August 17, 2011

VIA EMAIL AND FACSIMILE

Ann Stock
Under Secretary of Public Diplomacy and Public Affairs
U.S. Department of State
U.S. Department of State
2201 C Street NW
Washington, DC 2052

RE: REQUEST FOR REVOCATION OF SPONSORSHIP OF COUNCIL FOR EDUCATIONAL TRAVEL, USA (CETUSA)

Dear Under Secretary Stock,

We, the students listed herein, members of the National Guestworker Alliance, write to request the revocation of sponsorship for Council for Educational Travel, USA (CETUSA) on behalf of ourselves and the other more than 400 similarly situated J-1 student guestworkers employed at the northeastern chocolate co-packing Eastern Distribution Center III operated located at 500 N. Lingle Palmyra PA by the Hershey Company, Exel North American Logistics Inc., SHS Onsite Solutions, and Cultural Exchange Travel USA (CETUSA).

This complaint is filed on behalf of the following guestworkers and the over 400 similarly situated workers (“Hershey Guestworkers”):

Xu Yun Hong
Cen Rui Ru
Ganna Neolobytiuk
Godwin Efobi
Janina Brenzei
Ionut Bilan
Tarasiuk Alla
Tamir Purevdorj
Selenge Uyanga
Mihail Pasa
Andrei Acalugaritii
Roman Surzhuo
The National Guestworker Alliance (“NGA”) is a membership organization representing thousands of workers across sector and industry who enter the United States through the U.S. guestworker program. The NGA was formed as the Alliance of Guestworkers in the aftermath of Hurricane Katrina, when thousands of guestworkers were brought to the United States to work in the Gulf Coast, and subjected to forced labor. Organizing in labor camps across the Gulf Coast, guestworkers formed a vehicle for building power and shifting the national understanding of the guestworker program. Today, NGA is a rapidly expanding national organization of guestworkers across many industries including metal work, construction, landscaping, factory work, food processing, janitors services, and hospitality. NGA’s members are committed to working in partnership with U.S. workers in the same sectors to transform their workplaces from exploitative to dignified, to transform the terms of migration, and to expand the right to organize for all excluded workers, reversing a long legacy of retaliation against workers of color who organize to win dignity and freedom.

I. Background

A. Student Workers

In Spring 2011, 400 university students from around the world—including China, Turkey, Ukraine, Moldova, Mongolia, Romania, Ghana, and Thailand—were recruited at their home country universities to take part in the U.S. State Department’s J-1 visa program. The student guestworkers paid from $3,000-6,000 each to recruiters from CETUSA, a State Department-certified U.S. agency and its international affiliates. The students expected primarily a cultural exchange, with the chance to improve their English, meet Americans, and experience American culture, as well as to work for three months. Under the J-1 visa program, 22 U.S.C. 2451, work is secondary to an educational and cultural exchange program that “increases mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange… [and] assist[s] in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.”

Instead, the Hershey student guestworkers found themselves packing chocolates for the Hershey’s Chocolate Company at the Eastern Distribution Center III located at 500 N. Lingle Palmyra PA supervised by Exel North American Logistics Inc., SHS Onsite Solutions, and Cultural Exchange Travel USA (CETUSA). Students are paid from $7.85/hr to $8.35/hr. After automatic weekly deductions for above above-market rent and other expenses, they net between $40 and $140 per week for 40 hours of work. They are forced to live in company housing, for which they are charged $395/month each, at least twice the market rates paid by Americans in the same housing complexes. The Hershey student guestworkers’ economic reality leaves them little to no chance even to make back the $3,000-6,000 they paid to come. They have been offered no cultural exchange of any kind. Many actions by these entities violate federal statutes regulating labor, employment, and foreign affairs.

When the student guestworkers have complained about the violations of U.S. laws regulating labor, employment, and foreign affairs, they were threatened with deportation and other long term immigration consequences to coerce them to remain quiet about the violations. Student
guestworkers from all three shifts were summoned to "captive audience" meetings in the plant and threatened with deportation. Back home, the recruiters in their countries sent threatening emails to the student-guestworkers, called their parents, and even flew into the U.S. from China to undercut the organizing. Their employers and the employers’ agents took these actions to interfere and chill lawful complaints.

