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Congress of the United States
House of Representatives

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SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

April 27, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Nielsen and Secretary Acosta:

As you are aware, the FY 2018 Omnibus Appropriations bill included language that authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to approve a limited increase in the number of H-2B visas available for this fiscal year.

The language in the Omnibus Appropriations bill notes that a decision should be made upon the determination that the needs of American businesses cannot be met by the current workforce. I have heard from dozens of constituents that own or operate a variety of small business, who consistently tell me that they cannot access enough workers to maintain operations.

Additionally, my staff has reported that they expect a substantial increase in demand for workers through the remainder of this year as employers struggle to find adequate local labor. If this shortage continues for much longer, numerous businesses may be forced to close, damaging our regional economy.

As I did last year, I encourage you to act as quickly as possible to address this issue by substantially increasing the number of H-2B visas available. Providing workers to support our local small businesses through the H-2B program is vitally important to long-term economic growth in New York.

Thank you for your attention to this issue. I hope you will consider the experiences of small business owners from my district and I encourage you to act as soon as possible.

Sincerely,

John J. Faso
Member of Congress

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

May 22, 2018

The Honorable John J. Faso
U.S. House of Representatives
Washington, DC 20515

Dear Representative Faso:

Thank you for your April 27, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen and Secretary Acosta to take decisive action regarding the H-2B visa provisions contained in the Consolidated Appropriations Act, 2018 (Public Law 115-141), signed by the President on March 23, 2018.

As a general matter, there is a statutory cap of 66,000 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. *See* Immigration and Nationality Act (INA) § 214(g)(1)(B). Up to half of that allocation (33,000) is available during the first half of any given fiscal year, and the remainder is available during the second half of the fiscal year. *Id.* § 214(g)(10). However, section 205 of Div. M of the Consolidated Appropriations Act, 2018, Pub. L. 115-141, which was signed into law by the President on March 23, 2018, provides the Secretary of Homeland Security with discretion, after consultation with the Secretary of Labor, to increase the H-2B cap for the current fiscal year under prescribed circumstances.

As with the essentially identical provision authorizing the Secretary to augment the H-2B statutory cap in Fiscal Year 2017, the Department did not ask for, and does not wish to have, this discretion. I share Secretary Nielsen's opinion that Members of Congress have the best information to know the "right" number of H-2B visas needed to support American businesses without harming American workers.¹ This is 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 limit H-2B visas to employers with truly temporary needs, and to find solutions to most effectively allocate available H-2B visas throughout the year. As Secretary Nielsen noted to lawmakers during her recent testimony, Congress placed limitations on H-2B visas to protect American workers. But it also clearly could not have been Congress' intent for the lawful administration of the program to

¹ *See* Testimony of DHS Secretary Nielsen, House Committee on Appropriations, Subcommittee on Homeland Security, Fiscal Year 2019 Budget Hearing – Department of Homeland Security (April 11, 2018) (<https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=395210>).

The Honorable John J. Faso

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put American employers out of business. DHS is in the final stages of the interagency process to implement section 205 of Div. M of the Consolidated Appropriations Act, 2018. DHS cannot comment on how many additional visas may be authorized before it is published in the *Federal Register*.

Thank you again for your letter and interest in this important matter. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink, appearing to read "LFC", written in a cursive style.

L. Francis Cissna
Director