



February 14th, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen-

I write today to ask for extraordinary consideration for the forthcoming request for foreign labor for Silver Bay Seafoods ("Silver Bay").

Silver Bay is one of the largest salmon processors in the US, with five processing plants in Alaska (Naknek, Valdez, Sitka, Craig and Metlakatla). Each plant is located in a rural area and employs between 200 and 600 seasonal production workers. The workers are provided housing, meals and roundtrip transportation between Seattle and the assigned plant in Alaska. An entry-level seasonal production worker grosses approximately \$1,000 per week, depending upon the volume of fish harvested and processed. The processing season lasts 2 ½ to 3 months, generally beginning in June and ending in late August.

Silver Bay would prefer to hire domestic workers, but has been unable to find enough qualified US workers. For example, in 2017, Silver Bay held 132 recruiting events in 32 states, spending over \$1M in its recruiting, including over \$800,000 in advertising. Unfortunately, with this domestic work force, Silver Bay experienced a turnover rate of approximately 50% with some workers terminating their employment after one day. This lack of a stable and qualified work force made it impossible for Silver Bay to operate its plants at or near capacity. With a decrease in production, our fishermen owners were forced to suspend or significantly reduce their harvest efforts so our plants could process the fish it already had already purchased. In Naknek, our reduced operating capacity resulted in a financial loss of more than \$15M to Silver Bay and its fishermen.

This year Silver Bay redoubled its efforts to find domestic workers. It doubled the number of HR recruiters, increased the starting wage from \$10/hour to over \$11/hour and has already started recruiting events. However, given last year and the further decline in the unemployment rates around the country, Silver Bay and its fishermen owners are very concerned about the likelihood of hiring a qualified and stable workforce to effectively operate its facilities.

To remedy this situation, Silver Bay requested 850 H2Bs from USDOL's Office of Foreign Labor Certification. Silver Bay filed its application on January 1, 2018, but is concerned that

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it will lose out because of the number applications (over 5,000 applications requesting more than 85,000 positions) and the timing of its filing. Silver Bay was under the impression that it had to wait until 12:01 a.m.(AKST) – the time zone in which the employment would occur. Given the number of applications filed, Silver Bay is concerned that this delay puts it at a severe disadvantage under DOL's 1/17/18 Processing Announcement (i.e., First In First Out on 2/20/18). Under the pre-1/17/18 procedure, applicants received approval (i.e., certified H-2B applications) once they met all regulatory requirements.

We are seeking extraordinary help to enable Silver Bay to be successful in 2018. With an H2B workforce, Silver Bay will have ability to purchase more than 200 million lbs of salmon from its 450 independent fishermen shareholders. These 450 permitted fishermen represent 450 American small businesses with their own employees. Lack of H2B workers will adversely affect these 450 small businesses and have a large downstream effect on the surrounding economy of remote Alaska. It also will reduce the food supply of salmon for the domestic market and as an overseas export.

Should you have any questions, please do not hesitate to call me. Or, I can be available anytime for an in-person discussion. Your help and consideration is both appreciated and, frankly, needed.

Thank you and best regards,

A handwritten signature in dark ink, appearing to read "Brian Gannon", with a stylized flourish at the end.

Brian Gannon
Senior Director, Legislative Affairs and Labor Relations
United Work and Travel
Owings Mills, MD
406.314.0646



**U.S. Citizenship
and Immigration
Services**

April 16, 2018

Mr. Brian Gannon
Legislative Affairs and Labor Relations
United Work and Travel
11515 Cronridge Drive, Suite Q
Owings Mills, Maryland 21117

Dear Mr. Gannon:

Thank you for your February 14, 2018 letter to the Department of Homeland Security. Secretary Nielsen asked that I respond on her behalf.

Your letter described the importance of the seafood industry to Alaska's economy and your concerns that an individual employer may be disadvantaged in the hiring of H-2B temporary non-agricultural workers by the manner in which applications for temporary labor certification have been processed. You have requested aid for this employer, its independent fishermen shareholders, and the surrounding communities that rely on the jobs it provides.

Regarding your concern with the processing of the H-2B temporary labor certifications, U.S. Citizenship and Immigration Service (USCIS) must respectfully refer you to the U.S. Department of Labor, the agency responsible for adjudicating requests for temporary labor certifications.

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 33,000 for workers who begin employment in the first half of the fiscal year (October 1 - March 31) and 33,000 for workers who begin employment in the second half of the fiscal year (April 1 - September 30). USCIS has a responsibility to oversee and manage the H-2B cap, ensuring that the total sum of H-2B petitions (Form I-129, Petition for a Nonimmigrant Worker) does not exceed the statutory cap each year. As long as it determines that it has received sufficient numbers of petitions to reach the respective semi-annual limits, USCIS continues to accept and adjudicate all timely filed H-2B petitions. This approach is consistent with current laws and regulations 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.

On February 21, 2018, USCIS began receiving cap-subject H-2B petitions for the second half of fiscal year 2018. During the first 5 business days, USCIS received petitions filed on behalf of far more beneficiaries than the number of H-2B visas statutorily available.

As a result, to ensure a fair and orderly allocation and in accordance with applicable regulations, USCIS conducted a lottery on February 28, 2018 to randomly select enough petitions to meet the cap. USCIS rejected and returned the petitions and associated filing fees to all petitioners that were not selected, as well as any cap-subject petitions received after February 27, 2018.

The numerical limitations on the H-2B program are established by Congress. In regard to possible remedies for employers that may be affected by the cap, Congress possesses the authority to provide potential avenues of relief, as it did in fiscal years 2016,¹ 2017,² and most recently, in March of this year.³

Please be assured that USCIS understands the importance of the H-2B program to many individual employers, seasonal industries, and local and state economies. USCIS is committed to ensuring that the H-2B program functions as intended within the statutory and regulatory framework.

I hope this information is helpful to you. Thank you again for your letter and interest in this important issue.

Respectfully,



L. Francis Cissna
Director

¹ For fiscal year 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).

² For fiscal year 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. 32987 (July 19, 2017).

³ *See* Division M, Title II, section 205 of the Consolidated Appropriations Act of 2008, Public Law 115-141 (March 23, 2018). Note too that per Division H, Title I, section 111 of the Consolidated Appropriations Act of 2018, Public Law 115-141, Congress extended the ability of certain seafood employers to “stagger,” under specified conditions, the arrival of H-2B workers for a period of up to 120 days after the H-2B employer’s stated employment start date.