



July 10, 2015

TO: The Honorable John Kerry, Secretary of State  
2201 C St NW  
Washington, DC

The Honorable Jeh Johnson, Secretary of Homeland Security  
Secretary of Homeland Security  
Washington, D.C. 20528

CC: The Honorable Thomas Vilsack, Secretary of Agriculture  
1400 Independence Ave. S.W.  
Washington, DC 20250

The Honorable Thomas Perez, Secretary of Labor  
200 Constitution Ave. NW  
Washington, DC 20110

FROM: Undersigned Agricultural Employer/Producer Associations

RE: Visa processing disruptions impacting H-2A (Temporary non-immigrant agricultural workers) visa processing in June 2015.

The recent global visa processing shutdown has raised serious concerns about the reliability of the only legal foreign worker program for agriculture, the H-2A temporary agricultural worker program. Administered by the US Department of Labor and the State Workforce Agencies, the H-2A program requires prompt processing and visa issuance by the Departments of Homeland Security (DHS) and State (DOS) to function.

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While there have been recurring software problems with the DOS visa printing process since 2014 or earlier which caused inconvenience, added cost, and some crop losses to employers; the June 9 global breakdown of the processes between DHS and DOS were catastrophic to those growers expecting their workers to arrive in time to plant and/or harvest highly perishable crops and/or livestock operations. This stoppage threatens the business sustainability of some growers, causes significant economic hardship to others, and has shaken the confidence of the labor intensive agricultural community in the ability of our government to fulfill its role in assuring access to a legal, work eligible labor-force. Without long-term trust in government to manage legal work-force processes predictably, reliably, and in the required numbers, labor intensive agricultural producers will continue to shift their business models to more mechanized row-crops, resulting in less local revenue and significantly fewer local jobs.

Agricultural production is fraught with uncertainty caused by weather, insects, disease, global competition, transportation, economics, and other day-to-day and season-to-season variables. It is critical that our producers at least have full faith and confidence that the worker application, approval, and US entry processes be predictable and dependable. Even with a relatively small number of H-2A workers each year, visa processing bottlenecks are just one of several significant ongoing concerns that continue to cause the majority of growers to avoid the program.

Facing growing domestic labor supply shortages, US agriculture is increasingly turning to employment of H-2A visa workers. The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Applications for visas under this program have grown from a baseline of approximately 50,000 in recent years to over 100,000 for 2015.

As the domestic agricultural workforce continues to age out and our improving US economy provides more and more local year-around employment opportunities, use of the H-2A program will continue to grow. The current H-2A program, though still less than 10% of the total seasonal agricultural workforce, poses significant difficulty for growers to access and serves only a limited subset of agricultural employers.

With the potential for additional statutory improvements to the temporary worker visa programs and the likelihood of further work-eligibility testing in the future this recent steady growth could well result in demand levels that

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could equal 50 to 75% of the current 1.5 million plus seasonal agricultural workforce. We do not believe the current DHS security clearance, and DOS visa printing/crossing facilities have the processes or resources in place to sustain provision of these critical workers to US agricultural employers in the future. We see the system as barely functional and only marginally reliable at present. America's farmers, ranchers, and other labor intensive agricultural employers need and deserve better.

We call on the DHS and DOS to:

- 1) Respond to Congressional inquiries about how and why the global visa processing system broke-down in June 2015. What were the systemic, process, and/or resource issues that led to this break-down. Additionally, what were the numbers and types of visa applications that were delayed, how long were they delayed, and what is the estimated economic loss to various segments of the US economy as a result. When was the problem recognized, and what communication with Congress and other stakeholders was initiated to mitigate potential costs, losses, and other damage?
- 2) What plans, processes, and additional resources are now, or soon to be, put into place to assure these disruptions do not occur in the future in order to restore employer confidence in the systems and programs? Are sufficient resources available and/or provided for in the budgeting and acquisition processes for coming years?
- 3) What non-statutory streamlining, improvements, and other enhancements could be put into place within and between agencies including DOL, DHS, DOS, and USDA to make the H-2A visa application, approval, visa issuance, and border crossing processes more predictable, reliable, and attractive for agricultural employers?
- 4) During the visa crisis, several agricultural employers were eventually able to obtain INA 212(d)(4) waivers due to the unforeseen emergency caused by the visa processing shutdown. However, some ports of entry were more accommodating than others. What processes and procedures can DHS and DOS implement to ensure that future requests are handled systematically and not on an *ad hoc* basis?

5) The 212(d)(4) waiver is submitted through Form I-193 which has a \$585 fee per person plus a \$6.00 I-94 fee. Employers/employees should not have to pay any fees for such waiver requests when the reason for the request is the fault of the federal government. For an employer with a 1,000 H-2A workers, the fee for adjudication of the waiver request would have been over \$600,000. While the fee was waived in this instance on an *ad hoc* basis, what policies and procedures may be implemented to ensure that requests for fee waivers will be granted in all cases such as occurred during the recent shutdown?

Respectfully submitted (by National Council of Agricultural Employers, NCAE) on behalf of NCAE and these listed national agriculture trade organizations:

AmericanHort Association

Florida Fruit and Vegetable Association (FFVA)

National Council of Agricultural Employers (NCAE)

United Fresh Produce Association

U.S. Apple Association

Western Growers

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