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Judge: 'Rubber-stamped' petitions for foreign workers can't continue

DAILY POST STAFF

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USCIS: The U.S. Citizenship and Immigration Services office in Tiyan is pictured in May 2018. A federal judge on Monday said she can't order USCIS to continue its past practice of rubber stamping petitions for foreign workers. Post file photo

A federal judge has said she cannot order the U.S. Citizenship and Immigration Services to continue an apparent past practice of "rubber-stamping" petitions for foreign workers under the H-2B visa program.

District Court Chief Judge Frances Tydingco-Gatewood, in part, stated in a decision Wednesday she cannot hold USCIS in contempt for refusing to approve certain petitions

for H-2B visas from Guam employers based on the argument that petitions were previously approved. A group of Guam employers had sued USCIS and sought that the court hold the federal government in contempt of a prior court order that was sympathetic to Guam's labor shortage and need for temporary foreign workers.

In the judge's order on Wednesday, she cites that the USCIS, as represented by the Justice Department, has "now raised the suggestion that their prior 'practice' — as opposed to their prior 'policy' — may have been unlawful, as it may have involved the issuance of H-2B visas absent a true determination that all of the statutory requirements were met."

"It is beyond dispute that the court has no authority to order a party to violate the law," the judge stated.

USCIS had previously argued some petitions for foreign labor were previously approved despite a lack of compliance with certain requirements, including that the hiring of foreign workers should only be temporary rather than a recurring practice.

USCIS, during the latter part of the Obama administration and in the Trump administration, had denied petitions for H-2B visas for foreign workers for civilian projects. However, petitions for temporary workers under the H-2B visa program were approved for military construction projects and for civilian projects that could establish link with the military expansions on Guam, Post files show.

At the peak of the denials, Guam had nearly zero H-2B workers. Now, with the military construction-related projects, close to 1,000 H-2B petitions have been approved for Guam.

"USCIS' denial of Ace Builders' petition states that Ace Builders' prior applications were approved based on insufficient evidence, not because they were found to meet some previous set of now-abandoned criteria. As noted above, this position essentially concedes that USCIS was previously in the practice of 'rubber-stamping' plaintiffs' petitions, and plaintiffs have not — at least for purposes of this motion — attempted to demonstrate by clear and convincing evidence that the agency's position false."

"The court will not interpret the preliminary injunction as requiring defendants to

continue 'rubber-stamping' applications simply because such was its prior practice," the judge stated. "Any such interpretation would likely render the preliminary injunction itself improper, and the court will not interpret its own order so as to invalidate it."

USCIS is required to adhere to any lawful policy the agency had previously adopted, either through rulemaking or longstanding practice, the judge noted.