CHARLES W. DENT
15TH DISTRICT, PENNSYLVANIA

2082 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6411
FAX: (202) 226-0778

www.dent.house.gov
twitter.com/repcharliedent
www.facebook.com/congressmandent

# Congress of the United States
## House of Representatives
### Washington, DC 20515–3815

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
MILITARY CONSTRUCTION, VETERANS
AFFAIRS, AND RELATED AGENCIES
CHAIRMAN

SUBCOMMITTEE ON STATE,
FOREIGN OPERATIONS,
AND RELATED PROGRAMS

SUBCOMMITTEE ON TRANSPORTATION,
HOUSING AND URBAN DEVELOPMENT
AND RELATED AGENCIES

March 7, 2018

Mr. L. Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529



Dear Director Cissna:

My staff received an email response to my January 17, 2018 letter (enclosed here) regarding an L-1B visa issue confronting a constituent company, Air Products and Chemicals Inc. (Air Products), based near Allentown, PA. While I appreciate the response's references to USCIS memoranda and process, I am concerned the Agency's implementation in the individual case discussed could set a precedent for future applications.

As mentioned, Air Products has two major liquid hydrogen plants located in New Orleans, LA and Sarnia, Ontario, Canada. From time to time, one of these facilities is taken offline for routine maintenance. During this outage, the company increases production at the other facility to ensure customer supply is not interrupted. However, there is a shortage of driver technicians with the specialty training and skills required for delivery. Of the 748 commercial drivers employed by Air Products, only 77 have the specialized training and experience to handle liquid hydrogen. In order to meet customer demand, the company must shift drivers from one plant to the other – typically for seven to fourteen days – during this brief outage.

On five separate occasions over the last thirteen years, Air Products drivers obtained L-1B visas. At the request of USCIS, the company provided documentation demonstrating the special training drivers require to handle liquid hydrogen and explained the uniqueness associated with delivering this product:

> *"The primary function of our drivers is to safely deliver liquid hydrogen. This unique and specialized process involved lengthy training on the delivery equipment, operations and maintenance of storage vessels and customer delivery pump systems at our customer locations. Unlike other positions that require specific limited specialized tasks, the entire liquid hydrogen delivery process is specialized, as is the knowledge required to transport the product in a manner that is both safe and adheres to federal and provincial laws, guidelines, and regulations."*

DISTRICT OFFICES

LEHIGH VALLEY
3900 HAMILTON BOULEVARD, SUITE 207
ALLENTOWN, PA 18103
(610) 770-3490
FAX: (610) 770-3498

BERKS COUNTY
61 NORTH 3RD STREET
HAMBURG, PA 19526
(610) 562-4281
FAX: (610) 562-4352

LEBANON COUNTY
342 F WEST MAIN STREET
ANNVILLE, PA 17003
(717) 867-1026
FAX: (717) 867-1540

DAUPHIN COUNTY
250 WEST CHOCOLATE AVENUE, SUITE 2
HERSHEY, PA 17033
(717) 533-3959
FAX: (717) 533-3979

As stated to USCIS, liquid hydrogen drivers require additional training compared to other Department of Transportation certified drivers. Training and certification typically takes three months. This is three times as long as the process for drivers handling liquid nitrogen, liquid oxygen, or liquid argon, which takes a month. Despite the fact that only one in ten Air Products commercial drivers possess the qualification to handle liquid hydrogen, USCIS informed the company that the applicant's knowledge is not advanced relative to the rest of the company.

Yet, the Agency responded with a denial setting a new precedent. Understandably, this precedent – if followed – will not only adversely impact Air Products' operations, but U.S. and Canadian customers. Putting the significant revenue, reputational, and contractual obligations aside, I have been informed that replacing drivers with contractors could cost millions of dollars. More troubling, however, is the concern that there are not enough contractors available to fill the void no matter the cost. Furthermore, if USCIS employs this precedent, Air Products will not be able to renew visas held by existing drivers, leaving them without any drivers. With Air Products set to be the only U.S.-based large industrial gas company, USCIS' myopic adjudication will ultimately result in the business going to a foreign competitor.

While I appreciate and support the Agency's role in mitigating national security and fraud risks to the immigration system, I am concerned with USCIS' rationale for denying visas to these drivers working to support a U.S. company, delivering to U.S. customers for a limited duration of time. The number of drivers involved is limited. Their time in the United States is limited. They are Canadian citizens with families and jobs in Canada. There is no risk to security or challenge to the integrity of the immigration system. Therefore, I respectfully request you reconsider your agency's position in this case, as well as your agency's guidance for decisions on these types of cases moving forward.

Sincerely,

Charles W. Dent
Member of Congress

cc: The Honorable Robert P. Casey
The Honorable Patrick J. Toomey
The Honorable Lou Barletta
The Honorable Wilbur Ross
The Honorable Kirstjen Nielsen

CHARLES W. DENT
15TH DISTRICT, PENNSYLVANIA

2082 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6411
FAX: (202) 226-0778

www.dent.house.gov
twitter.com/repcharliedent
www.facebook.com/congressmandent

# Congress of the United States
## House of Representatives
### Washington, DC 20515–3815

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
MILITARY CONSTRUCTION, VETERANS
AFFAIRS, AND RELATED AGENCIES
CHAIRMAN

SUBCOMMITTEE ON STATE,
FOREIGN OPERATIONS,
AND RELATED PROGRAMS

SUBCOMMITTEE ON TRANSPORTATION,
HOUSING AND URBAN DEVELOPMENT
AND RELATED AGENCIES

January 17, 2018

Mr. L. Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529

Dear Director Cissna:

I am writing to request additional information regarding a response that a constituent company has received in reply to their application for L-1B visas.

