

Testimony of Jane Nichols Bishop
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Committee on Small Business
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The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy

Thank you very much Chairman Rice and Ranking Member Chu for your leadership in holding this important hearing. I would also like to thank full committee Chairman Graves and Ranking Member Velázquez.

My name is Jane Nichols Bishop, and I am the president of Peak Season Workforce of Mashpee, Massachusetts on Cape Cod. For more than a decade, Peak Season Workforce has successfully helped seasonal tourism-based businesses navigate the intricate government filing process to successfully obtain H-2B work visas. Peak Season Workforce currently represents more than 100 employers seeking H-2B work visas to supplement their American work forces during peak visitor season. Incidentally, we are a small, family-run business with just three employees including myself.

We represent hotels, motels, inns, bed & breakfast establishments, restaurants, clam shacks, pizza shops, a public transit operator and coffee shops. All of them experience a significant increase in business during their seasons. We also work on behalf of small businesses that support them and their customers. These include commercial laundries, bike rental shops, golf courses, retail stores, ice cream parlors, party rental companies, landscapers, trash haulers, and a bulk paper supplier. These businesses depend on workers with H-2B visas to fill essential jobs such as housekeepers, front desk clerks, cooks, short-order cooks, food preparation workers, dishwashers, dining room attendants, servers, laundry workers, retail and stock clerks, tent installers, landscapers, trash collectors and shuttle bus drivers.

Let me make this clear: my client employers that use H-2B international workers are not able to find enough U.S. workers to fulfill their staffing needs; they use workers from abroad to supplement—not replace—Americans in their work force. Each one of our 100+ employers hires American workers but does not have enough of them during their busy season.

Small businesses located in seasonal destinations, such as Cape Cod and the coast of Maine, have between five and eight months on average to earn a year's worth of revenue. Some of these businesses chose to stay open during the non-seasonal months with a limited number of American staff. Others are open only for the season and close in off-season months.

Seasonal small businesses wish they had more American workers from their immediate areas. They cannot rely anymore on high school or college students due to their school schedules. Most colleges start classes in early-to-mid August, and students must return to school while seasonal businesses remain busy through the summer and fall "shoulder" seasons. This often extends to the Columbus Day, three-day weekend in October and for some businesses, beyond that into Thanksgiving. Child labor laws correctly restrict the amount of labor young high school students can provide. And the reality today is that college students often seek professional summer internships related to their fields

of study so they have a better chance of getting a professional job when they graduate. Regrettably, lower skilled jobs cannot compete.

Working-age adults and retirees who live in popular tourist areas are not interested in entry-level jobs that are temporary in nature and often without benefits. Seasonal work is often physically demanding and can be challenging work for retirees who may want easy part-time jobs.

This year, small businesses encountered a particularly vexing problem that threw a last-minute monkey wrench into the application process and caused costly delays of many visa applications. On March 21, a federal judicial ruling ordered the Labor Department to stop issuing new prevailing wages because of an allegedly flawed methodology that had been used successfully since 2008. The Labor and Homeland Security Departments responded by freezing all pending applications for up to 45 days. This stopped the H-2B application process in its tracks and created a major approval backup at U.S. embassies worldwide. Businesses could not get their H-2B staff approved and were left without help at the start of this season. Today, 25-30 of my small business clients still wait for final approval while the season is in full swing.

Any time there is even a one-day approval delay at either the Labor Department or at the Department of Homeland Security, it can add up to a week's delay in embassy clearances. Because we are experiencing delays now, some small tourism-based businesses are taking extreme measures to survive. These include turning business away because of staff shortages. Other examples:

- Paying excessive amounts of overtime to American workers to cover the shifts of the missing H-2B workers
- Closing restaurants one day a week because there is not enough staff to rotate all shifts over seven days
- Cutting out a meal service, often at brunch or lunch
- Shuttering part of the dining room because the kitchen can't handle the orders with existing staff
- Opening later or closing early
- Taking blocks of sleeping rooms out of service for hotel/motel guests because there is not enough staff to clean the rooms
- Requiring managers and owners to do the work of missing H-2B staff

Along the New England coast, there is a small inn with a restaurant that is feeling the brunt of these problems. Now, at the middle of June, the owner has been unable to offer the dinner service because her H-2B cooks are stuck in the approval process. She is losing reservations. In fact, there was a planned wedding reception that could not go on because of inadequate staff. The owner has resorted to cleaning guest rooms herself while her H-2B housekeepers are waiting in their home countries for approval.

On the island of Nantucket, off the coast of Massachusetts, an accommodations business had 27 guest rooms occupied over Memorial Day weekend and no H-2B staff to clean rooms, change linens and prepare breakfast.

Please understand that despite these problems, Cape Cod, the coast of Maine and other destinations are open for business, and visitors should not be deterred from coming. The ocean is still there, meals are being served, and the days are warm and nights are cool. The chambers of commerce are eager to welcome and serve guests.

When this year's approvals resumed at the Labor Department, businesses were told flat-out to pay their H-2B workers higher wages in order to continue with the program. For most of our businesses, the new mandated wages went up ten to 34 percent per hour. In dollar amounts, we saw an increase of \$3 to \$8 per hour per employee, including American workers. Businesses cannot survive with this type of sudden labor cost increase. Tourism businesses already have set their budgets for the year and fixed their rates for their services. In some cases, an entry-level worker with no experience will now make more per hour than their supervisors do under the new prevailing wage rates. This will cause a ripple effect, because supervisors will not work for less than the workers they manage. All of this from Labor Department who told the judge that wages would not increase . . . "at most, \$2.12 per hour".

Employers already pay more to American and H-2B workers because they must adhere to prevailing rates versus state and federal minimum wage requirements. This puts them at a competitive disadvantage with companies that choose not to employ H-2B workers. Now with the supplemental wage requirements, H-2B employers face payroll costs that are significantly higher than those elsewhere in their communities. It is simply not sustainable.

Over the past two years, Congress has repeatedly blocked the Labor Department from implementing prevailing wage increases that burden struggling small businesses. We strongly encourage Congress to act again. Please encourage the Departments of Labor and Homeland Security to rescind this interim final rule and replace the regulation with a more reasonable approach to setting wages as was done under the 2008 regulations. One approach might be the H-2B wage language that is included in S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act immigration," currently being debated in the United States Senate. It is also important that the Departments implement a new more reasonable approach to setting wages without shutting down the H-2B program and causing further processing delays on already struggling small businesses.

On November 18, 2011 Congress enacted the Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112-55, 125 Stat. 552 (November 2011 Appropriations Act) which was a spending bill that contained Department of Labor's appropriations. It prohibited Labor Department from using funds to implement, administer or enforce the 2011 wage rule. Subsequent appropriations bills for Labor Department have continued the prohibition on the implementation of the 2011 wage rule. The prohibition will end after September 30, 2013, unless Congress again acts to extend the prohibition, preferably sooner rather than later.

As you know, small businesses are the backbone of the U.S. economy. Many in popular tourism destinations are dependent on international workers with H-2B visas to have successful seasons. They cannot thrive without adequate staff or with the uncertainty of when staff will become available. Businesses cannot show a successful bottom line if they are hobbled by bureaucratic decision-making in Washington that imposes unreasonable and uncompetitive wage rates.