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Contempt order sought for continued H-2B denials

Kevin Kerrigan | The Guam Daily Post Apr 26, 2018 Updated Apr 27, 2018



MEN AT WORK: A construction crew works on a project in Dededo. Attorney Jeff Joseph recently filed a motion in the District Court of Guam asking the judge to hold the U.S. Citizenship and Immigration Service in contempt and impose sanctions on the federal agency for its continued denial of H-2B petitions from Guam employers. Post file photo



The U.S. Citizenship and Immigration Service has continued to deny H-2B petitions from Guam employers seeking skilled foreign labor for nonmilitary construction projects, despite both a temporary injunction against USCIS and the class-action certification that has been granted in the case, according to attorney Jeff Joseph.

Joseph, who represents the Guam plaintiffs, filed a motion Thursday in the District Court of Guam asking Chief Judge

Plaintiffs' request for clarification
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Frances Tydingco-Gatewood to hold USCIS in contempt and impose sanctions on the federal agency for its continued denial of H-2B petitions from Guam employers.

"USCIS has continued to deny H-2B petitions," Joseph states, despite the preliminary injunction Tydingco-Gatewood issued in January.

The preliminary injunction ordered USCIS to reverse its previous denials of H2-B worker petitions, and to stop the blanket denial of future petitions – at least temporarily – until the merits of the case have been decided.

On March 31, Tydingco-Gatewood granted class-action certification to the lawsuit, allowing her ruling to extend beyond the original 12 Guam plaintiffs, and apply to other Guam employers filing H-2B petitions, who were not a party to the original lawsuit.

More petitions denied

In his motion, Joseph points out that within the past month, since the class-action certification was granted, Guam Advance Enterprises, a "potential class member," has received notice that its petitions for three H-2B visas had been denied by USCIS.

According to Joseph, the Justice Department attorney representing USCIS, Glenn Girdharry, told him it is USCIS' position that the certification applies only to the "ultimate final judgment in this matter, and not to the previously issued injunction."

Joseph argues that the court order is "clear on its face" and that USCIS is violating the terms of the court order with its "continued insistence on denying H-2B petitions based on temporary need."

He has asked that the court hold USCIS in contempt and sanction the federal agency appropriately for failure to follow the court's



USCIS rejection of H-2B petition from Guam Advance Enterprises
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explicit instructions.

Contacted for comment, AmOrient president John Robertson, who chairs the committee overseeing the H-2B litigation, cited Joseph's motion, highlighting the attorney's charge that USCIS is "attempting to game the system."

Greg Massey, administrator for the Guam Department of Labor Alien Labor Processing Certificate Division, said in a statement that Guam DOL "looks forward to reading the answer from Judge Tydingco-Gatewood. ... Any guidance and clarity that comes from the court or the federal government is welcomed."

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