Jan. 31, 2022
Brian Pasternak, Administrator
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N–5311
Washington, DC 20210

Re: Employment and Training Administration, Department of Labor, Docket Number ETA-2021-0006

Dear Administrator Pasternak:

Thank you in advance for receiving these comments from wafla. Wafla is a member-based association with greater than 1,000 member farms in the Pacific Northwest. Each year, our association assists greater than 150 employers who file H-2A applications, many of whom are small family farms.

We write, on behalf of these farms, to submit comments in connection with the Department of Labor's Proposed Rule on the Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States.

The Immigration and Nationalization Act requires DOL to set wages and working conditions such that the employment of non-immigrant H-2A workers will not adversely impact U.S. workers. A U.S. worker is a person who is either a U.S. citizen or an immigrant who has obtained legal work authorization. **It is well known to DOL that there are few if any U.S. workers who are interested in seasonal agricultural employment, and it is therefore not necessary to impose these draconian wage rates to protect a workforce that largely does not exist.**

Please consider and respond to these facts:

- State Workforce Agencies (SWAs) are required to refer job seekers to employers who file H-2A applications, and yet **it has been more than 10 years since DOL has required SWAs to refer only U.S. workers for these positions.**
- The last time that DOL required SWAs to screen job seekers for work authorization, the state of Washington, and many other states, refused. DOL did not enforce its requirements.
- Since 2019, the state of Washington has dramatically increased its recruiting of local workers. In 2021, Washington state reported that its recruiting efforts resulted in 114 applications, of which the vast majority were job seekers living in Mexico who were aware of Washington state's outreach efforts. The state reported that it was able to refer one local worker to an H-2A contract, and this worker was not hired.

Please take a minute to place this in perspective: Washington state is one of the largest ag labor states in the nation, annually employing more than 100,000 seasonal workers. The state expended millions of dollars in a recruiting campaign, did NOT require workers to prove work authorization, and yet was only able to recruit one candidate, who was ultimately not qualified for the position referred.

The reality for farmers in labor-intensive agriculture is that they can use the H-2A program or hire undocumented workers. Farmers who use the H-2A program are at a competitive disadvantage to farmers who do not, despite the fact they are paying higher wages, providing housing, and trying their best to follow the law.

The reality for job seekers from Mexico and Central America is that if they are not able to secure a job through the H-2A or a similar visa program, the alternative is undocumented immigration. This reality was recently recognized by the President's *U.S. Strategy for Addressing the Root Causes of Migration in Central America* regarding Northern Triangle nations. Making the H-2A program unaffordable to American farmers will only make this problem worse, not better.

The reality is that the AEWR is putting farmers out of business, encouraging undocumented immigration, and further promoting the offshoring of the U.S. food supply. The proposed changes to the AEWR by DOL do not address these fundamental issues and therefore should be reconsidered.

We look forward to your response to our comments.

Sincerely,

Ryan Ogburn
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