United States Senate

WASHINGTON, DC 20510

November 18, 2010

The Honorable Hillary Clinton
Secretary
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

In August, Congress passed and the President signed into law H.R. 6080, an emergency spending bill to fund border security improvements (including border patrol, fencing, infrastructure, technology, and law enforcement activities related to border enforcement). The funding provided is offset by fees imposed on certain employers who petition for H-1B and L visa workers. We're concerned that your Department has not yet started to assess these fees on applicants, thereby jeopardizing funding for our nation's border security.

Section 402 of Public Law 11-230 specifically says that, "the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act shall be increased by $2,250…". Additionally, the law states that "the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act shall be increased by $2,000…".

It's our understanding that your Department has failed to write rules or provide guidance to consular officers to require them to impose additional fees on applicants, despite the mandate that they be collected immediately on the date of the enactment of the emergency spending bill. The fees should have been collected starting on August 14, 2010, and will need to be collected until September 30, 2014.

The additional fees on certain H and L visa petitions are vital to our national security. We're concerned that your lack of action could leave a drastic gap in funding, leaving taxpayers on the hook when Congress intended to fully pay for necessary border improvements. We are also concerned that companies who have applied and received visas since August 14, 2010, have avoided the increased fees, and those fees may not be recouped.

We strongly encourage you to immediately instruct consular officers to subject applicants (both initial applications and extensions) to pay additional filing fees and fraud and detection fees. We also would like to know how many H and L visas have been submitted and how many have been approved by your Department since August 14, and how much funding for border security has been lost by your inaction. We would appreciate a response from you as soon as possible given the implementation of the fee increase was to take effect 2 months ago.

Sincerely,

AILA InfoNet Doc. No. 10112260. (Posted 11/22/10)

Chuck Grassley Tom Coburn

David Vitter Jim Inhofe

cc: The Honorable Alejandro Mayorkas
Director, United States Citizenship and Immigration Services

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