
Sullivan: Subversion of H-2B visa program damages Vermont tourism industry

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by Brian J Sullivan, Esq, MSK Attorneys, Burlington For many years, employers in the travel and tourism sector of the Vermont economy have encountered difficulties in finding American workers to do important work to keep that industry functioning. Although important, that work is often menial in nature and requires performance of repetitive tasks. Finding local residents to empty the trash, clean floors and windows, wash dishes and bus tables has proven extremely challenging. Even after offering hourly rates above minimum wage, employers in this crucial sector of our economy have found that they must rely on aliens to perform that labor.

This phenomenon is not unique to Vermont. Throughout the country, businesses with seasonal or periodic demand for entry-level employment have encountered the same challenges.

To address this recurrent problem, Congress created the H-2B non-immigrant visa category for temporary non-agricultural workers from certain countries. This category is a true “guest worker” program typically allowing stays of no more than nine months and requiring the employer to prove that no U.S. workers are being displaced by hiring the aliens.

In 1990, Congress passed a sweeping reform of the nation’s immigration laws, including imposing an annual cap on the available number of H-2B visas for each federal government fiscal year – October 1 to September 30. That system functioned well for many years, and only recently has the number of applications exceeded the number of visas.

With the rise in applications, the logical response would have been to increase the number of visas. Indeed, doing so has broad support across ideological lines in Congress. The H-2B visa program is supported by businesses generally and especially in red states such as Texas, Florida, Louisiana and Missouri, which have been among the leading destinations of H-2B visa holders. In fact, President Trump himself employs numerous H-2B workers in the hospitality industry at his various properties.

Because the number of applications for H-2B workers has outstripped the number of visas available, there has been bipartisan support for increasing the annual cap for these workers. In fact, the Omnibus Spending Bill signed into law by the President on February 15, should have increased the number of such workers from 66,000 to 135,000 annually. This would have been especially welcome for those seeking to employ workers during the second half of FY 2019 – April 1 to September 30 – because the cap for those visas was hit on February 19 (and would have been hit earlier but for a shambolic rollout of the visas at midnight on January 1 featuring website crashes and frustrated and sleepless immigration lawyers).

But, two months later, no effective steps have been taken to release the additional visas. The Spending Bill left it to the Secretaries of Homeland Security and Labor to determine how many visas to make available and when to do so.

Whether the delays that have occurred so far are due to bureaucracy, foot-dragging or something more sinister remains to be seen. For the moment, there are not enough crab pickers in Maryland, carnival workers in Florida, horse trainers in Texas and landscapers throughout the country as we move toward summer. In Vermont, travel and tourism business are finding it unduly hard to meet their summer staffing needs. There is no good argument against releasing the visas that Congress and the President have made available. Pressure should be brought to bear immediately on the Departments of Homeland Security and Labor.

Brian J. Sullivan, Esq. is a Founding Partner of MSK Attorneys in Burlington. In addition to land use and telecommunications law, Brian has over 20 years of experience practicing immigration law.