Figure 2

**H-2B APPLICATIONS
(Labor certification applications FY 2000 - 2009)**



Demand for H2B visas far exceeds the supply. The Department of Labor denies a large fraction of applications before they are even considered by the immigration service, USCIS.

Data are by number of positions requested.
"Other" includes positions for which the application was remanded to either the employer or the state or was withdrawn.



BENEFITS OF THE PROGRAM

The H-2B program is critically important for many businesses that have difficulty finding U.S. workers to fill temporary jobs. This is particularly true in seasonal industries. Comments from H-2B employers attest to the need for foreign workers in physically demanding seasonal jobs, often in remote locations, that many U.S. workers will not take.



“The benefit of H-2B to our company has been a legal, stable and motivated work force. We would much prefer to hire only American workers. It would be much cheaper and easier for us to use American workers if they were willing to do our jobs. The problem is that American workers are not willing to do these jobs. We have hired dozens and dozens of American workers. Only a handful have ever even shown up for work. Of those, we have never had one last more than two days. Without a consistent H-2B labor pool, we would not have been able to grow our business and create the good American jobs that we have created.”

–Forestry contractor in a southeastern state

In order to learn more about employers’ perceptions of the H-2B program, ImmigrationWorks USA and the U.S. Chamber of Commerce conducted a survey: five short questions distributed among H-2B employers in July and August 2010. The survey asked how many H-2B workers the company had hired in the last three years and what types of jobs those workers held. It included two open-ended questions about the benefits of using the program and asked what if any problems employers had experienced. Another open-ended question asked what employers would do if they were not able to hire H-2B workers. Participation was voluntary, and results could be submitted via email, fax or the internet. A total of 367 employers responded.

The majority of H-2B employers who responded to the survey noted that temporary foreign workers are reliable and hard-working. Many also praised these workers’ productivity: a benefit that offsets the cost of bringing them into the United States. Respondents appreciated that H-2B workers were willing to work seasonal jobs and then return home when the season ended.



The H-2B program reduces companies' training and turnover costs. Many survey respondents complained about high turnover among U.S. workers. Managers reported that when workers quit, their companies have to turn away business until they can find new workers and train them. Most H-2B workers stay for the duration of their visas, providing a stable and reliable workforce. In addition, survey respondents said that bringing back the same H-2B workers each year helps them to reduce training costs.

“The H-2B program has provided us with legally-authorized, reliable workers. The same workers have continued to return annually and therefore are already properly skilled and trained. They pass their pre-employment drug screen, show up every day and are willing to work extended hours and weekends, when necessary.”

–Manager for a horticultural service firm headquartered in Ohio



Still another important benefit of the program is that it offers companies a way to hire foreign workers when U.S. labor markets tighten. The program increases labor market flexibility by allowing businesses to bring in foreign workers when U.S. workers move up to better, higher-paying jobs during economic expansions.

But the advantages of the H-2B program extend far beyond the particular company that uses the visas. Not only does the program give employers a way to hire foreign workers when U.S. workers are not available; it also helps create jobs, increasing opportunities for U.S. workers. As many respondents to the ImmigrationWorks-Chamber survey explained, hiring H-2B workers allows them to sustain and expand the volume of business they do, and this in turn enables them to hire more U.S. workers, often for higher-skilled supervisory, clerical and sales positions. These jobs pay well above the minimum wage, and many are year-round.

More than one-third of survey respondents indicated that if they were unable to hire H-2B workers, they would have to cut back operations or close their business entirely – and fire U.S. workers as a result. Many respondents also noted that if they were unable to hire H-2B workers, they would have to shift some U.S. workers from supervisory jobs to positions requiring heavy manual labor and that this could jeopardize the economic viability of their businesses. Still others noted that if they were unable to bring in H-2B workers, they might turn to unauthorized immigrant labor or foreign students – not U.S. workers.

“If we are not able to get legal seasonal workers, we have only 2 choices: #1 Hire illegal, undocumented workers, #2 Go out of business.”

–Landscape and irrigation contractor in Kansas

The results of the ImmigrationWorks-Chamber survey are consistent with a study of Maryland's blue crab processing industry conducted by the University of Maryland's Sea Grant Extension program in 2008.¹ That survey used Maryland state data on the multiplier effects of local industries and found that every H-2B worker employed in a



Maryland seafood processing plant supported 2.5 additional jobs in the state, some in the crabbing sector, others in supporting industries and elsewhere in the local economy.

“We were constantly unable to get our work completed because of employees not showing up for work. With the H-2B program, we have been able to have consistent workers and in turn have hired more full-time salaried Americans for year-round positions.”

—*Landscaper in Pennsylvania*



According to employers, the H-2B program has economic benefits not only for participating firms but also for the broader economy. Most significantly, it appears to enable employers to hire more workers – not just foreign workers but also U.S. workers. Critics claim that the opposite is true – that the program costs U.S. workers jobs and drives down wages. The next section evaluates the merits of these claims.

ADDRESSING CRITICS’ CLAIMS

Critics of the H-2B program make a number of allegations. Some argue that the main reason employers use the H-2B system is because it allows them to hire workers who are cheaper than native-born workers. Others claim that allowing employers to bring in foreign workers adversely affects the wages and employment of U.S. workers. Still others argue that employers use H-2B workers for permanent, not temporary, jobs. And others focus their criticism on the staffing agencies that bring in H-2B workers and subcontract them out to other companies, charging that these agencies abuse the system and engage in illegal recruiting practices. This report finds little evidence to support most of these claims, and others can be addressed through relatively small, procedural reforms to the H-2B program.

