

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**

NORTH CAROLINA GROWERS' )  
ASSOCIATION, INC., *et al.* )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
HILDA L. SOLIS, *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 09 CV 411

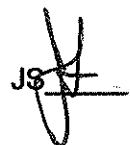
**AFFIDAVIT  
OF JOEL SWANTON**

The affiant, having been duly sworn, affirms and states as follows:

1. My name is Joel Swanton. I am Northeast Region Manager of the Forest Resources Association based in Holden, Maine. The Forest Resource Association ("FRA") is a national non-profit association representing the forest products industry, including members in Maine and the Northeast. Our members include forest landowners, land managers, logging contractors and wood-using mills. For simplicity, I will refer to all of these types of businesses collectively as "the forest products industry."

2. For many generations, Maine's forest products industry has had a significant reliance on seasonal non-immigrant Canadian labor for the harvesting and transport of forest products from remote areas of Maine to consuming mills in the region. These Canadian workers are the only qualified source of labor available in these remote areas. Currently 25-30 percent of the wood harvested in Maine is produced by Canadian workers. The availability of this labor

1

JS 

source is critical to Maine's forest products industry, which has a direct annual economic contribution of \$7 billion to the region's economy and sustains thousands of jobs in manufacturing and related businesses.

3. Historically, foreign seasonal logging and forest products workers have been admitted to the United States under the H-2B program, which is the counterpart to the H-2A program for agricultural workers. The H-2B program applies to non-agricultural workers. The number of H-2B visas available for foreign workers to be admitted to work in the United States each year is subject to a federally mandated "cap." H-2A visas are not subject to caps.

4. The H-2B "cap" has caused difficulties for the forest products industry since 2004. It has caused the H-2B program to be an unstable, unpredictable and inadequate source of workers. Congress has failed twice to renew an annual exemption of returning H-2B workers from the cap, so the forest products industry had insufficient workers. Accordingly, in these years approximately 600 Canadian workers were denied re-entry into the United States, which caused a severe labor shortage and lost revenues. The resulting artificial shortage of raw material created a supply crisis and drove costs to unsustainable levels for pulp and paper, lumber, and other manufacturing facilities that use wood as a raw material. An example may help to illustrate the insufficiency of the H-2B program. The application period for H-2B workers for 2009 began in October 2008. The cap, or "quota," was satisfied as of January 8, 2009. *See attached Exhibit A*. The next H-2B application period does not begin until October 2009, for workers who will begin work in the spring of 2010. The H-2B program is woefully inadequate to serve the labor requirements of the forest products industry.

5. In February 2008, the U.S. Department of Labor ("DOL") issued a Notice of Proposed Rulemaking ("NPRM") that proposed a number of changes to the H-2A program.

Among the changes, the NPRM proposed that logging workers be included in the H-2A program, meaning (among other things) that the visas would not be subject to caps. In April 2008, the FRA, along with the Maine Forest Products Council, submitted comments in support of the proposed addition of logging to the H2A program. Constant uncertainty and increasing restrictions related to the H-2B program, which logging employers formerly used, made the H-2B program an unworkable option and jeopardized the economic vitality of our businesses that rely on seasonal nonimmigrant labor.

6. The Final Rule issued by the DOL on December 18, 2008 (“the Chao Final Rule”), provided that logging workers be admitted under the H-2A program. Thanks to this provision in the Chao Final Rule, the forest products industry has sufficient workers for 2009.

7. Unfortunately, it now appears that 2009 will be the only year that our industry has enough workers. On March 17, 2009, current Secretary of Labor Hilda Solis proposed “suspending” the Chao Final Rule (including the provisions reclassifying logging workers as H-2A workers). Then, on May 29, 2009, Secretary Solis issued a Final Rule (“the Solis Final Rule”) definitively providing that logging workers will have to be admitted under the H-2B program after the effective date of the Solis Final Rule (June 29, 2009).

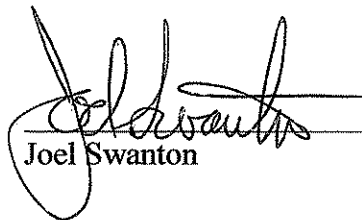
8. This means that the forest products industry will suffer a dire labor shortage again in 2010 and beyond, which will in turn create shortages for its “downstream” industries. These industries in the Northeast area already reeling from the bad economy, and it is no exaggeration to say that a season without adequate logging labor will devastate the industry and the economy at large.

9. FRA and the Maine Forest Products Council members participated in good faith in the 2008 comment period. That process was the opportunity for stakeholders to raise concerns. It is unacceptable to overturn that rulemaking process with a short 10-day comment period.

10. The Canadian logging labor force has been continually caught in the nightmare of immigration debate under H-2B and now the H-2A program for the past five years. These workers and the northeastern US economy that relies on them should not be held hostage by the broader immigration debate in this country.

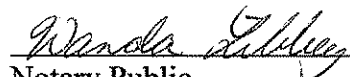
12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This the 5<sup>TH</sup> day of June, 2009.

  
Joel Swanton

SWORN TO AND SUBSCRIBED BY ME

This the 5<sup>th</sup> day of June, 2009

  
Notary Public

My Commission Expires: \_\_\_\_\_ Wanda Libbey  
Notary Public - Maine  
My commission expires 6 -16 - 09



Office of Communications

U.S. Citizenship  
and Immigration  
Services

# USCIS Update

Jan. 8, 2009

## USCIS REACHES H-2B CAP FOR SECOND HALF OF FISCAL YEAR 2009

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the second half of Fiscal Year 2009 (FY2009). USCIS is hereby notifying the public that Jan. 7, 2009 was the “final receipt date” for new H-2B worker petitions requesting employment start dates prior to October 1, 2009. The “final receipt date” is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of FY2009.

USCIS will reject petitions for new H-2B workers seeking employment start dates prior to October 1, 2009 that arrive after Jan. 7, 2009.

If deemed necessary, USCIS may apply a computer-generated random selection process to all petitions that are subject to the cap and received on Jan. 7, 2009 in order to select the number of petitions needed to meet the cap. USCIS will reject, and return the fee, for all cap-subject petitions not randomly selected.

Petitions for workers who are currently in H-2B status do not count towards the congressionally mandated bi-annual H-2B cap. USCIS will continue to process petitions filed to:

- Extend the stay of a current H-2B worker in the United States;
- Change the terms of employment for current H-2B workers and extend their stay; or
- Allow current H-2B workers to change or add employers and extend their stay.

More information about the H-2B work program is available at [www.uscis.gov](http://www.uscis.gov) or by calling the National Customer Service Center at 1-800-375-5283.

- USCIS -

A