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Judge rules in favor of employers on H-2B visas

Mindy Aguon | The Guam Daily Post Jan 24, 2018 Updated 17 hrs ago



CONSTRUCTION: A crew works on a project in Dededo. The number of H-2B workers on Guam has drastically decreased, jeopardizing local projects. Post file photo

U.S. Citizenship and Immigration Services has been ordered to reverse denials of more than 200 H-2B petitions filed by nearly a dozen local companies and stop the blanket denial of future petitions solely based on temporary need.

Chief Judge Frances Tydingco-Gatewood of the District Court of Guam issued a 33-page order yesterday in a civil lawsuit filed by the Guam Contractors Association and 11 local businesses against the Department of Justice and USCIS over the mass denial of H-2B applications in fiscal years 2015 and 2016.

The sheer number of H-2B visa denials beginning in 2015 reduced the foreign labor force on Guam

from more than 1,000 in years past to just a few dozen.

'Huge victory,' attorney says

Attorney Jeffrey Joseph represents the plaintiffs and called the order a "huge victory" for his clients who have been "suffering" for two years to try and complete projects on the island.

"This decision allows them to get back on track to do projects and help the military to create a stronger Guam and a more strategically positioned United States," Joseph told The Guam Daily Post.

Tydingco-Gatewood ordered the federal government to produce the administrative record for all petitions identified by the plaintiffs that were previously adjudicated.

"Employers can now proceed with H-2Bs without a concern that the government will wholesale deny them."

– Attorney Jeffrey Joseph

To restore the parties to the status quo and to best protect all interested parties, the court preliminarily enjoined USCIS from relying on "failure to satisfy peak-load or one-time occurrence conditions as grounds for denying temporary worker petitions in the absence of an adequate explanation as to how and why the pattern of adjudication has changed," the order states.

The earlier denials of H-2B visa applications were vacated and the government was ordered to reconsider any prior petitions.

It was further ordered that the plaintiffs' prior labor certifications shall remain valid through the end of the next period, in which each individual plaintiff may petition for and receive a temporary visa.

Joseph said he was pleased the court determined the need to "remedy the harms that already occurred" against his clients. He said there were 40 petitions for 296 workers that were denied in fiscal years 2015 and 2016 that will need to be approved.

"Employers can now proceed with H-2Bs without a concern that the government will wholesale deny them," Joseph stated.

He added the court has yet to rule on class certification so the injunction only applies to the named plaintiffs at this time, but he stressed the federal government is enjoined from denying future petitions.

There is the possibility that the government could appeal the decision in the 9th U.S. Circuit Court of Appeals and seek a stay of the injunction. Joseph yesterday said he will speak with USCIS attorneys today to negotiate the process on how to reopen the denied claims for his clients.

Military-related projects

The court's order comes one month after President Donald Trump signed the National Defense Authorization Act into law, authorizing Guam to hire up to 4,000 workers a year for the next several years, to meet the needs of constructions projects related to the military buildup.

Joseph said the NDAA is specific to military contracts and solves the temporary need for military contracts. He added, "This lawsuit brings well-needed relief for employers in the tourism, landscaping, civil construction, health care and other industries."