

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

October 6, 2022

The Honorable Antony Blinken
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
2703 Martin Luther King Jr. Avenue SE
Washington, DC 20593

The Honorable Martin Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RECEIVED
By ESEC at 5:13 pm, Oct 06, 2022

Dear Secretary Blinken, Secretary Walsh, and Secretary Mayorkas,

As we begin Fiscal Year (FY) 2023, we want to express our concern about whether the Department of Homeland Security, the Department of Labor, and the Department of State are adequately prepared to process employer applications and petitions for the employment of temporary, non-agricultural H-2B workers and issue H-2B visas in a timely manner in FY 2023 and into the future. As you know, employers began filing labor certification applications in July of this year for employment that will commence in the new fiscal year. **We ask that each of you take immediate action to ensure that your department is processing H-2B applications, petitions, and visas in the speediest and most efficient manner possible.**

Increased demand for temporary H-2B workers is putting a strain on employers and the agencies that process the H-2B applications, petitions, and visas. With each passing year, the semi-annual fall H-2B visa cap of 33,000 administered by DHS is reached earlier. Just a few years ago, the fall H-2B cap was not reached until December. Last year, however, the cap was reached on September 30th. Continuing this alarming trend, DHS announced on September 14th that the first half cap for FY2023 was reached on September 12th.

Last year, employers that needed workers after mid-to late October had little chance of obtaining workers from the fall H-2B visa allocation since those with earlier start times had already claimed the available visas. This year, it appears that situation has advanced with the cap being reached more than two weeks sooner. The application process timeline, coupled with the rise in demand for H-2B visas, is a challenge for all employers that rely on temporary and seasonal labor to supplement their domestic workforce in the late fall and winter.

This problem is especially acute for many of our constituents and the rural communities that rely on forests and the forestry sector for their livelihood since studies have shown that each H-2B worker supports 4.5 American jobs. Years of drought, high forest mortality, and fires have

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decimated Western forests, and the backlog of U.S. Forest Service land that needs to be replanted gets larger every year. Currently, some 4 to 5 million acres of Forest Service land is awaiting replanting¹. Forest Service Chief Randy Moore said in a POLITICO interview in December 2021, that labor constraints could become a concern as the department looks to increase reforestation efforts and work in nurseries².

It is estimated that there is a 3 to 5-year tree planting backlog on public and private forestlands³. There simply are not enough people willing and available to do this temporary and itinerant work. For decades, foreign temporary workers on H-2B visas have supplemented dwindling supplies of U.S. workers to plant trees across the country. H-2B workers each year plant 85 percent⁴ of the acres on public and private forestlands. The failure to replenish our forests is catastrophic for rural forest communities that rely on timber and forest products for their livelihood. Stalled reforestation work is also catastrophic for the environment, as healthy forests are crucial for clean air and water.

In recent years, the lack of visas and the processing delays at government agencies have made the H-2B application process even more challenging for employers. In the fall of 2021, many forestry contractors experienced long processing delays due to the Department of Labor's inability to efficiently process the Farm Labor Contractor certificates that the Department requires for forestry contractors.

The delays in processing Farm Labor Contractor certificates caused delays in the Department of Labor's processing of H-2B labor certification for forestry contractors. Those delays in turn prevented many forestry contractors from being able to obtain an approved H-2B petition from the Department of Homeland Security before the semi-annual H-2B cap was reached. Similar H-2B processing delays at the Department of Labor this past spring heightens my concern for forestry contractors this fall.

More recently, both the Department of Labor and the Department of Homeland Security delayed for months the release of additional H-2B visas that Congress authorized be released earlier this year. That delay deprived seasonal businesses of needed labor at a critical time of the year. And now that those additional visas have been released, we have heard numerous reports of visa processing delays at the U.S. Consulates abroad.

Each of these delays is troubling on its own, but all of them combined are creating an untenable situation for employers, particularly in the forestry industry. Every year that goes by where a tree is not planted is a year lost. Delays in processing are especially harmful to reestablishing our forests. The tree planting window is narrow. In the southeastern U.S., for

¹ National Forest System Reforestation Strategy-Growing and Nurturing Resilient Forests, USDA Forest Service, July 2022

² POLITICO Pro Q&A: U.S. Forest Service Chief Randy Moore, December 15, 2021, Politico Pro USDA unveils 10-year plan for combating wildfires, 01/18/2022

³ Communications with FRA members and increased planting demands of FS lands

⁴ Blinn, C. R., T. J. O'Hara, and M. B. Russell. 2021. H-2B guest workers and the critical role they play in US forests. *Journal of Forestry* 119(5):467-377.

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example, seedling planting begins in November and ends in February. Seedlings planted outside of this window experience significant mortality rates. Without appropriate administration of the H-2B program, public and private forests are being significantly harmed.

We ask that each of you take immediate action to ensure that your department is processing H-2B applications, petitions, and visas in the speediest and most efficient manner possible. The American economy and our forests can't wait.

Sincerely,



Bruce Westerman
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Drew Ferguson
Member of Congress



Cathy McMorris Rodgers
Member of Congress



Dan Newhouse
Member of Congress



Steven Palazzo
Member of Congress



Kurt Schrader
Member of Congress



Austin Scott
Member of Congress

cc: USDA Secretary Tom Vilsack



U.S. Citizenship
and Immigration
Services

November 14, 2022

The Honorable Bruce Westerman
U.S. House of Representatives
Washington, DC 20515

Dear Representative Westerman:

Thank you for your October 6, 2022 letter to the U.S. Department of Homeland Security. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in my response.

DHS recognizes the labor challenges facing Michigan's businesses and appreciates the importance of the H-2B program in addressing those challenges. When Congress has given DHS its time-limited authority to increase the H-2B cap beyond the annual numerical limitation set forth in section 214 of the Immigration and Nationality Act (INA), DHS has worked expeditiously, in consultation with the U.S. Department of Labor (DOL) in each instance, to exercise this statutory authority.

As your letter notes, U.S. Citizenship and Immigration Services (USCIS) has already, as of September 12, received enough petitions to reach the congressionally mandated cap on H-2B visas for the first half of fiscal year (FY) 2023. However, since your letter, Congress again authorized DHS to increase the H-2B cap in the *Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023* (Public Law 117-180). On October 12, 2022, DHS and DOL jointly announced the forthcoming publication of a temporary final rule to make available an additional 64,716 H-2B visas, the maximum number permitted by statute, for the remainder of the 2023 fiscal year.¹ In addition to meeting the needs of U.S. employers, DHS and DOL announced their ongoing commitment to ensuring protections for both H-2B and U.S. workers, most notably with the creation of a task force aimed at safeguarding the integrity of the H-2A and H-2B programs.

Further, DHS plans to issue a notice of proposed rulemaking that will modernize and reform the H-2A and H-2B nonimmigrant worker programs. DHS will propose, among other things, policies that increase program efficiencies and build upon existing worker protections. DHS welcomes your valuable suggestions and will consider the options you provided for improving the current H-2B program.

¹ <https://www.uscis.gov/newsroom/news-releases/dhs-to-supplement-h-2b-cap-with-nearly-65000-additional-visas-for-fiscal-year-2023>

The Honorable Bruce Westerman

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Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal line extending to the right.

Ur M. Jaddou
Director