B. CETUSA- State Department Designated Sponsoring Agency

CETUSA is a 501(c)(3) non-profit designated by the State Department as a sponsor providing J-1 visas. Founded in 1995 by Rick Anaya, CETUSA operates J-1 programs in the Student, Summer Work Travel, Intern, and Trainee categories. However, they primarily sponsor Summer Work Travel J-1 visas. In 2009, CETUSA sponsored 945 high school exchange student compared to 5,685 Summer Work Travel participants.\(^1\) CETUSA had assets of $2 million and revenue of approximately $6.5 million in 2009.\(^2\) In their 2009 From 90, CETUSA reported that the administration of the Summer Work Travel program cost $878,875 whereas the administration of the high school program cost $1,273,157. Considering that CETUSA sponsored nearly five times the number of Summer Work Travel participants than high school participants, the Summer Work Travel program is likely to be much more profitable. Assuming that current figures are similar to the 2009 fiscal year, the 400 -1 visa workers at the EDC represent slightly more than 6 percent of CETUSA’s sponsorships. CETUSA advertises their Summer Work Travel program as a way for employers to source workers year-round, in seasonal rotations that match school vacations in different parts of the world. Student from Eastern Europe, Africa and Asia work during the summer; South and Central American students staff the winter season; and Southeast Asian and Ecuadorian students staff the spring season. See “Your International Employees,” cetusa.org, http://www.cetusa.org/public/offers/work-and-travel-program/for/your-international-employees (Accessed August 10, 2011).

As the sponsor, CETUSA has a number of obligations to participants and the Department of State. The sponsor retains the primary responsibility for the participant and their well-being. Under the Summer Work Travel program regulations, sponsors must screen applicants, their job offers, and any third parties, including host employers and foreign entities that arrange placements. 22 C.F.R. § 62. CETUSA, as a sponsor, is required to “ensure that participants receive pay and benefits commensurate with those offered to their American counterparts.” 22 C.F.R. § 62.32.\(^3\) CETUSA is required to offer cross-cultural activities and “encourage exchange visitors to voluntarily participate in activities which are for the purposes of sharing the language, culture, or history of their home country with Americans. . . .” 22 C.F.R. § 62.8(d).

For students from Belarus, Bulgaria, Moldova, Romania, Russia, and Ukraine, sponsors have additional obligations under the Summer Work Travel pilot program for the 2011 season. The pilot program includes enhanced verification of third parties; identifying, evaluating, and

---


\(^3\) This regulation was changed when a new rule for the Summer Work Travel program came into effect on July 15, 2011. See 76 FED. REG. 23177, 23181 (April 26, 2011). The monitoring requirements took effect for all Summer Work Travel participants in the U.S. on July 15, 2011. The other regulations took effect for participants arriving on DS-2019 forms issued after July 15, 2011.
securing job placements for Pilot Program participants; additional monitoring and contact with participants; and other requirements. Furthermore, U.S. sponsors are prohibited from using staffing or employment agencies and must “contract directly with the entity that controls the participant’s work location and supervises, manages, and pays the participant.” See U.S. DEPARTMENT OF STATE, “2011 Pilot Summer Work Travel Program For Belarus, Bulgaria, Moldova, Romania, Russia and Ukraine,” http://exchanges.state.gov/root/packages/files-folder9/pilot-guidelines-summer-work-travel-program-1-5-2011.pdf.

CETUSA must conduct its activities to comport with the primary cultural and educational exchange goals of the program. Under the J-1 visa program, 22 U.S.C. § 2451, work is secondary to an educational and cultural exchange program that “increases mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange… [and] assist[s] in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.” CETUSA must also not a) commit an act that has the effect of endangering the health, safety, or welfare of an exchange visitor, whether by omission or commission; nor b) conduct the program in a manner that undermines the foreign policy objectives of the United States or brings “the Department or the Exchange Visitor Program into notoriety or disrepute.” 22 C.F.R. § 62.50. Violation of these two primary obligations can carry the imposition of sanctions against the sponsor by the Department of State. CETUSA has committed multiple violations against the exchange visitors and the Department of State, which will be outlined later in this letter.

