



As Virus Spreads, Limited Visa Services Could Strain Farms

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The U.S. Department of State's decision to suspend visa services across the globe in response to the spread of the novel coronavirus could squeeze the agricultural industry by limiting access to migrant farmworkers.

The State Department on Wednesday announced it would no longer process routine visa questions in most countries, forcing consular officers globally to cancel all appointments for green card and temporary visa applicants.

Consulates and embassies, "as resources allow," will continue to "provide urgent and emergency visa services," the department said, mostly for American citizens. A State Department spokesperson said in a statement that the embassies will "resume routine visa services as soon as possible, but are unable to provide a specific date at this time."

The suspension could cut off U.S. farmers' access to new migrant farmworkers under the H-2A guest worker program, which allows U.S. employers to hire foreigners for seasonal labor when there are not enough American workers to fill the open positions.

"This is a hit to the farming industry at a time when we're all stocking up on food in our own homes," said Julia Gelatt, a senior policy analyst at the Migration Policy Institute. A possible food shortage could prove particularly dire if agricultural sectors in countries that ship produce to the U.S. take a financial hit and restrict imports, she said. Some countries have already restricted imports of medical supplies.

Embassies and consulates in Mexico, which sends the bulk of migrant farmworkers to the U.S., were among those that ceased processing visa requests on Wednesday. According to the Cato Institute, Mexican citizens comprised 91% of H-2A visas under the guest worker program last year.

Blake Chisam, a partner at Fragomen, Del Rey, Bernsen & Loewy LLP and former senior counsel to the House Judiciary Committee's immigration panel, said during a firm webinar Thursday morning there may be "some potential" for Mexican migrant workers to get visa appointments because of the "essential nature" of their work.

The U.S. Consulate General Monterrey has announced it will prioritize H-2A applications from returning workers who are eligible to have their in-person interviews waived, which would include migrant workers who have previously worked under H-2A status and had their visas expire in the last year.

A spokesperson for the Monterrey consulate told Law360 on Thursday that the consulate is “well aware” of the importance of the H-2 visa program to both “the economy and food security of the United States” and is “reviewing all possible options.”

“We intend to continue processing H-2A cases as much as possible, but will need to modify our procedures in order to facilitate the social distancing recommended by health authorities,” the spokesperson said.

The Trump administration has also indicated that it’s aware of the problem.

A U.S. Department of Agriculture spokesperson told Law360 that the USDA is “directly engaged” with the State Department and “working diligently to ensure minimal disruption in H-2A visa applications during these uncertain times.”

“This administration is doing everything possible to maintain continuity of this critically important program,” the USDA spokesperson said.

The USDA and U.S. Department of Labor, which regulates the migrant guestworker program, said Thursday they had partnered to identify nearly 20,000 H-2A agricultural works and H-2B non-agricultural workers whose employment contracts are expiring soon and will be available then to transfer to other employers in need.

“American farmers and ranchers are at the frontlines of maintaining the nation’s food supply,” Labor Secretary Eugene Scalia said. “In these unprecedented times, it is critical for them to have the workforce they need.”

But with more than a quarter-million migrant workers on seasonal visas supporting the industry, the agricultural industry has sounded the alarm.

“This is a critical matter for U.S. farmers and ranchers,” Zippy Duvall, president of the American Farm Bureau Federation, wrote in a Tuesday letter to Secretary of State Mike Pompeo. “We urge the administration to find an appropriate mechanism, either through an emergency waiver or some other means, to ensure that H-2A workers may continue to safely come to America’s farms and ranches.”

The Agriculture Workforce Coalition, which includes the Farm Bureau as well as the Western Growers Association and other farm industry groups, called on Pompeo to recognize H-2A visa processing as essential functions.

"The failure to take necessary action to protect our food supply will result in bare shelves in grocery store produce aisles, not from panic-buying, but as the result of the federal government directly causing a shortage of critical labor," the industry groups wrote in a letter. "We urge you and the president to not let that happen."

According to a March 2020 study by the Cato Institute, H-2A labor makes up about 10% of full-time agricultural jobs. Meanwhile, people born in the U.S. have increasingly shied away from these farm jobs, with the portion of farmworkers being U.S.-born dropping from 40% in 1989 to around 25% in 2016.

That labor shortage has spurred Congress to work toward expanding the H-2A visa program in exchange for increased immigration compliance measures. The House passed such a bipartisan reform package last fall, but the legislation has since stalled in the Senate.

Allison Crittenden, the Farm Bureau's director of congressional relations, told Law360 this is a particularly critical time in the harvest season for farms to have full labor forces, and that the industry has suffered from labor shortages prior to the coronavirus outbreak, which the World Health Organization has now labeled a global pandemic.

And while some returning workers could still be processed, she said the Farm Bureau is concerned about an employment gap.

"We really are unsure, and right now is a time where we really need certainty," she said.