

Opposing motions in H-2B class action certification request

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(Photo: Pacific Marketplace file photo)

A federal court has received opposing motions from the federal government and some contractors in a request to [certify as a class-action lawsuit](https://www.guampdn.com/story/news/2018/03/06/court-proceeds-h-2-b-class-action-certification-briefings/397645002/) a case involving the denial of hiring skilled foreign workers for Guam under the H-2B visa program.

If the U.S. District Court of Guam certifies the lawsuit as a class-action status, businesses not named as plaintiffs in the case could apply for H-2B visas for Guam.

The Guam Contractors Association and nearly a dozen businesses sued the federal government in 2016 for denying almost all petitions to hire H-2B workers for the island, when H-2B petitions under the same set of facts

were approved in the past.

The federal government opposes the contractors' request to certify the case as a class-action lawsuit, arguing the plaintiffs lack standing to proceed because no relief can be granted to them because the period of needs for hiring H-2B workers have expired.

"Further, any claim of injury by plaintiffs on future-filed H-2B petitions is unripe, as United States Citizenship and Immigration Services has yet to make a determination on 'temporary need' and issue final agency actions in those instances," the federal government said.

The contractors, represented by attorneys Jeff Joseph and Jennifer Davis, asked the court to strike the federal government's opposition to the motion, saying it was untimely filed, among other things.

"Alternatively, if the court considers the opposition, the court should still grant the motion for class certification as the plaintiffs have clearly established eligibility for class certification under Federal Rules of Civil Procedure," the contractors' attorneys said in a March 19 motion to strike.

The federal government, in a March 21 filing, said it timely and properly filed its opposition brief. The federal government said the plaintiffs' motion to strike is meritless and should be denied in its entirety by the court.

Resumption

The opposing parties' filings came days after U.S. District Court Chief Judge Frances Tydingo-Gatewood ([allowed on March 5 the resumption of the process of determining whether to certify the H-2B lawsuit as a class-action status.](https://www.guampdn.com/story/news/2018/02/08/chief-judge-frances-tydingo-gatewood-orders-new-labor-certifications-h-2-b-petitions/318583002/)

The judge on Jan. 24 issued a preliminary injunction, saying the federal government cannot rely on "peakload" or "one-time occurrence" conditions as reasons to deny any past or future petitions for H-2B worker visas. While a number of motions in the H-2B lawsuit have been resolved, the contractors' class-action certification motion remains.

Moreover, the latest National Defense Authorization Act has allowed Guam contractors for military projects to bring in as many as 4,000 H-2B workers every year, but not for contractors working on non-military projects.

Guam used to have more than 1,000 H-2B workers at any one point, but the number dwindled to about 30 this year.

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). 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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