talent everywhere
2001 K STREET, NW, # 300
WASHIGTON, DC 20006 USA
worldwideerc.org

November 20, 2023

Mr. Charles L. Nimick
Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

RE: DHS Docket No. USCIS–2023–0012, NPRM on "Modernizing H-2 Program Requirements, Oversight, and Worker Protections"

Dear Mr. Nimick:

The Worldwide Employee Relocation Council ("WERC") greatly appreciates the opportunity to comment on the proposed rule entitled "Modernizing H-2 Program Requirements, Oversight, and Worker Protections." Please find outlined in this letter our thoughts on how the proposed rule can be modified to better address the needs of talent mobility.

WERC is committed to supporting strong business immigration policies which provide for the unhindered movement of workers around the globe. Workforce relocation is critical to the financial viability of a business and, in turn, to the vibrancy of local and national economies as well as the global economy. It is therefore vital that business immigration laws, regulations, practices, and the cost of obtaining work visas allow for the easy movement of workers throughout the world.

Our membership is comprised of over 4,000 individuals and businesses that fulfill the facilitation of global and domestic work through the relocation and compliance of employees across the globe, as well as the companies that employ them. Our members include relocation management companies, household goods moving organizations, immigration firms, human resources consultancies and hundreds of other suppliers. These organizations include many small and family businesses as well as larger enterprises.

We commend USCIS on moving forward with updating the requirements and processes related to the H-2 program to improve the effectiveness of the program and to enhance the experience for individuals and their employers. This rule includes a range of provisions that will significantly enhance the program, and we will highlight several of those provisions below. We also raise several areas where there are provisions that we ask USCIS to address before finalizing this rule to mitigate potential issues that could negatively impact U.S. employers and the H-2 program overall.

Employer Responsibility for Supply Chains: We understand the intent behind the agency's clarification of what an employer is responsible for related to actions with their supply chain and support the agency's decision to add in demonstration of "due diligence" provisions between employers and their suppliers. However, the broad and vague wording around the expectation of these "due diligence" requirements will leave employers with a lack of clarity around the expectations of the agency and will create challenges for

talent everywhere
2001 K STREET, NW, # 300
WASHIGTON, DC 20006 USA
worldwideerc.org

employers that encounter any issue within their supply chain to ensure that they are not penalized and barred from the H-2 program despite their good faith efforts to adhere to the "due diligence" requirement.

Employers need clarity of what is required of them to be able to ensure they can meet those requirements, and a vague requirement without clear parameters prevents the application of a consistent standard and raises the risk of situations where employers could be penalized depending on how the agency ultimately chooses to interpret the requirement in each situation.

The wording in this rule also provides a broad authority to USCIS to deny a petition and bar an employer in situations where they might have been subject to an administrative action by the Department of Labor's Wage and Hour Division or other applicable federal, state, or local agency, but not one that required debarment based on the investigation results. If the Wage and Hour Division or other agency has investigated and determined that debarment is not necessary, such decisions should be factored in by USCIS in deciding whether to deny a particular petition.

Worker Flexibilities: We applaud the agency's efforts to implement changes to enhance worker flexibilities and streamlining numerous requirements between the H-2A and H-2B, particularly in relation to the pre-and post-employment grace periods. Additionally, we appreciate USCIS adding provisions related to portability, removal of the 'dual intent' standard from H-2 workers, eliminating the 'eligible countries list' requirement, and improving the interrupted stay provisions. These are measures that will not only benefit petitioners and their employers but will also help USCIS strengthen the effectiveness and efficiency of the H-2 program overall.

Site Visits: WERC supports the intent behind USCIS' decision to codify site visit requirements into the rule, but we encourage the agency to clarify requirements, expectations, and timelines for employers related to site visits. This step is critical for ensuring organizations are clear on what is required of them, and that the agency doesn't ultimately penalize employers as not being 'cooperative' due to a lack of employer clarity around site visits.

Interrupted Stay Calculations: WERC supports the agency's decision to simplify the interrupted stay calculation by changing the reset for the 3-year period to 60 days. However, given that many H-2 workers cross the land border with Mexico, which does not track H-2 worker departures, this will result in issues for many H-2 participants with this requirement. We ask USCIS to implement a mechanism to allow for such tracking at the land border with Mexico.

Dual Intent: As noted above, WERC applauds USCIS for eliminating the dual intent provision. However, we urge the agency to further clarify its intent that employers can sponsor H-2 workers for permanent roles within the business even if they are the same or similar to the role the employer is positioning for. This is important for employers as often the positions are structured the same, but with some employees needed year-round but additional talent being needed only for certain seasonal periods.

Grace Period for Individuals Reaching Three Year Stay: WERC recommends that USCIS provide a short-term grace period to account for the departure of H-2 holders that have reached the three-year maximum length

talent everywhere
2001 K STREET, NW, # 300
WASHIGTON, DC 20006 USA
worldwideerc.org

of stay in the United States. This would allow for the orderly departure of individuals while also mitigating against potential unintentional overstays resulting from the lack of a grace period.

Conclusion

On behalf of the membership of WERC, I again thank you for this opportunity to provide comments on the proposed rule. We look forward to continuing to work with USCIS to successfully implement a final rule and to support the agency in enhancing a program that is critical for U.S. employers.

Should you have any questions regarding our requests, please contact me via email at mjackson@worldwideerc.org or via phone at +1-703-842-3411.

Sincerely,

Michael T. Jackson
Vice President, Member Engagement and Public Policy