



May 13, 2021

PA-2021-06

## Policy Alert

**SUBJECT:** 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

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is providing guidance in the [USCIS Policy Manual](#) regarding the filing and adjudication of temporary nonagricultural worker (H-2B) nonimmigrant visa petitions that fall under Section 9502 of the National Defense Authorization Act for Fiscal Year 2021 (FY 2021 NDAA).<sup>1</sup>

### Background

The FY 2021 NDAA, which took effect on January 1, 2021, amends the language from previous NDAA's exempting petitioners of certain H-2B workers on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI) from the requirement that the nonagricultural service or labor be temporary in nature. Specifically, it extends the military realignment-related exemption to include those contracts or subcontracts that are "supporting" or "adversely affected by" the military realignment, in addition to those that are "associated with" or "directly connected to" it, and states that priority will be given to federally funded military projects.<sup>2</sup> Under the FY 2021 NDAA, an H-2B employer who qualifies under the above parameters is not required to demonstrate that the service or labor is temporary in nature if the employment start date is before December 31, 2023.

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.

### Policy Highlights

- Explains that the exemption may be granted for certain contracts or subcontracts for labor or services required for performance of a contract or subcontract for construction, repairs, renovations, or facility services, provided they have a non-speculative supporting relationship to, association with, are adversely affected by, or have a direct connection to the military realignment, and provides non-exhaustive examples.

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<sup>1</sup> 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\(b\)](#)).

<sup>2</sup> The FY 2021 NDAA did not amend the exemption eligibility for health care workers, which Congress initially provided in the FY 2019 NDAA.

- Interprets contracts or subcontracts for construction, repairs, renovations, or facility services that are “adversely affected by” the military realignment as including, but not limited to, projects for which the military realignment has caused a loss of business income or a negative impact on the availability of necessary labor or resources that is not purely speculative (that is, based on assertions with no documentation to support the claim). While an approved temporary labor certification (TLC) is sufficient to show a general shortage of available and qualified U.S. workers on Guam (or in the CNMI), USCIS does not consider it sufficient to demonstrate that the military realignment occurring on Guam and in the CNMI has adversely affected the petitioner.
- Explains that a petition demonstrating that services or labor are performed under a federally funded agreement, contract, or subcontract has made a prima facie case that it qualifies for the NDAA exemption.

### **Citation**

Volume 2: Nonimmigrants, Part I, Temporary Agricultural and Non-Agricultural Workers (H-2) [[2 USCIS-PM I](#)].