C. Employers

1. SHS -- Labor Supplier

SHS Onsite Solutions ("SHS"), part of the SHS group, is a company that specializes in providing contingent labor support. SHS provides workers to Exel North American Logistics. SHS Onsite Solutions is one direct employer of the students.

2. Exel -- Distribution Center Operator

Exel North American Logistics ("Exel") is the supply chain division of Deutsche Post DHL, the German postal service. Exel specializes in multinational logistics management. Exel operates the Eastern Distribution Center III (“EDC III”) for Hershey, which owns the building. Exel contracts with SHS to provide the workers.

3. Hershey -- Building Owner and Parent Company

Hershey is the largest producer of chocolates and confectionary products in North America and owns EDC III. The building was constructed in 1999 as part of Hershey’s distribution network expansion plan. The largest of Hershey’s North American distribution facilities, it serves 1,600 retail locations and other distribution facilities. The plant itself is 1,285,000 square feet with ceilings that are 46 feet high and pallets are stacked seven high and two deep.
Hershey has contracted with Exel to operate Hershey’s distribution plant; Exel then contracted with SHS to provide labor; and SHS then contracted with CETUSA to provide 400 young laborers who paid CETUSA for a cultural exchange program. Hershey cannot be permitted to avoid liability for legal violations by out-sourcing their responsibilities. They own the entire plant and the plant operates at their behest.

II. Legal Violations

A. CETUSA placed student guestworkers with an employer who is violating labor laws, including the substantive and anti-retaliation provisions of the Occupational Safety and Health Act, the Fair Labor Standards Act, and the National Labor Relations Act.

i. Occupational Safety and Health Act (“OSHA”)

CETUSA has violated their obligation to protect the health, safety, and welfare of the Summer Work Travel participants by placing the students with an employer who is operating in violation of OSHA. Under the general duty clause of the Williams-Steiger Occupational Safety and Health Act of 1970, “every employer covered under the act” is required to:

> furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

22. C.F.R. § 1903.1.

At EDC III, line speeds are overly fast and with heavy lifting. For example, some students report having to move a 50-pound box every 5 seconds. Numerous workers are suffering under the strain of the weight and speed. Workers who have been at the factory longer have reported that the company normally runs the line at a slower speed, but are forcing the students to work faster and that the students are exceeding normal production standards.

CETUSA and the host employers have violated their duties under OSHA and the Summer Work Travel program. Threats of discrimination and retaliation by the entities also constitute discrimination under OSHA. The Hershey Student Guestworkers have simultaneously filed a complaint with OSHA.

ii. Fair Labor Standards Act (“FLSA”)

CETUSA, Excel, and SHS have violated the Fair Labor Standards Act, 29 U.S.C. 206 through direct and de facto deductions from the student guestworkers’ wages that drop their wages below the $7.25 federal minimum wage. Impermissible deductions include housing as well as significant pre-employment expenses.
While housing provided to employees is ordinarily assumed to be provided for the benefit of employers, CETUSA required employees to live in the housing to facilitate centralized housing and transportation as a benefit to their employers. Moreover, the cost of the housing directly deducted from the student guestworkers’ wages were at least double the actual cost of the housing on the open rental market. Because the deductions exceed the actual cost of the housing and the housing was provided primarily for the benefit of the employers, the deductions which brought the student guestworkers’ wages below minimum wage violate 29 U.S.C. 216(b).

In addition, the $3000 - $6000 in pre-employment expenses that the student guestworkers paid for this “opportunity” to be employed in temporary, low-wage work was incurred primarily for the benefit of the employers and cannot be shifted to the student guestworkers insofar as it brings their wages below the federal minimum wage. See Arriaga v. Fla. Pac. Farms, 305 F. 3d 1228 (11th Cir. 2002); and Rivera v. Brickman Group, Ltd, 2008 WL 81570 (E.D. Pa.). This employer cost shifting which leaves student guestworkers in debt servitude—working for the entire summer without even recovering these payments—is exactly the costs the federal minimum wage law prohibits.

