GUAM DEPARTMENT OF LABOR
Alien Labor Processing & Certification Division
9/19/2019

SAME
General Membership Luncheon

2019 H-2B Program Update

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BASIC H-2B PROCESS

1. Employer files with ALPCD for Temporary Labor Certification

2. 30 day Testing of the labor market occurs

3. ALPCD scrutinizes recruitment & ensures program compliance

4. Director of Labor recommends action to Governor

5. Governor’s Office Approves/ Denies – Routes back to GDOL
6. ALPCD processes labor cert for release to employer

7. Employer files USCIS I-129 petition for H-2B worker

8. If approved, notice goes to US Embassy – If denied employer advised of due process by USCIS - Extension of Stay does not require consular action.

9. US Embassy entertains individual worker visa applications-issues visas

10. Newly arrived workers must register with ALPCD w/in 24 hrs of arrival
CURRENT H-2B SITUATION

Current version of the program began in 1985.

Guam has enjoyed a nearly 100% approval rate for 30 years.

In 2015, across the board denials of H-2B petitions began by USCIS, with denials based on employer’s failure to meet Temporary Need requirements. Efforts by local, federal and private sector stakeholders yielded only partial relief from the unprecedented drop from 100% approval to 0% approval. Currently, 3 paths exist:

1. Regular Process
2. Class Member under the GCA Lawsuit
3. NDAA Exemption
1. **Regular Process** – Filing I-129 petition without claiming any special consideration, and justifying temporary need under 8 CFR 214.2(h)(6)(ii)(B)

   - Current approval rate is 0%
   - Chilling Effect has caused employers to avoid all filings under this ‘path’ since there is no confidence that any petitions will be approved.
   - Chilling Effect reinforced by 100% denial rate in 2016 & 2017.
CURRENT H-2B SITUATION

2. **Class Member under the GCA Lawsuit** - Filing I-129 with notice that the petitioner is a member of the class established in the ongoing GCA v USCIS lawsuit and covered by a temporary injunction barring USCIS from denying the H-2B petition on the same basis of denials in 2016 (ie. temporary need).

- Approval rate under 1%
- Chilling Effect applies to this ‘path’ since USCIS seems to be ignoring the injunction, but claiming compliance.
- Lawsuit Status: Class alleges USCIS changed policy in violation of the APA. Temporary Injunction in effect.

- Pending decision on merits- no hearing expected.
- Class Counsel filed contempt motion- Magistrate Judge recommended sanctions against USCIS to Chief Judge. USCIS has asked for a hearing on contempt. If sanctions imposed, possible national implications for other visa programs.
3. **NDAA Exemption** - Limited to contracts directly connected to or associated with the military realignment.

- 100% USCIS approval (100% of all filings in FY19)
- Letter from DoD required by USCIS for exemption to apply
- Process established with DoD for GDOL vetting, routing and recordkeeping. Allows some local control/involvement.
- No request has been declined by DoD to date.
- USCIS is final decision maker on whether or not a contract meets the NDAA exemption relying heavily on DoD decision.
- Federal contracts & local govt infrastructure - easy approval / other ‘outside the fence’ projects harder but some been approved. Hotel construction and multi-family housing projects have been approved by USCIS.
Current H-2B Population

995
As of 9/9/19

Current Impediment

H-2B List of Approved Countries

- Philippines removed from the list
- List revised in January each year
- Named beneficiaries now **required** for new imports
- Determination of US Interest needed or USCIS will deny
- NDAA Exemption projects have been approved
POINTS OF INTEREST

1. NDAA exemption may be justified for housing and real estate projects—encourage developers and contractors to try

2. Workforce Housing Needed—Concern with lack of facilities and great opportunity for business

3. Support needed to facilitate workforce housing:
   • Existing zoning statute (51% or more) difficult to enforce and doesn’t make sense—stifles development of facilities / 5 or less rule makes sense
   • Zoning restricted to M-1, makes development difficult
   • Economic incentives may be needed to spur development
   • After-use plans may help affordable housing efforts or be suitable for disaster recovery/other emergencies
ITEMS OF INTEREST

1. Current numbers:

2019 approved extensions & new imports = 1413 positions

Current Number of Workers Deployed: 995

12 month expectation= 2000-2200 workers on the ground

2. Anecdotal Observations:

• Employer confidence in program is improving. More filings occurring but only with NDAA exemption. Still not up to normal filing volume for the amount of work in progress.

• DoD is supporting broad interpretation of “associated with…” Many civilian sector projects possible using the exemption.

• Increased issues with Philippines seem to be dampening expected confidence

• Workforce housing is a growing issue.
3. GCA Lawsuit may turn into a national issue that affects other visa programs. Opportunities for change via settlement or final outcome of lawsuit.

4. Military Assistance- Continued strong support by the military needed for future NDAA provisions (e.g. push out of 2023 exemption sunset); funding assistance with staffing resources; continued sharing of stats and projections.
Pictures of ALPCD at Work
Inspector interviewing worker
Inspector interviewing worker
Jobsite inspection- Top of the Tsubaki
Example of Proper ID Display
Example of a Cement Mason working as a Painter
Investigators work with U.S. ICE to ensure workers are in legal status.
Example of Illegal Worker Hiding on Rooftop
Worker ID checked to determine work status
Barracks Inspection
Barracks Inspection
Video Briefing During ID Issuance