



ISSUE BRIEFING

July 2008

SUBJECT:

SAVE SMALL AND SEASONAL BUSINESSES USING THE H-2B VISA PROGRAM

BACKGROUND: The H-2B program provides a vital and legal source of seasonal labor for the green industry and other industries that cannot fill their labor needs with American citizens. The failure to renew the cap exemption for returning workers is having a devastating effect on landscape contractors and other small businesses that have been left without a reliable source of seasonal workers this year.

The program's congressionally mandated cap of 66,000 (33,000 for the first half of the fiscal year and 33,000 for the second half of the year) is inadequate to meet the seasonal needs of landscape contractors and other small employers. The current exemption from the cap for returning workers, who have proven they are not a security risk, expired at the end of the fiscal year. Without a **new extension** of this provision of the law, many landscape contractors are unable to fulfill their clients' needs and support their year-round American workforce during this year. Companies have had to scale back on supply and equipment purchases and turn away business. They have lost substantial revenue this year, and many will not be able to survive a second year without the needed workers.

The ability to hire guest workers is vitally important because the vast majority of U.S. citizens, who are legally qualified to perform the manual labor associated with the landscape industry, do not have the desire to work in seasonal manual labor jobs. Because of the timing of the season, traditional sources of manual labor — such as college students — are not available, and the heavy machinery used in the business prohibits companies from hiring high school students.

In May 2005, Congress passed emergency H-2B relief to exempt from the 66,000 cap the number of repeat H-2B workers allowed entry to the country each fiscal year as part of the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief 2005" (PL 109-13). The Save Our Small and Seasonal Businesses Act of 2005, which was included in the legislation, passed the Senate by an overwhelming majority of 94–6 because of the severe crisis faced by small and seasonal businesses as a result of reaching the cap on January 3, 2005. On October 17, 2006, the President signed into law the 2007 Defense Authorization bill, which included a one-year extension for the Save our Small & Seasonal Business Act of 2006. Congress' failure to renew the expired provision of law for fiscal 2008 has devastated the green industry and other seasonal employers. Unless Congress acts soon, the industry's outlook for fiscal 2009 will be even bleaker.

The increasing need for workers and increased enforcement against undocumented workers, has led more and more employers to use the H-2B program, resulting in the cap being reached earlier each year and more employers being shut out of the program. For fiscal year 2007, the cap for the first half of this fiscal year was reached on November 28, 2006, and the cap for the second half of the fiscal year was reached on March 16, 2007. For fiscal year 2008, the 33,000 first half of the cap was reached on September 27, 2007. The 33,000 for the second half of the

fiscal year was reached on January 2, 2008. Statistics released July 7, 2008, by the Department of Homeland Security (DHS) on the number of H-2B applications received to date, show that the DHS has already received over half the number of visa petitions required to reach the 33,000 cap for the first half of fiscal 2009, which begins on October 1, 2008.

We need to ensure that the green industry and other small and seasonal businesses can continue to have permanent access to a reliable, predictable labor source.

REQUESTED ACTION: Emergency relief from the restrictive 66,000 cap on H-2B workers is needed since the existing relief expired at the end of fiscal year 2007. The expiration of the exemption is devastating to those having to use the program. Therefore, we ask those not currently co-sponsoring S. 988 and H.R. 1843 to do so and for all to ask their leadership to support passing an immediate extension of the H-2B returning worker exemption as either a stand-alone measure or as part of any legislation moving through Congress.