Threats of retaliation by the entities against the student guestworkers also constitute prohibited retaliation under the Fair Labor Standards Act.

iii. National Labor Relations Act (“NLRA”)

The NLRA regulates relations between labor and management, particularly during labor disputes. A “labor dispute” includes “any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. . . .” 29 U.S.C. § 152(9). Employees have a clear right to organize, bargain collectively, and to engage in concerted activities “for the purposes of collective bargaining or other mutual aid or protection,” as well as to refrain from these activities should they so choose. 29 U.S.C. § 157. Interfering with this right is an unfair labor practice. 29 U.S.C. § 158(a)(1).

The J-1 Summer Work Travel students working at EDC III are contesting their wages, terms, and working conditions. Therefore, they are unquestionably engaged in a labor dispute. As a result, their employers are threatening to terminate their employment and the sponsor has threatened immediate and long term retaliatory immigration consequences. These threats constitute unfair labor practices and are illegal under 29 U.S.C. § 158(a).

iv. Retaliation, Intimidation, and Coercion

When the student guestworkers have complained about the violations of U.S. laws regulating labor, employment, and foreign affairs, they were threatened with deportation and other long term immigration consequences to coerce them to remain quiet about the violations. Student guestworkers from all three shifts were summoned to “captive audience” meetings in the plant and threatened with deportation. Back home, the recruiters in their countries sent threatening
emails to the student-guestworkers, called their parents, and even flew into the U.S. from China
to undercut the organizing. Their employers and the employers’ agents took these actions to
interfere and chill lawful complaints.

Courts recognize that “threatening [guestworkers] with serious immigration consequences in
order to prevent them from leaving employment constitutes ‘threatened abuse of the legal
process’” and constitutes unlawful coercion. See Ramos-Madrigal v. Mendiola Forestry Service
WL 5381821 at *4 (S.D.Fla. Dec. 19, 2008)(threatening that a worker will lose immigration
status if he leaves employment constitutes abuse of the legal process); U.S.
consequences, i.e., deportation" constitutes abuse of the legal process).

B. CETUSA failed to ensure student guestworkers received pay and benefits
commensurate with those offered to American counterparts in Violation of 22
C.F.R. § 62.32(e).

Sponsors are required to “ensure that participants receive pay and benefits commensurate with
those offered to their American counterparts.” 22 C.F.R. § 62.32(e). For students from Pilot
program countries, sponsors are required to “ensure that at minimum participants are
compensated at the prevailing local wage. . . including payment for overtime. . .”

Upon information and belief, other employees in the distribution center may be receiving higher
wages for similar work as the students. Moreover, employees performing similar work in the
immediate Pennsylvania area for other employers are paid between $12 and $18 per hour.

C. CETUSA threatened the student guestworkers’ health, safety, and welfare, 22
C.F.R. § 62.50.

One of the sponsors’ most critical obligations is to ensure the health, safety, and welfare of
student-worker participants. 22 C.F.R. § 62.50. CETUSA not only failed to ensure the health,
safety, and welfare by acts of omission when they placed the students in jobs at EDC III, they
actively jeopardized the health, safety, and welfare of the students by attempting to coerce them
into continued work. When the students brought health and safety concerns to CETUSA’s
attention, CETUSA responded by threatening to terminate their participation in the program,
which would render the student guestworkers out of status.

D. CETUSA conducted the J-1 Summer Work Travel program in a manner that brings
notoriety and disrepute to the Exchange Visitor program, 22 C.F.R. § 62.50.

The Department of State has formally recognized that “[w]hen the health, safety, and welfare of
Exchange Visitor Program participants are at risk, the Exchange Visitor Program’s usefulness as
CETUSA’s inattention to the student guestworkers’ health, safety, and welfare threatens to bring
notoriety and disrepute to the Exchange Visitor program. The reputation of the Summer Work
Travel program is already at risk due to increased numbers of complaints from “foreign
governments, program participants, their families, concerned American citizens, the media, law
enforcement agencies, and the Congress.” *Id.* Using the J-1 program as a guest worker program
for students and subjecting them to basic labor and employment violations when they expected
and paid thousands of dollars for a cultural exchange brings further disrepute to the Exchange
Visitor program.

