

**Congress of the United States**  
**Washington, DC 20515**

March 4, 2021

Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Mayorkas,

We write on behalf of the many small and seasonal businesses in Michigan that rely on the H-2B visa program to supplement their U.S. workers to ask that you promptly and fully implement the discretionary language in the FY 2021 Consolidated Appropriations Act for the Department of Homeland Security to authorize up to the maximum number of H-2B visas permissible. We applaud President Biden's past recognition of the importance of temporary foreign workers and their positive impact on American businesses and jobs.

The H-2B program is a foreign guest worker program that permits businesses with seasonal needs to hire foreign workers to supplement their U.S. work force. The H-2B program includes extensive safeguards to assure that U.S. workers are not adversely affected and foreign workers are protected from employer abuse.

These visas are particularly important to Michigan. One key example is Mackinac Island, which, in 2018 was named the number one summer tourist destination in the country, is almost completely closed during the winter months, when it is accessible only by snowmobile or plane. No cars are ever permitted on the Island. The economic benefit of Mackinac's seasonal tourist revenue is seen in its contribution, along with Cheboygan County, of significant tax revenues to the State. The U.S. Department of Labor (DOL) reports that in 2020, 267 Michigan employers applied for H-2B labor certifications for 3,984 positions. Seasonal Mackinac Island businesses generally employ about 30 percent of the H-2B workers throughout Michigan. These foreign guest workers represent about 20 percent of the workers on Mackinac Island during the open season. These seasonal foreign guest workers make it possible for businesses to employ their year-round U.S. workers. Employers throughout Michigan need and use H-2B workers for a variety of seasonal jobs, including county fairs and moderately priced family motels and restaurants. In addition to revenue benefits to the State, Michigan residents at all income levels benefit from the businesses that operate with H-2B workers supplementing their US work force.

In 2015, the longstanding statutory cap of 66,000 H-2B visas per fiscal year (33,000 for each half) was hit for the first time in several years, harming many seasonal employers. Beginning in 2016, Congress provided annual H-2B cap relief. In 2016, Congress approved a returning worker exemption (RWE), which provided that an H-2B worker who was counted against the statutory cap in one of the previous three years would not count against the cap in the current year. An RWE had been enacted by Congress in fiscal years 2004-2006 with bipartisan support.

In fiscal years 2017, 2018, 2019, and 2020, Congress provided discretionary authority to the Secretary of Homeland Security, after consultation with the Secretary of Labor, to approve additional visas up to the highest total number approved when an RWE was in effect. In fiscal years 2017 and 2018, the Secretary released 15,000 additional visas very late in the season and businesses and their U.S. workers suffered irreparable harm. In 2019, the Secretary released 30,000 additional visas to returning workers, well after the April start of the season for many businesses, including those on Mackinac Island. Some Mackinac Island businesses were still waiting for H-2B workers in early July. In Fiscal Year 2020, the Secretary released 35,000 additional visas but allocated 10,000 of those to Northern Triangle countries that have not been a source of foreign seasonal workers. Again, these visas became available late in the season for Mackinac Island and other Michigan businesses. The insufficient amount of workers caused businesses to be adversely affected.

Members of Congress, including the undersigned, are working in a bipartisan, bicameral fashion to find acceptable, permanent legislative improvements to the H-2B program that would provide more visas to meet the needs of the truly seasonal businesses that rely on H-2B workers to supplement their U.S. workforce. In the meantime, you retain the authority to issue additional H-2B visas up to the highest number of visas that were issued when an RWE was in effect: 135,320 total (2006). In light of current circumstances, especially the need to rebuild our economy, we urge you to promptly use your authority to issue visas to deserving businesses up to the maximum allowed. We acknowledge that the U.S. is experiencing significant unemployment. Unfortunately, that does not translate into more U.S. employees willing to perform seasonal jobs, especially in remote parts of northern Michigan. Seasonal businesses can only receive a DOL labor certification, the first step in the process for obtaining an H-2B visa worker, if the business demonstrates to the satisfaction of the Secretary of Labor that it has tried unsuccessfully to recruit a U.S. worker for the job. The issuance of a DOL labor certification to an employer, in itself, meets the definition to trigger your authority to issue additional visas under your existing statutory authority, as set forth below:

“SEC. 105. Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in fiscal year 2021 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor, may increase the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) in such fiscal year above such limitation by not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation.”

Last week, the Department of Homeland Security announced the 33,000 H-2B visa cap for the second half of the fiscal year was reached on February 12. It is critical that additional H-2B visas be made available immediately, as seasonal businesses with an April 1st start date and Notices of Acceptance (NOAs) from DOL have begun to file their Recruitment Reports with DOL. These businesses will soon be filing with USCIS for H-2B visas. The businesses that need H-2B visa workers need to know now how to structure their 2021 season. If additional visas are not made

available soon, these businesses will need to make plans to open late, curtail services and hours, cancel long-standing reservations, and possibly dismiss U.S. workers.

We appreciate your attention to this critical issue for Michigan and look forward to hearing from you.

Sincerely,




Jack Bergman  
Member of Congress



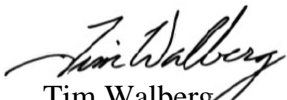
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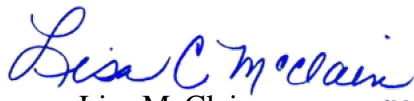
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cc: Acting Secretary Milton Stewart, Department of Labor  
Brian C. Deese, National Economic Council  
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