CLAIM: Employers hire H-2B workers because they’re cheaper

Some critics allege that the main reason employers use the H-2B system is because it allows them to hire workers who are cheaper than native-born workers. But the truth is H-2B workers are rarely cheaper than U.S. workers. Extensive regulations strictly enforced by DOL insure that employers do not pay H-2B visa holders less than they pay comparable native-born workers. The program’s prevailing wage requirement mandates that employers must pay foreign workers no less than the average wage paid to similar US workers doing the same job in the same geographic area. An elaborate system of worker protections also makes it difficult to use H-2B visa holders to undercut Americans. (See page 13, *H-2B Worker Protections*). These protections are extensive and costly for employers. And if anything, the costs associated with the program – costs of recruitment, labor certification and obtaining a visa – make hiring H-2B visa holders more expensive than hiring U.S. workers.



H-2B Worker Protections

The H-2B program protects temporary foreign workers from abuse by extending to them many of the same rights extended to U.S. workers and creating additional rights specific to H-2B workers.

Like U.S. workers, H-2B workers enjoy the following rights:

- They must be paid time and a half for overtime work. (Some positions are exempted, but very few H-2B workers hold them.)
- Employers may not discriminate against them or pay them differentially on the basis of sex, race, national origin, religion or disability.
- Employers must comply with all health and safety regulations. They cannot deduct the cost of safety equipment from workers' pay. In most cases, employees who are injured at work must receive free medical treatment and part of any wages lost while they are incapacitated.
- The right to join a union or engage in collective bargaining.

Additional rights specific to H-2B workers include:

- H-2B workers must be paid the DOL-mandated prevailing wage in their occupation and area.
- They must be employed full-time, typically at least 30 hours per week.
- Employers may not require workers to pay for any recruitment costs or fees related to the company's labor certification application.
- An employer must pay for the return transportation to the country of origin of any H-2B worker who is dismissed before the end of the authorized work period.
- Although it is not required by H-2B program regulations, DOL currently takes the position that employers must pay all of the visa and transportation costs incurred by H-2B workers coming to the United States. (The U.S. Fifth Circuit Court of Appeals ruled this fall that employers are not responsible for those costs, but it remains to be seen how DOL will implement the ruling.)

H-2B workers have limited rights in some other respects. Unlike many other temporary visas, such as the H-1B visa for skilled workers, H-2B visas do not allow for dual intent. H-2B visa holders cannot apply for a green card to remain permanently in the United States. Although an H-2B worker may transfer to other H-2B-approved employers and have the term of his or her visa extended, the H-2B visa is employer-specific. If the foreign worker does not report to work for five consecutive days without the employer's consent, the employer is required to notify DOL and USCIS within two work days after discovering that the worker has absconded.

“If I could find U.S. workers, I would. It would be less costly to the company to hire reliable U.S. workers, but some U.S. workers do not want to do manual labor.”

—*Human resource manager in New York state*



But if employers do not hire H-2B workers to save on costs, why do they hire them? According to employers who responded to the ImmigrationWorks-Chamber survey, it's because they cannot find enough native-born workers to keep their businesses running and meeting customer demand. Survey respondents reported that the seasonal nature of the jobs on offer combined with the physical demands of the work make the jobs unappealing to U.S. workers. The protracted downturn has made a difference, easing the problem for some employers in some locations. But other companies report that they still have difficulty finding qualified U.S. workers to fill empty slots. Survey respondents who operate seasonal businesses, such as restaurants and motels in resort areas, seem to find it particularly difficult to staff their operations. Many noted that students are not available for the entire season, that the local labor force is too small to meet peak demand and that adult workers typically want permanent employment, not seasonal jobs. According to these employers, the H-2B program offers them a way to fill their employment needs on a temporary basis when too few U.S. workers are available.

“H-2B workers are taking positions that U.S. workers see as too menial. U.S. workers thus go to our more advanced and high paying jobs.”

–*Quarry operator in New York state*



If these employers are telling the truth – that they hire H-2B workers only when they cannot find Americans – then their use of the program should diminish when more U.S. workers become available. And in fact, this is exactly what happened during the recent recession. The number of H-2B visas issued declined sharply when the recession hit, and it continued to drop as the downturn dragged on (see *Figures 1 and 2*). Although employers' profits were squeezed, they did not turn to the H-2B program as a source of less expensive labor – as you would have expected if the critics were right that businesses use H-2B workers because they are less costly than Americans. And there is little evidence that many H-2B employers turned instead to unauthorized workers – according to the Pew Hispanic Center, the number of people entering the U.S. illegally fell sharply during the downturn, as did the size of the unauthorized population in the United States.

Employers reacted to the recession by using fewer H-2B workers. And the program responded appropriately, self-correcting as the demand for H-2B visas dropped. As the recession dragged on, many employers who had completed the H-2B application process – whose labor certification applications and temporary worker petitions had already been approved by DOL and USCIS – opted not to bring some of these already authorized workers into the country. And by August 2009, USCIS found itself sitting on a surplus of some 25,000 visas – so many that it reopened the filing period for H-2B petitions after having earlier announced that it had received enough petitions to meet the cap.

This historical evidence is persuasive, but not conclusive. And in order to further investigate why employers hire H-2B workers, an original economic analysis conducted for this study examined the demand for H-2B workers across the 50 states.

