

January XX, 2019

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Acting Secretary Wolf:

We write on behalf of seasonal businesses in our states from industries such as tourism and hospitality, landscaping, fairs and carnivals, seafood processing, golf courses, reforestation contractors and horse racing, who continue to struggle with seasonal labor shortages that are made worse by the inadequate H-2B visa cap. Under the “Further Consolidated Appropriations, 2020”, the Secretary of the Department of Homeland Security (DHS), in consultation with Secretary of the Department of Labor, is authorized to provide expeditious H-2B cap relief for our local businesses' upcoming seasonal labor needs.

These American businesses depend on seasonal employment to meet the demand across many industries. Without immediate and meaningful H-2B cap relief, seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely. By taking quick action to release additional H-2B visas, seasonal businesses and U.S. workers across the country will avoid these harmful consequences, and instead, help contribute to the American economy.

The new law states:

SEC. 105. Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in fiscal year 2020 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor, may increase the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) in such fiscal year above such limitation by not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation.

This language is identical to the language that was enacted in each of the past three years. DHS has provided supplemental cap relief in each of those years, FY 17, 18 and 19 in the amounts of 15,000, 15,000 and 30,000 respectively. While these supplemental visas helped some employers who were shut out of the program, they were not sufficient to satisfy the total need for H-2B workers. Moreover, the visas were released well into company's peak seasons. Many seasonal businesses and their American workers were harmed by the lack of seasonal workers for all or part of their peak seasons. We urge you to release a significant number of additional visas as soon as possible to prevent this from happening in FY 20. The Department's May 2019 rule on

the “Exercise of Time-Limited Authority to Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” states that the total number of visas you are authorized to release under this language is 64,716.

On November 15, 2019 the first half cap for FY 20 was reached, about a month earlier than any previous year. As of December 20, 2019, the Department of Labor certified the need for approximately 51,000 H-2B workers with a date of need between October 1 and March 31, and about 2,500 petitions are still being reviewed, meaning that about 18,000-20,500 needed seasonal worker positions will remain vacant without the immediate release of additional visas.

Additionally, the Office of Foreign Labor Certification (OFLC) announced that within the first 24 hours of opening the Foreign Labor Application Gateway System for peak filing season that opened on January 2, 2020, employers filed 4,930 applications for more than 87,298 worker positions with an April 1, 2020, or later, work start date. By the end of the filing deadline on January 6, 2020, OFLC had received a total of 5,677 H-2B applications requesting 99,362 worker positions. This is more than triple the number of visa applications currently available for the second half of the fiscal year.

As a result, we urge DHS to release all 64,716 visas without delay to avoid the significant business losses that were seen in the past few years due to delays in the appropriations process and the time that DHS took to issue temporary final rules on supplemental visas. In the report that accompanied the “Further Consolidated Appropriations Act, 2020,” Congress made clear its intent that DHS act as expeditiously as possible and rely on past rulemaking. The report states that, “USCIS is encouraged to leverage prior year materials relating to the issuance of additional H-2B visas, to include previous temporary final rules, to improve processing efficiencies.” No additional rulemaking is required approximately seven months after DHS and DOL released the FY 19 temporary final rule. The rule need not be reinvented now, so soon after the Departments last reviewed and completed a rulemaking process on this exact issue. The agencies will not be reviewing new legislative authority or new technical facts that might lead to a different conclusion.

Given the continued low unemployment and growing demand for H-2B workers, as evidenced by the recent number of applications for the second half of the fiscal year, we urge the Department to promptly make available all 64,716 additional visas authorized under the law as soon as possible. These vital American businesses depend on the expeditious release of a sufficient number of additional visas. We thank you in advance for your attention to this pressing matter.

Sincerely,