

JOHN J. FASO
18th District, New York
1616 Longworth House Office Building
Washington, DC 20515
(202) 225-5614
<http://faso.house.gov>



Congress of the United States
House of Representatives

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April 27, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Nielsen and Secretary Acosta:

As you are aware, the FY 2018 Omnibus Appropriations bill included language that authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to approve a limited increase in the number of H-2B visas available for this fiscal year.

The language in the Omnibus Appropriations bill notes that a decision should be made upon the determination that the needs of American businesses cannot be met by the current workforce. I have heard from dozens of constituents that own or operate a variety of small business, who consistently tell me that they cannot access enough workers to maintain operations.

Additionally, my staff has reported that they expect a substantial increase in demand for workers through the remainder of this year as employers struggle to find adequate local labor. If this shortage continues for much longer, numerous businesses may be forced to close, damaging our regional economy.

As I did last year, I encourage you to act as quickly as possible to address this issue by substantially increasing the number of H-2B visas available. Providing workers to support our local small businesses through the H-2B program is vitally important to long-term economic growth in New York.

Thank you for your attention to this issue. I hope you will consider the experiences of small business owners from my district and I encourage you to act as soon as possible.

Sincerely,

John J. Faso
Member of Congress

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DELHI DISTRICT OFFICE
111 MAIN STREET
DELHI, NY 13753
PHONE: (607) 746-9537

KIRKBRIDE DISTRICT OFFICE
2 HUDSON STREET
PO Box 476
KIRKBRIDE, NY 12106
PHONE: (518) 610-8133

KINGSTON DISTRICT OFFICE
721 BROADWAY
KINGSTON, NY 12401
PHONE: (845) 514-2322

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U.S. Citizenship
and Immigration
Services

September 20, 2018

The Honorable John J. Faso
U.S. House of Representatives
Washington, DC 20515

Dear Representative Faso:

Thank you for your August 10, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

In your letter, you requested that the Secretary exercise her authority to release additional H-2B visas to accommodate any demand above the 15,000 H-2B visas for fiscal year (FY) 2018 authorized in the temporary final rule published by the Department of Homeland Security (DHS) and the Department of Labor (DOL) on May 31, 2018.¹

The Secretary does not intend to reopen the supplemental cap for FY 2018. As with the essentially identical provision in the FY 2017 Omnibus, the Department did not ask for the authority to increase the cap and does not believe that giving the Department such authority is the most effective way of addressing employer concerns about the supply of H-2 visas. Nevertheless, having been delegated this responsibility by Congress, the Secretary felt it was necessary to authorize additional H-2B visas to help seasonal employers stay in business, thereby protecting the jobs of their American workers.

I share Secretary Nielsen's opinion that Members of Congress have the best information to know the correct number of H-2B visas needed to support American businesses without harming American workers because congressional representatives have the best understanding of their constituencies and the needs of their local employers.

As stated in my previous letter to you, 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. I appreciate your own involvement in efforts to improve the H-2B program. 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 H-2B workers. This report will include suggestions on how the program can better serve our national interest. In the meantime, DHS continues to take steps of its own in this regard, including by inviting members of the public having information that a participating employer may be abusing the H-2B program to submit the information to ReportH2BAbuse@uscis.dhs.gov.

¹ See Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 Fed. Reg. 24905 (May 31, 2018).

The Honorable John J. Faso
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Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "LFC", written in a cursive style.

L. Francis Cissna
Director