

H-2B WORKFORCE COALITION

PROMOTING A STABLE AND RELIABLE SEASONAL WORKFORCE

Michael R. Shutley, Co-Chair
National Restaurant Association

April 4, 2007

Shawn McBurney, Co-Chair
American Hotel and
Lodging Association

Executive Committee:

Associated General
Contractors of America

American Horse Council

American Immigration
Lawyers Association

American Nursery & Landscape
Association

American Rental Association

American Trucking
Associations

Essential Worker
Immigration Coalition

Federation of Employers and
Workers of America

International Franchise
Association

National Association of
Convenient Stores

National Club Association

National Roofing Contractors
Association

Tree Care Industry
Association

U.S. Chamber of Commerce

The Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

Seasonal employers from the lodging, restaurant, landscaping, tourism and other service industries often rely on the H-2B visa program to fill seasonal jobs when sufficient U.S. workers are not available. The program has historically been very successful through allowing these businesses to supplement and support their full time American workforce with seasonal temporary workers and remain competitive during peak seasons. However, because the recruitment and paperwork burdens required by the H-2B program are expensive and time-consuming, employers turn to the program only after having engaged in extensive efforts to recruit American workers.

For many small and seasonal businesses, this program is the only legal way to hire foreign seasonal workers. However, in each of the two fiscal years leading up to 2005, the program suffered unannounced shut downs due to an inadequate, arbitrarily low cap (66,000 annually) on the number of workers who can participate in the program in any given year-regardless of the need of employers. The program is also used by an array of industries which compete for the available visas.

In 2006, Congress passed a temporary one-year return worker exemption to allow those H-2B employees who counted against the 66,000/year cap in FY2004, 2005 or 2006 to be exempt from the 66,000/year cap in 2007. Even though this temporary fix is in place, the H-2B system reached the bi-annual 33,000 cap in both halves of FY2007. In fact, the 2nd half cap was reached before it began on April 1, 2007.

It is vital for the longevity of seasonal employers in the United States that the H-2B visa program be sustained. Because the program has been successful over the years leading up to the cap situation, many seasonal employers depend on the program to stay in business. The program has its flaws, but through several steps, we can permanently fix the wheel to keep the program running, rather than re-creating one.

A few elements need to be addressed to ensure the success of the H-2B program:

- 1. Permanently fix the cap within comprehensive immigration reform by including a market-based regulator on the base-cap number.**

Though the temporary return worker exemptions have relieved some pressure on the H-2B system, the cap is still being reached at an alarmingly early date. Addressing the cap allows those employers who

are using the system for the first time fair access to these temporary workers. Failure to include a market-based regulator leaves many seasonal non-agricultural industries with an inability to conduct business. This type of regulator will also protect American workers from being displaced by participants in the program.

2. **Make the 3-year return worker exemption permanent.** For those employers who have been in the program for years, these H-2B workers are a critical element to their success. Many returning workers bring institutional knowledge that many employers depend on, thereby eliminating the need for retraining new employees on a yearly basis. Coupled with a market based regulator, the return worker exemption is a necessary element for the continued success of the H-2B system. Further, these workers have already been screened by the government and have proven their trustworthiness.
3. **Address the capacity issues in the consulates and regional Department of Labor offices.** Providing guidance and resources to the Departments of State, Labor and Homeland Security will help streamline the process and allow employers access to the H-2B workers by the "date of need."
 - Consulates: During FY2007, the U.S. State Department announced that due to capacity issues the Monterrey, Mexico office would not process any additional H-2 visas and all workers would have to be processed at other consulates. Monterrey is the highest processing H-2 consulate in Mexico. Due to Congressional pressure, the State Dept. continued processing after a short time, but significant delays are still abundant in Monterrey as well as other Consulates throughout Mexico and Guatemala.
 - Regional Dept. of Labor Offices: Throughout the FY2007, the Chicago and Atlanta regional Department of Labor offices have created specific problems for H-2B employer applicants. In Chicago, employers who have been using the program for years were being denied, even though the applications mirror what was approved the years prior. These denials then create a problem because they cannot be appealed through DoL, they must go through the Department of Homeland Security. In Atlanta, significant and unprecedented delays as well as widespread seemingly arbitrary denials are inflicting significant harm to seasonal employers. Many employers who depend on these workers will not have sufficient workers this spring to remain competitive and some may be forced to go out of business.

The Honorable Edward M. Kennedy
April 4, 2007
Page 3 of 3

The H-2B visa has proven to be much more than a simple temporary worker visa program. It has become an engine for economic growth for small businesses nationwide. Without access to this vital program, many of our nation's small and seasonal employers will have no choice but to shutter their businesses. We urge you to take steps now that will provide a lasting solution to our nation's seasonal employment needs.

Sincerely,

The H-2B Workforce Coalition