The key variable was the business cycle, which differs in its impact from state to state, raising and lowering unemployment at differing rates and times and affecting the number of U.S. workers available to seasonal employers. The goal of the analysis was to determine whether H-2B demand varied with these local ups and downs. After all, if



employers bring in foreign workers when it is difficult to hire U.S. workers, the number of H-2B workers in a state should increase when labor markets tighten – when unemployment falls and employment growth accelerates. But if employers are bringing in H-2B workers for other reasons, the demand for visa holders should not vary significantly with the business cycle.

The data on H-2B use came from USCIS, which tabulates the number of foreign workers admitted on H-2B visas going to each of the 50 states. The data on state unemployment rates and state employment growth came from DOL's Bureau of Labor Statistics. The data covered all 50 states plus the District of Columbia for FY 2006 through FY 2009. (See the *Appendix* for more detail.)

The results of the analysis support the argument that the H-2B program provides a way for employers to hire foreign temporary workers when they cannot find U.S. workers. From 2006 through 2009, the number of H-2B workers in a given state increased when the state's unemployment rate fell and its employment growth accelerated. In the average state, when the employment growth rate increased by 1 percentage point, employers brought in 216 additional H-2B workers. And when the unemployment rate increased by 1 percentage point, employers brought in 286 fewer visa holders. These findings are consistent with responses to the ImmigrationWorks-Chamber survey. Employers turn to the H-2B program to alleviate their difficulty finding workers when U.S. labor markets are tight – not, as critics claim, because H-2B workers are inherently cheaper to hire than Americans.

“Because we are a seasonal employer, the H-2B program helps us fill positions that local candidates do not find desirable. A local candidate will accept a seasonal job only until he/she finds a full-time year-round position.”

*–Manager of a private club
in Florida*



CLAIM: H-2B workers undermine U.S. workers' wages

The H-2B regulations include an array of provisions aimed at protecting U.S. workers from competition from low-wage foreign workers. The purpose of the certification process is to guarantee that no employer brings in an H-2B worker unless there is a shortage of U.S. workers willing to do the job. The DOL must certify that no qualified U.S. workers are available and that the foreign worker's employment will not adversely affect similarly employed U.S. workers. Employers must pay H-2B workers at least the prevailing wage (the average wage in a given occupation in that geographic area), and they must actively recruit U.S. workers at that wage before filing their labor certification application. With limited exceptions, the employer may not lay off similarly employed U.S. workers in the 120 days before an H-2B visa holder starts work or in the 120 days after that start date.

Still, despite these protections, some critics believe that the H-2B program harms U.S. workers' employment and undermines their earnings. No existing research systematically examines the truth of this claim. And what research exists is based largely on anecdotes, case studies or flawed methodologies. For example, the Employment Policy Institute looked at seven occupations with large numbers of H-2B workers and concluded that real wages were stagnant in those occupations between 2000 and 2007. But this tells us little. After all, the same was true for low-skilled workers across U.S. occupations during this period – regardless of how many H-2B workers the sector employed.



THE WORKER

Juan Romo del Alto, 33, first heard about the H-2B program eight years ago from a friend in Mexico City, and he decided to give it a try.

Getting to the United States wasn't easy, especially that first year. But through his friend he landed a job in New Orleans, where he worked for a summer at a landscaping company. That fall, like the other H-2B workers employed by the landscaper, he returned home to Mexico. The next spring, again through someone he knew, he was offered a slot at Borst Landscaping & Design, in Allendale, N.J. He still goes home to Mexico every fall, but he has come back to work for Borst every summer since.

Allendale is a residential suburb northwest of New York City, and Borst Landscaping is a relatively small operation with 55 workers, roughly half of them H-2B visa holders.

The most Romo del Alto could earn in Mexico, he says, is \$30 a day, and that's working sun-up to sundown. In New Jersey, he makes \$17.75 per hour.

Using the money he's earned at Borst, he has been able to buy a house at home in Mexico and provide for his wife and two children. "I'm able to save money and support my family and give them what they need," he said through an interpreter. "I'm very appreciative."

Mark C. Borst, the founder of the company, has been using the H-2B program for more than a decade, and he says he can hardly imagine keeping his business open without the workers it provides.

"They're great employees," he said. "They're loyal. They respect the program. They become key people to your organization – they definitely hit a point where they are assets. It would really put a burden on my company not to have them."

Both Borst and Romo del Alto complain about the paperwork involved in the H-2B process.

Even before he could come to the U.S., Romo del Alto remembers, he had to find and convince a U.S. employer to send him a letter offering him a job. There were several applications to fill out, routine now but bewildering at first, and he had to prove to officers at the consulate in Mexico that his ties to home were so strong that he would return there when the summer ended, not remain in the United States.

Romo del Alto sounds anxious and frustrated just talking about the process.

Still, he says, it was worth it.

He has been given more and more responsibility each year at Borst, he says, and now tries to help newer workers learn the ropes.

His only regret: he wishes he could stay year-round. He wants to apply to become a permanent U.S. resident, but the H-2B program does not allow that.



To fill this research vacuum, a second original economic analysis conducted for this study compared wages in sectors that rely heavily on H-2B visa holders with wages in other industries that hire few or no temporary workers. The goal was to investigate how the number of H-2B workers in a given job affects U.S. workers' employment and earnings.

