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Class action granted in H-2B visa lawsuit

Kevin Kerrigan | The Guam Daily Post Apr 3, 2018



CONSTRUCTION: A construction crew works on a project in Dededo. Post file photo

The District Court of Guam has granted class action status to the lawsuit filed by the Guam Contractors Association and 11 other plaintiffs against the U.S. Citizenship and Immigration Services over USCIS' blanket denial of H-2B visas for skilled foreign workers.

"It's another significant step in the right direction," said Jeff Joseph, lead counsel for the plaintiffs who filed this class action lawsuit in October 2016.

Monday's decision by Chief Judge Frances Tydingco-Gatewood follows the preliminary injunction in favor of the 12 plaintiffs that she issued on Jan. 23.

In that January ruling, the judge ordered USCIS to reverse its previous denials of H-2B worker

petitions, and to stop the blanket denial of future petitions – at least temporarily – until the merits of the case have been decided. However, that decision applied only to the 12 plaintiffs.

Joseph said this latest order to grant class action status to the case "opens the lawsuit up to any employer in Guam who has been denied or will be denied in the future an H-2B petition."

"It's significant in that it's no longer limited to the plaintiffs," he said.

The decision means that the court has recognized this is a "systemic problem" said Joseph, that affects "all employers petitioning for H-2B workers." As a result, he said the court has "expanded the eligibility for the relief under the injunction to the entire class."

Robertson: 'Hallelujah'

"Hallelujah," declared John Robertson on hearing the news. Civilian and military construction projects need foreign labor to fill the shortage of local skilled workers, industry officials have said in previous reports.

Robertson is president of AmOrient Engineering and he chairs the committee overseeing the H-2B litigation.

"This is a happy day for the construction industry in particular and for the Guam economic community as a whole," he said.

Robertson said many Guam businesses and their customers have been damaged over the past two years as a result of what he called "the senseless denial of H-2B temporary work visas" by USCIS.

However, he also cautioned that "there are some stipulations in the order that must be followed" and this latest order "must be tested by submission of petitions" for H-2B visas from employers who are not among the 12 plaintiffs in the lawsuit.

Robertson added that the decision does not end the lawsuit.

Still to be decided is their discovery motion, which seeks USCIS records that may reveal the timing, and reasoning, behind the sudden switch from 98 percent approval of H-2B petitions, to a policy of denying all H-2B applications.

"We're quite sure there was some change of policy, although they're denying it," Robertson said.

The final step, he said, is a permanent injunction to ensure that the preliminary injunction granted in January remains in place.

"We have the means now to resume business as usual" said Robertson, but we only have a preliminary injunction, he said.

"We must now proceed to the next phase of securing a permanent injunction," he said and "this requires more funding to support our legal team."