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Charles L. Nimick
Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Dr
Camp Springs, MD 20746

Re: Notice of Proposed Rulemaking on "Modernizing H-2 Program Requirements, Oversight, and Worker Protections", DHS Docket No. USCIS-2023-0012, 88 FR 65040

Dear Mr. Nimick:

The United States Conference of Catholic Bishops (USCCB) respectfully submits these comments on the Department of Homeland Security's (DHS or "the Department") Notice of Proposed Rulemaking on "Modernizing H-2 Program Requirements, Oversight, and Worker Protections" (the "Proposed Rule"), published on September 20, 2023. We applaud the Department's efforts to enhance the integrity of the H-2 programs and improve protections for temporary foreign workers, and we appreciate this opportunity to submit comments on the proposed changes.

The USCCB is a nonprofit corporation whose members are the active bishops of the United States, representing nearly 200 autonomous dioceses in all 50 states and the U.S. Virgin Islands. For almost sixty years, the USCCB's Department of Migration and Refugee Services has advanced the Catholic Church's concern for the life and dignity of immigrants, refugees, victims of trafficking, and others on the move through direct-service programs, advocacy, and outreach. This work is supported by the USCCB's Subcommittee on Pastoral Care of Migrants, Refugees and Travelers, which promotes pastoral outreach to immigrant and temporary foreign workers throughout the country.

The USCCB's commitment to serving and advocating on behalf of those who are poor and vulnerable is guided by Scripture and Catholic social teaching, which call us to respond to those in need with compassion and respect for each person's God-given dignity. Consistent with this, the U.S. bishops have affirmed that "[a]ll people have the right to economic initiative, to productive work, to just wages and benefits, to decent working conditions, as well as to organize and join

unions or other associations."[1] With regard to migrant workers in particular, the Second Vatican Council held:

> When workers come from another country or district and contribute to the economic advancement of a nation or region by their labor, all discrimination as regards wages and working conditions must be carefully avoided. All the people, moreover, above all the public authorities, must treat them not as mere tools of production but as persons, and must help them to bring their families to live with them and to provide themselves with a decent dwelling; they must also see to it that these workers are incorporated into the social life of the country or region that receives them.[2]

As discussed in the Proposed Rule's preamble, the H-2 programs play a critical role in the U.S. economy, allowing foreign workers to fill temporary jobs where there are not enough qualified domestic workers available. Though the programs meet a significant need, these foreign workers face unique vulnerabilities, given the temporary nature of their status, a reliance on their employer for basic needs, the fear of reprisal, language barriers, and other factors. While acknowledging that not all employers who participate in the H-2 programs are engaged in harmful or illegal practices, and employers may also struggle at times with vague or complex requirements, our constituencies report the regular and widespread occurrence of illicit and unjust practices. We appreciate the Department's efforts to identify and address ongoing violations, abuse, and exploitation of workers within the H-2 programs, as well as its proposals to strengthen protections for temporary foreign workers.

Issues Commonly Experienced by H-2 Workers

Catholic ministries across the United States serve migrant workers and their families by providing basic needs, such as food and housing assistance, healthcare services, legal aid, cultural orientation, and more, as well as pastoral care and accompaniment. Several of these ministries report employer abuse and exploitation of migrant workers, including wage theft, unsanitary housing, and dangerous working conditions. The ministries report that some employers violate state and federal laws by forcing employees to work long hours, and others charge fees for basic services related to workers' rights and responsibilities. Employer-provided housing sometimes lacks basic utilities. Some employers neglect to train workers on heavy machinery or provide instructions in an unfamiliar language, increasing employees' risk of injury.

Those specifically engaged in pastoral outreach to migrant farmworkers report similar issues as those described above, as well as the following patterns:

- Recruitment abuses: Many foreign workers have recounted paying recruitment fees, contrary to the existing prohibition on third-party contractors seeking payments from

[1] USCCB, A Catholic Framework for Economic Life: A Statement of the U.S. Catholic Bishops, no. 5 (Nov. 1996), https://www.usccb.org/resources/catholic-framework-economic-life.pdf.
[2] *Gaudium et spes*, no. 66 (1965).

prospective employees. Additionally, misinformation or lack of information about the work performed is prevalent in foreign recruitment practices.

- Mobility restrictions: One of the most repeated abuses encountered is the lack of freedom to leave the worker residence due to restrictions established by the employer, including by restricting access to workers' passports and other documents, and a lack of transportation.

- Insufficient health care: Accidents and illnesses in some cases are treated by returning the worker to his or her country of origin or with minimal financial compensation. Local churches and nonprofits at times provide treatment or cover the costs of treatment.

- Worker isolation: In some cases, work schedules and restricted mobility keep workers isolated from the surrounding community. The problem is exacerbated when employers attempt to restrict visitors from interacting with the workers.

Recently, Catholic ministries have observed employers bringing a group of workers for one or two months at a time (without days off) before returning them to their country of origin and replacing them with another group of workers shortly thereafter. This is part of a weakening relationship observed between workers and some employers. Previously, seasonal worker-employer relationships commonly fostered a sense of identity, belonging, and co-responsibility over time.

These issues are observed across several states where Catholic ministries serve H-2 workers, including Arizona, California, Georgia, Louisiana, Michigan, New York, Ohio, Washington, and Virginia. At times, these offenses may even rise to the level of human trafficking, based on the definition enshrined in federal law by the Trafficking Victims Protection Act of 2000.

