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Judge denies sanctions against USCIS

Kevin Kerrigan | The Guam Daily Post May 14, 2018 Updated 7 hrs ago



BUILDING: 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. Post file photo

A request to hold the U.S. Citizenship and Immigration Services in contempt and impose sanctions on the federal agency for its continued denial of H-2B visas sought by Guam employers was denied.

In an order issued Friday, Chief Judge Frances Tydingco-Gatewood of the District Court of Guam clarified her Jan. 24 preliminary injunction against further H-2B denials by explicitly stating that it applies to all class members as of May 11.

The plaintiffs' attorney, Jeff Joseph, sought the penalties



against the immigration service after the USCIS in April denied three petitions from a local company seeking skilled foreign workers for a nonmilitary-related project. USCIS denied those three petitions despite the preliminary injunction Tydingco-Gatewood issued in January, and despite her decision to grant class-action certification to the lawsuit in March.

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

In her decision, Tydingco-Gatewood wrote that the immigration service “may have plausibly relied on language” in the Jan. 24 preliminary injunction “to conclude the injunction had not yet been applied classwide.”

“After all,” wrote the judge, “the certification question ... had not yet been decided,” and was not decided until March 31.

As a result, she denied Joseph’s request for contempt and sanctions because the USCIS did not disobey “a specific and definite court order.”

However, she rejected the USCIS’ 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.”

“It is unfortunate that we must seek clarification to a clear order of a federal judge,” said AmOrient President John Robertson. He chairs the Guam Contractors Association’s committee overseeing the H-2B litigation.

However, Robertson credited Tydingco-Gatewood for “being consistent in enforcing her earlier ruling, while doing the right thing for the Guam economy.”

H-2B petitions under the NDAA

Under a provision in this year’s National Defense Authorization Act, the USCIS has been granting



Judge: Sanctions against USCIS denied, but Class status extended to all

H-2B visas to Guam employers seeking skilled foreign labor for construction projects related to the military buildup since early April.

The 2018 NDAA includes language that allows contractors working on Guam to hire up to 4,000 H-2B foreign workers each year for projects related to the military's expanding presence on the island.

As of April 20, Gov. Eddie Calvo had signed letters of support for about 1,500 H-2B petitions and USCIS had approved a total of 654 H-2B visas for foreign workers contracted to build projects related to the military buildup.

Greg Massey, administrator for the Guam Department of Labor Alien Labor Processing Certificate Division, said "the clarification by Judge Tydingco-Gatewood seems to be another positive step forward for Guam contractors who desperately need supplementary skilled workers to fill critical positions in their organizations."

"Guam DOL continues to monitor the progress of the lawsuit," said Massey, and DOL "looks forward to seeing how USCIS will decide on H-2B petitions filed under the injunction. "

Kevin Kerrigan