Air Products and Chemicals, Inc., based in Trexlertown, Pennsylvania, provides gases, equipment, and related services to a wide range of industries. As part of their operations, they have two major liquid hydrogen plants located in New Orleans, Louisiana and Sarnia, Ontario. During routine maintenance of these facilities, one facility is shut down and operations are shifted to the other active facility. To ensure that they are able to service all of their U.S. customers during this time, Air Products transfers drivers who fulfill deliveries at the shutdown plant to the active facility for a period of approximately three to four weeks. The company has successfully obtained L-1B visas to temporarily transfer these drivers on five separate occasions over the last 13 years.

In March 2016, Air Products submitted an L-1B application for a single driver. In response, they received a Request for Evidence (RFE) from U.S. Citizenship and Immigration Services (USCIS) in November 2016. After responding to this RFE in January 2017, Air Products received a Notice of Denial in December 2017. Additionally, in 2017, Air Products applied for 20 L-1B visas for their Sarnia drivers to work at the New Orleans plant. In response, the company received an RFE for six of the applications. I have been informed that Air Product's application and situation requiring these visas was not any different than previous instances in which the visas were approved. Without these visas and a full complement of drivers, Air Products will not be able to meet its current obligations.

I am concerned about the potential negative impact that USCIS' decision may have on both Air Products and their business customers, and would like further clarification on its decision-making process for L-1B visas. Specifically, can you please advise me as to whether USCIS has implemented any changes to its review of L-1B visas that may have impacted its decision regarding Air Products' 2016 and 2017 applications? If there has been a change to this process, could you also please provide an explanation for the agency's change and how it is the agency has communicated the change to applicants?

Thank you for your attention to this request. If you have any questions or need additional information, please contact Bryce Mongeon at Bryce.Mongeon@mail.house.gov or 202-225-6411.

Sincerely,

Charles W. Dent
Member of Congress

DISTRICT OFFICES

LEHIGH VALLEY
2500 HAMILTON BOULEVARD, SUITE 207
ALLENTOWN, PA 18103
(610) 770-3400
FAX: (610) 770-3406

BERKS COUNTY
61 NORTH 3RD STREET
READING, PA 19601
(610) 602-4301
FAX: (610) 602-4302

LEBANON COUNTY
542 E WEST MAIN STREET
ANNVILLE, PA 17003
(717) 867-1599
FAX: (717) 867-1540

DAUPHIN COUNTY
234 WEST CAERNARVON AVENUE, SUITE 2
HERSHEY, PA 17033
(717) 635-3565
FAX: (717) 533-3579

**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of the Director (MS 2000)*
Washington, DC 20529-2000

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

April 12, 2018

The Honorable Charles W. Dent
U.S. House of Representatives
Washington, DC 20515

Dear Representative Dent:

Thank you for your March 7, 2018 follow-up letter. In your most recent letter, you express concerns that the USCIS decision involving L-1B petitions filed by Air Products and Chemicals, Inc. could set a precedent for future filings.

Preliminarily, we note that as a matter of longstanding policy, we cannot comment on decisions in individual cases. In order to establish a worker's eligibility for L-1B classification, the petitioner must show, in part, the following: (1) that the beneficiary possesses "specialized knowledge;" (2) that the position offered involves the "specialized knowledge" held by the beneficiary; and (3) that the beneficiary has at least one continuous year of employment abroad in a managerial, executive, or specialized knowledge capacity with the petitioning employer and/or any qualifying organization within the preceding three years.

As described in USCIS guidance (L-1B Adjudications Policy, PM 602-0111 (Aug. 17, 2015)), a beneficiary seeking L-1B classification should, as a threshold matter, possess specialized knowledge that qualifies as either special knowledge or advanced knowledge, defined as follows:

- **Special knowledge**, which is knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets that is ***distinct or uncommon in comparison to*** that generally found in the particular industry; or

- **Advanced knowledge**, which is knowledge of or expertise in the petitioning organization's specific processes and procedures that is not commonly found in the relevant industry and is ***greatly developed or further along in progress, complexity, and understanding*** than that generally found within the employer.

When adjudicating an L-1B visa petition, a USCIS Immigration Services Officer makes a determination of eligibility. This determination is based on a thorough review of evidence in the record, all relevant sections of the Immigration and Nationality Act, Title 8 of the Code of Federal Regulations, and any existing internal policy guidance. Each determination is made on a case-by-case basis. With the exception of precedent decisions issued by the USCIS Administrative Appeals Office, *see* 8 CFR § 103.3(c), no precedent is established solely by the issuance of a decision on a single petition.

Additionally, your letter indicates a concern that there may be insufficient contractors available in the United States to perform the requested work if USCIS continues denying L-1B visa petitions filed on behalf of the workers in question. Please note that employers seeking L-1 workers are not required to test the U.S. labor market to demonstrate whether workers with the beneficiary's knowledge are available to the employer. Rather, the relevant inquiry is whether there are so many such workers that the knowledge is generally or commonly held in the relevant industry, and, therefore not specialized. If there are numerous workers in the United States who possess knowledge that is generally similar to the beneficiary's, it is the petitioner's burden to establish that the beneficiary's knowledge nevertheless is truly specialized. Similarly, if there is a lack of workers, the petitioner must still demonstrate that the beneficiary's knowledge is specialized as defined above.

Again, eligibility for nonimmigrant classifications, including L-1B specialized knowledge employees, is determined on a case-by-case factual basis. The petitioner has the burden to establish eligibility by a preponderance of the evidence in the record. If a petition is denied, USCIS provides a written explanation of the decision which reflects the application of current law and guidance in the particular case, and, where applicable by regulation, the right to seek review of the decision.

Thank you again for your letter and interest in this important matter. 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