

Judge deals blow to contractors desperate for foreign labor

Steve Lintiaco, Pacific Daily News USA TODAY Network Published 4:01 p.m. ChT Dec. 11, 2019



In this file photo, Commandant of the Marine Corps Gen. Robert B. Neller, right, speaks with then-Gov. Eddie Calvo, at Andersen Air Force Base Aug. 11, 2017. Neller visited Guam to tour facilities and meet with Marines. Calvo withdrew his support for the pending military buildup, citing the federal government's decision to deny Guam the use of foreign labor under the H-2B visa program. (Photo: Department of Defense)

The federal government continues to deny nearly all worker visas for non-military projects on Guam, despite a court injunction and federal judge on Wednesday rejected a request by local contractors to hold the federal government in contempt of court.

There's no clear and convincing evidence federal officials violated any specific court order, Chief Judge Frances Tydingco-Gatewood stated in her order.

At issue is whether the federal government violated the court's preliminary injunction by continuing to deny the bulk of H-2B visa petitions for civilian projects on Guam.

More: [Guam Labor: H-2B workers continue to increase \(/story/news/2019/11/22/guam-department-labor-says-number-h-2-b-workers-continues-rise/4266850002/\)](/story/news/2019/11/22/guam-department-labor-says-number-h-2-b-workers-continues-rise/4266850002/)

More: [GEDA: Companies should apply for H-2B visas; makes education community contributions \(/story/money/2019/08/22/geda-companies-should-apply-h-2-b-makes-education-contributions/2069709001/\)](/story/money/2019/08/22/geda-companies-should-apply-h-2-b-makes-education-contributions/2069709001/)

The Guam Contractors Association and nearly a dozen businesses who use skilled foreign labor under the H-2B visa program sued in October 2016 after the federal government started to deny nearly all visa applications. A foreign labor force that typically exceeded 1,000 had dwindled to about 50 because of the visa denials.

The preliminary injunction, issued by Tydingco-Gatewood in January 2018, was expected to provide temporary relief to those businesses during the ongoing legal battle by prohibiting U.S. immigration officials from denying visa requests based on the issue of temporary need, including meeting requirements of "peakload" or "one-time occurrence."

The Contractors Association in November 2018, after visa petitions continued to be rejected, asked the court to hold the federal government in contempt.

But Tydingco-Gatewood, in her order signed Wednesday, said her preliminary injunction never was intended to force the federal government to continue "rubber stamping" visa applications for Guam, as was the prior practice.

Policy, not practice

The injunction instead required the federal government to follow any lawful policy it already had adopted, she stated.

That is, the preliminary injunction required the federal government to follow its longstanding policy for worker visas, and not its long-standing practice she wrote. Requiring the federal government to follow its past practices likely would make the injunction improper, she wrote.

The federal government has argued its past practices might have been illegal, she wrote, because it had been issuing H-2B visas for Guam without determining all the legal requirements for those visas were met.

Guam Contractors Association President James Martinez, during a forum hosted by the Guam Chamber of Commerce last week, said the approval rate for foreign labor visas for civilian projects has dropped to zero, mainly because local businesses don't believe petitions will be granted and therefore don't apply.

In contrast, there has been a 100% approval rate for worker visas for military-related projects, as well as approvals for hundreds of visas for hotel and housing projects that were determined to be indirectly related to the military, he said. Federal law allows H-2B visas to be issued for military projects on Guam.

The shortage of skilled foreign labor has driven up the cost of civilian projects on Guam and limited the ability of contractors to take on some projects.

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