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H-2B

WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

www.h2bworkforcecoalition.com

January 7, 2022

Brian Crawford, Co-Chair
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Lodging Association

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AmericanHort
National Association of Landscape
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Association

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American Hotel and Lodging Association

American Horse Council

AmericanHort

American Seafood Jobs Alliance

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America

Forest Resources Association

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Mackinac Island Convention & Visitors
Bureau

National Association of Landscape
Professionals

Outdoor Amusement Business Association

Seasonal Employment Alliance

U.S. Chamber of Commerce

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
245 Murray Lane SW
Washington, DC 20528

The Honorable Marty Walsh
Secretary of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Mayorkas and Secretary Walsh:

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.

First, we would like to thank you for your decision to provide supplemental relief to seasonal businesses across the country who were unable to obtain an H-2B visa for seasonal workers in the first half of the 2022 fiscal year. There was unprecedented demand this year for seasonal labor, as seen by the cap announcement by the Department of Homeland Security on September 30, 2021. This was the earliest time in history that the H-2B cap for the first half of the fiscal year was reached, and it left hundreds of seasonal employers scrambling to fill the gaps in their workforce to get through their season.

There is a dire shortage of seasonal labor in the U.S. and many employers must turn to the H-2B program to meet their workforce needs to not only sustain their businesses, but also provide much needed support

to their American workers. Every H-2B worker supports 4.64 U.S. jobs.¹ Furthermore, a 2020 General Accountability Office report concluded that “counties with H-2B employers generally had lower unemployment rates and higher average weekly wages than counties that do not have any H-2B employers.”² The H-2B program places many requirements on employers to recruit U.S. workers, and our members try to find as many U.S. workers as they can. But in these unprecedented times, there are simply not enough workers to meet the seasonal workforce needs of U.S. employers. On January 4, 2022, the Bureau of Labor Statistics reported that there were 10.6 million job openings in the U.S. at the end of November.³ The Department of Labor reported that only 1,754,000 people who recently left the workforce were seeking unemployment benefits during the Christmas week.⁴ As a requirement to receive unemployment benefits you must search for work, so there is a large gap of available workers to fill those 10.6 million empty jobs.

We were extremely encouraged by your December 20, 2021 announcement of 20,000 additional H-2B visas being made available for the first half of fiscal year 2022. We urge you to implement the necessary regulations to make these visas available to employers as expeditiously as possible, as many of the employers seeking these visas are struggling to stay afloat. Workers are needed for the first half cap in several industries right now and further delay will cause irreparable harm for their seasonal businesses and their American employees.

American businesses are in urgent need of these workers, as evidenced by the Department of Labor (DOL) certifications approved as of December 31, 2021. DOL certified the need for 70,175 H-2B workers as of December 31, 2021; this is more than double the 33,000 statutory cap for the first half of the fiscal year. In addition, there are still an additional 9,977 requested worker positions awaiting certification by DOL during the first half of the current fiscal year. These data do not even take into account the applications that will be filed later in the fiscal year. For a comparison, in the FY 2021 H-2B first half cap, DOL certified a total of 55,571 worker positions.⁵ Currently in this fiscal year, with much of the 2nd quarter still ahead of us, DOL has already certified or has pending for certification 80,152 worker positions. We wrote to you in October of 2021 with a prediction that if year over year numbers held, we would see a request for first half cap positions topping 82,000 this year; we are well on the way to seeing this prediction being proven correct. American businesses need this to be published as soon as possible to ensure they can continue the rebuilding of the U.S. economy.

¹ Zavodny, Madeline. *Immigration and American Jobs*. American Enterprise Institute, 15 Dec. 2011, www.aei.org/research-products/working-paper/immigration-and-american-jobs/seek.

² United States, Congress, “H-2B VISAS: Additional Steps Needed to Meet Employers' Hiring Needs and Protect U.S. Workers.” *H-2B VISAS: Additional Steps Needed to Meet Employers' Hiring Needs and Protect U.S. Workers*, GAO-20-230, U.S. Government Accountability Office, 2020, pp. 13–14.

³ See Job Openings and Labor Turnover Summary, January 4, 2022, <https://www.bls.gov/news.release/jolts.nr0.htm> last visited January 5, 2022.

