October 7, 2020

The Honorable Carl Risch
Assistant Secretary
Bureau of Consular Affairs
U.S. Department of State
Washington, D.C. 20520

The Honorable Marie Royce
Assistant Secretary
Bureau of Educational and Cultural Affairs
U.S. Department of State
Washington, D.C. 20520

Dear Mr. Risch and Ms. Royce:

We are writing regarding the implementation of the preliminary injunction issued by U.S. District Judge Jeffrey White in National Association of Manufacturers, et al. v. U.S. Department of Homeland Security, et al. barring the Administration from implementing its June 22 Proclamation (No. 10052). We hope the Department of State will begin processing the affected visas immediately and that the application of the order will be universal.

The Court’s October 1, 2020 order states the “preliminary injunction shall take effect immediately and shall remain in effect pending trial in this action or further order of this Court.” The Court also states that the injunction applies “with respect to the Plaintiffs and the members of the Plaintiff associations,” which include Intrax, the U.S. Chamber of Commerce, and other organizations. The Bureau of Consular Affairs (CA) has discretion with respect to the latter part of the Court’s decision. It is reasonable to expect that the vast majority of sponsors and host employers of J-1 participants are or will be members of one of the plaintiff organizations, rendering the narrow applicability of the injunction moot. In our view, requiring proof of membership, therefore, is an unnecessary burden for both applicants and reviewing officers alike. Should CA deem proof of membership important, we recommend allowing applicants to share a letter from one of the plaintiffs attesting to the membership of either the visa sponsor or the host employer. Additionally, the Court chose specifically not to impose a date certain for membership in a plaintiff organization. Membership by a program sponsor or host employer at the time that an application is submitted should suffice.

Immediate implementation of the injunction is critical to supporting America’s economic recovery. For instance, host families who rely on au pairs, including many veteran and active duty military families, are at risk of losing an important childcare resource at a critical time. In a report just released by EurekaFacts, 77 percent of host families said that they would be adversely impacted if they no longer had an au pair as an option. Additionally, many small businesses in the Mountain West have been severely impacted by the suspension of the Summer Work Travel program this summer and wildfires during this fall. In a survey conducted by the Alliance in August, 93 percent of host employers say they cannot meet peak staffing needs without exchange visitors. These employers desperately need a successful winter season. Preparation for such a season, including
securing exchange visitor participants, is normally fully underway by now. Moreover, school
districts need to know whether they will have the option of hiring international teachers for the
spring semester. American businesses are also hoping to secure placement of international interns
and trainees, and camps need to start planning for the spring and summer. By facilitating the
immediate implementation of the injunction, the Department will be responsive both to the Court
and to the many host families, businesses, and schools that rely on the Exchange Visitor Program.

Sponsors and host employers are ready to work with the Department and embassies worldwide to
enable a quick shift to processing J-1 visa applications, and the Alliance is willing to help in any way
with that process. We look forward to your reply and to the issuance of appropriate guidance for
the immediate processing of such applications in accordance with the Court’s decision.

Thank you very much for your consideration.

Sincerely,

Ilir Zherka
Executive Director