

**STATEMENT OF BART STUPAK
MEMBER OF CONGRESS
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY, AND INTERNATIONAL LAW
APRIL 16, 2008**

Thank you, Chairwoman Lofgren and Ranking Member King, for allowing me to testify before the Subcommittee on the importance of the H-2B program.

While I welcome today's hearing, I am disappointed we didn't act to address the expiration of the H-2B returning worker program eight months ago. My legislation, the Save Our Small and Seasonal Businesses Act of 2007, was referred to this Subcommittee on April 20, 2007. That was nearly a year ago. I have written the Chairwoman twice and worked with colleagues on both sides of the aisle since July to extend the H-2B returning worker program, to no avail. The delay in acting on my legislation has hurt small and seasonal businesses in Michigan and throughout the nation.

The H-2B visa program was created to provide access to non-immigrant, temporary workers for seasonal and peak load needs when no American workers can be found. Foreign workers offer small and seasonal businesses short-term help and return to their home country at the end of the season. H-2B visas are capped at 66,000 visas per year. Even with 66,000 visas a year, it still does not meet the labor needs of seasonal businesses!

To help fill these additional needs, Congress established the H-2B returning worker program in 2005 by enacting the Save Our Small and Seasonal Businesses Act of 2005 (P.L. 109-13). This program exempts returning workers who have received an H-2B visa in 1 of the 3 previous fiscal years from counting against the 66,000 cap. The two-year pilot program was extended for an additional year in the National Defense Authorization Act of 2007 (P.L. 109-364).

After three successful years, the returning worker program expired on September 30, 2007. The H-2B returning worker program has been expired for six and a half months and yet Congress still has not enacted legislation to extend it.

On September 27 of last year, the U.S. Citizenship and Immigration Services had already received enough visa petitions to exceed the cap for H-2B visas for the first half of Fiscal Year 2008. The first cap was reached four days before the start of the new fiscal year! The cap for the second half of Fiscal Year 2008 was also reached quickly on January 2, 2008.

Without the returning worker program, thousands of small businesses with seasonal needs were locked out of the visa process. As a result, many landscaping businesses, resorts, restaurants, carnivals, seafood processing, and other seasonal businesses are facing significant labor shortages this year.

In my district, restaurants, hotels, and resorts in Mackinaw City, on Mackinac Island, and in the surrounding areas use H-2B workers to help supplement their full-time and seasonal American

workers. These businesses are truly seasonal in nature. Businesses on Mackinac Island have an operating season that generally runs from May through October, and are entirely closed during the winter months.

I thank the Subcommittee for inviting Mr. Daniel Musser of the Grand Hotel, which is a nationally and internationally known summer hotel on Mackinac Island, to testify. The Grand Hotel is an important icon in Michigan and has employed foreign workers for the last 35 years when they could not find enough Americans to fill all the available jobs. The Grand Hotel hires hundreds of Americans for seasonal jobs, but the number of positions needed surpasses the number of Americans who are ready, willing, and able to fill them.

This year, without the benefit of the returning worker program, the majority of the seasonal businesses in my district did not obtain the H-2B workers they will need this summer. Of the more than 70 businesses in northern Michigan, only one business in Mackinaw City and two on Mackinac Island received H-2B visas this year.

Not having H-2B workers will significantly affect the businesses within my district and their ability to keep a professional, trained, and dependable work force and provide the service and experience their customers expect. On a national scale, this will hurt tourist destinations throughout the United States. As a result of Congress' inaction, many businesses already scaled back their operations and laid off U.S. workers, while others report that they are on the brink of bankruptcy. By not extending the H-2B returning worker program, we are endangering the U.S. businesses and U.S. jobs that depend on these returning workers.

These foreign workers offer short-term, temporary help. H-2B workers cannot and do not stay in the United States. H-2B workers must return home at the end of their season. More importantly, the H-2B program contains strong provisions to ensure that American workers have the first right to work. Employers must vigorously recruit U.S. workers and must demonstrate to the Department of Labor that there are no U.S. workers available to fill seasonal vacancies before they can fill these vacancies with H-2B visa workers.

