

Contractors dealt setback in foreign labor case

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(Photo: Pacific Marketplace file photo)

The federal government's decision to deny H-2B visas for foreign workers on Guam has negatively impacted the island's economy, according to a federal judge, who said he nonetheless opposes issuing an injunction against the federal government.

District Court of Guam Magistrate Judge Joaquin Manibusan on Aug. 11 issued his report and recommendations in the lawsuit filed by the Guam Contractors Association and a dozen Guam businesses, challenging the federal government's high denial rate of visas for temporary foreign workers.

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The plaintiffs have asked the federal court to file an injunction against the federal government, requiring it to issue visas and extend existing visas until the case is resolved.

The businesses last year sued the federal government after it started to reject nearly all requests for H-2B visas.

Guam's population is too small to support a large full-time force of construction workers, so foreign laborers are brought in to fill the gap when large projects begin. Guam businesses unrelated to construction also rely on the use of foreign labor under the visa program.

Federal immigration officials have argued they are simply applying existing policies, and that visa requests are being rejected because Guam has not been using the program as intended, for temporary labor.

The federal government agreed to temporarily lift the national cap on H-2B visas for Guam and the CNMI in anticipation of the increased labor demands of the Guam military buildup. But the change is now meaningless because immigration officials are rejecting most requests for new visas and for visa renewals.

The impact of the island's foreign labor shortage is so far-reaching, the National Association of Realtors and the Guam Association of Realtors in June gave the Contractors Association \$30,000 to help with legal fees in the case. Contractors have reported the labor shortage has limited their ability to take on new jobs and has increased the cost of construction.

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Manibusan, in his report, stated that the businesses likely will suffer irreparable harm without an injunction, but he said they should not get an injunction because they have not shown they can win their case.

He said the U.S. Citizenship and Immigration Services has generally demonstrated a rational connection between the information provided, the regulations and its decision to deny visas.

"USCIS has always adhered to the principle that the employment which was sought should be temporary and one that will end in the near, definable future," Manibusan stated. "USCIS has concluded that in many of these petitions, the plaintiffs have failed to meet and establish this basic requirement of the regulation."

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