

July 18, 2018

The Honorable Rodney P. Frelinghuysen
Chairman
Committee on Appropriations
U.S. House of Representatives
H-305, The Capitol
Washington, D.C. 20515

The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
H-305, The Capitol
Washington, D.C. 20515

Dear Chairman Frelinghuysen and Ranking Member Lowey:

On behalf of the seasonal employers in our states, we urge you to include an H-2B returning worker exemption (RWE) in the FY 2019 Department of Homeland Security Appropriations bill that the committee will soon markup. Without H-2B cap relief, many employers will continue to suffer severe economic hardship and could go out of business.

The past two fiscal years have demonstrated that, without needed seasonal workers, businesses are not able to fulfill contracts. They have been forced to turn away customers, scale back services, and cancel capital equipment purchases. In some cases, businesses were forced to lay off American workers whose jobs are supported by H-2B workers or shut down their operations entirely. Seasonal businesses need meaningful and lasting cap relief, so they can continue to contribute to the economy, expand their operations, and add American jobs.

The H-2B program is essential to employers who cannot find temporary American workers to fill jobs across a number of seasonal industries. These seasonal businesses need H-2B workers to supplement their American workforce.

The H-2B program relies on well-vetted returning workers who come to the U.S. for seasonal employment and then go home. Returning workers are denied re-entry to the United States if they overstay their visas or break the law. These workers are not immigrants. They provide an opportunity for U.S. businesses to operate at a greater capacity, retain their full-time workers, and contribute to their local economies. Seasonal workers help support many upstream and downstream jobs. Every H-2B worker is estimated to create and sustain 4.64 American jobs.

In a strong economy with record-low unemployment, the program's congressionally mandated cap of 66,000 visas is inadequate to meet the labor needs of seasonal businesses. In fact, the U.S. Department of Labor (DOL) announced last month that the number of job openings actually exceeds the labor pool. Meaningful cap relief is needed to allow U.S. seasonal businesses to supplement their labor force during peak seasons when Americans are not available to fill temporary positions.

For FY 2018, the 33,000 first half cap was met on December 15, 2017 and the 33,000 second half cap was met on February 27, 2018. As of July, DOL has certified the bona fide need

for 142,387 H-2B workers, including 89,275 H-2B workers who were slated to begin work on or after April 1. DOL only issues final labor certifications when it concludes that:

- There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and that
- The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

On May 31, DHS released an additional 15,000 visas under the discretionary authority provided to it by the FY 2018 Omnibus Appropriations Act, but this number is only a fraction of the actual need. Due to significant demand, DHS again resorted to a lottery to determine which companies were lucky enough to receive desperately needed H-2B workers. Approximately 52% of H-2B positions requested for the second half cap will go unfilled, jeopardizing the survival of small and seasonal businesses and their American workforce. The fate of seasonal businesses and their domestic workforce should not be dependent upon a lottery.

The employers who have no other option but to rely on the H-2B program deserve a long-term solution that ensures that businesses that play by the rules are able to access the workforce they need, while also maintaining standards for wages and working conditions. For the H-2B program to be successful there must be robust enforcement of the regulations governing the program so that only those seasonal American businesses that follow the rules have access to the program, and they and their American workers can keep their doors open and continue contributing to the economy. We stand ready to work together on important permanent changes to the program going forward and urge you to include much needed H-2B cap relief in the FY 2019 Department of Homeland Security Appropriations bill so that those seasonal businesses that follow the rules and rely on the same workers coming back year after year can continue to generate economic growth and job creation for American workers across the country.

We thank you for your immediate attention to this issue. Should you have any questions or concerns, please do not hesitate to contact our offices.