



https://www.postguam.com/news/local/gca-objects-to-recommendations-in-h--b-case/article_245ef66e-8af4-11e7-9d56-236fb87666ad.html

GCA objects to recommendations in H-2B case

Louella Losinio | The Guam Daily Post Aug 28, 2017 Updated 40 min ago



LABOR FORCE: The local construction industry faces a challenge meeting labor needs for projects following the increased denials of petitions for foreign workers on H-2B visas. Post file photo

The Guam Contractors Association and other plaintiffs in the H-2B visa rejection case filed their objection to the recommendations issued by Magistrate Judge Joaquin Manibusan Jr. in a report filed on Aug. 11.

GCA and other plaintiffs filed a lawsuit several months ago against U.S. Attorney General Jeff Sessions after federal immigration desk officers rejected nearly all petitions for hiring or renewal of hiring foreign workers on H-2B visas.

Plaintiffs respond

In documents filed at the District Court, the plaintiffs responded to the report, arguing that the magistrate judge had erred in finding that the United States Citizenship and Immigration Services (USCIS) "denial of petitions were not arbitrary and capricious because the agency failed to articulate a connection between the evidence presented and the agency denials."

USCIS, instead of addressing the actual evidence and issue of temporary need presented by the employers, had issued "remarkably similar boiler-plate denials on 46 distinct petitions for 296 different workers," according to court documents.

Moreover, 100 percent of the cases had been approved in the past based on the same evidence since the start of the H-2B program.

"The only conclusion that can be rationally or logically drawn is that the evidence presented by the Plaintiffs did not matter and that there was no rational connection between the evidence presented and the ultimate decision of the agency," the plaintiffs said in the court documents.

GCA and other plaintiffs also argued that the judge "erred in agreeing with USCIS that recurring peakload needs which require temporary workers to continuously work for the same employer for one to three year periods is not in harmony with the regulation that employment will end in the near and definable future."

This month, the judge denied a motion that would have compelled the government to provide additional discovery in the ongoing H-2B visa rejection case.

'The burden of expense'

Earlier this year, GCA and other plaintiffs in the case filed a motion for discovery beyond the administrative record, which would have required the defendants to produce evidence related to guidance, policy memos, training materials and other documents that reveal decision-making processes for H-2B visa applicants.

"For the time being, I find that the burden of expense heavily outweighs the likely benefit of this

motion," Manibusan said.

In Guam, numbers of H-2B workers continue to decrease and the rate of visa issuance is nearly at a standstill. According to GCA, petitions last year for the H-2B visa program for Guam had a 99.3 percent rejection rate.

Meanwhile, a \$164.8 million contract for the construction of a new Marine Corps base was recently awarded to a multibillion-dollar U.S. company.

Louella Losinio