



JOHN LEMONDES
Assemblyman
126th District

THE ASSEMBLY
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May 31, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

RECEIVED

By ESEC at 9:06 am, Jun 10, 2024

Dear Secretary Mayorkas:

We are writing to express my disapproval of the recent rule changes to the H-2A temporary agricultural worker program and request that you consider making changes to either exempt New York state from the Asylum Program Fee or eliminate the fee entirely. On January 31, 2024 the U.S. Citizenship and Immigration Services (USCIS) established a new Asylum Program Fee which went into effect on April 1, 2024. The new Asylum Program Fee will be levied on employers to fund the costs of processing and adjudication of asylum applications. Placing the burden of increased asylum claims on the shoulders of those utilizing our legal immigration system is a slap in the face to American farmers, the agricultural supply chain, and all other businesses using H-2A labor.

Farmers are already required to pay for the housing, utilities, and transportation of H-2A migrant workers. In New York, the Adverse Effect Wage Rate (AEWR) set by the U.S. Department of Labor (DOL) has set the minimum wage at \$17.80. The DOL also made changes to the overtime threshold for these workers by lowering the current 60-hour threshold for overtime pay to 40 hours by January 1, 2032. With the new Asylum Program Fee and the overall changes to the fee schedule, the filing fee for a named H-2A beneficiary has increased from \$460 to \$1,090. These increased costs are crushing New York's already struggling agriculture industry.

Several states and cities have threatened our constitution and the rule of law by declaring themselves sanctuaries for illegal aliens. This state and the federal government provide immense leeway to migrants, yet they will not provide the same deference to our own farmers and small business owners who are forced to foot the bill for their pro-migrant initiatives. Considering all the challenges already facing small businesses in our state, this is going to crush our local farmers. As elected representatives of the state of New York it is our duty to protect vulnerable individuals and businesses.

Congress needs to remedy this issue by funding the USCIS themselves instead of passing off the cost burden on to employers, most of which are small businesses. Again, please consider addressing this issue to provide relief to the Americans and New Yorkers struggling to survive in this economy.

Sincerely,

John Lemondes
Assemblyman, 126th A.D.



George M. Borrello
Senate District 57



Pamela S. Helming
Senate District 54



Peter Oberacker
Senate District 51



Robert G. Ort
Senate District 62



Steven D. Rhoads
Senate District 8



Joseph G. Angelino
121st Assembly District



Anil Beephan
105th Assembly District



Scott Bendett
107th Assembly District



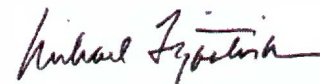
Kenneth D. Blankenbush
117th Assembly District



Ari Brown
20th Assembly District



Keith P. Brown
12th Assembly District



Michael J. Fitzpatrick
8th Assembly District



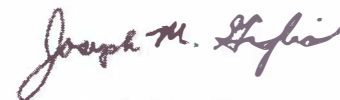
Edward A. Flood
4th Assembly District



Jeffery L. Gallahan
131st Assembly District



Jodi A. Giglio
2nd Assembly District



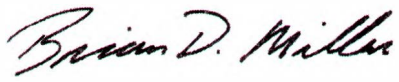
Joseph M. Giglio
148th Assembly District



Brian D. Manktelow
130th Assembly District



David G. McDonough
14th Assembly District



Brian D. Miller
122nd Assembly District



Matthew J. Simpson
114th Assembly District



Christopher Tague
102nd Assembly District



U.S. Citizenship
and Immigration
Services

June 27, 2024

The Honorable John Lemondes
New York Assembly
Room 720, Legislative Office Building
Albany, New York 12248

Dear Mr. Lemondes:

Thank you for your May 31, 2024 letter to the Department of Homeland Security (DHS) regarding your concerns about the impact of the Asylum Program Fee on agricultural employers. I am responding on behalf of the Department.

As stated in your letter, we agree “Congress needs to remedy this issue by funding the USCIS themselves instead of passing off the cost burden onto employers.” Unfortunately, Congress has thus far failed to fund USCIS for these costs despite repeated attempts by the President in budget requests to Congress. Nonetheless, USCIS is required to act by law, thereby incurring costs that must be fully recovered by fees per the Immigration and Nationality Act. As a result, and as you note in your letter, earlier this year we published the U.S. Citizenship and Immigration Services (USCIS) Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (Fee Rule), which took effect on April 1, 2024.¹

The fee changes created by the Fee Rule represent the first increase in USCIS fees in over 7 years. DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. USCIS allocates costs to fee-paying applicants and petitioners to ensure that the agency can fully recover its operating costs. As expressly contemplated by statute, USCIS provides certain services without requiring a fee, primarily immigration benefits for refugees and asylum seekers, as well as other fee waivers and exemptions for economically disadvantaged individuals and other especially vulnerable populations, such as victims and witnesses to crimes, including some required but unfunded by Congress. This means that the fees charged for a particular form may include the cost of adjudicating that form plus an additional percentage to cover overhead expenses and the agency’s costs to adjudicate fee-exempt, fee-reduced, and fee-waived cases.

USCIS accounted for small farms in their analysis of costs, and we considered the various concerns raised by commenters that the Asylum Program Fee would cause indirect secondary, tertiary, and downstream economic impacts on many facets of the United States.

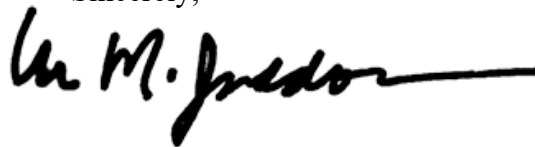
¹ See 89 FR 6194 (Jan. 31, 2024) available at <https://www.govinfo.gov/content/pkg/FR-2024-01-31/pdf/2024-01427.pdf>.

Examples cited by the commenters included exacerbating the effects on increasing costs for already economically precarious farmers.

While USCIS understands that the changes in the Fee Rule increase farmers' costs, to account for the difficulty that small farms and other small employers may face, the Fee Rule created a discounted Form I-129 Fee (\$545 for named beneficiaries, \$460 for unnamed beneficiaries) and a reduced Asylum Program Fee (\$300) for petitioners who employ 25 or fewer full-time equivalent employees. USCIS also notes that petitioners may file Form I-129 on behalf of multiple beneficiaries at a time, including up to 25 named H-2A beneficiaries. This substantially mitigates the per worker cost of filing Form I-129 on behalf of H-2A beneficiaries. Furthermore, the rule does not single out H-2A petitioners for fee increases. The Fee Rule altered fees for all Forms I-129 and I-140 petitioners, as well as most other immigration benefits. By law, USCIS is required to conduct a fee review every 2 years. Therefore, all fees, including the Asylum Program Fee, will be reviewed biennially. We defer to the U.S. Department of Labor (DOL) with respect to your stated concerns regarding DOL's recent rulemaking and its impact on H-2A employers.

Thank you again for your letter and interest in this important issue. Please share this response with the cosigners of your letter. 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", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director