

# Federal government asks judge for clarification on H2-B petitions

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(Photo: Pacific Marketplace file photo)

The federal government filed a motion on Saturday for Judge Frances Tydingco-Gatewood to clarify how they should handle previously denied H2-B visa petitions.

District Court of Guam Chief Judge Frances Tydingco-Gatewood on Jan. 24 issued a preliminary injunction, prohibiting the federal government from continuing its current practice of denying nearly every request by Guam businesses for the use of temporary skilled foreign labor.

In the recent court filing, the federal government asked for clarification on the applicability of past labor certifications on any future filed H2-B petitions.

The need for clarification comes from an inconsistency in the language of Tydingco-Gatewood's order, the filing states.

According to the judge's order, the U.S. Citizenship and Immigration Services is prohibited from applying the reasoning it used during fiscal 2015 and fiscal 2016 to reject visa applications for foreign workers. It cannot rely on "peakload" or "one-time occurrence" conditions as reasons to deny visa applications, the order states.

It cannot use those reasons to deny any past or future petitions for worker visas, the order states. The judge also nullified the agency's earlier visa denials.

The federal government, in the Feb. 3 court filing, argued that none of the H2-B petitions being challenged by the Guam Contractors Association and local businesses are still valid, and that all of the temporary labor certifications for the invalid H2-B petitions have most likely expired, causing a potential inconsistency in the judge's order.

The Guam Contractors Association and nearly a dozen local businesses that have used foreign workers under the federal H-2B visa program sued the federal government in October 2016 after federal immigration officials started to reject nearly every visa petition under the program.

A foreign labor force of previously more than 1,000 dwindled to fewer than 50. The loss of the foreign labor force has limited the ability of local contractors to take on new jobs and is expected to drive up the cost of construction on Guam.

The federal government still has the option of appealing the judge's order to the U.S. Court of Appeals for the Ninth Circuit, according to attorney Jeff Joseph, who represents plaintiffs in the lawsuit against the federal government. He said he plans to contact the attorney for USCIS to determine whether it plans to appeal or whether it will reopen the denied petitions for the plaintiffs.

The military's budget allows as many as 4,000 temporary foreign workers to be used on Guam, but only for projects related to the military.

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