

## Written Testimony of Andrew O. Reeves

### The Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

April 20, 2011

Distinguished members on the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, thank you for the opportunity to testify at today's hearing. I would like to address the H-2A temporary farm worker program.

Agriculture is the largest industry in New York. It may be the largest industry left in the United States. In order for agriculture to continue to thrive, there must be a streamlined process to bring in seasonal, temporary labor when necessary. The H-2A program is supposed to be a tool for the American farmers, put in place by Congress, to expedite a legal, temporary workforce. This program is supposed to allow farmers to develop a good business plan which insures a plentiful supply of top quality produce, without having to worry about a workforce. All other businesses are able to grow and shrink markets and production depending on demand. If a worker leaves for any reason, 10 others are always ready to fill the void immediately. These businesses are based on these variables.

If you hire an American recruit for temporary labor, they will be looking for another job with benefits and full time, not seasonal status. Once another opportunity becomes available, they leave or don't show up for work one day. As a result, you must spend an average of \$650 per worker and begin a 10-12 week process to replace them with the H-2A Program. The H-2A program should extend the same freedoms to the American farmers as Congress originally intended. They should be able to expedite legal foreign workers after exhausting all legal, local employment options in the existing State. If H-2a certifications have been granted in a neighboring State, this would mean the neighboring State has a shortage of eligible farm workers. I believe to have me advertise in those neighboring States and continue the recruiting process throughout half the life cycle of my contract period is ridiculous. For my farm not to be able to ask for experience when hiring is ridiculous. For me not to be able to ask for production standards without a challenge from New York or the USDOL is ridiculous. Any other business would not and could not operate in the parameters now set by the present H-2A Law.

The next problem that needs changing with the program is the length of the process. We used to be able to send an application to the State and Chicago for processing at the same time. Now we send one out to the State first, and once they finish their process, we then have the necessary order number to now move on to Chicago with a different form. Many times the State will approve something which the USDOL will reject. An example is Work Production Standards. New York State will allow them but the USDOL won't. They get rejected and thrown back, where either an appeal is necessary, or you remove the standards and move on. If you appeal, you have an 82% success rate, but you now have put your process behind schedule. If you choose to appeal, the USDOL no longer has to certify your order within 30 days of your date of need. New York State will not let me advertise asking for a resume, but the USDOL says I can.

After we have survived everything to this point, we now have to keep records of all applicants who have requested an interview or job. We also must document this for future audits and accept all applicants throughout half the term of the work contract. Because the job posting goes on a national site, we are bombarded with applications such as a fishing camp cook with a degree in geography wanting to bop in and work for the month of May on his way to Alaska in June. But he must know more about the free housing first. How about the family of Eastern Europeans asking if they can move the whole family here? How about the LPN wanting a job because she lost her license and needs a job? However, she won't work weekends. How about the lady from Manila? How about the kid from Auburn wanting a job loading? How about Burrell asking what do I mean by a resume? These are some of the examples of resumes I deal with. How about the PHD from California who lost his job and applied? DRCool is his email handle. These are all lawsuits and possible litigations looming on the horizon because our present system encourages it.

Now if everything is fine, we have 30 days or less to finish the process. We now move from overnight replies from government to snail mail. Homeland Security claims to turn your petition request around in 3-4 days. This is not true. If you overnight you I-129 to California, they stamp it that day or the day after they receive it. A received letter with the next day stamped on it comes to you after the check has cleared. Usually the process with no problems takes 12 to 14 days from beginning to end. Now we are down to 15 to 18 days left. Under the old process we could block schedule groups when the order is given a WAC number. Now we must wait until the acceptance comes. Next we now must pay visas before we can schedule interviews. We must email a request to CSC in order to get permission to access a site to schedule interviews. This takes 5 days if you make no mistakes in the

