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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

April 24, 2017

Edward C. Hugler  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Dear Acting Secretary Hugler:

I write to request information and documents regarding the H-2B visa program. As you know, the program allows for the admission of foreign workers into the United States to perform nonagricultural labor on a temporary basis. Employers that use the program must certify via a rigorous process at the Department of Labor (DOL) that there are no qualified workers available in the United States to perform the work and that the hiring of foreign workers will not adversely affect wages and working conditions of American workers who are similarly employed.

U.S. Citizenship and Immigration Services (USCIS) announced that it had reached the statutory cap of 33,000 H-2B workers for the first half of Fiscal Year (FY) 2017 on January 12, 2017<sup>1</sup> and announced on March 16, 2017 that the statutory cap for the second half of FY 2017 had been reached.<sup>2</sup> This is the third consecutive year that the statutory cap of 66,000 annual visas has been reached,<sup>3</sup> indicating that demand for temporary nonagricultural labor continues to exceed supply.

Further complicating issues for employers, the exemption from the cap in previous years for returning workers was not included in the continuing resolution signed into law on December 10, 2016.<sup>4</sup> According to USCIS, petitions for 85,202 H-2B worker visas were approved in FY 2016.<sup>5</sup> However, that figure included returning and other exempt workers who were not subject

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<sup>1</sup> U.S. Citizenship and Immigration Services: *USCIS Reaches the H-2B Cap for the First Half of Fiscal Year 2017* (Jan. 12, 2017).

<sup>2</sup> U.S. Citizenship and Immigration Services: *USCIS Reaches the H-2B Cap for Fiscal Year 2017* (March 16, 2017).

<sup>3</sup> Congressional Research Service, *The H-2B Visa and the Statutory Cap: In Brief* (R44306) (Dec. 11, 2015); U.S. Citizenship and Immigration Services: *USCIS Reaches H-2B Cap for Fiscal Year 2016* (May 19, 2016).

<sup>4</sup> Pub. L. No. 114-254 (2016).

<sup>5</sup> U.S. Citizenship and Immigration Services, *H-2B Nonagricultural Temporary Worker Visa and Status: Fiscal Year 2016 Semiannual Report to Congress* (Feb. 22, 2017).

to the statutory cap. According to DOL's Office of Foreign Labor Certification, as of March 21 more than 4,800 applications representing more than 83,000 individual workers had been submitted for the second half of FY 2017 alone.<sup>6</sup> Clearly, there are more employers that are interested in hiring H-2B workers than there are available visas.

Additionally, under a final rule recorded in the Federal Register on April 29, 2015, employers were given less time to file an Application for Temporary Employment Certification with DOL and were required to advertise job openings for a longer period of time.<sup>7</sup> Federal regulations require the Department to notify an employer within seven business days if an employer's Temporary Employment Certification application is incomplete or contains errors.<sup>8</sup> Multiple constituents have expressed concern that this standard is not being met.

Despite rigid requirements from DOL requiring them to pay, at a minimum, the prevailing wage and to advertise job openings for an extended period of time, many business owners, including many landscaping companies in Missouri, say they have been unable to hire and retain American workers for these labor-intensive, seasonal positions. They are concerned about the detrimental impact the inability to supplement the domestic workforce with H-2B employees will have on their companies.

In order to better assess the H-2B visa program, I ask that you provide answers to the following questions:

- 1) How many Applications for Temporary Employment Certification did DOL receive in FY 2017 and in each of the past three fiscal years? How many H-2B workers were included in those applications?
- 2) How many applications did DOL certify for FY 2017 and for each of the past three fiscal years? How many applications were rejected? How many H-2B workers were included in the applications that were certified and rejected?
- 3) Of the total number of Applications for Temporary Employment Certification that DOL received for FY 2017, how many came from employers that submitted applications in the previous three fiscal years?
- 4) Upon receipt of an employer's Application for Temporary Employment Certification, what was the average length of time it took DOL to either certify or reject each application for FY 2017? How does that compare to processing times for each of the previous three fiscal years?

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<sup>6</sup> United States Department of Labor, Employment & Training Administration, iCERT Visa Portal System ([icert.doleta.gov](http://icert.doleta.gov)) (accessed March 26, 2017).

<sup>7</sup> 20 CFR § 655.15.

<sup>8</sup> 20 CFR § 655.31.

- 5) For FY 2017 applications, what was the average length of time it took DOL to notify applicants when an applicant's Temporary Employment Certification application was found to be incomplete or contain errors? Please explain the cause(s) for delay if the seven-day standard was not being met.
- 6) Please list the numbers of H-2B workers contained in Applications for Temporary Employment Certification for FY 2017 by occupation. What was the average wage listed for each occupation? What was the average wage listed for all H-2B workers in FY 2017 applications?
- 7) How many Applications for Temporary Employment Certification did DOL process for the first half of FY 2017 after USCIS announced on January 12, 2017 that the statutory cap of 33,000 H-2B visas had been reached for the first half of the fiscal year?
- 8) What is DOL protocol for continuing to process Applications for Temporary Employment Certification after the statutory cap has been met?
- 9) How many applicants had an Application for Temporary Employment Certification certified by DOL for the first half of FY 2017 but then failed to procure H-2B visas because the statutory cap for the first half of the fiscal year had been reached? Of those applicants, how many re-submitted an Application for Temporary Employment Certification for the second half of FY 2017?