⁴ See Unemployment Insurance Weekly Claims, December 30, 2021, <https://www.dol.gov/ui/data.pdf> last visited January 5, 2022.

⁵ Looking at the numbers certified during Q4 2020 and Q1 2021 since DOL reports their numbers based on when the application is received, not the date of need, and employers must file with DOL between 75 and 90 days before they need workers.

We also write to you today asking that you again exercise the authority Congress granted to you in PL 117-70 and arrange to release additional H-2B visas in the second half of the fiscal year. The recent filings with DOL for the second half of the fiscal year clearly show that there will be significant workforce disruptions if additional cap relief does not materialize. On January 4, 2022, DOL announced that it had received 7,875 H-2B applications requesting 136,555 worker positions for the second half of the 2022 fiscal year. This is **more than four times** the number of visas permitted under the statutory cap. Congress provided you with the authority to release additional visas and we are pleading with you to announce your intention to do so in the near future and publish a TFR implementing that decision.

The highest number of H-2B returning workers approved in the program's history was 64,716 in FY 2007. Given the stark workforce needs for the remainder of this fiscal year and the workforce shortfalls that seasonal employers will experience, we urge your Departments to exercise your authority and make the remainder of the additional visas (44,716) available immediately. This will provide employers the ability to better handle their labor challenges, as they will have additional certainty regarding their workforce planning decisions in the coming months.

Additionally, seasonal employers continue to have a strong commitment and support for the administration's efforts to increase access to H-2B visas for foreign nationals from the Northern Triangle countries and Haiti. We will continue to work with these foreign governments to help diminish the irregular migration from these countries by helping to streamline the application process for foreign workers from these countries. It remains incumbent upon this administration to allocate supplemental visas for returning workers from *other* nations as well in order to fulfill the demand for seasonal workers, as nationals from the Northern Triangle and Haiti cannot satisfy these labor demands alone.

Lastly, putting in place a predictable process for the administration to utilize their Congressional authority to release supplemental H-2B visas should be a priority. As seasonal businesses face tremendous labor shortages across the nation, the prompt release of additional H-2B visas is extremely important. The release of supplemental H-2B visas should provide certainty that employers can have supplemental H-2B visas available as close to the date of need as possible. We look forward to working with the administration to improve this process.

Thank you for your consideration of these important matters and we look forward to continuing the important dialogue and assisting in any way possible.

Sincerely,

The H-2B Workforce Coalition



**U.S. Citizenship
and Immigration
Services**

February 8, 2022

Mr. Brian Crawford
Co-Chair
H-2B Workforce Coalition
c/o American Hotel and Lodging Association
1250 I Street, NW, Suite 1100
Washington, DC 20005

Dear Mr. Crawford:

Thank you for your January 7, 2022 letter to the Department of Homeland Security (DHS) regarding supplemental H-2B temporary nonagricultural worker visas. Secretary Mayorkas asked that I respond on his behalf.

In your letter, you emphasized the importance of the H-2B Temporary Nonagricultural Worker Program for small and seasonal businesses and expressed appreciation for DHS's December 20, 2021 announcement regarding 20,000 supplemental H-2B visas that will be made available for U.S. employers seeking to employ additional workers on or before March 31, 2022. Your letter urged DHS, in consultation with the U.S. Department of Labor (DOL), to make these visas available as expeditiously as possible and requested additional H-2B visas in the second half of the fiscal year.

DHS appreciates the concerns you raised regarding the challenges faced by your coalition members, and the need for H-2B nonimmigrant labor for small and seasonal businesses. To the extent it has statutory authority, DHS 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.

As you noted, on December 20, 2021, DHS announced a supplemental increase of 20,000 visas for the H-2B program for U.S. employers seeking to employ additional workers on or before March 31, 2022. DHS published the temporary final rule on January 28, 2022, and the additional H-2B visas became available to employers on the same day. As in prior years, DHS consulted with DOL to assess labor demands and balance the interest of U.S. workers.

Please also note that U.S. Citizenship and Immigration Services continues to accept H-2B petitions that are exempt from the congressionally-mandated cap. These include, among others,

Mr. Brian Crawford

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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 change their employers.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

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

Ur M. Jaddou
Director