I'm often asked why Michigan businesses hire foreign workers considering Michigan's high employment rate. However, during the summer months, the unemployment rate drops significantly in northern Michigan. Statistics from the Michigan Department of Labor & Economic Growth show that unemployment drops from around 20 percent in the winter to less than 4 percent in the summer months in Mackinac County.

It is also important to keep in mind that the H-2B program is specifically designed for peak-season needs. It is difficult for employers to recruit American workers who are willing to work a temporary, full-time job for only five or six months out of the year. While businesses do hire some college students, the season is longer than their summer breaks, keeping them from possibly working during the entire May through October season. In addition, more and more college students are moving away from traditional summer jobs to take part in office internships and related programs.

In recent months, the H-2B program has been attacked by organizations like the Southern Poverty Law Center, AFL-CIO, and SEIU. These organizations firmly believe that the H-2B program is rife with abuse and bad employers who treat foreign workers like modern day slaves. I do not disagree that the H-2B program, like any other program, includes a few bad apples that violate the law. We have some isolated cases in the Gulf Coast region. However, this does not mean that the H-2B program is fundamentally flawed and does not provide proper protections for foreign workers.

Under current law, H-2B workers receive the same worker protections as their U.S. counterparts. An H-2B worker is guaranteed wage protections under the federal Fair Labor Standards Act; a safe and healthy worksite mandated by the Occupational Safety and Health Act; protection for occupational injuries and fatalities under state workers' compensation programs; federal whistleblower protections; right to join a union; and protections under five federal civil rights statutes which prohibit discrimination on the basis of race, color, religion, gender, citizenship, national origin, age, or disability.

H-2B workers are also provided additional protections which were established under the Save Our Small and Seasonal Businesses Act of 2005 (P.L. 109-13). This legislation, which originally established the returning worker program, made sure that government agencies processing H-2B visas have the resources they need to detect and prevent fraud and to protect American workers. These resources come from a special government-imposed fee of \$150 that businesses pay for each H-2B petition they file. The legislation established fines of up to \$10,000 per violation if a business breaks the employment conditions promised to the H-2B worker. In addition, it provided the Department of Labor with the authority to deny a business' H-2B applications for up to five years for bad behavior.

Some changes could be made to the H-2B program to help both the businesses using the program and the foreign workers coming to the United States. It is important that the Department of Labor have the authority to enforce the labor protections already in place.

In addition, Congress should address the issue of foreign labor recruiters. Because H-2B visas are so limited, foreign labor recruiters have been able to exploit this for a profit. There are reports of some foreign labor recruiters who charge foreign workers excessive fees and misrepresent the terms of employment and the terms of the H-2B visa. Such recruiters are also reportedly snatching up H-2B visas and then take advantage of the businesses that depend on these workers by auctioning them off to the highest bidder. This is unacceptable. Visas should go directly to the businesses that need them, and recruiters should be held accountable for the information they provide to foreign workers. By delaying an extension of the returning worker program, Congress is compounding the foreign recruiter problem that the unions and workers rights groups are trying to prevent. I hope to continue my dialogue with the Subcommittee and Chairman George Miller on these matters.

Now, however, America's small and seasonal businesses need Congress to act immediately to extend the H-2B returning worker program. Small and seasonal businesses in Michigan and throughout the country are facing significant labor shortages this year that will result in forced downsizing, decreased services, economic hardship or even bankruptcy. If small businesses lose

their ability to hire seasonal, non-immigrant labor, full-time American jobs and U.S. businesses are at stake and may be lost.

I urge the Subcommittee to act on my legislation, the Save Our Small and Seasonal Businesses Act (H.R. 1843), or approve an extension of the H-2B visa returning worker program as soon as possible, to preserve small businesses' access to seasonal workers.

Thank you.