**E. CETUSA failed to provide cultural activities, 22 C.F.R. § 62.8.**

Sponsors are required to “offer or make available to exchange visitors a variety of appropriate
cross-cultural activities” and to “encourage exchange visitors to voluntarily participate in
activities which are for the purpose of sharing the language, culture, or history of their home
country with Americans.” 22 C.F.R. § 62.8. However, CETUSA has failed to provide *any*
cross-cultural activities. Furthermore, by placing the students at EDC III working long hours for
low pay where their safety is threatened, CETUSA is not only failing to encourage cross-cultural
exchange with Americans, but actively discouraging such exchange. The student guestworkers
would willingly embrace cross-cultural exchange and the opportunity to get to engage
Americans. It is the reason that they paid thousands of dollars to participate in the Exchange
Visitor program. The lack of opportunity to do so is one of their primary complaints.

**F. CETUSA charged excessive fees knowing that students would not be able to earn
enough to pay back the fees causing hardship for students in completing the
program in violation of 22 C.F.R. § 62.12.**

Regulations require that the sponsor ensure that the student-worker “possesses adequate financial
resources to complete his or her program.” 22 C.F.R. § 62.12. Through the excessive costs to
participate in the program, the high deductions, and the low wages, the scheme left students with
significant economic burdens, violating the intent of this regulation and the intent of the program
overall.

**G. CETUSA violated the 2011 Pilot Program for students from Moldova, Romania,
and Ukraine by failing to contract directly with the entity that controls the work
location and for failing to ensure that participants are placed with an employer that
complies with applicable federal, state, and local occupational health and safety
laws. See 76 Fed. Reg. 23177, 23180 (April 26, 2011).**

Students from Belarus, Bulgaria, Moldova, Romania, Russia, and Ukraine fall under the 2011
Pilot Summer Work Travel program. Under the Pilot program regulations, sponsors are required
to “contract directly with the entity that controls the participant’s work location and supervises,
manages, and pays the participant.” U.S. DEPARTMENT OF STATE, “2011 Pilot Summer Work
Travel Program For Belarus, Bulgaria, Moldova, Romania, Russia and Ukraine,”
program-1-5-2011.pdf.

EDC III currently has a number of J-1 students from Pilot program countries working within the
factory. As stated previously, EDC III is owned by Hershey and operated by Exel. Hershey
owns the location, Exel supervises and manages the participants, and SHS pays the participants. However, CETUSA only contracted with SHS. CETUSA’s failure to contract additionally with Exel and Hershey violates the Pilot program rules.

III. Request for Action by U.S. Department of State

Under these circumstances, CETUSA is conducting the J-1 Summer Work Travel program in a manner that places the health, safety and welfare of the students at risk and brings notoriety and disrepute to the Exchange Visitor Program. Rather than operating a cultural and educational exchange program that strengthens relationships between the United States and other foreign nations, CETUSA is demeaning the next generation of leaders of these countries, operating an illegitimate guest-worker program with sub-standard work conditions incompatible with the primary cultural or educational objectives of the J-1 summer work travel program.

We therefore respectfully request that the State Department immediately undertake the following actions pursuant to 22 C.F.R. § 62.50 to protect these students and ensure the wellbeing of future students and the integrity of the program:

i. Ensure CETUSA does not take any employment or immigration related retaliation against any student for this complaint. This includes actions that affect students’ current and future visa prospects;
ii. Support students’ request for parole in place to protect their immigration status from retaliatory acts by the sponsor as this investigation goes forward;
iii. Meet with the student guestworkers listed on this complaint and fully investigate the allegations;
iv. Immediately suspend CETUSA’s sponsorship designation for 120 days (the maximum allotted suspension);
v. Revoke CETUSA’s designation following an in-depth investigation;

Please contact me (504) 309-5165 (office) or (504) 376 6238 (cell) to discuss this matter further and to arrange the interviews with the Hershey student guestworkers. I am also glad to help facilitate gathering additional documents and information relevant to the investigation.

Thank you for your immediate attention to this matter.

Sincerely,

s/ Jennifer J. Rosenbaum

Jennifer Rosenbaum
Counsel to Student Guestworkers
Legal Director
National Guestworker Alliance
cc:
Rick Ruth
Deputy Assistant Secretary, Acting Senior Advisor
Bureau of Educational and Cultural Affairs

Sally Lawrence
Director, Office of Exchange Designation

Susan Geary
Director, Office of Exchange Coordination and Compliance

Barbara Shailor
Special Representative, International Labor Affairs