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VIRGINIA

United States Senate

WASHINGTON, DC 20510-4606

COMMITTEES:
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September 29, 2020

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Pompeo:

I write to urge you to clarify that seafood companies seeking H-2B visas for their seasonal workers, via the Temporary Nonagricultural Worker Program, do qualify for the national interest exemption to Presidential Proclamation 10052.

With a half billion dollar economic impact, Virginia seafood is a key industry in the Commonwealth. Its success largely depends on seasonal workers, who shuck oysters, clams, and crabs, hand pick seafood meat, pack fish, and perform other critical tasks. While seafood businesses have made good faith efforts to find local seasonal workers, employers often must rely on H-2B visas to fill difficult and labor-intensive positions. The industry is already confronting significant business challenges due to the pandemic, and now faces the potential for further economic harm unless it is able to access H-2B visas.

As you know, Presidential Proclamations (P.P.) 10014 and 10052 suspend entry to the United States for certain immigrant visa applicants through December 31, 2020, due to the COVID-19 pandemic. Both proclamations include National Interest Exceptions (NIE), which allow the government to issue H-2B work visas for “travel necessary to facilitate the immediate and continued economic recovery of the United States.” The proclamations further state that the NIE apply when at least two of three indicators are present:

- 1.) The applicant was previously employed and trained by the petitioning U.S. employer.
- 2.) The applicant is traveling based on a temporary labor certification (TLC) that reflects continued need for the worker.
- 3.) Denial of the visa pursuant to P.P. 10052 will cause financial hardship to the U.S. employer.

Many seafood companies in Virginia and around the United States depend on seasonal workers whose positions meet all three of the criteria listed above. In Virginia, the financial hardship of failing to secure visas for H-2B workers will be extreme, with the burden falling heavily on small, seasonal Virginia seafood companies already facing economic uncertainty due to the COVID-19 crisis. For example:

- 1.) A bait fish packing operation in the Northern Neck of Virginia will lose approximately \$150,000 in revenue each month without H-2B visa workers and will not be able to purchase bait fish from watermen or purse seine vessels.
- 2.) A crab picking operation in Hampton Roads will lose five American full-time salary positions and approximately \$600,000 in revenue each month without H-2B workers.
- 3.) A Northern Neck bait fish operation will lose approximately \$1M each month in combined bait fish purchases and profit in sales. As a result, American truck drivers, supervisors and office personnel will be laid off.
- 4.) A bait fish operation will lose \$350,000 each month in product sales without H-2B visas.

While I understand that local consulates make individual visa approval decisions, I ask that the Administration clarify that seafood workers are covered by the NIE. Additionally, I ask that you provide a response to the following questions, either via writing or a meeting, by October 14, 2020:

- 1.) Are all consulates aware of the clear NIE guidance for P.P. 10014 and 10052?
- 2.) Do visa applicants and petitioning employers receive a clear explanation of factors that result in a visa being denied? If so, how is this explanation communicated?
- 3.) What point of contact has the ultimate authority to provide such explanations?
- 4.) What process is available for visa applicants who appear to meet all visa and NIE guidelines to have their H-2B visa denials reconsidered?

Virginia seafood businesses, many of which are family-owned operations going back multiple generations, depend on the Department of State to issue congressionally-authorized H-2B visas in order to survive. Without concrete guidance on the H-2B visa process as it relates to the Presidential Proclamations, our seafood industry remains in a perilous position, as businesses seek to survive the pandemic. I urge you to ensure congressionally-authorized H-2B visas are granted to seafood workers who meet the NIE guidelines. Thank you for your careful attention to this critical matter.

Sincerely,



Mark R. Warner
United States Senator