

# Lawyer: Feds may be singling out Guam on H-2B visa issue

Kyla P Mora , [kmora@guampdn.com](mailto:kmora@guampdn.com) 6:20 p.m. ChT April 26, 2017



(Photo: Kyla P Mora | PDN)

In an address at the Guam Chamber of Commerce's general membership Wednesday, attorney Melinda Swavely described a "disturbing development" in the struggle between Guam and U.S. Citizenship and Immigration Services over H-2B temporary worker visas.

Swavely said based on conferences between the government of Guam and USCIS, it appears Guam may be being singled out because the federal government feels Guam has overused the program.

"It seems that they are looking at Guam differently than other jurisdictions," Swavely said. "That may be why we're getting a zero-percent approval rate."

That development is all the more reason to continue pressing forward with litigation, Swavely said.

Swavely said Guam must dispel misconceptions and re-frame the issue.

According to Swavely, the record of decision for the upcoming military buildup assumes that H-2B workers would be available to build necessary facilities. That point was brought up in a Jan. 17 hearing, when Magistrate Judge Joaquin Manibusan asked the plaintiffs how military buildup facilities were to be built otherwise.

The necessity for the buildup makes this a national defense issue, not an immigration issue, Swavely said. She hopes that approaching it from that angle will make the issue resonate more with the current federal administration.

Swavely joined featured guest speaker Greg Massey, administrator of Alien Labor Processing and Certification at the Guam Department of Labor, to provide updates on the pending litigation and other issues related to the H-2B visa shortage.

Swavely reviewed the status of the lawsuit filed on behalf of a dozen Guam businesses in October 2016 that demands relief from sudden, near-total stoppage of temporary work visas to Guam businesses.

On April 6, Gov. Eddie Calvo officially withdrew the government of Guam's support from the military buildup as long as visa denials continued, and urged Guam's attorney general to join the lawsuit. The attorney general hasn't yet officially moved to join the lawsuit, but is actively looking at the issue and may be coordinating with counsel, Massey said.

The government of Guam did issue a letter to the Trump administration on the issue on April 13, Massey said.

A hearing was scheduled for May 1, at which point all motions were to be submitted, Swavely said. However, because a federal court hasn't yet ruled on previously heard motions for dismissal and class-action status, attorney Jeff Josephs will be requesting an extension.

## Misconceptions

The current approval rate for H-2B visas for Guam is zero percent, Massey said. As of tomorrow, he added, there will be 139 H-2B workers on Guam. Last year at the same time, there were 1,463.

At the same time, popular misconceptions must be addressed, Massey said. While many people challenge businesses bringing in H-2B workers and ask why they don't simply hire locals, the truth is that temporary workers only make up about 20 percent of the workforce.

The Navy has projected a need for 9,000 workers at the height of the buildup, Massey said.

"We have a core group of about 5,000 workers on Guam. There's no way we're going to train up 5,000 more people in the next two to three years," Massey said.

In answer to criticisms about not growing a local workforce, Massey pointed to apprenticeship programs and training offered through the Department of Labor and GCA Trades Academy.

However, he said, "people aren't knocking down doors to do outdoor, strenuous jobs. There are some, but not in the numbers we need. We could train 500 people, and it wouldn't make a dent in the 5,000 we need."

Bringing in 5,000 workers from the mainland, Massey said, is even more unrealistic, given higher salaries, transportation, housing and moving costs.

## Examining options

Even without the buildup, Massey said, there is close to \$1 billion worth of ongoing work on Guam right now, and the Department of Labor is examining all options, Massey said.

Chamber member Carl Peterson worked with the organization's Armed Forces Committee on the issue. In response to questions about Guam's lack of workers, Peterson said he would "go through the litany, explain we can't go down the road 100 miles and get the resources, because they're not there."

However, he also pointed out that, according to the U.S. Bureau of Labor Statistics, 4.9 percent of all the workforce in the United States is in construction.

"Closer to home, 4.6 percent in Hawaii is in construction. But as of September last year, 9.6 percent of Guam's workforce is in construction," Peterson said. "We've done twice as good as Hawaii. So it's not that we don't have the demand."

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