



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

August 30, 2016

The Honorable Eddie Baza Calvo
Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Dear Governor Calvo:

Thank you for your March 11, 2016 and June 29, 2016 letters. Secretary Johnson asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) has not made any recent changes to policies for defining or interpreting temporary need in the adjudication of H-2B petitions. For H-2B petitions, USCIS must determine whether an employer has demonstrated a temporary need for a worker, consistent with existing eligibility requirements for H-2B classification. Within the context of the H-2B program, the regulations provide that an employer's temporary need can be based on a one-time occurrence, a peakload 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 one year or less, but in the case of a one-time occurrence may last up to three years. The employer seeking H-2B workers must establish, among other things, that the need for the services will end in the near, definable future.

Although there have been no recent policy changes, USCIS has heard concerns from several stakeholders (including employers on Guam) this year about a perceived increase in denials and Requests for Evidence (RFE) for H-2B petitions. To respond to our stakeholders, USCIS posted clarifying guidance regarding temporary need on the USCIS website to help petitioners comply with existing regulatory requirements when filing H-2B petitions. See <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/guidance-temporary-need-h-2b-petitions>. This guidance is intended to increase transparency by listing the factors that USCIS adjudicators use to examine the temporariness issue when reviewing H-2B petitions, including what duties the workers will perform as specified in the petition, whether the employer needs the number of temporary workers requested to perform those duties, and whether the need extends throughout the employment period requested.

We note that, prior to the submission of the Form I-129 petition to USCIS, the determination as to whether there are sufficient U.S. workers who are able, willing, qualified, and available to do the temporary work is made by the Department of Labor or, in the case of employment on Guam, by the Guam Department of Labor. However, these determinations are advisory in nature. By regulation, the ultimate responsibility for determining H-2B eligibility rests exclusively with USCIS.

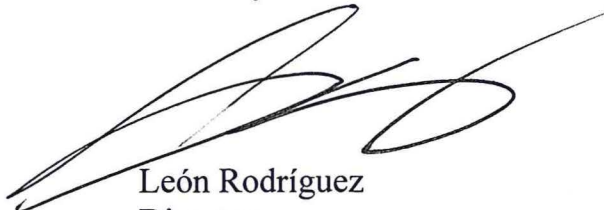
With regard to an increase in RFEs and denial rates, earlier in 2016, USCIS determined that recent changes in Service Center staffing led to a temporary increase in the number of RFEs issued to H-2B petitioners in general, not just those employers on Guam. A temporary increase in the RFE rate may occur as officers newly-trained on a classification take extra care to ensure they apply existing law correctly in their adjudication. The increase in RFEs therefore does not reflect a change in adjudication standards or a heightened burden of proof for H-2B petitions. With respect to H-2B petitioners located on Guam, we have noted that some employers have expressed a need for H-2B workers spanning over a period of several years, which has cast doubt on whether these employers' needs can be properly characterized as "temporary," within the regulatory definition of that term. This does not preclude a finding of temporary need, but each individual petition is adjudicated on its own merits, and the burden rests with the petitioner in each case to establish that it in fact has a temporary need.

USCIS notes your concern regarding what appears to be an ongoing shortage of healthcare workers on Guam and, in particular, a shortage of nurses at the Guam Regional Medical City. We continue to explore options and alternatives for helping Guam meet any need for healthcare workers that may not qualify under the H-2B visa classification.

Please be assured that USCIS is well aware of the importance of the H-2B program to Guam, and we are committed to working with stakeholders to ensure its continued integrity under existing law.

Thank you again for your letters and interest in this important issue. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'León Rodríguez', is written over a horizontal line.

León Rodríguez
Director