The study looked at three critical variables for each of 503 different occupations: the annual growth of hourly earnings among native-born workers in each occupation, the annual growth in the number of native-born workers in that occupation and the number of H-2B visa holders employed in the occupation. The occupations ran the gamut from chief executives (an occupation with no H-2B workers) to cooks and grounds maintenance workers (occupations with many H-2B workers). The analysis was done at both the state and national levels and covered the period from 2000 through 2009.

The data on U.S.-born workers' earnings and employment came from the Current Population Survey, a survey of some 50,000 households conducted monthly by the Census Bureau on behalf of the Bureau of Labor Statistics. The data on H-2B workers came from approved H-2B labor certification applications tabulated by the Foreign Labor Certification Data Center. (More detail on the study's data, statistical methodology and results can be found in the *Appendix*.)

If it is true that the H-2B program harms U.S. workers' labor market opportunities, the growth rate of U.S. workers' wages and employment should be smaller in occupations that employ many H-2B workers than in occupations that employ few or none.

The results do not indicate that this is the case.

On the contrary. The analysis shows that the number of approved H-2B workers expressed as a fraction of total employment in a given field in a given fiscal year is not negatively related to the growth of U.S. workers' employment or earnings over the next calendar year. Indeed, at the national level, the number of H-2B workers admitted in a given year is correlated with *stronger* wage and employment growth in occupations that rely heavily on the program. Specifically, the results indicate that a 1 percentage point increase in the percentage of H-2B workers in a given occupation in a given year is associated with wages in that occupation increasing 0.05 percentage points faster than they otherwise would have over the next calendar year, and with employment also increasing 0.05 percentage points faster. These are small effects – not surprising since the H-2B program is small. But the fact is, the direction is positive – the H-2B program is not having an adverse impact on U.S. workers.

At the state level, there was no significant relationship between the number of H-2B workers in a given occupation and the wage or employment growth in that sector. In other words, this analysis found no evidence that admitting more H-2B workers significantly slows or boosts either employment or earnings growth among native-born workers – it has no effect one way or another.

Other research reinforces these results, finding little conclusive evidence that immigration of any kind, temporary or permanent, adversely affects U.S. workers' employment or earnings. A voluminous economics literature uses sophisticated methodologies to examine how inflows of foreigners affect U.S. workers' labor-market outcomes. These studies have looked at inflows of immigrants in general, at permanent residents, at refugees and at H-1B workers – just not H-2B workers. And most of this research concludes that immigration has either no effect or a small effect on competing native-born workers.

Among the best known of these studies is by Gianmarco Ottaviano, professor of economics at the Università Commerciale Luigi Bocconi in Milan, and Giovanni Peri, professor of economics at the University of California at Davis.² Published by the National Bureau of Economic Research in 2008, their study examines the effect of immigration to the United States during the period from 1990 to 2006. Its principal finding: that an increase in immigrants has little effect even on the wages of the most similar U.S. workers, those without a high school diploma – no more than



minus 0.1 percent to plus 0.6 percent a year. For a worker earning \$25,000 a year – the median wage for a full-time, year-round male worker without a high school diploma – this translates into a range of minus \$25 to plus \$150 per year. The effect is so small largely because immigrants and native-born workers are different. They tend to have different skills, work in different sectors, live in different parts of the country – and by and large, they complement rather than compete with each other.

Other studies suggest that immigration has some negative effect on less-skilled U.S. workers’ earnings and employment. But these negative consequences are more than offset by the broader economic benefits of immigration. The same 2008 study by Ottaviano and Peri concluded that immigration raised average wages among native-born workers, skilled and unskilled, by 0.6 percent. The researchers’ explanation: when immigrants take low-skilled, low-paying jobs, they free U.S. workers to do higher-skilled, higher-paying work – and indeed in many cases, the immigrants’ presence helps create and support those better jobs. One of the biggest beneficiaries of immigration has been college-educated mothers who hire immigrants to provide child care that enables them to reenter or stay in the workforce. The population as a whole also benefits from immigration through lower prices for goods and services provided by foreign workers.

What would happen if employers were not able to bring in temporary foreign workers? Many business owners would be forced to move operations outside the country or shut down completely. In a few industries – the few instances where it’s possible – some jobs might be mechanized. Still other employers might hire unauthorized workers – a distinct possibility, according to responses to the ImmigrationWorks-Chamber survey. Or they might raise prices for the goods and services they produce. None of those alternatives help the average American.

CLAIM: H-2B workers are not truly temporary

Still other critics question whether H-2B visa holders are truly temporary. Although employers must establish that their need for foreign workers is indeed short-term – either a “one-time occurrence” or a “seasonal” or “peak-load” or “intermittent” need – some employers turn to the program year after year. Critics charge that this indicates the employers are using the program to fill permanent, not temporary, jobs.

This concern is without merit. Recurrent demand does not violate the rules of the H-2B program. After all, a job can be both temporary and recurring. Many of the seasonal jobs that employers use the H-2B program to fill are just that – temporary and recurring. And this is precisely what makes them undesirable to many U.S. workers. Few workers with other alternatives will take a one-time, seasonal, peak-load or intermittent job. And when they do, according to many H-2B employers, they often quit as soon as they find a permanent job that offers more stability.

“This program fills positions that U.S. workers don’t want to do when the economy is strong. Recruiting is very difficult during times of economic growth; even today, U.S. workers are still a challenge to retain.”

