



February 8, 2022

PA-2022-08

Policy Alert

SUBJECT: Clarifying the Temporary Need Exemption for Certain H-2B Workers on Guam and in the Commonwealth of the Northern Mariana Islands

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to clarify how a petitioner may demonstrate that it qualifies for an exemption from the temporary need requirement for a nonimmigrant visa petition for a temporary nonagricultural H-2B worker on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI) that falls under the National Defense Authorization Act for Fiscal Year 2021 (FY 2021 NDAA).¹

Background

In May 2021, USCIS issued Policy Manual guidance² regarding the FY 2021 NDAA, which extended the exemption to the requirement that the nonagricultural service or labor be temporary in nature to include petitioners whose contracts or subcontracts are “supporting” or “adversely affected by” the military realignment, in addition to those that are “associated with” or “directly connected to” it. USCIS is now further clarifying how a petitioner may demonstrate that it qualifies for the exemption based on contracts or subcontracts that are “supporting” or “adversely affected by” the military realignment on Guam and in the CNMI.

This guidance, contained in Volume 2 of the Policy Manual, is effective immediately. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Explains that housing development projects, in addition to infrastructure improvements, are likely to qualify for employment of H-2B workers under the NDAA exemption, given an inherent need for additional housing capacity to support the military realignment.
- Recognizes that there is significant evidence that the military realignment has had an adverse impact on the availability of necessary construction labor on Guam.

¹ See Section 9502 of the National Defense Authorization Act for Fiscal Year 2021, [Pub. L. 116-283](#) (January 1, 2021) (amending Section 6(b) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)).

² See [Exemption to the Temporary Need Requirement for Certain H-2B Workers on Guam and in the Commonwealth of the Northern Mariana Islands under the National Defense Authorization Act for Fiscal Year 2021](#), PA-2021-06, issued May 13, 2021.

- Clarifies that USCIS would generally consider a signed letter from a Guam Department of Labor (Guam DOL) official describing the adverse effect of the military realignment, along with a detailed explanation or other evidence that credibly demonstrates how unavailability of construction workers has had a negative impact, sufficient to demonstrate an adverse effect, in the absence of facts indicating otherwise.³

Citation

Volume 2: Nonimmigrants, Part I, Temporary Agricultural and Nonagricultural Workers (H-2), Chapter 11, Temporary Nonagricultural Worker (H-2B) Petitions Requiring Special Handling [[2 USCIS-PM I.11](#)].

³ Guam DOL intends to provide a process to request a letter describing the adverse effect of the military realignment to the applicable agreement, contract, or subcontract on its [Alien Labor Processing and Certification Division](#) webpage.