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October 14, 2008

The Honorable Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Mr. Thomas Dowd, Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-5641
Washington, DC 20210

Re: Correction to Comment on Proposed H-2A Regulation
Regulatory Information Number (RIN) 1205-AB55

The American Immigration Lawyers Association (AILA) is a voluntary bar association of more than 11,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. AILA submitted comments on April 14, 2008 to the Proposed Rule “Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement” 73 Fed. Reg. 8537 (February 13, 2008). Since the time of that submission, AILA has had further opportunity to discuss the proposed regulation with numerous Congressional offices and experts in the field. Pursuant to that consultation and additional review, AILA has concluded that a statement we made in the Comment to the Proposed Rule runs contrary to the Association's position and we seek by this letter to correct that statement.

Wage Rate Determinations

As we stated in our original submission, “AILA carries no brief on the wage issue itself. It leaves that discussion to the growers, workers, and the government. AILA wants the H-2A program to work and to be used.”

Unwisely, however, we did not stop there. We continued by saying, “Accordingly, it recommends that DOL adopt the wage formula described in AgJobs, including the three-year freeze followed by formula changes. In addition, the Department of Labor should undertake its own study of the impact of the undocumented foreign farm laborer on agricultural wages.”

At the time of submission, AILA believed that adoption of the wage formula negotiated as part of the AgJOBS legislation represented a balancing of worker and grower interests that would be supported by all parties to the negotiation. In short, we believed it represented a neutral middle ground that

might enhance the wage determination process in a mutually beneficial way. Discussions with authors of the AgJOBS legislation and other experts, however, have impressed upon us the pitfalls with trying to extricate one piece (the wage rate formula) from that compromise and expecting it to stand alone.

We now understand that adoption of the AgJOBS wage formula without the additional changes contemplated by the proposed legislation would amount to a pay cut for farm workers who do backbreaking work at already depressed wage levels. Likewise, we believe that the proposal to replace the U.S. Department of Agriculture's Farm Labor Survey (FLS) with the Bureau of Labor Statistics' OES survey would lead to a similar reduction of wage levels.

AILA strongly opposes changes to the program or other measures that could further reduce the wages of U.S. and immigrant agricultural workers. As such, we respectfully request the Department of Labor to supplement our prior submission with this correction. Specifically, we urge the Department of Labor to withdraw its proposed changes to the methodology and sources for establishing wage rate levels for agricultural workers.

We thank the Department of Labor for considering this correction to our original comment.

Respectfully submitted,

The American Immigration Lawyers Association