



February 28, 2022

Johanna Cruz
Management Analyst
Office of the Comptroller
Bureau of Consular Affairs
U.S. Department of State
Via electronic submission: www.regulations.gov

**RE: Schedule of Fees for Consular Services – Nonimmigrant and Special Visa Fees
86 Fed. Reg. 74018 (December 29, 2021)
RIN 1400-AF33, Docket No. DOS-2021-0019**

Dear Ms. Cruz:

On behalf of the membership of the Florida Fruit & Vegetable Association (FFVA), we submit to you the following comments on the U.S. Department of State's proposed rule, Schedule of Fees for Consular Services – Nonimmigrant and Special Visa Fees, 86 FR 74018, published December 29, 2021.

FFVA is an agricultural organization whose grower-shipper membership represents the vast majority of fresh fruit, vegetable, and other specialty crop production in Florida. Our organization also serves as an agent for its members in filing H-2A applications in Florida and 21 other states. Florida's farms employ more H-2A workers than in any other state, having been certified for more than 39,000 H-2A visas in recent years. Most of these employees work on Florida's fruit, vegetable, and specialty crop operations.

FFVA is grateful to the Department for the opportunity to provide comments on this proposed rule and to share how the proposed fee increases for petition-based non-immigrant visas (NIVs) will affect Florida's growers and other agricultural small businesses.

General Comment

The proposed rule provided that, generally, costs for petition-based NIV categories only increased slightly, due to a combination of decreased compensation costs and an increase in contracted support costs.

The proposed increase in fees, however, is not at all slight. The Department proposes to increase petition-based NIV fees from \$190 to \$310 – an increase of 63%.

In reviewing the proposed rule, we've identified fatal flaws in the Department's methodology that have overstated costs to the Department and understated the fees' impacts to H-2A employers. Because of these flaws, the Department's proposed fee increases are not based on fact. These

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arbitrary fee increases will have a significant economic impact on a substantial number of small businesses who will bear the cost of these fee increases.

It is for these reasons that FFVA implores the Department to withdraw its proposed rule.

Specific Comments

The proposed increase to petition-based NIVs will have a significant economic impact on a substantial number of small businesses.

The Department certified in its proposed rule that the fee increase “will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).” This simply cannot be accurate.

The Department also states that it does not believe that the increased NIV application processing costs will deter non-U.S. citizens from applying for work visas. Notwithstanding whether this statement is true for other NIVs, it is misapplied as it relates to the H-2A visa.

Under program rules, the petitioning employer reimburses the H-2A worker for the cost associated with bringing the worker to the worksite. This means that the H-2A employer, and not the visa beneficiary, incurs the cost of the visa. As farmers in the program typically employ multiple H-2A workers, the 63% increase in petition-based NIV fees will have a concentrated and cumulative impact on agricultural small businesses rather than being spread across multiple individuals as the rule supposes.

Many growers regularly hire 50 to 100 H-2A workers annually. The 63% fee increase would result in an immediate and direct impact of \$15,000 to \$30,000 to these growers in visa fees alone. Other agricultural small businesses bring in hundreds, even thousands, of H-2A workers and will incur hundreds of thousands of dollars in additional fees. One of our members, in fact, would pay over \$288,000 in additional fees in one year.

These growers will receive no new benefit or services in return for their increase in fees, either. Employers will simply pay an additional 63% for the status quo.

This rule will unequivocally have a significant economic impact on a substantial number of small businesses. And though the increased fees may not deter non-U.S. citizens from applying for work visas, it could have a similar effect by deterring employers from making jobs available to non-U.S. citizens.

Due to the substantial impact this rule would have on agricultural small businesses, the Department should withdraw its proposed rule and only consider alternatives that do not have a disparate impact on our nation’s growers.

The Department understates the rule's impact on the total cost of bringing a worker into the United States.

The proposed rule provides that “the total cost to bring over an agricultural worker is estimated to be \$10,177, or \$10,367 with the current visa fee of \$190.” This number is used as a basis to claim that the total cost of bringing over a worker will increase “by just over one percent.” Though the Department credited this information to the U.S. Department of Agriculture, it did not cite to a specific published study nor provide the source of the data when requested.

We proffer that this number as presented is inaccurate. Employers in Florida regularly report paying approximately \$1,000 to bring a single H-2A worker to a worksite in the United States. Though actual costs may vary between employers, due to the number of workers or proximity to the border, this estimate is significantly less than the USDA cost included in the proposed rule.

By this estimate, the Department's proposed rule would constitute a 12% increase in an employer's costs in bringing in a single H-2A worker. In using inaccurate data, the Department significantly understates the substantial impact this rule will have on agricultural producers.

The Department should therefore withdraw its proposed rule to avoid causing significant harm to growers and instead review the actual cost to growers. More accurate data will indicate that the NIV fees as proposed will have a significant economic impact to the small businesses who employ workers under the H-2A program.

The Department has underestimated its projected annual number of applications.

In Table 1 – “Impact of Proposed Fee Changes,” the Department lists its projected annual number of applications for each visa category, and anticipates processing 239,529 applications for the H, L, O, P, Q, and R category nonimmigrant visas combined. Yet in 2021, the H-2A visa alone accounted for over 258,000 visas actually issued. The method used to develop these projections has clearly missed the mark.

The Department went to great lengths in the proposed rule to educate on the fluctuation of per unit costs, but in significantly underestimating the number of projected visas, it has significantly overestimated the fees that are needed to offset those costs.

Not only were a record-number of H-2A visas issued during the pandemic, even more H-2A visas are expected to be issued in 2022, based on early reports from the U.S. Department of Labor. The Department should review its methodology so that the number of projected applications is consistent with number of applications actually received. More accurate projections would likely result in lower costs per unit and a more appropriate visa fee.

Conclusion

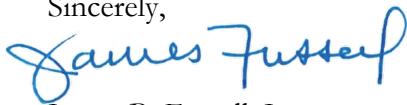
Our nation's farmers are facing an unprecedented domestic labor shortage which has resulted in their growing reliance on the H-2A visa. These growers, however, cannot and should not be subjected to fees that are unfounded in methodology and reality.

It is abundantly evident that the Department's methods contain fatal flaws that have resulted in a far too costly visa fee. In short, the Department has overstated its costs and understated the impact of its proposed fees. Florida's fruit and vegetable growers, and agricultural producers throughout the nation, would bear the brunt of these inaccuracies.

The Department must therefore withdraw its proposed rule to avoid inflicting substantial harm on a significant number of small businesses. Further, we ask the Department to consider more efficient processes to reduce costs rather than merely transferring the costs to growers, and to only propose fee increases that are based on sound methodologies.

FFVA is grateful to the Department and its leadership for its consideration of these comments.

Sincerely,



James B. Fussell, Jr.
Director of Labor Relations
Florida Fruit & Vegetable Association