I ask that you respond to this request no later than May 15, 2017. If you are unable to meet that deadline or should you have any questions, please contact Joel Walsh at (202) 224-5618 or [joel\\_walsh@hsgac.senate.gov](mailto:joel_walsh@hsgac.senate.gov). Please send any official correspondence related to this request to [Amanda\\_Trosen@hsgac.senate.gov](mailto:Amanda_Trosen@hsgac.senate.gov).

Sincerely,



Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman

RON JOHNSON, WISCONSIN, CHAIRMAN

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WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

April 24, 2017

The Honorable Rex Tillerson  
Secretary  
U.S. Department of State  
2201 C St. NW  
Washington, DC 20520

Dear Mr. Secretary:

I write to request information and documents regarding the H-2B visa program. As you know, the program allows for the admission of foreign workers into the United States to perform nonagricultural labor on a temporary basis. Employers that use the program must certify with the Department of Labor that there are no qualified workers available in the United States to perform the work and that the hiring of foreign workers will not adversely affect wages and working conditions of American workers who are similarly employed.

U.S. Citizenship and Immigration Services (USCIS) announced that it had reached the statutory cap of 33,000 H-2B workers for the first half of Fiscal Year (FY) 2017 on January 12, 2017<sup>1</sup> and announced on March 16, 2017 that the statutory cap for the second half of FY 2017 had been reached.<sup>2</sup> This is the third consecutive year that the statutory cap of 66,000 annual visas has been reached,<sup>3</sup> indicating that demand for temporary nonagricultural labor continues to exceed supply.

Further complicating issues for employers, the exemption from the cap in previous years for returning workers was not included in the continuing resolution signed into law on December 10, 2016.<sup>4</sup> According to USCIS, the Department of State approved visas for 84,626 H-2B

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<sup>1</sup> U.S. Citizenship and Immigration Services: *USCIS Reaches the H-2B Cap for the First Half of Fiscal Year 2017* (Jan. 12, 2017).

<sup>2</sup> U.S. Citizenship and Immigration Services: *USCIS Reaches the H-2B Cap for Fiscal Year 2017* (March 16, 2017).

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<sup>4</sup> Pub. L. No. 114-254 (2016).

workers in FY 2016.<sup>5</sup> However, that figure included returning and other exempt workers who were not subject to the statutory cap. According to the Department of Labor's Office of Foreign Labor Certification, as of March 21 more than 4,800 applications representing more than 83,000 individual workers had been submitted for the second half of FY 2017 alone.<sup>6</sup> Clearly, there are more employers that are interested in hiring H-2B workers than there are available visas.

Despite rigid requirements from the Department of Labor requiring them to pay, at a minimum, the prevailing wage and to advertise job openings for an extended period of time, many business owners, including many landscaping companies in Missouri, say they have been unable to hire and retain American workers for these labor-intensive, seasonal positions. They are concerned about the detrimental impact the inability to supplement the domestic workforce with H-2B employees will have on their companies.

In order to better assess the H-2B visa program, I ask that you provide answers to the following questions.

- 1) How many applications for H-2B visas did the State Department receive for FY 2017 and for each of the past three fiscal years? How many visas were issued each year? How many visa applications were rejected?
- 2) For the past three fiscal years (FY 2014 through FY 2016), how many workers were exempt from the annual statutory cap of 66,000 H-2B visas? Of that total, how many were returning workers? How many were workers petitioning to extend their stay? How many were fish roe processors? How many worked in the Commonwealth of Northern Mariana Islands and/or Guam? Please list any other reasons why workers were exempted from the statutory cap.
- 3) How many returning workers, who would have been eligible for an exemption in previous years, were counted against the statutory cap for FY 2017?
- 4) For FY 2017 and for each of the past three fiscal years, what was the average length of time it took the State Department to process each H-2B visa application after it was received?
- 5) Please list the number of H-2B visas issued for FY 16 by occupation.
- 6) Please list the number of H-2B visas issued for FY 16 by state or U.S. territory in which the worker was employed.

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<sup>5</sup> U.S. Citizenship and Immigration Services, *H-2B Nonagricultural Temporary Worker Visa and Status: Fiscal Year 2016 Semiannual Report to Congress* (Feb. 22, 2017).

<sup>6</sup> United States Department of Labor, Employment & Training Administration, iCERT Visa Portal System ([icert.doleta.gov](http://icert.doleta.gov)) (accessed March 26, 2017).

