

Congress of the United States
Washington, DC 20515

April 30, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0075

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Dear Secretary Nielsen,

We are writing to formally request that you act quickly to prioritize returning workers in the H-2B Temporary Non-Agricultural Workers Program.

The H-2B returning worker exemption expired on September 30, 2016. As a result, thousands of seasonal American businesses are failing to operate, maintain, and grow their business due to the lack of an available American workforce in these areas and an increasing demand for H-2B visas. Additionally, this year's natural disasters prompted a further increase in demand for H-2B visas. Returning workers are proven contributors to our economy and to the businesses they support as law-abiding nonimmigrant H-2B visa holders. Each year, returning workers provide employers with the certainty that they will have a trained, ready staff to help them stay competitive and keep their doors open. These workers have also been vetted in the past by DHS and have demonstrated year after year that they do not overstay their visas, have complied with all aspects of the program, and do not present a security risk.

While it is Congress' authority to reauthorize the H-2B returning worker program, your office has the requisite authority to act in the interim. The FY 2018 cap has already been met, and in our recent Omnibus, Congress gave you the authority to provide H-2B visa cap relief. We humbly request that you immediately issue the maximum number of visas permitted by the FY18 Omnibus for which DOL has certified the employer's eligibility, and prioritize returning workers in FY 2018. The applications for H-2B visas this year far exceed the cap. Last year, with only modest cap relief granted by your Department, countless employers remained unable to meet their hiring needs. We are making it a priority to author permanent legislation to resolve the returning worker exemption, and in the interim, we ask for your support to help us save American businesses from unnecessary closure and their American workers from unnecessary cuts to their wages and hours.

Thank you for your time and consideration. We stand by ready and willing to provide you specific recommendations for the immediate issuance of additional H-2B visas and prioritization of returning workers, and respectfully request a timely response and a meeting with you at your earliest convenience.

Very Respectfully,



THOMAS A. GARRETT, JR.
Member of Congress



WILLIAM R. KEATING
Member of Congress



JACK BERGMAN
Member of Congress



CHELLIE PINGREE
Member of Congress



ROBERT J. WITTMAN
Member of Congress



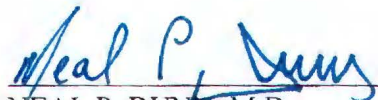
BILL JOHNSON
Member of Congress



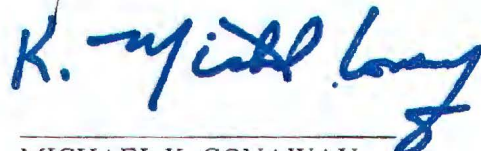
BOB GIBBS
Member of Congress



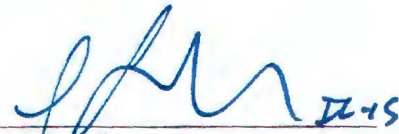
RYAN A. COSTELLO
Member of Congress



NEAL P. DUNN, M.D.
Member of Congress



MICHAEL K. CONAWAY
Member of Congress



JOHN SHIMKUS
Member of Congress



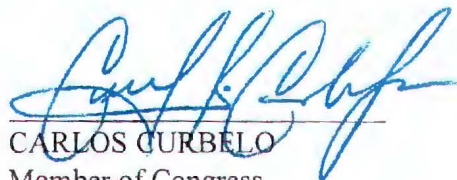
PETER WELCH
Member of Congress



PAUL MITCHELL
Member of Congress



ANN MCLANE KUSTER
Member of Congress



CARLOS GURBELO
Member of Congress




RICHARD M. NOLAN
Member of Congress



MIKE BOST
Member of Congress



CAROL SHEA-PORTER
Member of Congress



BRUCE POLIQUIN
Member of Congress



RICHARD E. NEAL
Member of Congress



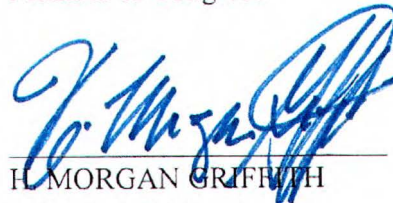
MIKE BISHOP
Member of Congress



JOHN R. MOOLENAAR
Member of Congress



STEVE CHABOT
Member of Congress



H. MORGAN GRIFFITH
Member of Congress



U.S. Citizenship
and Immigration
Services

May 23, 2018

The Honorable Thomas A. Garrett, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Garrett:

Thank you for your April 30, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen to take decisive action regarding the H-2B visa provisions contained in the Consolidated Appropriations Act, 2018 (Public Law 115-141), signed by the President on March 23, 2018.

As a general matter, there is a statutory cap of 66,000 on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year. *See* Immigration and Nationality Act (INA) § 214(g)(1)(B). Up to half of that allocation (33,000) is available during the first half of any given fiscal year, and the remainder is available during the second half of the fiscal year. *Id.* § 214(g)(10). However, section 205 of Div. M of the Consolidated Appropriations Act, 2018, Pub. L. 115-141, which was signed into law by the President on March 23, 2018, provides the Secretary of Homeland Security with discretion, after consultation with the Secretary of Labor, to increase the H-2B cap for the current fiscal year under prescribed circumstances.

As with the essentially identical provision authorizing the Secretary to augment the H-2B statutory cap in Fiscal Year 2017, the Department did not ask for, and does not wish to have, this discretion. 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. As Secretary Nielsen noted to lawmakers during her recent testimony, Congress placed limitations on H-2B visas to protect American workers. But it also clearly could not have been Congress' intent for the lawful administration of the program to put American employers out of business. DHS is in the final stages of the interagency process

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

The Honorable Thomas A. Garrett, Jr.

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to implement section 205 of Div. M of the Consolidated Appropriations Act, 2018. DHS cannot comment on how many additional visas may be authorized before it is published in the *Federal Register*.

Thank you again for your letter and interest in this important matter. The co-signers of your letter will receive separate, identical responses. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "LFC", is written over the typed name.

L. Francis Cissna
Director