



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam.

November 29, 2017

The Honorable John F. Kelly
Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear General Kelly:

I write this as an update to the letter I wrote to you on November 9, 2017. It is to provide you with more information on the matter and to again, communicate the dire straits in which this issue has placed Guam and the nation, and I implore your assistance to see it resolved. **Resolving this issue is my top priority and I need your help.**

Since sending you the letter, I have seen breaking news stories in the Washington Post and the Washington Times, which center on the Department of Homeland Security's (DHS) questionable actions and legal interpretations. The articles focus on the carryover of Obama-era policies by entrenched Obama "holdovers" within the DHS (November 6 Washington Post article by Nick Miroff: ***"DHS ends protected immigration status for Nicaraguans but Hondurans get extension"***; November 9 article by same author: ***"White House Chief of Staff tried to pressure acting DHS secretary to expel thousands of Hondurans, Officials say"***; November 15 Washington Times article by Stephen Dinan: ***"Catch-and-Release of illegals restart in Texas, Border Patrol agents say"***).

I feel strongly that these articles show DHS's indecisiveness and liberal interpretations that **clearly demonstrate an undermining of President Trump's immigration initiatives**. DHS is singlehandedly dismantling the president's rigid stance on immigration reform and is hindering his early strides on reducing illegal border crossings. **I bring these articles to light in further support of my plea for resolution on the H2B denials for Guam.**

While on the one hand DHS is defying the Trump Administration on the deportation of illegal or undocumented aliens, it is on the other hand taking a hardline stance against allowing legally admitted skilled workers – who contribute to the economy – to stay on Guam and fill the gap of U.S. workers in Guam's construction, nursing, and other industries.



November 29, 2017

DHS/USCIS' now two-year running H2B Visa denials for Guam, which to us still appear arbitrary, are having a devastating effect on our health, welfare, economy, and standard of living of American citizens. In one instance, **USCIS denied the visa extension application of 110 nurses for a new hospital on Guam.** For 38 of these, USCIS' denial was overturned on appeal. Sadly, however, the **decision in favor of the 38 nurses' employer came after six months, thousands of dollars, and after the nurses had already left Guam.** Although the employer won the battle, in the end it lost the war, and Guam's healthcare industry and its residents have had to suffer the consequences.


I have been extremely patient with the DHS/USCIS rhetoric, and feel strongly that to witness the degree of defiance toward the president's policies is clearly a call for direct intervention by the White House into DHS.

My chief of staff, Mark Calvo, has been communicating with your staff, Douglas Hoelscher, and has provided him with summary details of some of the exchanges I've had with DHS leadership and White House Domestic Policy members. I've attached these summaries for your information.

Again, despite my diligence, I have not seen genuine concern or effort from DHS/USCIS to help us, and I expect continued resistance without your and the president's intervention. Please help me bring this matter to a speedy resolution.

Thank you for your support and leadership.

Respectfully,



EDDIE BAZA CALVO
Governor of Guam

Attachment: USCIS Discussion Issues

USCIS Discussion Issues

Example of Questionable Denial

Employer: Leading Tech

- New Company- No previous H-2B – New workers
- All project durations less than 1 year
- Request was for 10 Cement Masons

Projects:

- Renovate FBI Building on AAFB
- Storage Facility on Naval Base Guam
- Coast Guard Security gate
- Coast Guard Roof Repair and painting
- Mock Up search Houses- Naval base Guam

Denied by USCIS on failure to adequately prove temporary need and listing numerous criteria, for which USCIS felt there was insufficient evidence in the record. Additionally, USCIS communicated the supposition that since the employer was a construction company, it had an inherent permanent need for masons.

For decades, this type of petition would have and has been approved.

Please note that, other than the employer, it was the US government that was adversely affected by the employer's manpower shortage.

Conference Calls:

Domestic Policy Council - 11/2/17 (Guam time)

After being briefed on Guam's position with the 100% denial of H-2B petitions, David Wetmore indicated that they have had several talks with USCIS and are inclined to be with USCIS on the issue, but reiterated that there has been no change in policy. He commented that they felt that many employers have had H-2B for a long period and that a pattern has been established leading them to believe that the jobs are not temporary, but could not comment on the counter comments from Guam officials that new employers were being denied also.

David spoke on the NDAA and hinted at possible language, which may assist outside-the-fence work, but still related to the buildup (i.e. wastewater and utilities). They indicated that they did not want to stand in the way of military projects, but David indicated that getting a special carve out for Guam for non-military work would be unlikely because they would have to start doing it for everyone else in the country who are also seeking help on H-2B. Greg specifically asked if the White House was opposed to Guam's request for a change in the regulations. David responded that he would not answer that question because it may be used against him later.

Cissna Call - 10/18/17 (Guam time)

Director Cissna, after being briefed on Guam's position, commented that he has heard our plea but he feels his hands are tied and that he could not do anything to forward our request for regulatory change. He commented:

"I think where you have a construction situation, where something like the Military Build Up, which is going to take many years, that exceeds by far even that 3 year arrangement that we made, but as I say, that should be addressed in the NDAA, its the stuff outside that context for the rest of your economy that is really the problem, as I understand it. And I continue to believe that if you do have temporary need in the extra-military situations, those should be approvable."

