

https://www.postguam.com/news/local/judge-sanctions-against-uscis-appropriate/article_cbd5d37c-9727-11e9-a236-2f7b9a4da8b.html

Judge: Sanctions against USCIS appropriate

MINDY AGUON | THE GUAM DAILY POST

13 HRS AGO



JUDGE: District Court Magistrate Judge Joaquin Manibusan Jr., right, speaks at a naturalization ceremony May 23 at the District Court of Guam in Hagåtña on May 23. David Castro/The Guam Daily Post

DAVID CASTRO | THE GUAM DAILY POST

U.S. Citizenship and Immigration Services has not complied with the District Court of Guam order prohibiting the agency from denying H-2B visas for temporary foreign workers, and the plaintiffs are entitled to appropriate sanctions, according to a report and recommendation issued by District Court Magistrate Judge Joaquin Manibusan Jr.

"Defendants have failed to meaningfully appreciate the implications, ramifications and

reach of the District Court's permanent injunction order which enjoined them from using its prior denial reasoning with respect to current petitions," the report states.

The plaintiffs, including the Guam Contractors Association and certain contractors, filed a motion to hold USCIS in contempt of court for failing to comply with the permanent injunction. As of Sept. 26, 2018, the Guam Department of Labor had approved H-2B labor certifications for 1,680 positions. Of those 1,680 positions, 764 fell within the National Defense Authorization Act and 668 had petitions filed with USCIS, court documents state.

As of Sept. 26, 2018, of the 708 petitions for non-NDAA workers filed with USCIS, zero had been approved, with 91 positions having no action taken on them, and no communication from USCIS for over 90 days, the court document states. USCIS sought one or more requests for evidence from employers petitioning for 577 workers. USCIS wanted evidence that the jobs for the foreign workers are temporary.

On Oct. 3, 2018, after two separate sets of requests for evidence, Ace Builders LLC received denials for 555 petitions for failure to establish temporary need.

USCIS has argued it fully complies with the permanent injunction and argued the petitioners failed to show sufficient evidence to establish temporary need.

Manibusan found USCIS was not in compliance when it denied Ace Builders' petitions.

"There appears to be clear and convincing evidence that defendants have failed to fully comply with this court's injunction," the judge wrote. "Sanctions are appropriate for the court's consideration."

USCIS has 14 days to file written objections to the report and recommendation.

Guam Contractors Association Executive Director James Martinez said the report and recommendation appear to be a "step in the right direction," and the organization is anxious to see what the chief judge will decide.