

# UPDATED Lawyer: Judge's H-2B class-action certification a significant victory

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(Photo: Pacific Marketplace file photo)

A federal judge has granted the Guam Contractors Association's request to grant a class-action certification in a lawsuit filed against the U.S. government for denying nearly all H-2B visa petitions for Guam.

Having the H-2B lawsuit certified as a class action means that businesses not named as plaintiffs in the case could apply for skilled foreign worker visas for Guam, and those applications would be handled the same way as applications from named plaintiffs.

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The court issued in January a preliminary injunction in favor of the named plaintiffs, which include the Guam Contractors Association and 11 businesses, stating USCIS is prohibited from applying the reasoning it used in 2015 and 2016 to reject H-2B visa applications.

That is, USCIS cannot rely on "peakload" or "one-time occurrence" conditions as reasons to deny visa applications.

Colorado-based attorney Jeff Joseph, counsel for the Guam Contractors Association and other named plaintiffs, on Monday said the judge's latest order is a significant victory, not only for the named plaintiffs but other contractors as well.

"It shows that the lawsuit is moving in the right direction," he said.

Joseph said employers whose H-2B petitions were denied or will be denied by USCIS because of the temporary need and one-time occurrence standards can now be a part of the H-2B lawsuit.

A summary judgment in the case, he said, could take another six months to a year.

Guam-based attorney Jennifer Davis, co-counsel for the named plaintiffs, said the judge's latest order is an important step. She said the next step is for the plaintiffs to file a proposed notice, no later than April 30, for other employers to join the lawsuit.

## The order

U.S. District Court Chief Judge Frances Tydingco-Gatewood's decision on the Guam Contractors Association's lawsuit comes a few days after USCIS approved 162 H-2B petitions for military projects on Guam.

Guam used to host more than 1,500 H-2B workers annually. There were 23 as of last week.

## 'Great day for the island'

"This is great news," said John Robertson, vice chairman of the Guam Contractors Association board. "This is a great day for the island. Those needing a new home, for example, can now hire a contractor at reasonable cost."

Robertson said class certification means that not only the named plaintiffs in the lawsuit will benefit, but also all other employers that have been similarly affected by USCIS' denial of H-2B visas over the past two years.

"This includes not only construction contractors but also other employers with legitimate need for temporary foreign workers," he said. "There are some new stipulations for applications and the system must be tested by actual filings of petitions."

Robert Manalo, vice president of 5M Construction, a general contractor who is among the businesses that sued the federal government, said the judge's latest order speaks of fairness between those involved in military construction and those that are working for projects "outside the fence."

Manalo said 5M Construction is now preparing to file petitions for 60 H-2B workers, and they hope for approvals.

"The latest news is giving us confidence that we now have access again to skilled foreign workers we need to complete projects we long started and to bid on new projects," Manalo said.

5M Construction is one of the subcontractors for the new hotel project in Tumon, called Tsubaki Tower, which aims to offer five-star luxury accommodation. The hotel is estimated to cost \$180 million to build and furnish, according to Pacific Daily News files. But its construction has been delayed because of a lack of construction workers needed to complete the project.

## 'Fight is not over'

Robertson of the Guam Contractors Association said on Monday that "the fight is not over."

"What we have is a preliminary injunction. We must now proceed with pursuit of a permanent injunction and that involves more legal expense to be paid for by all of us," he said.

The island's lack of foreign skilled workers to supplement the local workforce has put at risk military realignment construction projects as well as civilian and government of Guam projects.

The latest National Defense Authorization Act, signed in December, allowed up to 4,000 H-2B workers on Guam for military projects.

Other motions in the H-2B lawsuit have been resolved, but not the contractors' class-action certification motion, until the federal judge's March 31 order.

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*Reporter Haidee Eugenio covers Guam's Catholic church issues, education, government, business and more. Follow her on Twitter [@haidee\\_eugenio](https://twitter.com/haidee_eugenio) ([https://twitter.com/haidee\\_eugenio](https://twitter.com/haidee_eugenio)). Follow Pacific Daily News on Facebook/GuamPDN (<http://www.facebook.com/guampdn/>) and Instagram [@gua](http://instagram.com/GuamPDN) (<http://instagram.com/GuamPDN>)mpd (<http://instagram.com/GuamPDN>)n.*

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