When told that those are not being approved, after a long pause he responded: *"Well then I suggest that maybe they are not actually temporary need."*

He asked if we had a specific example of what we thought was temporary and when presented with an example of a real case that was clearly temporary, he could not comment or object to the example as being something that should be denied. The Leading Tech Case mentioned above is a very similar example of a true temporary need case that was denied.

It appears that some pre-judgments may have been made at the highest levels of USCIS as to what the business situation is on Guam. So to use a broad blanket and call the Military Buildup a project that is permanent also seems to be an arbitrary decision that is not well-thought-out or researched.

Cost Rising for DOD Projects:

We are receiving information that Guam contractors may be filing new applications for H-2B workers due to justifying DOD Contract Actions where upward cost adjustments are being requested to adjust for the unprecedented rise in labor cost, as a result of the federal governments denial of H-2B workers. We understand that DOD may be requiring contractors to prove that they are unable to access temporary foreign workers as part of the justification for the increased cost adjustment.

This information has just been received, but preliminary fact finding leads to this being the case. The scope of this issue is yet to be determined, but it leads us to believe that existing DOD contracts are not merely delayed but may also run over-cost.

Numerical Cap- Not a Pressing Issue; Lack of available workers should trump unprecedented temporary need concentration.

Hire American Agenda – Supported by H-2B workers:

It is our contention that Guam's stringent labor market testing and enforcement procedures, which exceed those of other jurisdictions, provide adequate protection of US worker jobs. Indeed, with the recent denial of H-2B petitions, we have found that many contractors who should be very active and employing local skilled and unskilled workers are instead unable to secure contracts due to skilled worker uncertainty and thus the denial of H-2B petitions have had the opposite effect and has inhibited the employment of US workers. We find that the skill sets contributed by one H-2B worker, facilitates the employment of several US workers within an organization.

We also find that small and mid-sized contractors have been effectively squeezed out of contracts and only those larger contractors are able to vie for projects. The vast majority of Guam contractors are these smaller companies. These small businesses have suffered greatly and many have closed or are on the verge of closing. We do not believe that destroying small business was the intent of the president's Hire American agenda.



**U.S. Citizenship
and Immigration
Services**

December 15, 2017

The Honorable Eddie Baza Calvo
Governor of Guam
Ricardo J. Bordallo Governor's Complex
513 West Marine Drive
Hagatna, Guam 96910

Dear Governor Calvo:

Thank you for your November 29, 2017 letter to White House Chief of Staff John F. Kelly. Since U.S. Citizenship and Immigration Services (USCIS) implements the H-2B visa program, he has asked me to respond on his behalf. Chief of Staff Kelly also asked me to thank you on behalf of President Trump for taking the time to travel to meet the President in Honolulu last month to directly and personally provide to the President and his senior staff your urgent concerns.

Your letter expresses concerns about the impact of USCIS adjudications of petitions for H-2B temporary non-agricultural workers on Guam over the past 2 years.

The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary non-agricultural jobs. For H-2B petitions, USCIS looks at the totality of evidence presented by petitioners to determine whether an employer has demonstrated a temporary need for a worker, consistent with existing eligibility requirements for the H-2B classification. Within the context of the H-2B program, the regulations provide that an employer's temporary need may be based on a one-time occurrence, a peak load need, a seasonal need, or an intermittent need. Generally, employment is determined to be temporary in nature when the employer's need is for a limited period of time. The period of time will generally be limited to 1 year or less, but in the case of a one-time occurrence may last up to 3 years. An employer seeking H-2B workers must establish, among other things, that the need for the services will end in the near, definable future.

As you know, on December 12, 2017, President Trump signed into law H.R. 2810, the National Defense Authorization Act (NDAA) for Fiscal Year 2018. Consistent with the Administration's request, section 1049 of the NDAA contains language that will provide significant relief for H-2B employers on Guam. Section 1049 of the NDAA modifies statutory requirements for H-2B employment on Guam until October 1, 2023 to remove the requirement that the employer's need be temporary, for up to 4,000 workers annually whose employment is directly connected to or associated with the military realignment on Guam. Although the scope

The Honorable Eddie Baza Calvo
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of section 1049 is not as broad as I understand you would have preferred it to be with respect to employment not linked to the military realignment, modifying this core requirement of the H-2B program for the unique benefit of eligible employers on Guam (and later, in the Commonwealth of the Northern Mariana Islands) is an unprecedented accommodation responding to Guam's needs in the interest of national security. I expect that its positive effect will be substantial, and USCIS is moving rapidly to implement it on time and effectively.

Please be assured that USCIS is well aware of the importance of the H-2B program to Guam. We are committed to ensuring that the program functions as intended within the statutory and regulatory framework.

Thank you again for your letter and interest in this important issue.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Francis Cissna". The signature is stylized with a large "L" and a cursive "Cissna".

L. Francis Cissna
Director