–Manager at a pavement marking company in North Carolina





CLAIM: Unscrupulous businesses and staffing agencies abuse visa holders and undermine Americans

Still other critics – among the most vocal – complain that unscrupulous employers and staffing agencies abuse the H-2B program.

Many of these critics' complaints focus on what they allege are illegal recruitment practices. H-2B employers find prospective employees in a variety of ways. Some recruit their workers themselves, traveling abroad to interview prospects or relying on existing workers to tap family members. Others hire foreign recruiters to interview and select applicants on the ground in Mexico or Jamaica or some other sending country. Still others rely on U.S.-based staffing agencies that bring in large numbers of temporary foreign workers and hire them out on contracts to smaller employers. Labor certification applications indicate that large staffing agencies are not the dominant H-2B employers. Among applications approved in FY 2009, the median number of H-2B workers requested was 15, and only one application for more than 500 workers was approved. But the program's critics train much of their fire on the staffing agencies and on foreign recruiters.

Some of the critics' concerns are understandable. With millions of foreign workers desperate to enter the U.S., it is easy to see how recruiters might take advantage of them. Anecdotes suggest that some foreign recruiters require illegal payments from aspiring H-2B workers. And critics are correct that it can be difficult to address this sort of exploitation because the illicit activity would occur abroad.

An extensive web of regulations attempt to limit illegal recruitment practices. DOL and DHS regulations adopted in 2008 prohibit employers from requiring H-2B workers to pay any recruitment-related fees as a condition of obtaining employment. Additional DOL regulations require that employers' contracts with foreign recruiters explicitly forbid the recruiters from seeking or receiving payments from prospective employees. Employers must attest that H-2B workers have not paid any fees to a recruiter. If they learn that a worker has done so, they must reimburse the worker. If DOL's Wage and Hour Division finds that an employer, attorney or agent had knowledge of or had reason to know of such payments, it can assess fines and penalties and bar those individuals or companies from the H-2B program.

Despite all of these rules, concerns persist. But there are a number of ways that the problem could be addressed further. State Department officers who interview H-2B applicants before admitting them are already obligated to inform them of their rights, but the officers could be mandated to make more of an effort and to make sure the applicants understand the warnings. The State Department and DOL could increase oversight of foreign recruiters. And businesses that violate the law should face appropriate sanctions.

Also subject to criticism are the staffing agencies that bring in large numbers of foreign temporary workers and hire them out on contracts to other employers. Critics claim that these agencies commit fraud, abuse foreign workers, exhaust the limited quota for H-2B workers and skew wage rates, both for H-2B visa holders and for U.S. workers.

New regulations issued by DOL in late 2008 address many of the critics' concerns about staffing agencies. The regulations require that agencies and their clients prove that their need for workers is truly temporary. The rules also bar staffing agencies from moving H-2B visa-holders from one company to another as a way to keep them in the U.S. on a year-round basis. And DOL routinely audits H-2B employers, barring those who repeatedly break the law from participating in the program. Over time, these restrictions are likely to reduce the number of H-2B workers subcontracted out by agencies to other companies.

But arguably the best way to control abuses by staffing agencies would be to eliminate the burdensome bureaucracy that makes them necessary in the first place. It's no mystery why seasonal employers, particularly small business owners, turn to staffing agencies: they spare business owners from having to master the complexities of applying for labor certifications and petitioning for foreign workers. Several respondents to the ImmigrationWorks-Chamber



survey reported that contractors help companies hire H-2B workers when the annual cap has been met – and that they are increasingly turning to them as the rules get more complex. Simplifying the rules would reduce employers’ need for staffing agencies and limit any distorting effect on the labor market.

“The process has become so labor-intense that it discourages participation on the part of quality employers. Those of us who are ethical employers, of both full-time and temporary workers, have had to resort to utilizing temp agencies. This is not the best process for us or for the workers involved.”

–Resort manager in Missouri

THE PROGRAM’S HURDLES AND INEFFICIENCIES

Although employers’ responses to the ImmigrationWorks-Chamber survey pointed to many benefits of the H-2B program, their comments also suggested problems – inefficiencies, unnecessary hurdles, burdensome costs, expensive delays and more. H-2B employers are an interested party with an evident stake in how visas are issued. Still, their perspective yields important insights that can be used to help improve the program.

Several aspects of the H-2B program limit its attractiveness to businesses that could benefit from participating. Employers responding to the ImmigrationWorks-Chamber survey described the system as complicated, time-consuming, costly and inefficient. Many reported that the cap of 66,000 visas per year was too low to meet their labor needs. Others complained that uncertainty as to whether they would be able to get H-2B workers hobbled their operations and stymied business growth. Still others pointed to delays in DOL, DHS and State Department processing, inconsistent decision-making by government agencies, lack of guidance and frequent changes to the program’s regulations. One respondent commented that the myriad requirements and restrictions of the H-2B program make it almost impossible to be in full compliance.

“The biggest problem is the inability to get timely approval of petitions. In addition, the volume of paperwork required is ridiculous, especially when it is asked for repetitively.”

–Restaurant manager in South Dakota



Any missteps in the complicated application process can mean delayed approval or visas denied – both extremely costly for employers. Even a short delay can leave a business without workers during a critical window in its sector’s seasonal cycle – think about an amusement park still short of workers when the summer season kicks off on Memorial Day. And in most years, a delay in the application process can also mean failure to get a worker before the visa cap is reached.



