

H-2B

WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

www.h2bworkforcecoalition.com

Brian Crawford, Co-Chair
American Hotel &
Lodging Association

Laurie Flanagan, Co-Chair
AmericanHort
National Association of Landscape
Professionals

Gregg Hartley, Co-Chair
Outdoor Amusement Business
Association

Steering Committee:

American Hotel and Lodging Association

American Horse Council

AmericanHort

American Seafood Jobs Alliance

Federation of Employers and Workers of
America

Forest Resources Association

Golf Course Superintendents Association of
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Leading Builders of America

Mackinac Island Convention & Visitors
Bureau

National Association of Landscape
Professionals

Outdoor Amusement Business Association

Seasonal Employment Alliance

U.S. Chamber of Commerce

June 9, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas:

The H-2B Workforce Coalition is comprised of small and seasonal businesses across the country owned and operated by thousands of employers and their representatives from industries such as lodging, landscaping, seafood, restaurants, tourism, equine, forestry, mobile outdoor amusement, golf courses, and others. Our members are seasonal businesses that rely on the H-2B visa program to supplement their U.S. workforce during seasonal surge and peak business needs.

We want to thank you for the engagement from you and your team at the Department of Homeland Security (“DHS”) on June 2, 2022. The H-2B visa program is critical to the members of the Coalition and ongoing dialogue with the regulators of the program is crucial to ensuring the needs of American business are met. We share the same desire to have an efficiently run program while providing much needed workforce support to American business and giving opportunity to the beneficiaries of H-2B visas to better themselves by coming, safely and legally, to the U.S. in a cyclical fashion to earn a good wage.

We realize that changes are needed to the H-2B visa program, many of which would require an act of Congress. We are confident that progress can be made on this front if President Biden and you support permanently instituting the returning worker exemption (“RWE”). A permanent RWE has had strong bipartisan support in the past and is, in our collective view, the best approach to providing seasonal businesses the workers they need who are well vetted and follow all H-2B visa program rules, including returning to their home countries as required.

Short of a permanent statutory fix, a request from the Administration to Congress asking lawmakers to utilize the legacy RWE language in the annual Homeland Security appropriations bill would have a substantial, positive impact on the ongoing H-2B debate. The RWE would require no rulemaking from DHS. Mr. Secretary, we recognize there will always be opponents of foreign guest workers, but these workers are desperately needed to complement the U.S. workforce for seasonal businesses. Your advocacy could make all the difference.

If Congress will not act on reinstating the returning worker exemption, we are confident that Congress will again provide you with the discretionary authority to

increase the number of H-2B visas by 64,716 additional visas. This discretionary authority has been provided annually since 2017 and, for the first time this year, this authority was exercised to provide cap relief in both halves of the fiscal year. We encourage you and your team at DHS to begin working on the temporary final rule (“TFR”) well before the actual cap has been met and as soon as Congress provides you the authority. We have seen the demand for H-2B visas grow on an annual basis. In fact, for the first two quarters of this fiscal year, there has been a 47.7% increase in applications at the Department of Labor (“DOL”). Waiting to start on the TFR until DHS announces that the cap has been reached delays the much-needed relief for American businesses.

Furthermore, rather than conducting a separate rulemaking each time the discretionary authority is provided, DHS could promulgate one rule that would outline how DHS would use such discretionary authority. This rule would follow the normal rulemaking process under the Administrative Procedure Act and remain a final rule in the Code of Federal Regulations. Thus, when the discretionary authority is provided, the process for DHS to consult with DOL, any additional program integrity requirements for employers, and the process for requesting supplemental visas, would already be outlined. As a result, employers would immediately be able to request supplemental visas without waiting months for a TFR to make its way through the regulatory process.

If DHS holds the view that a final rule is not a viable option for exercising the discretionary authority provided to it by Congress, we encourage you to consider working on a TFR that lays out how supplemental visas would be issued throughout the whole year. Doing multiple TFRs a year is a waste of already limited agency resources. Consolidating the TFR promulgation process in this manner would provide much needed certainty for all H-2B employers, regardless of when the company needs workers during the year, because the additional information would allow businesses to better plan for their seasonal workforce needs.

We are very supportive of the Biden Administration’s efforts at providing a method of cyclical migration for the Northern Central American countries and Haiti. However, the infrastructure for issuing these visas must be improved. If the federal government fails to improve processing times at the U.S. Consulates in those countries, our nation and our economy will never realize the full benefits of these policies. Uncapping the Northern Central American countries and Haiti’s visa allotment would go a long way toward encouraging employers to seek workers from these countries. Our coalition stands ready to work with you, the Department of State, and the Ministries of Labor within the Northern Central American countries and Haiti to ensure that H-2B visas are processed as expeditiously as possible so that we can see these important policy objectives come to fruition.

We also encourage you to issue all the available 64,716 visas, as the demand is clearly present. So far, this fiscal year, DOL has certified 204,341 worker positions, or 73,625 more worker positions than the maximum authority you have been given to release. The demand is clearly there.

Finally, we recognize the need for program integrity. However, DHS and DOL have made minor changes to the TFR that seemed to slow down the release of the rule. These minor changes have little effect on the program and the resultant delay harms American business, which is the opposite effect that Congress intended.

We thank you again for the engagement and the publication of the TFR releasing an additional 35,000 H-2B visas. We stand by ready to work with you and your team at DHS to ensure the needs of American business are met.

Sincerely,

The H-2B Workforce Coalition



August 8, 2022

Brian Crawford
Co-Chair
H-2B Workforce Coalition
1250 Eye Street, NW, Suite 1100
Washington, DC 20005

Dear Mr. Crawford:

Thank you for your June 9, 2022 letter to the U.S. Department of Homeland Security suggesting reforms to the H-2B program. Secretary Mayorkas asked that I respond on his behalf.

I appreciate the valuable information your organization and other stakeholders have provided during and following the June 2, 2022 H-2 engagement. The information will help DHS as we continue to ensure that the H-2 programs are responsive to the needs of the U.S. economy while strengthening foreign worker protections.

Increasing the H-2B visa annual cap generally requires Congressional action. If Congress provides authority to increase H-2B visas in future fiscal years, DHS will again assess, in consultation with the U.S. Department of Labor, the need to make additional H-2B visas available and will make the appropriate determination at that time.

To the extent DHS currently has statutory authority, we will endeavor to ensure that American businesses are equipped with the resources needed to recover successfully and contribute to the economic health of local communities, while ensuring that the wages and working conditions of U.S. workers are not adversely affected. This includes U.S. Citizenship and Immigration Services continuing to accept H-2B petitions that are exempt from the cap, such as petitions for current H-2B workers in the United States who wish to extend their stay and, if applicable, change the terms of their employment or their employers.

This also includes continuing DHS's outreach efforts with the governments of El Salvador, Guatemala, Honduras, and Haiti to ensure expanded and meaningful access to H-2 programs and facilitate the process for employers seeking workers from these countries. The U.S. Agency for International Development also continues to work to increase interest in the H-2B visa program and the supplemental H-2B visa allocation in some of these countries. We are grateful for your support of the Biden Administration's efforts to increase access to H-2B visas for nationals of these countries.

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DHS appreciates all the ideas you have provided as we continue to find ways to promulgate the H-2B rulemaking process more efficiently, and we will consider your recommendations with respect to our authority to increase the H-2B cap and to reform the H-2B program generally.

Thank you for your letter and continued interest in these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director