

# Federal court won't sanction agency for H2-B visa denials

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(Photo: Pacific Marketplace file photo)

A federal court on Friday said it won't sanction the U.S. Citizenship and Immigration Services for recently denying H-2B petitions for workers on non-military construction projects, despite a Jan. 24 temporary court injunction and a class action certification in March.

But the court's order allows H-2B class members, as of May 11, to be covered in a preliminary injunction that essentially prohibits USCIS from denying petitions on the basis of reasoning it used in 2015 and 2016 to reject H-2B visa applications for Guam.

That is, USCIS cannot rely on "peakload" or "one-time occurrence" conditions as reasons to deny visa applications.

Colorado-based Attorney Jeff Joseph, representing the Guam Contractors Association and nearly a dozen businesses, asked the court to hold USCIS in contempt and impose sanction against it for continued visa denials and to clarify whether the scope of the preliminary injunction applies to class members.

U.S. District Court Chief Judge Frances Tydingco-Gatewood on Friday granted in part and denied in part the Guam Contractors Association's request.

The judge's order makes explicit what may have been previously only implicit: "the preliminary injunction entered in this case shall apply to all members of the certified class."

"The preliminary injunction entered on January 24 and clarified in part on February 8 shall apply to all class members as of the date of this order," the judge wrote.

The judge, however, has not ordered a sanction for USCIS.

First, USCIS may have plausibly relied on language in the Jan. 24 order to conclude the injunction had not yet been applied class-wide, the judge wrote. After all, the certification question at the time had not yet been decided, she stated.

Second, the parties have identified no authority suggesting that once the certification question was later decided, the court's injunction was to be automatically and retrospectively applied to class-member petitions USCIS had previously adjudicated.

"Given those considerations, the court cannot conclude defendants have disobeyed 'a specific and definite court order' and cannot conclude the contempt sanction is appropriately applied here. The request for sanction will be denied," Tydingco-Gatewood wrote.

USCIS so far has approved 654 H-2B visas for military projects on island, but none for workers on civilian projects.

The Guam Contractors' attorney said Guam Advance Enterprises, a potential class member, on March 27 received notice that its petition for H-2B visas had been denied.

Guam Advance Enterprises is engaged in electrical and mechanical contracting, and is involved in the construction of non-military projects such as the Tsubaki Tower, which aims to offer five-star luxury accommodation in Tumon.

Joseph said the motion for injunction and the order on the preliminary injunction are clear and apply to all future denials of named plaintiffs and class members. USCIS opposed this.

The Guam Contractors Association and other in 2016 sued the federal government, which had been denying nearly all petitions for H-2B visas for Guam.

The island used to have an average of 1,500 H-2B workers every year, but because of the denials, only about 20 remained as of late March.

Reporter Haidee Eugenio covers Guam's Catholic church issues, education, government, business and more. Follow her on Twitter [@haidee\\_eugenio](https://twitter.com/haidee_eugenio) ([https://twitter.com/haidee\\_eugenio](https://twitter.com/haidee_eugenio)). Follow Pacific Daily News on Facebook/GuamPDN (<http://www.facebook.com/guampdn/>) and Instagram [@gua](http://instagram.com/GuamPDN) (<http://instagram.com/GuamPDN>)mpd (<http://instagram.com/GuamPDN>)n.

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