

**From Farm to Table: Immigrant Workers Get the Job Done**  
**Responses to Questions for the Record**  
**Adam Lytch, L&M Farms**  
**June 20, 2023**

**How have long processing times affected your business's ability to use seasonal immigration programs, including the H-2B and H-2A programs, to meet your business's workforce needs.**

L&M Farms employs H-2A workers to plant and harvest a variety of vegetables across multiple states. To submit an H-2A application, we submit separate applications and petitions to three different federal agencies and one state agency within a 60-day period for workers to arrive on time.

Here is how that process plays out:

- The **State Workforce Agency** (SWA) posts our H-2A job order to recruit U.S. workers and inspects our employer-provide housing.
- The **U.S. Department of Labor** (USDOL) certifies that there are no U.S. workers willing, able, and qualified for the job.
- After we submit our USDOL labor certification, the **U.S. Department of Homeland Security** (USDHS) approves our petition for H-2A visas.
- Finally, using our USDHS visa approval, we apply to the **U.S. Department of State** (USDOS), to issue visas to nonimmigrant workers.

Any hiccup along the way can result in a processing delay which prevents H-2A workers from arriving at our farm on time. Even a one-week delay can have devastating effects, as perishable crops cannot wait on administrative delays to be harvested.

In December of 2021, our H-2A application had been approved by every agency, and we were on track to begin harvesting on time. The state department only needed to issue the visas to the individuals we had recruited to work for us. That's when we found out that the state department denied issuing the visas, with no explanation why. The workers we were scheduled to receive ended up being delayed nine days at the consulate after their scheduled appointments. Besides the processing delays we also had crops that were maturing ahead of schedule. With no option to receive the workers early and with the delays in processing the visas, in total, we lost nearly 160 acres of broccoli and cabbage in the field. The total financial loss for the crops was a little over \$600,000. In addition to the loss of crops in the field, we also had over \$35,000 of costs related to per diem and hotel expenses in Monterrey while the workers waited past the date of their scheduled interviews for visas.

The state department told us that the visa application was under an administrative hold for additional processing. The state department is authorized by section 221(g) of the Immigration and Nationality Act to hold an application for further processing but often does so without communicating any details to the employer. The employer is therefore left without any means to correct an application. It is very much like a black hole. Some H-2A employers have learned that the state department uses this opportunity to verify that an employer still has a job available for the H-2A worker, which seems unnecessary given the labor certification process we'd just gone through.

There are plenty of opportunities for delay throughout the rest of the process, too. Sometimes, a SWA may not inspect the employer-provided housing in time, delaying USDOL from issuing the labor

certification. If USDOL finds a deficiency in the application, they essentially consider that the application does not have to follow its prescribed timeline. Though there are legitimate reasons for USDOL to issue a notice of deficiency, a deficiency is just as often raised because the analyst does not understand the program or the agency's own rules.

For U.S. Citizenship and Immigration Services (USCIS), a part of USDHS, the greatest cause of delay is how the agency receives and transmits communications. All visa petitions are submitted to USCIS by mail, and all notifications from USCIS are transmitted by mail. If a petition contains any small error, it takes several days for an applicant to receive notice of it. Though we do get an electronic notification when our visa petitions are approved, we must wait for the actual approval to be received in the mail, which affects how quickly we can schedule interviews with the state department.

The H-2A program is fraught with red tape that presents any number of issues for delay. One small error can mean that farmers like me don't have a workforce on time, meaning the fruits and vegetables that we produce rot in the field.

**How would decreasing processing times for applications for visas help small business owners, like yourself, in areas facing workforce shortages?**

The H-2A application process already operates on an expedited timeline. When the reviewing agencies stick to the timeline, I can hire workers to start on time. But there are too many opportunities for delay. When an agency fails to approve a visa application on time, the burden of that failure falls on farmers like me. Despite having gone through great time and expense, we are left with no workforce – a workforce we were guaranteed.

These improvements should not take an act of Congress. Many processing delays could be improved by allowing electronic processing (USCIS), training, or simple communication with the employer. Certainly, Congress should ensure that these agencies have the staff and resources needed to fulfill these functions, but these agencies already have so many efficiencies available that they are not using.

Ultimately though, Congress is responsible for the H-2A program and the agency actions which contribute to the larger labor issue that agriculture is facing. Congress's decades-long inaction on this issue has allowed these agencies to operate in a vacuum, creating a bureaucratic monster that farmers like me are supposed to navigate. This is why it is important for Congress to quickly pass comprehensive agriculture labor reform, granting full program access to farmers and agricultural employers and modernizing the administration of the H-2A program.