requesting process. If you make a mistake, you will be notified within 5 days of the mistake and you redo it. In 5 more days you will receive access or another problem. The site let's you electronically schedule or just fill out the spreadsheet and email it. I suggest email. The electronic system is on its third spreadsheet and if there is a specific problem, you'll receive a specific direction back with email scheduling. With the electronic system, you'll receive an error list, without a clue of where to begin. There are no directions as to how the new system works. You attempt to understand and operate it. If you fail, or have a problem, forget it. You will receive an email answer which will never answer the question you asked. I had a problem with an order which 18 emails were not answered and 11 calls were not returned. One day during lunch I found another CSC Branch with names and numbers. The Human Resources Manager was able to make proper contact to their other division for me. He was amazed how it took him 4 calls to resolve the issue so he thought. When my workers interviewed, it still required a call to the Nuevo Laredo Consulate to inform them the order scheduled and farm name were wrong. They, as usual were very helpful.

The next issue I have with the H-2A program is with the AEW's \$10.25 per hour wage rate. This is a 15% increase in the labor cost from the program revamped during the past administration. The rate went up in these times from \$10.16. This is an unrealistic wage for the workers considered unskilled and not requiring any previous experience or work standards. We pay for the visas, we pay for food and travel both ways, we take workers to the store, we must guarantee at least  $\frac{3}{4}$  of the total hours in the contract, and we provide housing and utilities at no additional cost. No taxes or Social Security are deducted. Many portions of their jobs offer them an opportunity to earn even more when performing piecework. When your slower workers are guaranteed a minimum of \$10.25 per hour for piecework, your faster workers make considerably more because you production minimum standards are based on the slower workers. This is a reason we quit growing green and yellow beans, reduced acreage of peas, quit growing snow peas, and wouldn't raise blueberries if they weren't organic and bring us a higher price.

Lack of consistency is my final complaint with the program. I can send an I-129 with only one copy and get an acceptance. I have had a customer do the same and he was sent an approval but requested to send another copy and \$404 with another form or they may not be able to schedule appointments at the Consulate. I have used production standards and have had customers denied standards. I have been told to hire Puerto Ricans and that I couldn't ask them to interview or submit a resume. I recently talked to a large orchard producer from Virginia. Their farm hires 178 H-2A

workers. Last year they were forced to use Puerto Rican Labor. I have the same labor reporting system as this grower. My vendor verified the orchard production was half last year of other years. This farmer was asking me if there were ways around the Puerto Rican labor situation. He said if he has to use Puerto Rican workers this year, he will have an auction. How can you expect to tell a business owner how he has to run his business? No other business suffers these restrictions.

Now I will briefly review areas I believe need to change. Bullet Form may be the easiest way.

- Apply to State and USDOL at the same time
- Allow standards and experience to be included in the job requirements
- Revamp the recruitment process. Why advertise in a state which already has been approved for H-2A workers
- Reduce the recruitment period until the time the H-2a workers arrive on the farm
- If the number of workers on an order are reduced because of referrals, these slots should remain open so the farmer can fall back on them if the referral workers don't work out or leave
- Introduce a form of arbitration to resolve issues. Legal Service Attorneys constantly look for area to litigate
- The 30 day rule from USDOL is not adequate. It encourages the farmers to lie about their need dates because the process cannot be completed within the 30 days period
- Allow a farm to select where he gets his workforce. Every other business has that freedom
- Speed up the Homeland Security Process or make them tell the truth. USDOL and Department of State believe the 3-4 day turnaround
- Reduce the wage to a realistic level. The Bush Order was the best system thus far
- Repair the mess created by the new interview scheduling procedure. It was introduced before it was ready, and I guarantee it wasn't developed by CSC. They have always been a great company to work with
- We must include the Dairy Industry. AgJobs is a Dead on Arrival proposal. The changes have morphed it into a bad deal for Agriculture
- Strive for more consistency across the board. State and U.S. DOL, State Health Dept., Homeland Security, and Department of State.
- Let the H-2A Workers pay their own visa fee. It is non refundable, and they should have some "Skin in the Game".

