

You play big role in getting your H-2A workers on time



FRANK GASPERINI
National Council
of Agricultural
Employers

The author is Executive Vice President/CEO of the National Council of Agricultural Employers (NCAE.) NCAE is the national trade association representing Agricultural Employers in Washington, DC. NCAE advocates and addresses employer issues for all employers of both domestic and H-2 agriculture workers. Visit NCAE's website at www.NCAEonline.org for more information and continuing updates.

We are fast approaching the time when employers are anxiously awaiting their H-2A visa workers' arrival. As we know, there are many ways our workers can be delayed so that they do not arrive on, or before, the date of need specified in your application. We also know that one or more delayed workers can cause serious havoc, financial distress, and even business failure in time-critical work such as harvesting. Even for those who can cover for a missing employee for a few extra days or weeks, quality — and more importantly, safety — may suffer as too few people, or not the best-qualified people, are forced to work longer hours and push beyond their limits.

So, based on many conversations with harvesters over the past few years, let us discuss the steps every H-2A employer should follow every year, starting even before the H-2A visa worker application is filed.

First, remember that your business, your family's livelihood and probably their workplace safety are at stake, so your active, hands-on actions are important from the start. No one can be more concerned about your success than you are, so do not put your future into the hands of any assistants, contractors, government agencies, or elected officials and just walk away to wait! I am not suggesting you be a total pest and second-guess everyone involved, but that you maintain active interest, have knowledge of the process, and be ready to jump to ask for appropriate and timely help if you are not being served.

If the first you know of your workers being delayed is that they are not there on your date of need, then you have not done your own due diligence as a manager. There are likely others

ANSWERS BY MEMBER REQUEST

The topic for this NCAE column and the column planned for the April newsletter are a result of a request made to the USCHI office for information about whom to contact about visa issues. The first step, covered in this column, is identifying and preventing possible reasons for delays. The next step is knowing what to do when you have a delay. Thank you for your topic requests! This keeps our newsletter relevant and interesting to the membership. Contact Mandi at 620-200-1381 or office@uschi.com to offer topics or story ideas for Harvest News writers.

in the chain of events who are the cause of the delay, but if you are surprised at that point, then shame on you!

Your due diligence starts with selecting an experienced, competent, and responsive agent or attorney to file your application if you do not do it yourself. We have discussed previously that there can be large differences between and among agents/attorneys. It is your personal responsibility to pick a good one who will communicate with you and keep you up to date, and with whom you feel comfortable working. Remember, you are the customer, so just like the farmers you harvest for, you get to choose whom you do business with. It is your business on the line if things go wrong — you are the one at risk if the workers don't arrive, and you are the one who will be audited by the government. Choose well.

Now, let's look at the most common causes for delay. I talked with a couple of the largest H-2A agents in the U.S. as well as two attorneys in preparing this article, and it appears that late applications and housing issues are the No. 1 sources of worker delays most years. Many of these issues are under your control or your agent's control, but not all of them.

APPLIED TOO LATE/MISTAKES (ERRORS AND OMISSIONS) ON APPLICATION

Applications should be returned to your agent 120 to 90 days

before the date of need. Applying too late is self-explanatory. Errors and omissions can include ANY error or omission, even spelling the employer's name or business name wrong somewhere in the application, or using confusing work location descriptions. For example, one fixed-site application, in listing the worksites, included a location called "Smith Farm" because that is what they called one of the farms they owned based on a previous owner's name — but the Department of Labor determined from that farm name that the applicants were planning to send workers to work for another farmer and issued a denial. Everything on the application must be perfect and in compliance with Department of Labor, U.S. Citizenship and Immigration Services, and State Department protocols and interpretations or your petition will be delayed at best, and possibly flatly denied.

The DOL reports that more than 90 percent of delays are caused by material mistakes and/or omissions in the initial application. An NCAE member attorney who used to be a certifying officer for the DOL in Chicago reports that it is common for a small number of agents to be responsible for a disproportionate number of Notices of Deficiency or Denials, often for the same multiple errors and omissions in many of

CONTINUED ON NEXT PAGE