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Congress of the United States
House of Representatives
Washington, DC 20515

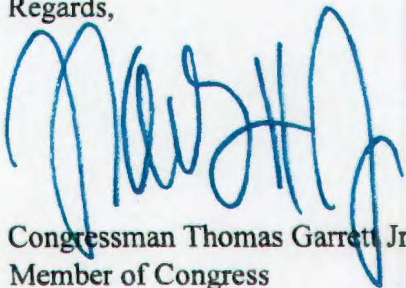
January 31, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Donald J. Trump,

Due to abnormalities in the recent hurricane activities, the 60,000-worker cap placed on seasonal H-2B visa issuance is far too small to address the needs of employers in Virginia's Fifth Congressional District and across the United States. In light of this fact we request an immediate raising or elimination of restrictions governing H-2B visa issuance. We would also ask you to implement an evaluation to immediately review reimplementation of the returning workers policy. Prompt response is greatly appreciated, Americans depend on swift action.

Regards,



Congressman Thomas Garrett Jr.
Member of Congress

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CC:

The Department of Homeland Security
1120 Vermont Avenue NW
Washington, D.C. 20005

Chairman Mike Conaway
2430 Rayburn House Office Building
Washington, D.C. 20515

Chairman Bob Goodlatte
2309 Rayburn House Office Building
Washington, D.C. 20515

Chairman Michael McCaul
2001 Rayburn House Office Building
Washington, D.C. 20515



U.S. Citizenship
and Immigration
Services

March 19, 2018

The Honorable Thomas Garrett, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Representative Garrett:

Thank you for your January 31, 2018 letter to President Trump. The White House forwarded your letter to the Department of Homeland Security (DHS), and Secretary Nielsen asked that I respond on her behalf.

Your letter expressed specific concerns with the H-2B temporary nonagricultural worker program, particularly with the Fiscal Year (FY) 2018 numerical limit (the “cap”) and the impact that any H-2B cap closure could have on employers in Virginia and the rest of the United States. You requested that the president raise the cap or eliminate restrictions governing H-2B visa issuance and evaluate reimplementation of the returning worker program.

There is a statutory cap on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year. Currently, Congress has set the H-2B cap at 66,000 per fiscal year, with up to 33,000 allocated to workers who begin employment in the first half of the fiscal year (October 1 to March 31) and the remainder allocated to workers who begin employment in the second half of the fiscal year (April 1 to September 30). U.S. Citizenship and Immigration Services (USCIS) has a responsibility to oversee and manage the H-2B cap, which includes ensuring that the total sum of approved beneficiaries of H-2B petitions (Form I-129, Petition for a Nonimmigrant Worker) does not exceed the statutory cap for each year.¹ This approach is consistent with current laws and regulations² in that the annual cap of 66,000 visas is not exceeded and that it is allocated evenly between both halves of each fiscal year.

Regarding your request to reauthorize the returning worker program, only Congress possesses the authority to provide that or other potential mechanisms to increase the availability of H-2B workers, as it did in FY 2016³ and in FY 2017.⁴

¹ The USCIS cap calculation excludes those beneficiaries that are exempt or otherwise not subject to the H-2B cap. This includes requests that USCIS receives for extension of stay, change in employment where the beneficiary was continuously maintaining H-2B status, amendments to an alien’s H-2B employment, fish roe processors, fish roe technicians, and supervisors of fish roe processing, and workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands or Guam. For FY16 only, this exemption also included H-2B nonimmigrants named and certified as “returning workers.” See INA § 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), as revised by the *FY 2016 DHS Appropriations Act* (P.L. 114-113).

² See INA 214(g)(1); see also 8 C.F.R. 214.2(h)(8)(ii)(B).

³ For FY 2016, H-2B nonimmigrants certified and confirmed as “returning workers” were exempted from the H-2B cap. See INA § 214(g)(9)(A), 8 U.S.C. § 1184(g)(9)(A), as revised by the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015).

The Honorable Thomas Garrett, Jr.

Page 2

Please be assured that USCIS understands the H-2B nonagricultural worker program's significance to seasonal employers and is committed to ensuring that the program functions as it was intended.

Thank you again for your letter, and also for taking the time to express your thoughts and concerns during our congressional call with the Department of Labor regarding the H-2B nonimmigrant visa program. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,



L. Francis Cissna
Director

cc: Chairman Mike Conway, House Committee on Agriculture
Chairman Bob Goodlatte, House Committee on the Judiciary
Chairman Michael McCaul, House Committee on Homeland Security

⁴ For FY 2017, the Secretary of Homeland Security was authorized to increase the total number of available H-2B visas "after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in fiscal year 2017 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor." See Sec. 543 of the Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017), as implemented by Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 82 Fed. Reg. 32,987 (July 19, 2017).