I have aired my grievances and hope I was able to shed some light on the problems of H-2A. AgJobs is not the answer either. Labor Unions and Legal Service Groups have killed the good in that bill already. I will not endorse any program with amnesty attached. The Amnesty Act of 1985 was another example of it not working. The workers moved up the ladder and left a vacuum which was filled with the millions of undocumented workers in the United States. Most of the workers I recruit once spent time illegally in the United States. I have convinced them to go back and enter the legal H-2A program. I have convinced not less than ten farms to convert to legal H-2A workers. These people should remain at the front of the line. What we now ask for is a program be developed which will partner with today's Agriculture Industry and finally address the H-2A needs of our Dairy Industry also. We need to work this out together for the salvation of the industry this country was built with. Let's once and for all do this together once and do it right. Leave the Unions and the Legal Services ambulance chasers on the sidelines. We owe this to an industry already bombarded with new EPA and DEC regulations every year. We also have the Traceback and Food Safety Requirements whose costs are all the burden of the farmers presently. We are at a point of losing our producers if something isn't done now. Washington needs to become proactive with this issue. Four different programs in three years are confusing, and lack the continuity necessary for Agribusiness to develop and maintain a long term business plan.

Thank you very much for your time and invitation.

The H-2A program is the only viable program in existence which addresses the most important issue in The Agriculture Industry today, availability of legal and experienced farm workers.

I have been recruiting for the past 6 years H-2A workers out of Mexico.

The program has change 4 times in the past three years, and twice, these changes occurred in the mid season.

The H-2A program is able to be utilized in around 50 Countries worldwide.

My experience will focus on the recruitment activities in Mexico alone.

The H-2A program deals with several different State and Federal agencies, all of which seem to lack a good understanding of the other.

Let's now take a journey together and maybe we'll better be able to decide if this system runs like a Rolex, or this is just another example of why people in general scratch their heads when the words Government Program are mentioned.

First of all, let's look at the titles and addresses we have to either fit on an envelope or attempt to list on an overnight form.

- How about the name of this committee first; **The Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending**
- Next, we have; **New York State Department of Labor ; Office of Foreign Labor Certification; W.Averell Harriman State Office Building; Building 12; Room 500, Albany, New York 12240**

This is the easy one.

- Next, we move on to Chicago; U. S. Department of Labor Employment and Training Administration; Office of Foreign Labor Certification; Chicago National Processing Center; 536 South Clark Street Federal Building; 9<sup>th</sup> Floor; Chicago, IL 60605
- Then there is California; U.S. Citizenship and Immigration Services; California Service Center; Att: H-2A Processing Center; 24000 Avila Road, Second Floor, Room 2312, Laguna Niguel, CA 92677 Make sure you don't overnight on a Friday, and write H-2A on the outside of the packet.

**Now we'll review the steps necessary to bring experienced, dependable labor to your farm.**

- The farmer must decide if he plans to recruit an H-2A workforce for the coming season.
- To do this, he must answer some important questions first:
- What will be the hourly rate?
- Don't know AEWB changes in February.
- Can I get my workers where I want?
- Not necessarily, depends on how people are feeling that day. Talk about Virginia.
- Can I get experienced workers?
- Yes if you are in the hands of a good agent.
- Do I have to hire anyone who applies for the job?
- Well, not necessarily but that depends.
- How soon will I have to decide?
- Yesterday or the day before.
- You cannot apply sooner than 75 days prior to day of need. You cannot apply fewer than 45 days prior to date of need.
- Contact an Agent or your local SWA, New York State Rural Labor Representative.
- Fill out form ETA 790 and the required attachments and send it to Albany DOL to list on the State Site and request a camp inspection through your County Health Department.

- State will look to see you do not require any experience in your application because farm workers are unskilled.
- When everything is complete and approved by the State DOL, you receive an approval and permission to move on with the process.

