

Statement of Congresswoman Thelma Drake
Hearing on the H-2B Visa Program
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and
International Law
2141 Rayburn House Office Building
Wednesday, April 16, 2008
2:00 P.M.

Chairwoman Lofgren, Ranking Member King, and members of the Subcommittee:

Thank you for the opportunity to provide comment on the importance of the H-2B visa program, which has been essential to many small and seasonal businesses in Virginia's Second District.

As you may know, the H-2B seasonal worker program allows businesses across the nation access to the temporary workforce they need during peak business seasons. For instance, businesses in my district are heavily reliant upon a summer workforce for the busy tourist season. The program had an original cap of 66,000 workers, though a provision enacted in the fiscal year 2005 Emergency Supplemental Appropriations Act (P.L. 109-13) allowed returning workers to be exempt from the visa cap if they had already been counted against the cap in the previous three fiscal years. This returning worker provision was later extended through fiscal year 2007, and it was allowed to expire this past September.

The expansion of the H-2B program through the returning worker provision was designed to address an increasing need by small businesses whose domestic outlets for workers had been exhausted. I believe it is important to point out that employers who look to the H-2B program for workers must first prove that they are not able to find American workers for the job. Additionally, employers must pay their H-2B temporary workers a prevailing wage, and employers must adhere to strict workforce standards. This is not an unfair labor program by any means – it is truly a legal and beneficial program.

What is unfair, however, is that the returning worker provision – which could be extended with a simple and unobtrusive piece of legislation – has yet to be extended, while other programs have. For instance, a simple bill to extend the Religious Worker Visa Program passed the House of Representatives by voice vote on April 15, 2008. As you know, in March of last year, Mr. Stupak introduced H.R. 1843, the Save Our Small and Seasonal Businesses Act of 2007, which makes the H-2B returning worker provision permanent. Early this February, I introduced H.R. 5233, the Giving Relief to Our Small Businesses Act, which provides a two-year extension of the returning worker provision. Later in February, Mr. Gerlach introduced H.R. 5495, the Relief for America's Small and Seasonal Businesses Act, which provides a one-year extension of the provision.

As you can see, the variety is there from which to choose, however, not one of these bills has been considered by this subcommittee. This is astonishing, especially given that Mr. Stupak's bill has wide, bipartisan support with 149 cosponsors. This leads me to the conclusion that the H-2B program is being held hostage by those who would wish to pass a far more radical immigration policy.

While the H-2B visa program undoubtedly falls under the purview of this subcommittee, I would argue that H-2B is also a labor issue – using our immigration system to solve the workforce issues facing our small nation's businesses. The shortage of H-2B visas will certainly affect the fishing, landscape, food service, hospitality, and tourism industries in my district – to name just a few. According to the Department of Labor, in Fiscal Year 2006, the businesses in the Commonwealth of Virginia applied for 480 H-2B workers, 391 of which were certified. In FY07, the number of requested workers went up to 515, though the number of applications certified went down to 368. While these numbers may not seem large to many, it is all the difference to small businesses in my district that may face closing their businesses due to lack of a workforce. Additionally, in not renewing the returning worker provision, our country is shutting down a legal and efficient means for immigrants to enter our country and be a part of the workforce. By not renewing the returning worker provision, legal immigrants will now be faced with choosing between remaining in their country, or breaking our laws to enter illegally.

In closing, I would ask the Subcommittee to consider these three pieces of legislation in a prompt manner. As I have said before, the small business community is an invaluable engine that drives the U.S. economy. Small businesses represent 99.7 percent of all employer firms, employ half of all private sector employees, pay more than 45 percent of the total U.S. private payroll, and have generated from 60 to 80 percent of net new jobs annually over the last decade. Many of these small businesses rely on temporary workers during key times of the year. It is essential that we address their workforce needs. I have included with this statement supplemental materials from several municipalities, the Governor of Virginia, and other business interests that are affected by the H-2B program.