The Honorable Rex Tillerson  
April 24, 2017  
Page 3

- 7) Please list the number of H-2B visas issued by country of nationality for each H-2B worker.

I ask that you respond to this request no later than May 15, 2017. If you are unable to meet that deadline or should you have any questions, please contact Joel Walsh at (202) 224-5618 or [joel\\_walsh@hsgac.senate.gov](mailto:joel_walsh@hsgac.senate.gov). Please send any official correspondence related to this request to [Amanda\\_Trosen@hsgac.senate.gov](mailto:Amanda_Trosen@hsgac.senate.gov).

Sincerely,



Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman

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CHRISTOPHER R. HIXON, STAFF DIRECTOR  
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

April 24, 2017

James McCament  
Acting Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave. NW  
Washington, DC 20008

Dear Acting Director McCament:

I write to request information and documents regarding the H-2B visa program. As you know, the program allows for the admission of foreign workers into the United States to perform nonagricultural labor on a temporary basis. Employers that use the program must certify with the Department of Labor that there are no qualified workers available in the United States to perform the work and that the hiring of foreign workers will not adversely affect wages and working conditions of American workers who are similarly employed.

As you are aware, U.S. Citizenship and Immigration Services (USCIS) announced that it had reached the statutory cap of 33,000 H-2B workers for the first half of Fiscal Year (FY) 2017 on January 12, 2017<sup>1</sup> and announced on March 16, 2017 that the statutory cap for the second half of FY 2017 had been reached.<sup>2</sup> This is the third consecutive year that the statutory cap of 66,000 annual visas has been reached,<sup>3</sup> indicating that demand for temporary nonagricultural labor continues to exceed supply.

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<sup>4</sup> Pub. L. No. 114-254 (2016).

2016.<sup>5</sup> However, that figure included returning and other exempt workers who were not subject to the statutory cap. According to the Department of Labor's Office of Foreign Labor Certification, as of March 21 more than 4,800 applications representing more than 83,000 individual workers had been submitted for the second half of FY 2017 alone.<sup>6</sup> Clearly, there are more employers that are interested in hiring H-2B workers than there are available visas.

Despite rigid requirements from the Department of Labor requiring them to pay, at a minimum, the prevailing wage and to advertise job openings for an extended period of time, many business owners, including many landscaping companies in Missouri, say they have been unable to hire and retain American workers for these labor-intensive, seasonal positions. They are concerned about the detrimental impact the inability to supplement the domestic workforce with H-2B employees will have on their companies.

In order to better assess the H-2B visa program, I ask that you provide answers to the following questions.

- 1) How many petitions for H-2B visas did USCIS receive for FY 2017 and for each of the past three fiscal years, and how many workers were included in those petitions? How many petitions – and workers – were approved each year? How many were refused?
- 2) For the past three fiscal years (FY 2014 through FY 2016), how many workers were exempt from the annual statutory cap of 66,000 H-2B visas? Of that total, how many were returning workers? How many were workers petitioning to extend their stay? How many were fish roe processors? How many worked in the Commonwealth of Northern Mariana Islands and/or Guam? Please list any other reasons why workers were exempted from the statutory cap.
- 3) How many returning workers, who would have been eligible for an exemption in previous years, were counted against the statutory cap for FY 2017?
- 4) For FY 2017 and for each of the past three fiscal years, what was the average length of time it took USCIS to process each petition once the Department of Labor approved the applicant's Application for Temporary Employment Certification?
- 5) Please describe USCIS's formula for determining when the statutory cap has been reached for each half of each fiscal year.

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<sup>5</sup> U.S. Citizenship and Immigration Services, H-2B Nonagricultural Temporary Worker Visa and Status: Fiscal Year 2016 Semiannual Report to Congress (Feb. 22, 2017).

<sup>6</sup> United States Department of Labor, Employment & Training Administration, iCERT Visa Portal System ([icert.doleta.gov](http://icert.doleta.gov)) (accessed March 26, 2017).



- 6) Please describe USCIS's process for verifying that all 33,000 visas were, in fact, issued for the first half of FY 2017 after its announcement that the statutory cap for the first half of the fiscal year had been reached. Will USCIS process additional petitions for the first half of FY 2017 if it is determined that 33,000 visas were not, in fact, issued?
- 7) Please list the number of H-2B visas issued for FY 16 by occupation.
- 8) Please list the number of H-2B visas issued for FY 16 by state or U.S. territory in which the worker was employed.

I ask that you respond to this request no later than May 15, 2017. If you are unable to meet that deadline or should you have any questions, please contact Joel Walsh at (202) 224-5618 or [joel\\_walsh@hsgac.senate.gov](mailto:joel_walsh@hsgac.senate.gov). Please send any official correspondence related to this request to [Amanda\\_Trosen@hsgac.senate.gov](mailto:Amanda_Trosen@hsgac.senate.gov).

Sincerely,



Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman