

# United States Senate

WASHINGTON, DC 20510

March 3, 2021

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Mayorkas:

We urge the Department of Homeland Security (DHS) to retain and expeditiously implement the H-1B selection rule published on January 8, 2021, titled, “Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions.” The rule will protect American workers by ensuring that visas are first issued to employers offering the highest wages in the area of employment before being allocated to other petitioners.

This rule would revamp the annual distribution of H-1B visas, which is currently done by random lottery, to instead prioritize the highest-paid workers. This would make it much more difficult for companies that specialize in outsourcing American jobs to game the allocation of H-1B visas, which currently results in these companies obtaining tens of thousands of additional visas every year.

On February 4, DHS announced a delay in the effective date of the H-1B selection rule from March 9 to December 31, 2021.

We were disappointed to learn of this delay, as the H-1B visa program is greatly in need of reform. The practical effect of this delay is that outsourcing companies will continue to game the lottery system and secure thousands of new H-1B visas for FY 2022 since the H-1B filing season begins in a few weeks. This will facilitate these companies’ efforts to continue outsourcing American jobs.

According to a May 4, 2020 analysis by the Economic Policy Institute, a majority of H-1B employers use the visa program to pay migrant workers below-market wages, and half of the top 30 H-1B employers use an outsourcing business model. This is simply unacceptable and does not reflect how Congress intended the H-1B program to work. While Congress should pass legislation to overhaul the H-1B visa program, DHS and the Department of Labor should use their robust regulatory authority to reform the H-1B program to protect American workers from displacement and migrant workers from exploitation.


Establishing an equitable distribution of new visas is a key starting point to ensuring that the H-1B visa program is not used to lower wages and displace American workers. The annual H-1B visa lottery has been abused for years by outsourcing companies. Employers offering high wages to international graduates of American universities often lose out in the H-1B lottery,

while thousands of new H-1B visas are issued each year to outsourcing companies offering below-market wages and seeking to offshore American jobs.

The H-1B selection rule is a reasonable regulatory reform that will improve the H-1B visa program for American and immigrant workers, and American employers. We disagree with the decision to institute a lengthy delay to the effective date of the H-1B selection rule, and we urge DHS to retain and implement the rule as soon as possible – ideally before the upcoming April 2021 lottery – so that outsourcing companies cannot continue to game the system at the expense of American workers, as they have done for far too long. If DHS finds that the H-1B selection rule needs to be further refined to avoid unintended consequences, we ask that you quickly identify and make these changes to improve the rule.

We believe the H-1B visa program must be reformed to stop abuse. Implementing a reasonable allocation of visas as the H-1B selection rule would do is a meaningful step toward reform to protect American workers. We urge you to expeditiously implement the rule.

Sincerely,



Richard J. Durbin  
United States Senator



Charles E. Grassley  
United States Senator

cc: Al Stewart, Acting Secretary of Labor  
Tracy Renaud, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services