5-7 Days with no problems

- **Fill out Form ETA 9142 and send it with your Form ETA 790 to Chicago DOL.**
- Don't ask for experience or standards unless you have extra time.
- You will not receive certification any sooner than 30 days before you date of need out of Chicago.
- NYSDOH inspects your housing and forwards results to Chicago.
- If you have to make modifications to your application, USDOL can go beyond the 30 day limit.
- One week or more after applying, you'll be asked to begin the recruiting process.
- Your job order will be listed in Puerto Rico, and you must advertise locally and in two neighboring states. These states already have H-2A certifications from the USDOL.
- The order is placed on a National Job Listing.
- You must keep records of all applicants. I advertise for resumes. USDOL says I can, NYSDOL says I can't I advertise no phone call will be returned.
- You must accept referrals and applicants from this point until the midpoint of your job order.
- Many times you have 2 to 4 days to advertise and have your recruitment plan back in Chicago.
- At least Chicago uses Overnight Delivery.
- I've done this process in 14 day before with no problems, but an appeal or modification can make this a 3 to 4 week process.

14 Days with no problem. You however, will only have 30 days or less to finish the process.

- **Fill out form I-129 and send it to USCIS, Homeland Security, in California. Better overnight it, you only have 30 days left Make sure you include the complete certification back from Chicago with your package. You must send 2 copies of everything. Make sure you keep a color copy of your certification. If your package is lost, and it does happen, you'll need another color copy of your certification.**
- Per Homeland Security, they turn your petition request around in 3-4 days. This is on paper only. Show I-797B.



- USCIS won't even send you a notice of review form without you check clearing first
- You'll receive a review notification around 10 or 12 days after you send out the I-129
- You will receive a petition acceptance

12-14 days with no modifications

- **US Dept of State is the next Agency. Schedule interviews through CSC online. You will need all information from your recruits at the time the appointments are scheduled. Also visas must be paid before interviews are scheduled.**
- Try to find information about the process now required to file. You go to the Consulates Webpage and they are out dated.
- Email CSC [H2BMex@csc.com](mailto:H2BMex@csc.com) and in 5 days you'll receive instructions as how to email a request to schedule interviews.
- This request may be answered in 5 days or more. You will gain access to their new online system. You now can access the spreadsheet and electronically schedule your interviews and select dates.
- Works with one or two workers. 1st spreadsheet crashed and burned with more than 17 workers.
- Second spreadsheet also crashed and burned because all of the names from the first spreadsheet were lost in the system.
- 18 emails and 11 phone messages over 2 ½ weeks not returned.
- Any emails you receive come at least 5 days later and never answer your question.
- Both emergency numbers go to voicemail. Dial number.

10-14 days with no problems

23 days with my order

**Workers interview at the Consulate. This is a two day, two location process beginning this year. Workers need lead time to prepare and travel to the interview. There is a 2 to 3 week lead time for interviews for groups of workers. This includes minimum of 5 days worker notification.**

14-20 days

36-48 day process for only a 30 day window

This system has a pay rate of \$10.25 per hour. Last year we had a rate of \$8.98 per hour. This does not include the free inspected housing and utilities, free transportation both ways, and no deductions taken out. The average cost to apply for this program and get the worker on your doorstep is \$600- \$675 per worker.

# Andrew O. Reeves

## CAPABILITIES

With an extensive technical background, and several years of personnel and situation management, I have effectively identified and resolved problems efficiently, and cost effectively. I have successfully employed a team approach and shared decision making management style. Through computerized energy management, I have been able to reduce energy costs and improve air quality. I am well versed in Municipal Law and how it applies to all purchasing and budgetary functions. I place an emphasis on training and cross training as a way to increase productivity, quality, and safety.

