

# Injunction, possible settlement considered in H-2B suit

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(Photo: Kyla P Mora/PDN)

District Court of Guam Magistrate Judge Joaquin Manibusan on Tuesday held a three-hour court hearing on a request by local businesses to force the U.S. government to continue issuing visas to temporary foreign laborers, pending the outcome of their federal lawsuit.

A dozen Guam companies in October [filed a lawsuit](http://www.guampdn.com/story/news/2016/10/04/local-businesses-sue-feds-over-worker-visa-denials/91517270/) ([/story/news/2016/10/04/local-businesses-sue-feds-over-worker-visa-denials/91517270/](http://www.guampdn.com/story/news/2016/10/04/local-businesses-sue-feds-over-worker-visa-denials/91517270/)), alleging the recent high rejection rate for H-2B visas constitutes an unlawful change in U.S. Citizenship and Immigration Service policy. The lawsuit claims some employers might be forced out of business because they no longer have access to the foreign workers needed to complete military and private projects.

U.S. immigration officials used to approve 95 percent of requests to import foreign labor, but last year rejected nearly all requests, the businesses have argued.

The motion for a preliminary injunction was filed in November. If granted, it would require the federal agency to grant visas or visa extensions it had previously rejected, until the matter is settled in court.

## **Businesses file request for immediate H-2B relief**

(<http://www.guampdn.com/story/news/2016/11/02/businesses-file-request-immediate-h-2b-relief/93144514/>)

Manibusan gave attorneys until Jan. 31 to determine whether or not a settlement can be reached.

"We do have something on the table that we think would be beneficial to both parties, the plaintiffs and the interests of the government," attorney for the plaintiffs Jeff Joseph said about a potential settlement. "I'm hoping that we can work something out, in lieu of litigating this for the next year, while jobs are at a standstill."

The hearing started as a technical discussion about jurisdiction and the definition of "temporary need," then shifted to the problems the denial of foreign worker visas will pose for the military buildup.

Because of Guam's remote and strategic location relative to the United States, Joseph argued, it has been exempt from caps on H-2B visas since 1985. Guam, he said, has historically needed the exemption because workers who are trained on the island often leave for Hawaii and the mainland, where "they can make 40 to 50 percent more on the dollar."

While mainland H-2B visas are issued for unskilled labor, Guam's visas are only issued for skilled labor, with the top three categories of carpenters, masons, and reinforcement metal workers. Joseph said, "any employer would prefer to have permanent workers, universally, across the board. They would love it. But the reality is that there is not enough labor on the island."

With the military buildup coming, Joseph said, Guam has "reached the point of critical mass, where if we don't have the workers, it's going to shut down. We are one to two months away from that happening."

## **House OKs \$170M in military construction, but no special hiring of foreign workers on H-2B**

(<http://www.guampdn.com/story/news/2016/12/05/house-oks-170m-military-construction-but-no-special-hiring-foreign-workers-h-2b/94980732/>)

Joseph attributed USCIS's about-face on H-2B approval to the agency's collapsing the four different categories of temporary worker into a single category, effectively ignoring the peakload provision, under which every company included in the lawsuit had successfully applied in the past.

Attorney Glenn Girdharry from the U.S. Department of Justice, noted that the director of the USCIS California office, which handled Guam's applications, has denied any official change in USCIS policy.

Joseph said Guam is not the only jurisdiction complaining. He cited a letter from Rep. Bob Goodlatte (R-Va.), questioning denials of H-2B visas under the peak load criteria in his district.

Ultimately, Joseph argued, the situation is a "double-bind" – either there has been no official change to policy, in which case the near universal denials are "arbitrary and capricious," or there has been a change, which should have been announced publicly and subject to comment. Either way, he argued, USCIS is wrong, and immediate relief should be granted to avoid "doing untold damage to the economy of Guam."

Girdharry said the plaintiffs cannot demonstrate irreparable harm or serious immediate damage. He also argued that, since the Guam Department of Labor's certification of temporary need is only "advisory," USCIS and Homeland Security should have the final say.

Although previous approval does not mean that an application for an H-2B visa will be approved, Girdharry said, the long history of H-2B visa use by the companies in question – in some cases over a span of 30 years – means that their need for foreign labor was not truly temporary.

**Adelup: Visa denials could create 'labor crisis'**

[\(http://www.guampdn.com/story/news/2016/08/23/adelup-visa-denials-could-create-labor-crisis/89153404/\)](http://www.guampdn.com/story/news/2016/08/23/adelup-visa-denials-could-create-labor-crisis/89153404/)

A [motion to dismiss the lawsuit \(/story/money/2017/01/11/federal-government-files-dismiss-h-2b-lawsuit/96432772/\)](http://www.guampdn.com/story/money/2017/01/11/federal-government-files-dismiss-h-2b-lawsuit/96432772/), filed by the U.S. Attorney General's office on Jan. 11, is currently pending.

Manibusan said he will submit his recommendations on to Chief Judge Frances Tydingco-Gatewood.

**Federal government files to dismiss H-2B lawsuit**

[\(http://www.guampdn.com/story/money/2017/01/11/federal-government-files-dismiss-h-2b-lawsuit/96432772/\)](http://www.guampdn.com/story/money/2017/01/11/federal-government-files-dismiss-h-2b-lawsuit/96432772/)

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