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## Guam contractors seek contempt order against USCIS

Kevin Kerrigan | The Guam Daily Post 8 hrs ago



**WORKERS:** A construction crew works on a project in Dededo. A federal judge has broadened the scope of her decision on hiring foreign workers on H-2B visas, but the U.S. Citizenship and Immigration Services has been stalling on approvals, employers alleged in a lawsuit. Post file photo

The attorney representing the Guam Contractors Association has renewed his request for a federal court order against the U.S. Citizenship and Immigration Services for its continued denial of H-2B petitions from island businesses seeking permission to hire skilled foreign workers for construction jobs and other temporary specialized work projects on Guam.

In a motion filed Thursday in the District Court of Guam, attorney Jeff Joseph contends the agency has "demonstrated a willful failure to comply" with the Jan. 24 preliminary injunction issued by Chief

Judge Frances Tydingco-Gatewood of the District Court.

That preliminary injunction required USCIS to reverse its previous denials of H-2B worker petitions and stop the blanket denial of future petitions.

### **'Immense' losses**

In his motion for contempt, Joseph writes, "This willful violation has caused immense tangible and intangible losses" for Guam contractors and has "ground development projects on Guam to a halt."

Joseph represents the GCA and 11 other Guam employers that 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.

Since early April, under a provision in this year's National Defense Authorization Act, the USCIS has been granting H-2B visas to Guam employers seeking skilled foreign labor for construction projects related to the military buildup.

However, John Robertson, AmOrient Engineering president and chairman of the committee overseeing the Guam Contractors Association's litigation, said not a single H-2B petition from any Guam contractor for nonmilitary related work has been approved by USCIS, despite the preliminary injunction Tydingco-Gatewood issued in January, and despite her later decision to grant class-action certification to the lawsuit in March.

USCIS "is playing games," said Robertson. "We won" the case in District Court in January, he said, but what USCIS is doing now is stalling.

"They're not disapproving, they're just sending the applications back and asking for more information," he said.

"So we asked Jeff Joseph to go ahead and ask for contempt," said Robertson, "because they're not following the order of the judge."

Joseph filed a similar request for sanctions against USCIS in April that was denied by Tydingco-Gatewood, who wrote that the agency "may have plausibly relied on language" in the Jan. 24 preliminary injunction "to conclude the injunction had not yet been applied classwide."

However, she rejected the USCIS's request to limit the case to the 12 original class-action plaintiffs,

declaring, "Now that the class has been certified ... the court will therefore make explicit what may have been previously only implicit: The preliminary injunction entered in this case shall apply to all members of the certified class."

### **'Appropriate sanctions'**

In his motion for contempt, Joseph wrote that of the 708 nonmilitary H-2B petitions filed by Guam employers with USCIS, "zero had been approved, with 91 positions having no action taken on them, and no communication from USCIS for over 90 days."

He wrote, "This explicit disregard for and persistent failure to comply with this court's order can only be remedied by this court finding defendants in contempt of court and imposing appropriate sanctions."

USCIS has not yet responded.

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Kevin Kerrigan