## EXPERIENCE

Reeves Farms, Baldwinsville, NY

**Manager**, June 1995 - Present

- Schedule and oversee planting, maintenance, and harvesting on a 350 acre fruit and vegetable farm
- Electronically generate and maintain payroll records
- Certified Labor Contractor recruiting workers through the federal H2a program
- Interface with Data Track software technicians to customize payroll and reporting system
- Establish cooperative purchasing, sales, and labor usage with other local operations
- Establish comprehensive maintenance, capital replacement, and safety programs

Auburn City School District, Auburn, NY

**Superintendent of Buildings and Grounds**, July 1994 – June 1995

- Managed all buildings and grounds activities in the district
- Established and managed a \$ 6.7 million budget
- Clerk of the Works on \$11.3 million capital project
- Performed air quality and air flow tests
- Operated three different energy management systems
- Established a computerized inventory and preventative maintenance program

Jefferson County, Watertown, NY

**Superintendent of Buildings and Grounds**, May 1993 – July 1994

- Managed all buildings and grounds for Jefferson County
- Performed a comprehensive facilities evaluation for 19 buildings
- Established and managed a \$6.1 million budget
- Tested and analyzed air quality and flow in three buildings
- Managed all maintenance and equipment operation in a new \$23million Public Safety Building
- Directed Security and Protection in all county building

Nu Havun Industrial Contractors, Marcellus, NY

**Field Superintendent**, February 1991 – February 1993

- Directed and monitored all field operations for large painting and small construction projects
- Estimated and negotiated projects between \$500 and \$650,000
- Established and administered a job safety Haz Com Program

Carrier Corporation, Syracuse, NY

**Maintenance Supervisor**, February 1978 – March 1990

- Supervised 30 skilled tradepeople
- Coordinated all construction projects on campus
- Maintained all site facilities and systems
- Established and maintained a predictive maintenance program
- Developed and manage a \$4 million budget
- Established and maintain subcontracts for equipment and services.
- Established training and evaluation guidelines for skilled tradespeople

CONSULTING

Comfort Inn/Radisson Hotel, Key West, FL

**Chief Engineering Consultant**, November 2002 – February 2003

- Consolidated maintenance groups
- Instituted incentive program for housekeeping staff
- Oversaw construction and design of roofing and booster pump system
- Developed and tracked budget through Lotus and Excel

FIRE PROTECTION

Plainville Fire District, Lysander, NY

**Fire Commissioner**, January 2010 to Present

EDUCATION

Upper Iowa University  
28 credit hours  
Business Administration  
1987 to 1990

SUNY Oswego  
18 credit hours  
Business Administration  
1975 to 1976

Auburn Community College  
A.A.S. Degree  
Business Administration  
1971 to 1974

COMPUTER SKILLS

Windows, Lotus Suite, Microsoft Office Suite, Excel,  
Computerized Energy Management Systems, Data Track /ADS

CERTIFICATION AND TRAINING

Roof Construction and Repair  
Zenger and Miller Supervision  
Supervisory Assessment Center  
Pesticide Applicator License  
Testing and Balancing HVAC Systems  
State and Federal Labor Contractor  
Identifying and Testing Building Air Quality  
Landis and Gyr Powers HVAC Training  
Johnson Controls Energy Management Systems  
Honeywell Energy Management Systems  
Computerized Maintenance  
Managing for Productivity, Production and Inventory  
Pump Design and Repair, Mechanical Seal Seminar

Dupont Safety Training Observation Program  
Asbestos Disposal and Removal Training  
Hazardous Waste Spill Training  
Hazardous and Waste Disposal and Procedures  
Boiler Certified  
Ridge Training  
NYS Fire Commissioner Training  
Carrier Energy Management Systems  
Day Systems Energy Management Systems  
Trane Energy Management Systems

Committee on Oversight and Government Reform  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None for me, Andrew O. Rewes

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I work as a Farm Manager for Rewes Farms.  
I recruit H-2A workers for Rewes Farms and  
several other farms.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

N/A

I certify that the above information is true and correct.

Signature:

Andrew O. Rewes

Date:

4/16/2011