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Governor seeks exemption from worker ban

Kevin Kerrigan | The Guam Daily Post Jan 24, 2019 Updated 4 hrs ago



EXEMPTION: A construction crew works on a culvert in front of the San Juan Bautista Church in Ordot in 2016. Gov. Lou Leon Guerrero has spoken with the U.S. Department of Homeland Security and asked for an exemption for Guam to allow island employers to continue to hire skilled workers from the Philippines. Post file photo

Gov. Lou Leon Guerrero held a conference call Wednesday morning with the Department of Homeland Security in Washington, D.C., and asked for an exemption for Guam to allow island employers to continue to hire skilled workers from the Philippines for nonmilitary-related construction projects under the H-2B visa program.

The governor spoke with Assistant Secretary of Homeland Security John Hill and told him Guam does not fall into the high-risk category for overstays.

In the notice posted on the Federal Register on Saturday, DHS cited figures showing nearly 40 percent of H-2B visa holders from the Philippines stayed in the U.S. mainland after their visas expired.

However, the overstay figure on Guam is much lower, the governor said following a visit Wednesday to the Guam Homeland Security office in Agana Heights.

Leon Guerrero cited figures provided by the Guam Department of Labor, which indicate the H-2B overstay rate on Guam may be no more than 2 or 3 percent.

“That’s very minimal in comparison to what they’re saying. I don’t think the 40 percent (overstay) is here on Guam,” she said.

Leon Guerrero told reporters that Hill assured her he would arrange a phone call with Department of Homeland Security Secretary Kirstjen Nielsen and try to set up a face-to-face meeting for the governor when she goes to Washington at the end of February.

The governor said she already met briefly with Nielsen about the H-2B situation when she was at the White House in December 2018, and “(Nielsen) said she would look into it,” said Leon Guerrero.

The governor said her next meeting with Nielsen would be a follow-up, in which she’ll ask her “to help and assist us in whatever way she can to allow us to get those H-2B workers.”

“It’s impacting our economy and construction (and) our ability to move forward with some projects,” Leon Guerrero said.

Leon Guerrero also said she has been in touch with Del. Michael San Nicolas, who is a member of the U.S. House Committee on Financial Services. She hopes he can include an exception for Guam in the next National Defense Authorization Act.

“He’s on board with our effort,” said the governor, “and we’re going to do whatever we can” to ensure Guam contractors and service employers are able to get the H-2B works they need.

As of Wednesday, there were 630 H-2B workers on Guam. All of them are Filipinos, according to Greg Massey, administrator of the Guam Department of Labor Alien Labor Processing Division.

Potentially 'catastrophic'

The Guam Chamber of Commerce fears the DHS decision to remove the Philippines from the list of countries eligible to take part in the H-2B visa program “could be catastrophic to our economic development.”

“This new rule is an unwelcome development for the local economy on so many levels,” Joe Arnett, chairman of the commerce chamber board, said in a release issued Wednesday.

“We need to do a little work on the federal government's claim for overstayers and see how our numbers compare to the U.S.,” Arnett said.

'2 to 3 percent overstay rate'

“2 to 4 percent overstay rate”

“We’re probably at a 2 to 3 percent overstay rate,” on Guam said DOL’s Greg Massey during a briefing he gave to a special meeting of the Guam Contractor’s Association Wednesday morning which was called to talk about the impact of the DHS decision.

The Guam Contractors Association and 11 other Guam employers filed a class-action lawsuit against USCIS in October 2016 after its yearlong, near-100 percent denial of all petitions for skilled foreign workers under the H-2B visa program.

John Robertson, AmOrient Engineering president and chairman of the committee overseeing the Guam Contractors Association's litigation said Massey told them about the conference call between the governor and Homeland Security.

“He said that (deputy DHS director Hill) was not even aware of the lawsuit the Guam Contractors had filed,” said Robertson.

“It’s quite clear from his briefing that the governor is acting,” and the Contractor’s Association is going to “let the governor take the lead,” he said. The GCA is not planning to take any additional action at this time.

The GCA won a decision from Chief Judge Frances Tydingco-Gatewood of the District Court of Guam in January 2018 ordering USCIS to reverse its previous denials of H-2B worker petitions and to stop the blanket denial of future petitions.

Yet not a single H-2B petition from any Guam contractor for nonmilitary-related work was granted until GCA filed a motion asking the court to hold the USCIS in contempt in October 2018. Since then, USCIS has granted one employer's application for H-2B visas for work on a nonmilitary-related project, Massey said.

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