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May 8, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Acting Secretary Wolf:

Employers across America are facing unprecedented challenges due to the lockdowns imposed as a result of the coronavirus epidemic. And those employers that supplement their U.S. workforce with seasonal H-2B guest workers are facing additional challenges in ensuring they can keep their businesses open and retain their full-time year-round American workers.

On April 22, President Trump issued a proclamation<sup>1</sup> limiting the number of immigrants admitted into the United States. The proclamation read, “the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Excess labor supply affects all workers and potential workers, but it is particularly harmful to workers at the margin between employment and unemployment.”

The President’s proclamation excluded the nonimmigrant visa programs from the immigration moratorium which includes the seasonal, non-agricultural H-2B guest worker program. But the proclamation further stipulated:

*Within 30 days of the effective date of this proclamation, the Secretary of Labor and the Secretary of Homeland Security, in consultation with the Secretary of State, shall review nonimmigrant programs and shall recommend to me other measures appropriate to stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers.*

We believe that a review by the Department of Homeland Security (DHS) and the Department of Labor (DOL) will find, as previous studies have found, that the continued issuance of H-2B visas is critical to the recovery of the American economy and to the American workers who depend on the H-2B workers to support their full-time, year-round jobs.

In an effort to make Americans who have been economically impacted by the COVID-19 epidemic aware of the vast number of available, unfilled seasonal

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<sup>1</sup> [Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak](#)

jobs, we created our own [online jobs bank](#)<sup>2</sup> that is exclusively dedicated to advertising seasonal positions available with U.S. employers.

The SEA online jobs bank permits American workers to locate and apply for available jobs in communities all across the country. The jobs bank contains over 850 listings comprising 10,000+ available positions in 44 states.

In addition, DOL operates its own [electronic job registry](#)<sup>3</sup> and requires that all H-2B jobs be posted there prior to an employer receiving certification to bring in H-2B workers. After DOL approves seasonal employers to hire H-2B workers, the job openings are removed from the DOL registry. The SEA online job bank, by contrast, continues to post these available positions even after DOL has certified there are an insufficient number of U.S. workers interested in filling the positions.

We are advertising the availability of our jobs bank on several other online resources, including LinkedIn and numerous online news and opinion sites, including those that frequently advocate for further restriction or elimination of guest worker programs.

In the week that our advertising campaign has been active, the advertisements have resulted in:<sup>4</sup>

- 225,000 impressions
- 17 click throughs
- 0 U.S. applicants

Seasonal employers continue to make every effort to recruit American workers, including those negatively affected by the coronavirus pandemic. The administration believes that a V-shaped recovery of the economy is highly likely and that a majority of the country will be open for business by Memorial Day. A recent Washington Post survey<sup>5</sup> shows that 77% of currently furloughed or laid off workers expect to re-hired for their previous positions when the stay-at-home orders in their area are lifted. These workers are therefore extremely unlikely to take a seasonal, temporary position while they wait to return to their previous positions.

In addition, the [generous unemployment insurance compensation](#)<sup>6</sup> included in the CARES Act, however, has created a disincentive for laid off or furloughed Americans from taking seasonal jobs. Many news reports explain that many American workers can earn more in unemployment compensation than they can by going back to work. As long as government benefits are more lucrative than private sector employment, all U.S. employers – not just seasonal employers – are going to have difficulty staffing their businesses.

In addition, we have surveyed our members facing a labor shortage regarding their efforts to recruit American workers.

83 respondents

- What platforms are employers using to recruit American workers?
  - 89% have their jobs posted on their state workforce agency's website
  - 65% online job banks
  - 55% Facebook
  - 49% public signs
  - 36% now hiring advertisement on company trucks
  - 36% on Craigslist
  - 27% newspaper

<sup>2</sup> [Seasonal Employment Alliance online jobs bank](#)

<sup>3</sup> [Electronic jobs registry](#) | USDOL

<sup>4</sup> [Seasonal Employment Alliance jobs bank ad results](#)

<sup>5</sup> [Washington Post-Ipsos poll](#)

<sup>6</sup> [Effect of additional unemployment insurance in CARES Act on labor shortage in the landscape occupation](#) | SEA

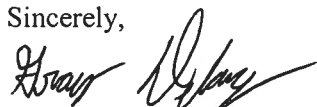
- 11% Twitter
  - 7% local radio/TV
- Average advertised wage of \$15.07 per hour
- Does employer offer a monetary bonus?
  - 43% offer a starting wage higher than the H-2B prevailing wage
  - 36% offer an end of season bonus
  - 18% are offering a length of service bonus (receive bonus after specified number of weeks worked)
- Since March 1, how many American workers applied/showed up to work/remain with your company?
  - 758 applied
  - 169 showed up to work
  - 115 remain employed as of April 23

The labor shortage faced by seasonal employers is extreme and for employers is causing them to lay off their full-time, year round American workers, cancel contracts and permanently downsize their businesses.

Reportedly, the U.S. State Department has only issued about 13,000 H-2B visas towards the FY20 second half cap, 20,000 less than the statutory cap of 33,000 visas. USCIS should immediately reopen the cap so that enough beneficiaries are approved to ensure that the 33,000 H-2B visas from the first and second half of FY20 are issued. There is historical precedence to justify USCIS reopening the cap. In [June of 2015 USCIS reopened the H-2B cap](#)<sup>7</sup> explaining that “it can be difficult to estimate in advance how many beneficiaries of an H-2B petition approved by USCIS will actually seek H-2B status or eventually be issued an H-2B visa by the department of State”

Numerous states have entered phase one of their reopening. It is critical that every step is taken to ensure that the economic recovery of our country is as speedy as possible. Seasonal employers want to play a role in this recovery, but without an adequate labor force, seasonal employers will be constrained in their ability to contribute to the recovery. DHS should immediately reopen the H-2B visa cap to ensure that the full allotment of visas authorized by Congress are available to seasonal employers so that they can contribute to the rapid recovery of our economy.

Sincerely,



Gray Delany

CC:

President Donald J. Trump  
The White House  
1600 Pennsylvania Ave NW  
Washington, D.C. 20500

The Honorable Eugene Scalia  
Secretary of Labor  
200 Constitution Ave NW  
Washington, D.C. 20210

The Honorable Mike Pompeo  
Secretary of State  
2201 C Street NW  
Washington, D.C. 20520

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<sup>7</sup> [USCIS to Reopen H-2B Cap for the Second Half of Fiscal Year 2015](#) | DHS