

Guam braces for project delays, other impacts of H-2B 'crisis'

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The construction site of the Tsubaki Tower hotel project in Tumon, Jan. 22, 2019. (Photo: Frank San Nicolas/PDN)

Guam could see further construction delays and higher project costs as a result of the federal government's recent decision to stop issuing new H-2B visas to workers from the Philippines for at least a year, business managers and government officials said.

The Department of Homeland Security announced that the Philippines is no longer on the list of countries eligible to send workers to the U.S. under the federal H-2A and H-2B programs at least for a year. But the new policy does not affect the status of those currently holding valid H-2B visas, unless they seek an extension of stay.

Prior to the effective date of the new policy, Jan. 19, the federal government had already approved more than 1,300 H-2B petitions for Guam.

Of this number, only about 606 H-2B visa workers were on island as of Tuesday, the Guam Department of Labor said.

Gov. Lou Leon Guerrero on Tuesday said she will restate with the Trump administration Guam's continued need for skilled labor from the Philippines for military and civilian construction projects, calling the new federal restrictions as "burdensome" and a "crisis" that "remains a priority."

More: [First batch of new H-2B workers arrives on Guam after nearly 3 years \(/story/news/2018/06/13/first-batch-new-h-2-b-workers-arrives-guam-after-nearly-3-years/697020002/\)](/story/news/2018/06/13/first-batch-new-h-2-b-workers-arrives-guam-after-nearly-3-years/697020002/)

More: [H-2B applications slow to rise; nearly 1,800 foreign workers on Guam \(/story/news/2018/10/07/h-2-b-applications-slow-rise-nearly-1-800-foreign-workers-guam/1556028002/\)](/story/news/2018/10/07/h-2-b-applications-slow-rise-nearly-1-800-foreign-workers-guam/1556028002/)

The ban lasts until Jan. 18, 2020.

Guam has been relying on the Philippines, for decades, as the main source for its H-2B workers such as cement masons, carpenters, iron workers, heavy equipment operators and electricians, because of the limited local labor pool.

H-2A visas are issued for seasonal labor for agricultural work, and are not used on Guam.

Governor: H-2B crisis remains priority

Leon Guerrero, who marks her third week as governor, said she's concerned about the Trump administration's removal of the Philippines from the list of approved countries that can participate in the H-2B program.

"Though we will still be able to petition for H-2B labor because of the National Defense Authorization Act, the extra step being proposed of employers

who seek to use H-2B labor will continue to be burdensome," she said in a statement. "This crisis remains a priority, especially given the denial of nearly all petitions over the last few years."

The governor said in addition to raising the issue directly with Trump in a December 2018 meeting, she will also be writing to the secretaries of the Departments of State and Homeland Security to restate Guam's need for skilled labor from the Philippines for military and civilian projects.

It's only been about a year since Guam started having limited access to H-2B workers for military realignment-related projects after three years of nearly blanket denials of H-2B petitions for Guam.

The lack of H-2B workers stalled and increased the costs of construction projects on Guam, from new military hangars to new hotels and residential home repairs.

Guam: Low H-2B overstay rate

The new policy, published in the Jan. 18 Federal Register, said the Philippines has high rates of H-2B overstay, and large numbers of human trafficking victims had previously been issued H-2B visas.

In fiscal 2017, Homeland Security estimated that nearly 40 percent of H-2B visa holders from the Philippines overstayed their period of authorized stay across the United States.

But on Guam, the overstay rate when there were 1,600 H-2B workers was 1 to 3 percent, according to Greg Massey of the Guam Department of Labor.

Guam does not have human trafficking involving nationals from the Philippines, Massey said. Most recent cases involved citizens of other countries.

Massey said Guam is once again caught in a national policy for which it has little or no input.

More than 1,300 petitions approved prior to Jan. 19 will not be affected, and those include the 606 H-2B workers who are already on Guam as of Tuesday, Massey said.

That means Guam could still expect more H-2B workers to arrive under previously approved petitions.

'Sky is not falling yet'

Massey said he does not consider the policy as a total ban on H-2B workers from the Philippines, because among other things, the U.S. Citizenship and Immigration Services can still approve H-2B petitions as a "matter of discretion and on a case-by-case basis."

The process, however, can be a bit more challenging for the attorneys of employers wanting to petition H-2B workers, Massey said.

Petitioning employers, for example, can still be allowed to hire H-2B visa workers if they can justify that the petition is for a project related to the ongoing military realignment on Guam, he said.

"I think we're going to be okay in the short-term as far as the military buildup is concerned. But there are challenges with outside-the-fence projects," he said.

The policy contains language that allows certain exemptions. The National Defense Authorization Act for fiscal 2019 authorizes H-2B visa approvals for military-related projects on Guam.

Because the policy took effect only a few days ago, the full impact remains to be seen.

"The sky is not falling yet," Massey said.

Homeland Security said a determination will be made according to all of the relevant factors and evidence in each individual circumstance, including previous admission and compliance with the program.

