



U.S. Citizenship
and Immigration
Services

July 6, 2018

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your April 25, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen and Secretary Acosta to consider a number of factors when determining whether to temporarily increase the number of H-2B visas for seasonal, temporary foreign workers for the remainder of the fiscal year (FY), as permitted by the FY 2018 Omnibus. Specifically, you suggest the following:

- At a minimum, any increase in H-2B visas should be supported by statistical data, an assessment of the projected needs of specific businesses, evaluation of employer recruitment effort, fair calculations of the relevant prevailing wage, and a review of potential labor pools' qualifications and availability.
- A decision to increase the H-2B numbers should contain the same conditions Secretary Kelly imposed when he authorized a one-time increase, specifically, the irreparable harm standard.
- The Department of Homeland Security (DHS) and the Department of Labor (DOL) should conduct mandatory audits on all petitions accompanied by an irreparable harm attestation.
- DHS should require all employers receiving H-2B visas under the supplemental cap to be enrolled in E-Verify program.

On May 31, 2018, DHS and DOL published a temporary final rule increasing the cap on H-2B nonimmigrant visas by up to 15,000 additional visas through the end of FY 2018. Like last year, these visas are available only to American businesses which, among other requirements, attest that they will likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition. In addition, these petitioners will have established, by obtaining a temporary labor certification from DOL, that there are no willing and available U.S. workers to fill the offered positions. As an additional safeguard, if the employer has a current temporary labor certification with a work start date before April 15, 2018, it must conduct a fresh round of recruitment for U.S. workers. This protects U.S. workers by re-confirming that there are not enough willing, qualified and able U.S. workers to fill these positions.

On June 6, 2018, U.S. Citizenship and Immigration Services (USCIS) announced that during the first five business days of filing for a visa available under the FY 2018 supplemental cap it received petitions for more beneficiaries than the number of H-2B visas available under that cap. Accordingly, USCIS is required by regulation to use a computer-generated process, commonly known as a lottery, to randomly select sufficient petitions to meet the increased cap for FY 2018. The lottery was completed on June 7, 2018, and included all H-2B cap-subject petitions received between May 31, 2018 and June 6, 2018.

As with the essentially identical provision authorizing the Secretary to augment the H-2B statutory cap in FY 2017, the Department did not ask for, and does not wish to have the discretion to increase the H-2B visa cap afforded under the FY 2018 Omnibus. I share Secretary Nielsen's opinion that Members of Congress have the best information to know the "right" number of H-2B visas needed to support American businesses without harming American workers.¹ This is because congressional representatives have the best understanding of their constituencies and the needs of their local employers.

Further, I share the Secretary's desire to work together with Congress to limit H-2B visas to employers with truly temporary needs, and to find solutions to most effectively allocate available H-2B visas throughout the year. In the coming months, DHS will be submitting a congressionally-mandated report that details options for addressing the issue of late-season filers in the H-2B program that are currently unable to obtain visas. This report will include options on how the program can better serve our national interests. I would be happy to work with you and your staff on legislative changes that may improve the program. DHS strongly encourages that any new H-2B cap provision contemplated by Congress should include a requirement for petitioning employers to enroll and participate in the E-Verify program.

DHS is committed to ensuring that our immigration system is implemented lawfully and that American workers are protected. If members of the public have information that a participating employer may be abusing this program, DHS invites them to submit information to ReportH2BAbuse@uscis.dhs.gov and include information identifying the H-2B petitioning employer and relevant information that leads them to believe that the H-2B petitioning employer is abusing the H-2B program.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,



L. Francis Cissna
Director

¹ See Testimony of DHS Secretary Nielsen, House Committee on Appropriations, Subcommittee on Homeland Security, FY 2019 Budget Hearing – Department of Homeland Security (April 11, 2018) (<https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=395210>).