

Focus on Guestworkers

Rep. Smith Proposes H-2C Legislation

◦
*H.R. 2377 would expand
the guestworker program*

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On August 1, 1997, Representative Bob Smith (R-OR) and other agribusiness supporters introduced a bill in the U.S. House of Representatives that would create a pilot program to increase the availability of temporary foreign labor for fruit, vegetable, and tobacco growers. The program has been dubbed H-2C.

The U.S. Commission on Immigration Reform recently warned against the expansion of guestworker programs in testimony before the House Committee on Immigration and Claims, citing such problems as an agricultural labor surplus, declining real wages, increasing poverty, and increasing farmworker unemployment.

Compounding these problems, warns the Commission, recent changes in U.S. welfare policy mandating "workfare" will place additional strain on the United States' low-wage labor market.

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What You Need To Know About Guestworkers

- * The Bracero Program, a guestworker program implemented during World War II, reached its peak between 1956 and 1959, when roughly 450,000 Mexican farmworkers were sent to the United States yearly. (Federal News Service, 1997)
- * "Operation Wetback," a program designed to stop undocumented immigration spurred by the Bracero Program, apprehended 1,089,583 unauthorized immigrants in 1954 at the height of the guestworker program. (U.S. Commission on Immigration Reform, 1995)
- * The percentage of farmworkers in the U.S. who are undocumented immigrants increased from 7% just after the 1986 immigration amnesty law to 37% during 1994-95. Guestworker programs have recently been proposed as solutions to unlawful immigration. (Department of Labor, 1996)
- * 19,000 H-2A agricultural guestworkers are certified by the Department of Labor to work in the United States yearly. (U.S. Department of Labor, 1997)
- * Between seven and eight thousand H-2A workers were employed in 1997 in North Carolina agriculture alone. In addition, many H-2B workers were employed in agriculture-related industries such as fisheries, plant nurseries, tobacco warehouses, and Christmas tree farms. (Immigrants Legal Assistance Project, 1997)
- * The average member of the North Carolina Growers Association "uses" eight H-2A workers each year. (North Carolina Growers Association, 1995)
- * For farmworkers working under the H-2A program, some of the advantages are: a legal work contract, workers' compensation benefits, a higher wage, and the ability to work legally.

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SAF is a 501(c)(3) non-profit organization whose mission is to bring students and farmworkers together to learn about each other's lives, share resources and skills, improve conditions for farmworkers, and build diverse coalitions working for social change.

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The History of Guestworker Programs in the United States

Access to foreign workers has been a vital part of business and agriculture in the United States for hundreds of years. Slaves, contract laborers, immigrants, and undocumented workers have all filled the same shoes, toiling at jobs most in the country would not do.

Early guestworker programs giving employers access to foreign workers began in California in the mid 1800s. California first employed Chinese workers, then Japanese, Filipino, and Mexican citizens, among others. In the early 1900s, Italian farmworkers worked in East coast agriculture in the padrone system.

The "Bracero" guestworker program was implemented during World War II. This was an agreement between the U.S. and Mexico to bring Mexican workers to the U.S. with temporary visas in order to fill a labor shortage created by soldiers fighting in the War. Braceros stopped growing food on their land in Mexico because they thought they would make enough money in the U.S. to support their families. Braceros worked in cotton, sugar beets, cucumbers, and tomatoes.

The Bracero program was administered by independent farmers' associations and the Farm Bureau. Roughly four and a half million Mexican citizens were granted temporary visas under this program between 1942 and 1964. The program was terminated in 1964 due to the mechanization of cotton harvesting and the excess of undocumented agricultural workers in the U.S.

In 1943 the U.S. government gave the United States Sugar Corporation permission to hire Caribbean workers on temporary visas. This agreement became the H-2 program when it was amended to the Immigration and Nationality Act of 1952. The H-2 program was only half the size of the Bracero program and focused on Florida sugar cane and Eastern apples.

The Immigration Reform and Control Act of 1986 separated agricultural and non-agricultural programs into the H-2A and H-2B programs respectively. Under the H-2A program, a grower who desires to hire temporary foreign labor must apply to the Department of Labor proving that there is a shortage of domestic labor for the jobs to be filled. The Department is required by law to ensure that filling the jobs with foreign workers would not hurt similarly employed U.S. workers. The H-2B program was designed to fill non-agricultural jobs with foreign guestworkers.

Guestworkers are legally bound to their employer and must leave the country when their jobs end. Coming from countries where any U.S. wage looks rich, the workers have been historically esteemed as controllable and productive.

Excerpts taken from the testimony of Bruce Goldstein, Co-Executive Director of the Farmworker Justice Fund, in a prepared statement to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims, 24 September 1997.

Guestworker Classification Frustrates Tree Growers

The classification of the Christmas tree industry as agriculture or forestry is currently the subject of much debate in North Carolina, which is the second largest producer of Christmas trees in the U.S. At the heart of the matter lie worker benefits, minimum wage, and overtime pay.

In the 1930s, the Christmas tree industry was classified as forestry, not agriculture. As forestry workers, employees benefited from the Fair Labor Standards Act (FLSA) and were paid minimum wage and overtime. This classification lasted for almost fifty years.

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA) was enacted by Congress in 1983, but at the time, the U.S. Department of Labor did not enforce the law in forestry. In

1985, a U.S. Court of Appeals ruled that AWPA should apply to forestry work that was largely manual, including Christmas trees. In 1994, the U.S. Department of Labor investigated several North Carolina tree growers, bringing charges of AWPA overtime and back pay violations against a number of them. Thinking it was an Immigration and Naturalization Service investigation, some farmworkers fled, leaving the growers short-staffed at harvest time.

To avoid this problem the following year, the Christmas tree growers requested guestworkers through the U.S. Department of Labor. The Department of Labor classified them as H-2B guestworkers, indicating that the work was non-agricultural. The same Christmas tree workers were

classified as H-2A workers in North Carolina the following year. Thus, workers received greater protections regarding housing and salary, yet no overtime pay.

The continued widespread employment of guestworkers in the North Carolina Christmas tree industry raises concern over the definition and application of the agricultural classification. At issue are the protections that accompany the H-2A and H-2B programs. For many growers, guestworker programs are "difficult and contentious," and those who administer them are "inept and adversarial." The growers have taken these complaints to Congress. Farmworker advocates feel that Christmas tree growers are seeking guestworker classifications to minimize overtime pay and other benefits for workers.

WE'VE HEARD THAT ONE BEFORE



Resources:

House of Representative H-2A bills:
<ftp.loc.gov/pub/thomas/c105/h2377.ih.txt>
<ftp.loc.gov/pub/thomas/c105/h2038.ih.txt>

Rural Migration News:
www.migration.ucdavis.edu

Sin Fronteras:
www-user.cibola.net/~sinfront

"Temporary Foreign Worker Program - Summary"
www.usda.gov/agency/oce/oce/labor-affairs/h2asumm.htm

Urban Institute, "Does the U.S. need a Guest Farm-Worker Program?"
www.urban.org/periodcl/prr25_2b.htm

U.S. Commission on Immigration Reform:
www.utexas.edu/lbj/uscir/120795.html

