



## **Baker Landscape & Irrigation Inc.**

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The Honorable Kristjen Nielsen  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave, NW  
Washington, D.C. 20528

Dear Secretary Nielsen,

As a small and seasonal employer, I urge you to immediately resume processing H-2B visas up to the full number of visas authorized by the Fiscal 2018 Omnibus Appropriations Act. Without immediate action, many employers across the country will be without the critical workforce they need to operate this spring and summer. These businesses may not be able to fulfill contracts. They could be forced to turn away customers, lay off American workers whose jobs are supported by H-2B workers, and in some cases shut down their operations entirely.

My business is among those that could be affected.

The program's arbitrary cap of 66,000 visas established in 1992 is inadequate to meet the bona fide seasonal labor needs. For FY 2018, the 33,000 first half cap was met on December 15, 2017 and the 33,000 second half cap was met on February 27, 2018.

It is clear that without immediate action by DHS and DOL, nearly 70% of seasonal positions for the second half of fiscal 2018 will go unfulfilled due to cap limitations.

The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The H-2B program is essential to employers who can not find local temporary workers to fill jobs in landscaping and related business.

Further, the H-2B program and my business relies on well-vetted returning workers who come to the U.S. for seasonal employment and then go home. These workers are not immigrants. They provide an opportunity for the U.S. businesses to operate at greater capacity, retain their full-time workers and contribute to their local economies.

Relief for seasonal businesses that use the H-2B program is desperately needed. I urge you to immediately resume processing H-2B visa petitions up to the full number of H-2B visas authorized by the Fiscal 2018 Omnibus Appropriations Act.

Sincerely,



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

August 27, 2018

Mr. Michael P. Baker  
Baker Landscape and Irrigation, Inc.  
145 Moose Ridge Road  
Lake George, New York 12845

Dear Mr. Baker:

Thank you for your May 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen to approve additional H-2B petitions pursuant to the H-2B visa provisions contained in the Consolidated Appropriations Act, 2018 (Public Law 115-141), which was signed by the President on March 23, 2018.

This provision authorized Secretary Nielsen, in consultation with Secretary Acosta, to determine whether to increase, and if so, by how many (within specified parameters), the number of available H-2B visas for fiscal year (FY) 2018. In making her decision to increase the number of H-2B visas, the Secretary carefully weighed several factors, including whether U.S. workers may be harmed by any such increase.

On May 31, 2018, the U.S. Department of Homeland Security (DHS) and U.S. Department of Labor published a temporary final rule increasing the cap on H-2B nonimmigrant visas by up to 15,000 additional visas through the end of FY 2018. The Secretary does not intend to reopen the supplemental cap for FY 2018.

As with the essentially identical provision in the FY 2017 Omnibus, DHS did not ask for, and does not believe it is appropriate to have, the discretion to authorize the issuance of additional H-2B visas, in general, and specifically under a supplemental cap. I share Secretary Nielsen's opinion that Members of Congress have the best information to know the correct number of H-2B visas needed to support American businesses without harming American workers because congressional representatives have the best understanding of their constituencies and the needs of their local employers.

Further, I share the Secretary's desire to work together with Congress to find solutions to most effectively allocate available H-2B visas throughout the year, while also protecting U.S. workers in the process. DHS will be submitting a congressionally mandated report that details options for addressing the issue of late-season filers in the H-2B program, resulting in their inability to obtain H-2B workers. This report will include suggestions on how the program

Mr. Michael P. Baker  
Page 2

can better serve our national interest. In the meantime, DHS continues to take steps of its own in this regard, including advising members of the public who may have information about a participating employer who is abusing the H-2B program on how to file a report through [ReportH2BAbuse@uscis.dhs.gov](mailto:ReportH2BAbuse@uscis.dhs.gov).

Thank you again for your letter and interest in this important issue. Should you wish to discuss these matters further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Francis Cissna". The signature is stylized with a large "L" and a cursive "Cissna".

L. Francis Cissna  
Director