

# United States Senate

WASHINGTON, DC 20510-4404

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ENERGY AND  
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COMMERCE, SCIENCE,  
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JOINT ECONOMIC  
COMMITTEE

October 19, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Acting Secretary Wolf:

I write today about the current situation of H-2A visa holders and their ability to continue to work in the United States when they are prohibited from returning to their home country due to COVID-19 restrictions. As you know, portions of the temporary rule issued on April 20, 2020, entitled "Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency" were extended on August 19, 2020. The extension of these temporary provisions have and will continue to provide much needed relief to agricultural employers. However, I request the Department of Homeland Security (DHS) consider also extending the temporary exception to the three-year maximum stay requirement.

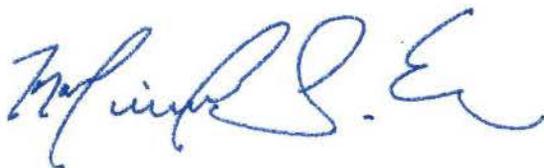
I am appreciative of the continued efforts DHS has taken this year to address threats to our workforce and domestic food supply resulting from COVID-19. I gratefully acknowledge the flexibility and support provided for the hiring, travel, and employment of seasonal, nonimmigrant agricultural workers who assist and supplement the domestic workforce.

Despite consistent and determined efforts to recruit employees from the domestic workforce, the sheep industry in Utah, as well as other western states, continue to depend on H-2A nonimmigration workers, primarily from Peru. Because of COVID-19 travel restrictions, employers have limited access to new H-2A workers, and some H-2A workers are unable to return to their home country. In these difficult times and under these unique circumstances, I believe these workers should be given the opportunity to continue to work legally in the United States to provide for themselves while restrictions remain in place.

Sheep producers and others in the agricultural industry have been heavily impacted by the COVID-19 pandemic which has subsequently resulted in disruptions in or price variations in our nation's food supply. Having a reliable, secure, and legal workforce through the H-2A nonimmigrant visa program is one way to provide relief to a struggling industry. For the livelihoods of these immigrants who may not return home, for the agricultural community, and

for American consumers, I urge you to consider an extension to the maximum length of stay requirement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael S. Lee". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

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Michael S. Lee  
United States Senator

CC:  
The Honorable Sonny Perdue  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250



U.S. Citizenship  
and Immigration  
Services

November 24, 2020

The Honorable Michael S. Lee  
United States Senate  
Washington, DC 20510

Dear Senator Lee:

Thank you for your October 19, 2020 letter. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (The Department) carefully considered whether it should extend the flexibilities for H-2A workers to remain in the United States beyond the three-year limitation, without first requiring them to remain outside of the United States for an uninterrupted period of three months, as generally required by regulation. As explained in the August 20, 2020 temporary final rule, the Department determined not to do so in order to strike a balance between providing stability to the U.S. food supply chain, addressing the urgent needs of U.S. agricultural producers, and ensuring that those aliens admitted into the United States as temporary H-2A workers remain in the United States on a temporary basis, as required by law.

While we cannot comment on any specific cases that may come before the agency, we recognize that some nonimmigrants may unexpectedly be compelled to remain in the United States beyond their authorized period of stay due to travel restrictions and other unforeseeable disruptions. Depending on their circumstances, these aliens may be eligible to apply for a change of status to certain other nonimmigrant categories before their authorized period of admission expires. We also note that these H-2A workers may, depending on the case, be granted up to a 30-day period following the expiration of their employer's H-2A petition to prepare for departure from the United States.

Please note that the Department will continue to monitor the situation and will determine whether continued flexibilities may be needed.

Thank you again for your letter. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "J. Edlow", with a long horizontal flourish extending to the right.

Joseph B. Edlow  
Deputy Director for Policy