“The number one problem is not knowing if I will get the visas each year. I put a lot of time and money into applying for the visas each year and you never know if you are going to get them.”

–Landscape in Maryland

The uncertainty involved in the H-2B process creates inefficiencies and worse. Employers who do not know whether they will be able to get visas have difficulty making plans. And regulations meant to prevent abuse can create perverse incentives. For example, anxiety about meeting the annual cap may encourage employers to petition for H-2B workers they aren’t sure they will need just in case their business takes off or some of their workers quit after the quota is hit.

The complexity of the H-2B program also leads to unintended outcomes. It discourages an untold number of small businesses from using the program. It creates incentives to hire lawyers and other consultants. Larger companies that require large numbers of H-2B workers are in a position to bear these costs, but small businesses are at a distinct disadvantage – with consequences for them and ultimately for the economy. Many respondents to the ImmigrationWorks-Chamber survey complained that mounting costs – the ever-changing prevailing wage requirement, travel costs, visa fees, recruitment expenses, lawyer and consultant fees – were coming close to making participation in the program prohibitively expensive.

“There is significant red tape, confusion, inconsistency in how the program works and what is needed to get approved.... If the law was simplified, we wouldn’t have to hire an attorney each year to sort through the yearly changes to the law.”

–Manager in the hospitality industry



The recruitment process for U.S. workers is also inefficient. The precise timing requirements and the long lag between recruitment and the start of the work period make the seasonal jobs being advertised even less attractive to U.S. workers – remember employers start recruiting 120 days before the worker is needed. Employers who successfully recruit U.S. workers worry that they will not show up three or four months later when the job begins. Since these jobs are temporary, many U.S. workers are likely to continue searching for a permanent job while waiting for the temporary job to start – and as a result, employers may be stuck without any workers when their peak season starts.

MAKING THE PROGRAM MORE EFFICIENT

The H-2B program clearly needs improvement – and making it more efficient would serve the country’s economic interests. Far from harming U.S. workers’ employment or earnings, the program appears to create and preserve jobs in some sectors. It also lowers prices for the labor-intensive goods and services produced by industries that hire H-2B workers – to the benefit of U.S. consumers.



THE COMMUNITY

Maryland is famous for its tasty blue crab, which is harvested from the Chesapeake Bay and is the state's official crustacean. What few people realize is that the crab cakes and other delicacies produced by Maryland seafood processors are made possible by a heavy reliance on seasonal H-2B workers.

For many generations, young Maryland girls worked alongside their mothers picking Chesapeake crabmeat out of shells – tedious, painstaking manual work. But like much of rural America, the region has changed. More young people leave in search of work, they want a different kind of career. Fewer locals are available or interested in jobs in the seafood-processing plants. And so, starting in 1991, the plants began turning to H-2B workers.

Before a Maryland company can hire an H-2B worker, it must advertise widely and make every effort to hire American workers. The processing plants must pay a government-mandated “prevailing wage” of \$7.25 an hour, and with piece work, pickers can earn significantly more. The workers, most of them from Mexico, pick crab eight hours a day, five or six days a week. They and their employers pay taxes on their income. And when the season ends in the fall, the workers return home to Mexico. Many of them come back season after season.

Maryland isn't the only state that hires H-2B worker for seafood processing. Employers in Virginia and North Carolina also use the program. But Maryland's processors rely on it far more heavily. Together, the 25 seafood plants on the Chesapeake Bay employ as many as 500 H-2B workers a year, and these employees are widely credited with sustaining the industry. The crabmeat processing industry contributes between \$25 and \$30 million to the Maryland economy every year. According to employers, seasonal workers are responsible for three-quarters of the crab picked at Chesapeake processing plants. The plants operate on narrow profit margins, and the H-2B program allows them to remain globally competitive.

F. Levi Ruark, president of the National Bank of Cambridge, Md., explains how essential these H-2B workers are. They sustain the processing plants, and the plants sustain everyone else: from the financial institutions that lend them money to the restaurants that serve their product to visiting tourists – not to mention the grocery stores and other businesses where the foreign workers shop. Without the H-2B workforce, Ruark told *The Baltimore Sun* last year, “I could see a great downturn in our economy.”

If you add it all up, according to University of Maryland economist Douglas Lipton, each foreign worker sustains 2.54 American jobs in the surrounding community. If the H-2B program shut down and those workers could not return, Lipton estimates, it would put more than 1,250 Americans out of work.

That's unthinkable, Maryland crabbers say – except that it almost happens every year. The H-2B program is capped at 66,000 workers a year, and Maryland seafood processors must compete with seasonal employers in many other fields, including landscaping, construction and tourism across the 50 states. Companies can't file a request for a visa more than 120 days before they need workers. If enough other employers in other sectors apply first, Maryland seafood processors are out of luck – and some years, the cap has been reached even before the picking plants were allowed to apply.



Responses to the ImmigrationWorks-Chamber survey and the original economic analysis conducted for this report point to the same conclusion: the two most problematic aspects of the H-2B program are the rigid cap and the burdensome paperwork. Both make it difficult for the program to fulfill its stated objective – enabling employers to bring in temporary foreign workers when they are unable to find enough U.S. workers to meet their business needs. And both problems can be addressed relatively easily.