Lt. Gov. Josh Tenorio said he and the governor recognize the contributions thousands of Filipinos made in order to rebuild Guam and reignite the economy in the aftermath of World War II.

"Decades later, their talents and contributions remain vital to filling our skilled labor shortage as we move forward with the build-up and further strengthening our island's economy," Tenorio said.

Legal challenge

Colorado-based Attorney Jeff Joseph, who represents Guam contractors who sued the federal government over H-2B petition denials, said the DHS decision will definitely impact Guam civilian and military projects as many of the contractors rely on workers from the Philippines.



Construction workers on the site of the Tsubaki Tower hotel project in Tumon, Jan. 22, 2019. (Photo: Frank San Nicolas/PDN)

"However, this will not be part of the pending lawsuit. It raises an entirely separate legal issue that would have to be challenged by means of a distinct lawsuit," Joseph said.

'Resetting the dialogue'

The governor said she looks forward to working with Del. Mike San Nicolas in seeking a legislative remedy to the issue.

San Nicolas said Guam needs to work with the concerns of the State Department and approach the issue not as adversaries but as partners with the federal government.

"It is clear that the tit-for-tat of using lawsuits to address Guam's H-2B issues is only going to further complicate matters," San Nicolas said. "I look forward to an opportunity to reset the dialogue."



The construction site of the Tsubaki Tower hotel project beside Hotel Nikko Guam in Tumon, Jan. 22, 2019. (Photo: Frank San Nicolas/PDN)

More: [Tsubaki Tower receives approval for H-2B workers \(/story/money/2018/11/14/tsubaki-tower-receives-approval-h-2-b-workers/1993965002/\)](/story/money/2018/11/14/tsubaki-tower-receives-approval-h-2-b-workers/1993965002/)

More: [Feds approve more foreign labor for Andersen hangar project \(/story/news/2018/04/20/feds-approve-more-foreign-labor-andersen-hangar-project/535083002/\)](/story/news/2018/04/20/feds-approve-more-foreign-labor-andersen-hangar-project/535083002/)

Specific projects

PHC Corp. general manager Jong Won on Tuesday said he's concerned about the new federal policy's impact on the more than \$200 million Andersen Air Force Base hangar projects, although he said he has yet to fully consult with company lawyers about the decision.

PHC Corp. is a subcontractor for a joint venture of Core Tech International, Amec Foster Wheeler and SK Engineering and Construction Co. Ltd., which is working on the Andersen hangars project, Won said.

Of the 330 approved H-2B petitions for PHC Corp. in 2018, some 320 H-2B workers from the Philippines are currently on Guam for the company.

The latest policy poses another hurdle for the 340-room Tsubaki Tower's construction, said Milton Morinaga, managing director at PHR Ken Micronesia.

"It's not going to help us, that's for sure," Morinaga said.

The new hotel in Tumon received H-2B visa approval from the federal government in November.

The luxury hotel was anticipated to open in October 2018, but the lack of H-2B visas due to the federal government's blanket denial of H-2B petitions for Guam starting late 2015 resulted in a lack of workers and a delayed timeline.

Now, Morinaga and the tower's construction company 5M Construction are assessing how many visas were already approved, and how many they'll have to restart the search for in other countries.

"From that number, we'll assess what kind of shortage we're experiencing," he said.

The CNMI has also been hiring workers from the Philippines for its construction projects, including the building of the Saipan casino.

Trafficking victims

Homeland Security said among all U.S. posts throughout the world, U.S. Embassy Manila issues the greatest number of T-derivative visas. T-1 visas are granted to human trafficking victims, and their family members are eligible for T-derivative visas, T-2, T-3, T-4, T-5 and T-6 visas.

U.S. Embassy Manila issued about 40 percent of the total T-derivative visas from fiscal 2014 to 2016.

"A recent review of certain T-1 status recipients, whose spouses were issued T-2 visas during this same period, shows that approximately 60 percent were determined to have been trafficked to the United States on H-2B visas," Homeland Security said.

Homeland Security said the Philippines' continued inclusion in the programs creates "the potential for abuse, fraud, and other harm to the integrity of the H-2A or H-2B visa programs."

Besides the Philippines, Ethiopia has also been removed from the list of designated countries for the H-2A and H-2B programs. The Dominican Republic has been removed as a designated country for the H-2B program.

With reports from Anumita Kaur.

More: [Archbishop Byrnes calls for patience as archdiocese undergoes bankruptcy process \(/story/news/2019/01/21/archbishop-calls-patience-archdiocese-undergoes-bankruptcy-process/2635558002/\)](/story/news/2019/01/21/archbishop-calls-patience-archdiocese-undergoes-bankruptcy-process/2635558002/)

More: [Video shot by Guam resident at Indigenous Peoples March: What we know \(/story/news/2019/01/22/video-shot-guam-resident-indigenous-peoples-march-what-we-know/2640428002/\)](/story/news/2019/01/22/video-shot-guam-resident-indigenous-peoples-march-what-we-know/2640428002/)

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