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Settlement on the table in H-2B visa denials case

Neil Pang | Post News Staff | Jan. 20, 2017 5 hrs ago

"There's nothing wrong with push-pull factors in the economy raising the rate of people pay – that's a good thing. But when we have an artificial inflation of wages based on H-2 denials, that can be disastrous to the economy because it's not realistic in terms of what's going on with the rest of the economy." – Attorney Jeff Joseph

The attorneys representing various local companies and the Guam Contractors Association in a lawsuit against federal authorities have two weeks to reach an agreement with the government, according to attorney Jeff Joseph.

Joseph explained during a press conference Thursday that he believed the settlement to be mutual beneficial for all parties concerned, and has little impact on the government in terms of changing law or regulations. He was unable to expand on the contents of the settlement as it is confidential, but said they would submit a report on the settlement to the court within two weeks.



Beyond the proposed settlement, Joseph said there were three other motions before the court, including a motion for class certification which, if granted, would make a decision rendered in the case equally applicable to all filers of H-2B applications that have had denials.

Also on the table is a motion to dismiss filed by the government, to which plaintiffs have until Jan. 21 to respond. Also pending is a motion for summary judgment, with a response due in May.

Labor availability

Joseph said he expects a noticeable impact on labor availability beginning in February and March, when some of the work on the military realignment is expected to begin.

"Once the buildup starts, I think we're going to see a lot of shifting of workers from commercial building and residential building to military (projects)," he said.

Joseph said that once the military buildup projects begin, he expects costs on the island to rise as employers compete for the remaining limited workforce by paying higher wages. He said additional cost will not be absorbed by contractors, but rather passed on to consumers.

He added that while no contractors have had to shut down yet, the potential of liquidated damages not completing these projects would be enough to force small businesses to close their doors.

Attorney: Plaintiffs are pleased

Calling their preliminary injunction hearing from earlier this week the "first step in a case that's going to take a long time to litigate," Joseph stated the plaintiffs are, overall, very pleased with how things have gone. He said their argument in the case so far is not that the wages on Guam are low, but that the denial of H-2B visa applications has artificially inflated the wages.

"There's nothing wrong with push-pull factors in the economy raising the rate of people's pay – that's a good thing," he said. "But when we have an artificial inflation of wages based on H-2B denials, that can be disastrous to the economy because it's not realistic in terms of what's going on with the rest of the economy."

As the rest of the country prepares for the transition of authority come the inauguration of President-elect Donald Trump, Joseph said he believes Trump's America-first policy argues in the plaintiffs' favor.

'America first'

A requirement of the H-2B program is to recruit American first, and all of these plaintiffs would rather have a domestic workforce that is reliable and that they can rely on year-round, he said.

"That's the ultimate goal," Joseph said, but added: "It's not realistic. There's just not enough labor on the island to do that, but they do want America first."

"If we cannot find the workers and we can't bring in workers, then those jobs are going to go overseas – they're going to be outsourced to a great extent. So if we really want America first, we have to do what we've done always, and that is to allow the H-2B program to proceed and for the employers to follow the rules of that program."

Neil Pang

English teacher turned reporter covering GHURA, military affairs, church/religion, mass transit, parks and rec and more.