First, the cap. The main problem with a fixed quota is that it restricts employers from bringing in workers when they need them most. Good economic times squeeze seasonal employers from two directions. When the economy is booming, U.S. workers can find other jobs, and few are interested in temporary or seasonal positions. And meanwhile, the demand for many labor-intensive goods and services increases. The two forces combine to push up employers' demand for H-2B workers. But a fixed cap cannot adjust, no matter how strong the economy or how desperate the employers' need for workers. This inflexibility constrains economic growth.

A more efficient approach would be to link the H-2B visa cap to the business cycle. The history of the H-2A and H-2B programs underlines the point: market forces work better than arbitrary ceilings to limit worker flows, and there is little risk that employers will bring in more temporary workers than they need. The H-2A program, which enables employers to hire temporary agricultural workers, has no cap. Yet at no time in the past decade has the number of visas issued under the program exceeded 65,000 per year – and some years, it was as low as 30,000. Similarly, in FY 2005 and 2006, when non-farm employers were allowed to bring in returning H-2B workers without counting them against the 66,000-visa cap, the number of workers admitted remained less than one-tenth of one percent of total U.S. employment.

If there must be a cap, it should be based on market forces. The number of visas available should rise when the economy grows and demand for H-2B workers increases – and it should shrink during hard times when fewer seasonal workers are needed. Some commentators propose measuring labor demand monetarily – not by mandating wage rates, which would distort the market, but by replacing burdensome certification requirements with a visa auction or a fee paid by employers for each foreign worker they hire.³ Alternatively, the cap could be designed to move up and down in sync with some other, proxy measure of economic activity: the national unemployment rate, GDP growth, growth in sectors that typically hire large numbers of H-2B workers – or perhaps some combination of the three. Once the formula for the cap was determined, there should be no need for Congress, an independent commission or any government agency to intervene – the cap would move up and down automatically with the business cycle.

Second, the paperwork. There can be little question about the need to make the H-2B program more efficient by streamlining its paperwork requirements. The application process should be simplified for employers who have participated in the program before. In cases where there are no concerns about a company's previous compliance with the program, the requirements should be eased – both the labor certification and the temporary worker petition process could be expedited. Employers who have been audited and found to be in compliance should also be entitled to an expedited process. And all employers seeking visas should be able to file their applications electronically.

Another way to increase the H-2B program's efficiency would be to streamline the recruitment process for U.S. workers. The precise timing requirements make it difficult for employers to hire U.S. workers. The process is expensive for employers. It's antiquated, relying on newspaper ads and state employment agencies. And it generally yields few, if any, U.S. workers. Simplifying the paperwork requirements seems unlikely to harm U.S. workers, and it would benefit small businesses, reducing the need to hire lawyers and staffing agents to navigate the system.

Finally, when contemplating changes, policymakers should step back and view the H-2B program in the broader context of U.S. immigration policy. Current policy severely restricts the number of low-skilled workers who can enter the U.S. legally – whether on temporary, permanent or family visas. Temporary programs are small and burdened by excessive paperwork. Permanent visas for low-skilled workers are virtually non-existent. Only 5000 are available



each year, and any accompanying family members count against that cap. In practice, the only avenue open to low-skilled foreigners who want to settle in the U.S. permanently are family-based visas. But most family-based admission categories have long queues – often as long as five to 10 or even 20 years – and not all potential immigrants have relatives who can sponsor them.

No wonder hundreds of thousands of foreign workers risk their lives every year trying to enter the U.S. clandestinely. The number of visas available to low-skilled workers simply bears no relation to the flow generated by market forces and required to meet U.S. labor demand. Improving the H-2B visa system can help alleviate this bottleneck – but only by so much. Eventually it must be accompanied by other, broader reforms to the U.S. immigration system.



CONCLUSION

The H-2B program plays a small role in the U.S. economy – H-2B visa holders account for less than one-tenth of one percent of total employment. But the program is crucial to a wide array of seasonal and other employers who would have difficulty meeting their labor needs if they were unable to hire temporary foreign workers.

Employers must clear extensive hurdles to bring in H-2B workers. They must file a labor certification application with the Department of Labor, then file a petition for a temporary worker with U.S. Citizenship and Immigration Services. Only when both applications have been approved can the employer begin to search for suitable foreign workers, who must be approved by the State Department before entering the United States. The process is complex, time-consuming, costly and inefficient.

Despite these problems, in most years the demand for H-2B workers far exceeds the annual cap of 66,000 workers. Based on a survey of H-2B employers conducted by ImmigrationWorks USA and the U.S. Chamber of Commerce, employers hire H-2B workers for temporary jobs because they cannot find enough U.S. workers to meet their labor needs. Employers view H-2B workers as reliable and hard-working.

An original economic analysis conducted for this report finds no evidence that the H-2B program harms native-born workers' employment or earnings. On the contrary, if the program did not exist, some seasonal employers – most of whom hire U.S. workers along with foreign workers – would go out of business. There is also no evidence that H-2B workers are a less expensive substitute for U.S. workers. Concerns about abusive subcontracting and illegal recruitment practices can be addressed through changes to the program.

Nothing hinders economic growth more than employer uncertainty – including uncertainty about whether or not there will be enough workers available to meet business needs. The goal of the H-2B program should be to limit this uncertainty – all the more important in today's weak economic climate. The H-2B program can best achieve this goal by enabling employers to hire foreign workers when U.S. workers are unavailable, not by imposing unrealistically low visa caps or prohibitive paperwork.

This report proposes several improvements to the H-2B program, all designed to make it more efficient. The cap should be more flexible and linked to market forces. The paperwork requirements should be simplified. Both changes would enhance the program's contribution to the U.S. economy.

