

United States Senate

WASHINGTON, DC 20510

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April 19, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Nielsen and Secretary Acosta:

As you know, the President and Congress have been unable to reach agreement on any kind of comprehensive immigration reform, including the pressing need to protect those individuals losing legal immigration status under the DACA and TPS programs. We hope that, in the coming year, we can reach agreement on a long-term solution for a range of immigration issues, including reforms to the H-2B visa program that will both meet the workforce requirements of Maryland's seasonal seafood industry and the necessary protections for workers employed in the United States as seasonal workers.

As we work to implement longer-term reforms, we urge you both to work collaboratively to address the FY'18 H-2B visa demand. Due to the seasonal nature of these businesses, it is imperative that you take immediate action. Your attention to this issue will ensure that the Maryland seafood industry can operate successfully this year.

The Consolidated Appropriations Act for FY'18 grants you both the authority to grant additional H-2B visas "upon determining that the needs of American businesses cannot be satisfied in fiscal year 2018 with United States workers who are willing, qualified and able to perform temporary non-agricultural workers." The lack of stability and certainty within the program has been detrimental to Maryland businesses. Research conducted by the University of Maryland estimates that 2.54 Maryland jobs are lost for every H-2B visa that is not granted to the seafood industry. Unfortunately, some Maryland businesses have already reduced the size of their American workforce due to the lack of availability of H-2B visas.

Congress granted DHS and DOL similar authority to meet the rising need for H-2B visas in FY'17. Neither agency addressed this issue in a timely manner and many visas that could have been issued were not. Consequently, many Maryland businesses were unable to meet their financial and contractual obligations. We urge you to avoid these delays this year.

Additionally, Congress included language directing both DHS and DOL to submit a report to "review options for addressing the problem of unavailability of H-2B visas for employers that need workers to start work late in a semiannual period of availability." We encourage your agencies to work with Congress to identify reforms that will reduce waste, fraud, and abuse within the H-2B program. In particular, your agencies should ensure that H-2B visas are only used when: (1) there are not enough U.S. workers who are able, willing, qualified, and available

to do the temporary work; (2) employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers, or otherwise displace U.S. workers; and (3) the need for the prospective worker's services or labor is temporary. The program must not only protect American workers but also protect H-2B visa holders from those who abuse the program.

Thank you for your attention on this issue.

Sincerely,



Chris Van Hollen
United States Senate



Benjamin L. Cardin
United States Senate



U.S. Citizenship
and Immigration
Services

May 17, 2018

The Honorable Chris Van Hollen
United States Senator
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your April 19, 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 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

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>).

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put American employers out of business. DHS is in the final stages of the interagency process 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. Senator Cardin, who co-signed your letter, will receive a separate, identical response. 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