In light of these patterns, the USCCB believes that the Proposed Rule, overall, is a step in the right direction and would bring several positive outcomes, such as preventing incidents of human trafficking, increasing identification of trafficked workers and employers who do not treat their workers with dignity and respect, barring these employers from participating in the H-2 programs, and increasing awareness of workers' rights, among other things. With this in mind, we offer the following comments on specific aspects of the Proposed Rule.

Feedback on Proposed Rule

A. Prohibited Fees in the H-2 Nonimmigrant Classifications (Sections 214.2(h)(5)(xi)(A) and 214.2(h)(6)(i)(B))

To strengthen the Department's existing provisions and establish substantial uniformity with the Department of Labor's prohibited fee provisions, DHS proposes to modify its provisions to prohibit fees paid by H-2 workers to an employer, joint employer, petitioner (including to its employee), agent, attorney, facilitator, recruiter, or similar employment service when related to the workers' H-2 employment. Fees that are "related to" H-2 employment would include, but not be limited to, the employer's agent or attorney fees, visa application and petition fees, visa application and petition preparation fees, and recruitment costs; however, such fees would not include those

that are "the responsibility and primarily for the benefit of the worker, such as government-required passport fees."

We support this proposal and believe DHS should adopt it as proposed. The USCCB believes that this provision will further protect the reliance interests of workers and guard against financial hardships beyond their control. Many foreign temporary workers have had to go into debt, exhaust their savings, or enter precarious financial positions for their families in order to pay some of these fees and come to work in the United States, leaving these workers vulnerable to exploitation and human trafficking. These measures are an important step toward enhancing the overall integrity of the recruitment process and enabling greater accountability for employers and third-party agents.

B. H-2 Whistleblower Protection (Section 214.2(h)(20))

DHS is proposing to provide H-2A and H-2B workers with "whistleblower protection" comparable to the protections currently offered to H-1 workers. DHS considers that it is appropriate to afford such protections to H-2A and H-2B workers in recognition of the vulnerability of H-2 workers to exploitation and abuse, as described in the Proposed Rule. The proposed whistleblower provision would help mitigate the structural disincentives described above that workers could face in reporting abuses.

Consistent with concerns about trafficking and exploitative working conditions, the USCCB welcomes proposed Section 214.2(h)(20) and believes DHS should adopt it as proposed. We believe this would better protect workers from exploitative employment conditions, since employees would have protections when submitting a complaint or speaking with an attorney. The USCCB recommends that the process be simplified, outlined, and provided to workers in a language they can understand, so that the workers are able to submit complaints to DHS regarding retaliation. This process should also include the opportunity for certifications (I-918 Supplement B) or declarations (I-914 Supplement B) for U or T visa status.

C. Denial of H-2 Petitions for Certain Violations of Program Requirements (Section 214.2(h))

As a significant new program integrity measure and a deterrent to petitioners that have been found to have committed labor law violations or abused the H-2 programs, DHS is proposing to institute certain mandatory and discretionary bars to approval of an H-2A or H-2B petition. This proposed reform is an important addition to the Department's efforts to improve the integrity of the H-2 programs and to protect H-2 workers by allowing evaluation of a petitioner's past compliance with certain H-2 laws prior to approval of H-2 petitions, especially considering that an H-2 worker's status is tied to the petitioning employer only.

Ensuring compliance with legal requirements and promoting worker protection are crucial to maintaining the integrity of the H-2 programs. The USCCB welcomes the proposed strengthening of employers' obligations to their employees. In particular, we appreciate efforts to clarify the scope of on-site inspections and the consequences of a refusal or failure to fully cooperate with

these inspections, helping employers to understand the specific consequences for noncompliance and provide them with a clear opportunity to rebut adverse information or address deficiencies.

The USCCB invites DHS to consider whether and how to cross-reference U visa and T visa grants when considering whether an employer should be barred from the H-2 programs. Many of these visa applications lead to investigations but not necessarily prosecutions for fraud in labor contracting, human trafficking, or witness tampering. Grants of T and U visas to an employer's workers should be considered against that employer's continued participation in the H-2 programs.

D. Worker Flexibilities: Grace Periods (Sections 214.2(h)(5)(viii)(B) and 214.2(h)(6)(vii)(A)) Portability (Sections 214.2(h)(2)(i)(I) and 274a.12(b)(21))

The Department proposes revisions and additions to several provisions that will provide stronger protections for workers to remain in the United States and/or switch employers. These proposals include harmonizing the grace periods provided to H-2A and H-2B workers and providing H-2 workers with portability.

The USCCB welcomes the proposed changes and believes DHS should adopt them as proposed. We applaud efforts to provide for a more inclusive and equitable economic model that places people at the center. In addition, the USCCB invites DHS to consider expanding the grace period for H-2 beneficiaries to be consistent with the grace period afforded to H-1B workers. Many of the Department's proposed changes incorporate H-1 protections within the H-2 programs, and we invite DHS to act similarly in this instance.

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We again commend DHS for its efforts to improve protections afforded to both prospective and existing H-2 workers. We believe that these changes make the H-2 programs more effective instruments for integral human well-being. We also appreciate efforts to clarify expectations placed on employers to aid in their compliance with program requirements. Our organization remains committed to working with a wide range of stakeholders, including employers and labor organizations, to improve working conditions and the quality of life for temporary foreign workers.

Respectfully submitted,

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