Finally, policymakers should view the H-2B program in the wider context of U.S. immigration policy. Current policy severely restricts the number of low-skilled workers who can enter the U.S. legally, and the number of visas available, permanent and temporary, bears no relation to the flow generated by market forces and required to meet U.S. labor needs. Improving the H-2B visa system can help alleviate this bottleneck – but only by so much. Eventually it must be accompanied by other, broader reforms to the U.S. immigration system.

APPENDIX ON DATA AND METHODS

Data. The H-2B labor certification application data are from <http://www.flcdatacenter.com/CaseH2B.aspx>. These data are a public-use version of ETA Form 9142. The data were expanded from the number of applications to the number of positions. In FY 2007 through FY 2009, partial certifications were possible, and the number of positions certified was created accordingly.

The USCIS data on H-2B workers admitted (based on I-94 forms) are from the Yearbook of Immigration Statistics, <http://www.dhs.gov/files/statistics/publications/yearbook.shtm>.

The fraction of H-2B visa applications that were denied is based on State Department data from <http://www.travel.state.gov/pdf/FY2009NIVWorkloadbyVisaCategory.pdf>.

Data on H-2A visa issuances are from the State Department, http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html.

Data on state-level seasonally-adjusted unemployment rates and employment levels are from the Bureau of Labor Statistics, www.bls.gov. The employment data are nonfarm employment from the Current Employment Statistics survey. The monthly data were converted to simple averages by fiscal year.

Data on natives' employment and earnings are based on the Current Population Survey Merged Outgoing Rotation Survey (CPS MORG) data from the National Bureau of Economic Research, <http://www.nber.org/morg/annual/>. Earnings were corrected for inflation using the annual personal consumption expenditures price deflator from the Bureau of Economic Analysis, www.bea.gov. The CPS data were merged with the number of certified H-2B labor certification applications by occupation by converting the Dictionary of Occupational Titles occupation codes into the CPS occupation codes using crosswalks available at www2.ed.gov/rschstat/eval/rehab/support/doc-soc.xls and <http://www.bls.gov/cps/cenocc.pdf>. The crosswalk and merge resulted in data on 503 occupations.

Methods. The relationships between the number of approved H-2B positions as a fraction of total employment and natives' employment and earnings are based on analysis of the H-2B labor certification application data and the CPS MORG data. The analysis was done at the national and the state level. From the CPS MORG data, employment and real hourly earnings growth rates were calculated at the detailed occupation level for each calendar year during 2000-2008. Those data then were compared with the number of H-2B workers in the base year in that occupation divided by total employment in the base year in that occupation (e.g., the growth rate of employment and earnings from 2008 to 2009 was compared with the number of H-2Bs in FY 2008 divided by total employment in 2008). This comparison was done by regressing employment and earnings growth rates on the number of certified H-2B applications as a fraction of total employment in that occupation, occupation, year and (if state-level) state fixed effects in ordinary least squares (OLS) regressions. Standard errors are robust and clustered on the occupation to control for heteroscedasticity. The regression results are as follows, with standard errors in parentheses:

	Employment growth rate	Earnings growth rate
H-2B workers, national	.047 (.004)	.053 (.005)
H-2B workers, state	.047 (.032)	.006 (.008)

Note: Each coefficient is from a separate regression.

The results show that having more H-2B workers in a given occupation does not significantly affect employment or earnings growth among natives in that occupation. If having more H-2B workers adversely affected natives' labor market outcomes, the estimated coefficients would be negative and statistically significantly different from zero,



which is not the case here. The results are robust to only including occupations that ever had an H-2B worker certified during 2000-2009, which excludes many relatively high-skilled occupations. They also are robust to examining the level of H-2B workers in an occupation instead of the share. The state-level results also are robust to including interactions between the state and year fixed effects to control for state-specific economic shocks.

These results are subject to at least two caveats. First, the number of H-2B workers may be endogenous in the regressions, with shocks to employment and earnings growth rates affecting the number of H-2B workers relative to total employment. There is no obvious candidate instrument to control for this potential endogeneity, but including occupation and year fixed effects should help control for any endogeneity. Second, the H-2B data are approved labor certification applications, not all of which result in actual H-2B workers. Also, there is not a perfect one-to-one correspondence between positions and workers; strictly speaking, the LCA data are positions, not workers, and an H-2B worker may hold more than one position in a given year.

The relationships between demand for H-2B workers and the state unemployment rate and employment growth rate are based on OLS regressions of the number of H-2B workers admitted from USCIS data for FY 2006-2009 (the period available) on the unemployment rate or the employment growth rate and state fixed effects. Standard errors are robust and clustered on the state to control for heteroscedasticity. The regression results are as follows, with standard errors in parentheses:

	H-2B admissions
Unemployment rate	-286.207 (71.124)
Employment growth rate	215.719 (62.399)

Note: Each coefficient is from a separate regression.

The results show that H-2B admissions are negatively related to the unemployment rate and positively related to the employment growth rate in a state. The estimates are statistically significantly different from zero at conventional levels. As the unemployment rate increases by 1 percentage point, the number of H-2B workers admitted falls by 286. As the employment growth rate increases by 1 percentage point, the number of H-2B workers admitted rises by 216. As a caveat, the USCIS data are based on I-94 data on admissions and do not necessarily include all H-2B workers (particularly renewals and returning workers).

ENDNOTES

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