



DEPARTMENT OF
LABOR

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DIPĀTTAMENTON HOMOTNĀT • David M. Dell'Isola, Director • Gerard A. Toves, Deputy Director

Lourdes A. Leon Guerrero
Governor

Joshua F. Tenorio
Lieutenant Governor

June 7, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas:

I was present during the call with Governor Leon Guerrero on June 7, 2023 regarding Guam's recovery from Super typhoon Mawar.

As you may be aware, Guam is in the initial recovery phase from the strongest typhoon to hit Guam in decades we must repair and re-build facilities critical to the island's infrastructure. We currently have a shortage of skilled construction workers due to the large military realignment occurring in Guam and many construction companies have had to resort to importing temporary foreign construction workers under the H-2B visa program through a special statutory exemption passed through the National Defense Authorization Act (NDAA).

In all cases, the USCIS I-129 petitions for existing H-2B workers currently on island utilized this exemption which requires that USCIS to determine that contracts submitted by the employer are directly connected, associated, supporting or adversely affected by the military realignment occurring in Guam. Since the petitions were approved for these specific projects with a military realignment nexus, employers must limit the usage of their H-2B workers to that specific activity

This being the case, the Government of Guam is having trouble finding local contractors to perform immediate short duration critical recovery construction work as the majority of our local U.S. construction craft workforce is also engaged in military contracting work.

We were hoping that for a period of 90 days, DHS would allow existing H-2B contractors to utilize their H-2B workers for Government of Guam recovery projects and task orders, notwithstanding the projects which were approved in their I-129 petitions.

If this is allowable, I would then task my Guam DOL Alien labor Division, who currently enforces H-2B provisions in Guam, to engage with all H-2B employers and after the 90 day period ends, ensure that all H-2B contractors return to normal order.

Thank you in advance for your consideration on this very urgent matter. Should you have any questions, please feel free to contact me via email at david.dellisola@dol.guam.gov.

DAVID DELL'ISOLA
Director of Labor

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U.S. Citizenship
and Immigration
Services

August 18, 2023

David Dell'Isola
Director of Labor
Department of Labor Guam – American Job Center Guam
P.O Box 9970
Tamuning, Guam 96931

Dear Mr. Dell'Isola:

Thank you for your June 7, 2023 letter to the Department of Homeland Security (DHS) requesting that DHS allow current H-2B workers to be assigned to work on Government of Guam recovery projects and task orders. I am responding on behalf of the Department.

DHS and U.S. Citizenship and Immigration Services (USCIS) appreciated the opportunity to speak to representatives from Guam, including you and Governor Leon Guerrero, on June 15, 2023, regarding your concerns. We understand Super Typhoon Mawar caused devastation and significant disruptions across Guam, and you are facing issues with availability of construction workers to assist with critical recovery construction work.

Thank you for sharing your concern about the shortage of available H-2B workers on Guam, because all H-2B nonimmigrants in Guam are working under the National Defense Authorization Act for Fiscal Year 2021 (FY 2021 NDAA) exemptions related to the military realignment. You have requested a 90 day reprieve to allow existing H-2B contractors to use their FY 2021 NDAA workers to be assigned to critical recovery projects and task orders, notwithstanding the projects and job duties outlined in their I-129 petitions that USCIS approved. USCIS cannot permit an exemption from statutory and regulatory requirements, because you are requesting a material change to the existing H-2B petition. As discussed during our recent call, changes in job duties not listed in the petition job description or working at another location outside the area of intended employment listed on the temporary labor certification (TLC), or any change from a worker's normal National Defense Authorization Act position to one relating to disaster relief, constitute a material change. Any such change requires a new TLC and a new or amended H-2B petition under 8 CFR 214.2(h)(2)(i)(D) or (h)(2)(i)(E), as well as evidence that the new work is "temporary" in nature, unless it qualifies for an exemption from the temporariness requirement. As noted on the call, USCIS understands the nature of Super Typhoon Mawar's impact and will take that into consideration when adjudicating H-2B petitions filed for work in Guam.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact my team via email to uscis-igaoutreach@uscis.dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal line extending to the right.

Ur M. Jaddou
Director