



LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY  
MIKE STRAIN DVM  
COMMISSIONER

March 18, 2015

The Honorable Thomas Perez  
Secretary of Labor  
Office of the Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room S-2018  
Washington, DC 20210

The Honorable Jeh Johnson  
Secretary of Homeland Security  
Office of the Secretary  
U.S. Department of Homeland Security

Secretaries Perez and Johnson:

Thank you for your most recent efforts to resume processing of the H2B petitions using the temporary labor certification. We understand the position that the most recent court decision has put the agencies in, and the steps you are taking to rectify the situation, but do ask that you reconsider the decision to suspend premium processing. Due to the late nature of this announcement, many of our processors have already lost productivity and will need to expedite the petition process through premium processing.

As you are aware, the Louisiana seafood industry is reliant upon a strong workforce. Many of our companies utilize the H2B guest worker program in order to secure seasonal workers and the Louisiana Department of Agriculture and Forestry works closely with the industry to determine the domestic wages for many of our Private Wage Rate surveys. Unfortunately, in December of 2014, the United States Department of Labor (USDOL) announced that it would no longer allow the Private Wage Rate (PWR) surveys that were developed by many state departments of agriculture. This action has forced employers into accepting higher prevailing wages that are not representative of the wages that are being paid domestically.

To make matters worse, the H2B worker cap has already been exceeded and many seafood processor applications have been delayed even with early submissions. Seafood processing begins in the early spring and with the worker cap reached, this will trickle down to agriculture industries that utilize the program.

These actions will have a negative impact on the seafood industry and the related commerce sectors such as restaurants, etc. Last month, the LSU AgCenter conducted a rapid economic analysis of recent



H2B policy changes from the US DOL for the Louisiana seafood industry. The assessment was conducted in response to potential changes in the cost and availability of labor stemming from a mid-year cap on H2B permits and the DOL announcement that it would no longer allow Private Wage Rate (PWR) surveys. Results indicate that for every one dollar of employee compensation created by the seafood preparation and packaging industry in Louisiana, employee compensation increases by \$2.06 across all sectors of the Louisiana economy. This includes the original \$1 of employee compensation created by the seafood preparation and packaging industry plus an additional \$1.06 of induced multiplier effects across all sectors of the state economy. Total income generated by H2B visas workers in Louisiana seafood industry is substantial and ranges from \$36 million to \$43 million in the State of Louisiana.

Based on the assumption of \$35 million in revenue, the loss of this revenue for any given number of firms would lead to total reduction in labor income across the Louisiana economy, eventually leading to companies closing. The economic impact of two processing facilities closing is \$5.3 million and with five firms shutting down, \$13.3 million. Louisiana has already faced a number of processing facilities closing due to hurricanes and oil spills, and the industry simply cannot sustain without a stable workforce. I am certain that not only is the seafood industry in Louisiana impacted, but the entire Gulf coast will be affected by these latest actions.

We are working closely with our Louisiana Congressional delegation (see attached letter) and other members of Congress to make sure our concerns are heard. It is critical that we work to identify a long-term solution to our workforce challenges. Our office stands ready to assist you by continuing to provide accurate information on the domestic workforce. We also feel that the state departments of agriculture can serve as useful resources to secure a strong agriculture workforce. Through this letter, I am asking for your help, to work with us, and find a viable legislative solution that would not only create a stronger and more workable H2B program but would also permit the use of state prevailing wage rate determinations that are representative of the workforce in our states.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Strain", is written over the printed name.

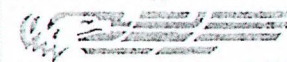
Mike Strain, DVM  
Commissioner

MIKE STRAIN DVM  
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MAY 20 2015

The Honorable Mike Strain  
Commissioner  
Louisiana Department of Agriculture & Forestry  
P.O. Box 631  
Baton Rouge, LA 70821

Dear Commissioner Strain:

Thank you for your correspondence to Secretary of Labor Thomas Perez and Secretary of Homeland Security Jeh Charles Johnson regarding the continued operation of the H-2B temporary nonagricultural worker program.

On March 4, 2015, the U.S. District Court for the Northern District of Florida, in the case of *Perez v. Perez*, No. 3:14-cv-682, vacated U.S. Department of Labor (DOL) regulations promulgated in 2008 governing the H-2B program and enjoined DOL from implementing the temporary labor certification portion of the H-2B program pursuant to those regulations. DOL was therefore forced to immediately discontinue processing applications for temporary labor certifications in the program.

Following the court's decision, DOL and the U.S. Department of Homeland Security (DHS) worked jointly to issue an interim final rule on April 29, 2015, that addressed the *Perez* court order related to H-2B rulemaking authority.<sup>1</sup> Also on April 29, DHS and DOL jointly issued a final rule amending the regulations governing the methodology by which DOL calculates the prevailing wages for H-2B occupations.<sup>2</sup> Swift action in response to the court's order was crucial; DHS and DOL have acted in order to enable the agencies to meet their statutory obligations under the *Immigration and Nationality Act* and to prevent further economic dislocation to employers and employees in industries that rely on the H-2B program.

U.S. Citizenship and Immigration Services (USCIS) temporarily suspended adjudication of H-2B petitions while DHS and DOL reviewed and assessed the district court's decision. Given the volume of cases received during the suspension of H-2B petition adjudications, USCIS also suspended premium processing of H-2B petitions. On April 20, 2015, USCIS resumed accepting premium processing requests for H-2B petitions after USCIS completed data entry of the pending cases and reassessed its ability to deliver appropriate levels of service to premium and non-premium filings.

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<sup>1</sup> Interim Final Rule, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 80 Fed. Reg. 24041 (April 29, 2015).

<sup>2</sup> Final Rule, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 80 Fed. Reg. 24145 (April 29, 2015).

On April 2, 2015, USCIS announced that it had received enough cap-subject petitions to reach the congressionally mandated H-2B cap for Fiscal Year 2015. The final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before October 1, 2015 was March 26, 2015. USCIS will adjudicate to completion all H-2B worker petitions that were received prior March 27, 2015, and also will continue to adjudicate H-2B worker petitions that are not subject to the congressionally mandated cap.

Thank you again for your letter. DOL and DHS will continue to keep the affected public informed of developments with respect to the H-2B program.

Respectfully,



Portia Wu  
Assistant Secretary  
Employment and Training Administration  
U.S. Department of Labor



León Rodríguez  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security