

KEN BUCK

4TH DISTRICT OF COLORADO

2455 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4676
FAX: (202) 225-5870

DISTRICT OFFICE:

900 CASTLETON RD. SUITE 112
CASTLE ROCK, CO 80109
PHONE: (720) 639-9165
FAX: (720) 639-9134

5626 19TH STREET, SUITE A
GREELEY, CO 80634
Phone: (970) 702-2136
Fax: (970) 702-2951



Congress of the United States
House of Representatives
Washington, DC 20515-0605

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION
AND CITIZENSHIP
SUBCOMMITTEE ON ANTITRUST, COMMERCIAL
AND ADMINISTRATIVE LAW - RANKING MEMBER

HOUSE FOREIGN AFFAIRS COMMITTEE

SUBCOMMITTEE ON ASIA, THE PACIFIC,
AND NONPROLIFERATION

April 29, 2021

Tracy Renaud
Acting Director
U.S. Citizenship and Immigration Services
111 Massachusetts Avenue NW
Washington, D.C. 20001

Dear Acting Director Renaud,

I write regarding numerous H-2B visa petitions that were rejected for consideration in February due to extreme weather events outside the applicants' control. These petitions were stuck in transit when the H-2B visa cap was reached on February 12, 2021, and when they arrived, USCIS rejected appeals to consider employers' H-2B visa petitions. I urge you to reconsider this determination and provide full and fair adjudication to petitions impacted by these unforeseeable weather events.

From February 6 – 17, the National Weather Service (NWS) reported an Arctic blast that directly impacted much of the continental United States, including economic shutdowns and severe delivery delays in what the NWS estimates was a billion-dollar weather and climate disaster. Concurrently, on February 12, 2021, USCIS reached the H-2B cap for the second half of the current fiscal year, barring any additional petitions from consideration. However, petitions that were sent prior to that date and scheduled to arrive prior to February 12 were denied consideration. It is clear the only reason the petitions did not arrive before the cap was reached is severe weather.

In 2014, following courier delays that resulted in H-1B petitions arriving under similar circumstances, USCIS provided impacted petitioners an option to submit a second petition for consideration. I urge you to consider this fair remedy for the impacted petitioners, especially given the economic importance of H-2B visa holders to Colorado and the country.

Temporary work visas allow many businesses in Colorado to hire enough employees to meet demand for their businesses during peak seasons. However, removing these businesses' H-2B petitions from consideration due to courier delays caused by severe weather events unfairly inflicts serious damage on their ability to serve their customers. While caps on temporary work visas are established by Congress to protect American citizens from unfair competition for

KEN BUCK

4TH DISTRICT OF COLORADO

2455 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4676
FAX: (202) 225-5870

DISTRICT OFFICE:

900 CASTLETON RD. SUITE 112
CASTLE ROCK, CO 80109
PHONE: (720) 639-9165
FAX: (720) 639-9134

5626 19TH STREET, SUITE A
GREELEY, CO 80634
Phone: (970) 702-2136
Fax: (970) 702-2951



Congress of the United States
House of Representatives
Washington, DC 20515-0605

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION
AND CITIZENSHIP
SUBCOMMITTEE ON ANTITRUST, COMMERCIAL
AND ADMINISTRATIVE LAW - **RANKING MEMBER**

HOUSE FOREIGN AFFAIRS COMMITTEE

SUBCOMMITTEE ON ASIA, THE PACIFIC,
AND NONPROLIFERATION

employment, there is clear precedent for reconsideration in situations where businesses have been inappropriately excluded from the process.

In light of the extraordinary circumstances detailed above and existing precedent for affected petitioners to resubmit their petitions for consideration, I respectfully urge you to reconsider the decision to deny these petitions.

Sincerely,

A handwritten signature in blue ink that reads "Ken Buck".

Ken Buck
Member of Congress



U.S. Citizenship
and Immigration
Services

May 27, 2021

The Honorable Ken Buck
U.S. House of Representatives
Washington, DC 20515

Dear Representative Buck:

Thank you for your April 29, 2021 letter to U.S. Citizenship and Immigration Services (USCIS). In your letter, you emphasized the importance of the H-2B program to businesses in Colorado and requested that USCIS accept H-2B submissions that were delayed due to inclement weather.

We appreciate the concerns you raised regarding the need for H-2B nonimmigrant labor for seasonal employers in Colorado, and we acknowledge the immigration-related challenges that H-2B employers and temporary foreign workers are currently facing. We want to assure you that the rejection of a petition does not preclude a petitioner from resubmitting a request, and USCIS will process the case anew, without prejudice. Further, while USCIS received enough petitions to meet the congressionally mandated H-2B cap for the second half of the fiscal year on February 12, 2021, as the nation's economy continues to reopen safely, the Department of Homeland Security (DHS) is taking action to ensure that American businesses are equipped with the resources needed to recover successfully and contribute to the economic health of local communities.

With regard to the needs of employers who did not receive H-2B visas under the annual statutory cap, we note that Congress again delegated to DHS its authority to increase the number of available H-2B visas in Section 105 of the Consolidated Appropriations Act, 2021. As in prior years, DHS consulted with the Department of Labor. In light of increased labor demands and balancing the interest of U.S. workers, on April 20, 2021, DHS announced a supplemental increase of 22,000 visas for the H-2B program. Of the 22,000 additional visas, 16,000 are initially available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in one of the last three fiscal years). The additional visas have been made available via a temporary final rule in the *Federal Register* that was published on

May 25, 2021.¹ Furthermore, to expand lawful pathways for opportunity in the United States consistent with President Biden's Executive Order 14010², 6,000 of these visas are reserved for nationals of the Northern Triangle countries of Honduras, El Salvador, and Guatemala.

Employers seeking H-2B workers must test the U.S. labor market and certify in their petitions that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work for which they seek a prospective foreign worker. They must also certify that employing H-2B workers will not adversely affect the wages and working conditions of similarly-employed U.S. workers. The additional visas will only be made available to employers that attest that, if they do not receive workers under the cap increase, they are likely to suffer irreparable harm.

Finally, please note that USCIS continues to accept H-2B petitions that are exempt from the congressionally-mandated cap. These include, among others, petitions for current H-2B workers in the United States who wish to extend their stay.

Thank you again for your interest in this important matter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Sincerely,

A handwritten signature in black ink, reading "Tracy L. Renaud". The signature is fluid and cursive, with the first name "Tracy" and last name "Renaud" clearly distinguishable.

Tracy L. Renaud
Acting Director

¹ See Temporary Increase in H-2B Nonimmigrant Visas for FY 2021, USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/temporary-increase-in-h-2b-nonimmigrant-visas-for-fy-2021>

² See Executive Order 14010 of February 2, 2021, *Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*.