



May 19, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Scalia and Acting Secretary Wolf:

We write as leaders in the Agriculture Workforce Coalition, which unites the agricultural industry in the effort to ensure that America's farmers, ranchers and growers have access to a stable and secure workforce now and in the future. During the unprecedented challenge to our nation's economic and public health presented by the novel coronavirus, our members are hard at work sustaining our nation's abundant and diverse production of crops, livestock, and other agricultural commodities so critical to our country. While agricultural employers go to great lengths to recruit and retain U.S. domestic workers, it is well known that foreign-born labor comprises three quarters of the farm labor force. Due to the lack of available domestic workers overall, H-2A visa holders also represent an increasingly important component of the agricultural workforce. The fact that this workforce has been deemed "essential" in the context of the pandemic enforces the critical role it has played and will continue to play in feeding our nation and supporting the vast economic and export value of the industry's products.

The President's April 22nd proclamation directed you, in consultation with the Secretary of State, with reviewing non-immigrant visas programs and recommending measures to "stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers." The H-2A non-immigrant program, which increasingly provides a critical workforce for agriculture, is one such program. We concur that able, willing, and qualified Americans should be provided first preference and priority for job openings before H-2A workers are considered. This is the structure already required by your agencies' regulations for the approval of requests for temporary labor certification, H-2A visa issuance, and subsequent employment.

Any concern that the labor market test and U.S. worker recruitment efforts overseen by government agencies do not adequately consider possible changes in the U.S. labor market by

the time of H-2A worker admission is unfounded. The H-2A program is unique among the non-immigrant visa programs in that the obligation for the employer to hire a willing, available, and qualified U.S. worker remains in force *through the first 50 percent of the H-2A employment period*. While we believe that the so-called “50 percent rule” has proven to be unduly burdensome and the Department of Labor has proposed to revise it, the current application of the 50 percent rule should more than address any concern about domestic workers’ access to agricultural jobs in the context of COVID-19-related unemployment.

We do wish to note that President Trump has spoken forcefully and optimistically regarding reopening the economy. Though the report that 20.5 million jobs were lost in April was stunning, 18 million people who have lost their jobs are said to have self-classified themselves as “temporarily laid off.” It is not realistic to expect many of these workers to actively seek a temporary or seasonal job on a farm. Indeed, farms could suffer severe labor disruptions if U.S. workers briefly accepted an agricultural job but then abandoned the job prior to completion to return to their previous employment.

Though our primary focus is agriculture, we do wish to note that many seasonal industries that utilize non-immigrant visas are closely related and to some extent interdependent with the agricultural sector. Examples include forestry tree planting, landscape plant installation, food processing, aquaculture and hauling/distribution. Therefore, the success of related agricultural sectors is linked to the ability of such seasonal non-agricultural employers to access a supplemental, surge workforce when American workers are not available in sufficient numbers for short-term jobs. The H-2A program, as well as other non-immigrant visa petitions including for seasonal labor, is a critically important safety valve to allow such businesses to address seasonal labor needs, and thus sustain a functioning supply chain for many agricultural sectors, a fact that we ask you to carefully consider in your deliberations.

The agricultural community shares the Administration’s hope for a speedy economic recovery as states begin easing stay-at-home orders. Moreover, agricultural employers are committed to protecting the health of their entire workforce and the American public. We respectfully urge you to oppose changes to the H-2A program that will make it more difficult for our domestic growers and producers to succeed and do their part to contribute to the U.S. economic recovery.

Sincerely,

The Agriculture Workforce Coalition