

Congress of the United States
House of Representatives
Washington, DC 20515-1803

April 3, 2018

The Honorable Kirstjen 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 20510

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Dear Secretary Nielsen and Secretary Acosta:

I write today to urge you to raise the cap on H-2B visas for fiscal year (FY) 2018 without delay.

As you know, the statutory allocation of H-2B visas for the current fiscal year was reached on February 27, 2018. Small and seasonal businesses are the lifeblood of Southwest Louisiana's heritage and economy, and many of our industries, such as crawfish processing, are forced to cease operations without temporary seasonal workers. Due to the time-sensitive nature of seasonal businesses, it is critical that temporary seasonal visas be made available immediately.

Under Division M, Extensions, Title II, Section 205 of the FY 2018 Consolidated Appropriations Act (P.L. 115-141), the Secretary of Homeland Security, in consultation with the Secretary of Labor, has the authority to approve petitions for admission under the H-2B Nonimmigrant Temporary Worker program up to the new statutory level set in the bill for the current fiscal year.

In accordance with this legislation, I respectfully request your immediate attention to this matter and advise that the cap be raised at minimum an additional 30,000. Additionally, I encourage you to take immediate steps to re-open the petition process and adjudicate any pending labor certifications that demonstrate the requirements set forth in this legislation. I believe that your Departments can take these actions, using the authority provided under this law, without the need for additional rulemaking.

Furthermore, I encourage your Departments provide information regarding the increased cap, processing of additional applications, and approval of additional visas to Congress and employers as soon as possible to alleviate concerns and stabilize struggling businesses.

I greatly appreciate your Departments' past efforts to increase the annual cap on H-2B visas, and I look forward to seeing a significant increase this fiscal year to fill these desperately needed jobs in Louisiana.

Thank you for your attention to this important issue. I appreciate your consideration and encourage swift action.

Sincerely,



Clay Higgins
MEMBER OF CONGRESS



U.S. Citizenship
and Immigration
Services

April 25, 2018

The Honorable Clay Higgins
U.S. House of Representatives
Washington, DC 20515

Dear Representative Higgins:

Thank you for your April 3, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen and Secretary Acosta 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 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 April 11 testimony, Congress placed limitations on H-2B visas to protect American workers. But it also clearly could not have been Congress's intent for the lawful administration of the program to put American employers out of business.

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>).

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

Respectfully,



L. Francis Cissna
Director