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THE DISTRICT COURT OF GUAM

GUAM CONTRACTORS ASSOCIATION, *et al.*, CIVIL CASE NO. 16-00075

Plaintiffs-Petitioners,

vs.

JEFFERSON B. SESSIONS, III,
Attorney General of the United States, *et al.*,

Defendants-Respondents.

**ORDER RE: MOTIONS FOR
CLARIFICATION**

The parties have filed opposing motions for clarification of the court’s January 24, 2018 order, which preliminarily enjoined Defendants from engaging in a specific course of conduct in adjudicating Plaintiffs’ visa petitions. See ECF Nos. 82, 83. Defendants have asked for a new order instructing that Plaintiffs’ prior labor certifications, issued for prior periods of need, cannot be used for any newly-filed petitions and that any new petitions are to be accompanied by corresponding new certifications. Plaintiffs, by contrast, appear to ask for an order specifying that they may: (1) proceed as Defendants request for any petitions not yet submitted; and, for any previously submitted petitions, either (2) submit prior certifications, deemed reopened and approved by court order for a period corresponding to the period originally certified, or (3) seek new certifications from the Guam Department of Labor (GDOL) for periods corresponding to

1 those originally certified.

2 Several considerations guide the disposition of these competing requests. Whether
3 Defendants actually seek “clarification” by way of their motion is unclear. They request an order
4 at odds with the language of the court’s prior order, which directs in no uncertain terms “that the
5 Plaintiffs’ prior labor certifications shall remain valid through the end of the next period in which
6 each individual Plaintiff may petition for and receive a temporary visa.” See ECF No. 81 at 33.
7 That was relief both sought in the initial motion for preliminary injunction (see ECF No. 8) and
8 discussed at some length at the hearing.

9 In seeking their proposed revision, Defendants suggest they are motivated by a
10 congressional purpose that has made its way into regulatory language—a purpose which,
11 Defendants appear to contend, requires a new labor determination and corresponding
12 certification each year and thus cannot support the use of prior-year certifications with any
13 petitions Plaintiffs may present here. Whether the regulatory language actually compels that
14 conclusion based on the authority Defendants submit is debatable, because: the cited regulatory
15 provisions are silent, and Defendants have added no additional guidance, as to what might
16 happen to a certification made for a period of need lasting longer than a year; various related
17 regulatory provisions suggest a petition may amend dates of need or employment even while
18 relying on a previously approved certification; and other provisions adding a requirement that
19 amendments be limited to the same fiscal year as the original petition are conspicuously absent
20 from the provisions on which Defendants appear to rely. See, e.g., 8 C.F.R. § 214.2(h)(1)(ii)(D),
21 (6)(v)(B), (viii)(B); cf. id. § 214.2(h)(6)(iv)(D).

22 But Plaintiffs, to their credit and perhaps their detriment, appear to concede that labor
23 certification has not been and should not be the stumbling block here. At the December 11, 2017
24 hearing, for example, Plaintiffs’ counsel suggested that if Defendants have legitimate

1 “concern[s] that the test of the labor market is not the same now, we are willing to do that, we are
2 willing to test the labor market—that is really not at issue in this litigation, whether there’s a
3 shortage of workers or whether there’s an adverse effect on wages—we’re willing to go through
4 that.” 12/11/2017 Hrg. Audio at 4:31:00-12 p.m. And in their own motion for clarification, they
5 add that “Plaintiffs (and proposed class) can always initiate the process of re-obtaining a new
6 valid labor certification and submit this to the USCIS upon reopening of the H2B applications.”
7 ECF No. 83 at 2. In the interest of quickly finding common ground and a way forward in this
8 dispute the court, for purposes of these opposing motions, will take Plaintiffs at their word. The
9 court therefore **GRANTS IN PART** and **DENIES IN PART** both motions (ECF Nos. 82, 83).

10 The court **ORDERS** that:

11 (1) For any earlier submitted petition for which Plaintiffs seek reconsideration, Plaintiffs
12 shall seek updated temporary labor certification from GDOL and, if granted, shall submit the
13 certification to USCIS to be considered in conjunction with the corresponding petition. New
14 labor certifications may be issued for the same period of time originally requested or whatever
15 other period GDOL may deem appropriate.

16 (2) For any new petition Plaintiffs may submit to USCIS for adjudication for any
17 prospective period of need, Plaintiffs must submit along with the petition a new temporary labor
18 certification from GDOL corresponding to the period of need.

19 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Feb 08, 2018