

Guam contractors optimistic about worker visa lawsuit

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(Photo: Pacific Marketplace file photo)

Time is running out for the federal government to challenge a preliminary injunction related to the issuance of visas for temporary foreign labor on Guam, according to John Robertson, vice chairman of the Guam Contractors Association board, who said the 30-day deadline expires either Thursday or Friday this week.

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 that once numbered more than 1,000 has dwindled to 35 as of this January, according to a recent Department of Labor report. 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.

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

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. That is, 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.

"We think USCIS realizes they have a very weak case," Robertson said during Thursday's luncheon by the Society of American Military Engineers, Guam Post.

"That doesn't mean, though, that our fight is over," Robertson said. "We need to make it permanent."

One of the pending issues in the lawsuit, he said, is whether it will be certified as a class-action so businesses not named as plaintiffs in the case will be able to apply for worker visas.

The goal, he said, is for the court to issue a summary judgment in the case. "It looks pretty good," he said.

Mark Mamczarz, board chairman for the Contractors Association, said the lawsuit so far has cost \$125,000 in legal fees, and is expected to cost another \$50,000 to \$100,000 before it is resolved.

He encouraged those attending Thursday's luncheon to contribute to the lawsuit, noting Guam will need workers to build anything those professionals design.

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