

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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SAF is supported by the Z. Smith Reynolds Foundation, the Kathleen Price Bryan Family Fund, NC Humanities Council, NC Arts Council, NC Community Shares, NC Public Allies, the Migrant Health Program and the National Community Service Trust.

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Published by SAF

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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



NOTES FROM THE FIELD

North Carolina H-2A Worker Dies after Returning to Mexico

Every year, the North Carolina Growers Association (NCGA) brings thousands of workers from almost every state in Mexico to the United States under a contract known as H-2A.

Under this contract, workers agree to work for a period of three or six months. NCGA promises decent salaries, at least 40 hours of work per week, free housing, reimbursement of travel expenses, and workers' compensation benefits.

This package sounds attractive to workers in Mexico, but after arriving to the workplace, most of the workers find these promises to be false. Many are forced to work under hazardous conditions and are exposed to pesticides and other harmful chemicals. Workers are also pressured not to complain for fear of losing their jobs.

Workers under the H-2A program do not want to leave, because they often must make enough money to repay high interest on loans they used to pay for their transportation to the U.S.

In early April of this year, four brothers came from Francisco I. Madero, Durango to work in North Carolina.

Juan, who was the oldest, came to the United States for the first time as an H-2A worker. He got sick after a week of planting tobacco. His feet became swollen,

causing only minor problems at first. After weeks of working without breaks under severe pressure from the grower, Juan's feet got worse and his entire body - including his face - swelled pretty badly.

"What's wrong with you?" asked his brother Antonio, who is a few years younger. Juan responded that it was nothing, that his body was just not well.

It was pretty obvious that Juan was sick, but he continued to work under that condition for two weeks, until he wasn't able to digest food or use the bathroom.

Andres and Alfredo decided to ask their employer to help them with their brother, for he could no longer eat or sleep well. Juan decided to go to work for the third week becoming more sick each day. On Tuesday of the third week, Juan gave up as he was unable to walk any more.

When the grower asked Juan why he was not working, Juan just showed him his swollen feet and then was taken back to the labor camp by the crew leader.

Two days later, a representative of the NCGA came to the labor camp searching for Juan to take him back to Mexico by request of the grower and the three brothers. After asking Juan what was wrong with him, the representative rushed him to the bus station, not to the hospital.

"We never ask for anything because it upsets the grower right away and he starts yelling at us and threatening to send us back to Mexico without pay," said the workers in this camp. Since the trip back to Mexico usually takes about three days, Juan's condition got worse. Three weeks after arriving back home to his six young children and wife in Mexico, he died.

Unfortunately, this story is often repeated in North Carolina and throughout the United States. Many farmworkers live in constant fear because they cannot fight this injustice. Farmworkers' economic situation prevents them from leaving and searching for another job. They must consider the situation of their families who need money to eat.

This situation needs to change. In order for change to happen, farmworkers must take steps to demand better conditions. If farmworkers are not encouraged to stand up for themselves, this type of treatment, which resembles slavery, will continue.

Adapted from an article written by 1997 SAF Intern Marc Antonio Rodriguez, entitled "The Cruel Reality of the H-2A Program"

The names in this article have been changed to ensure confidentiality.

Opiates to Agricultural Employers

The current H-2A program employs about 19,000 guestworkers nationally each year.

Though the H-2C program is proposed as a two year pilot program, provisions for visa extensions could increase the number of guestworker visas to 75,000 within three years (25,000 annually).

According to the Farmworker Justice Fund, H.R. 2377 would:

- Give employers easy access to foreign worker visas, essentially privatizing agricultural immigration policy.
- End the requirement that there be a labor shortage before guestworkers are employed.
- Authorize lower wages and worse conditions than the current H-2A program.
- Allow employers not to provide housing for H-2C workers.
- Restrict labor law enforcement by restricting government action and access to the courts.

Three additional agricultural guestworker bills have recently been introduced in Congress:

- (1) Senator Smith (R-OR) introduced S.1563.
- (2) Representative Chambliss (R-GA) introduced H.R. 2595.
- (3) Senator Craig (R-ID) introduced S.169.

U.S. agribusiness has become dependent upon cheap foreign labor, sidestepping economic laws which generally govern employment and acceptable wage rates.

Commenting upon this unhealthy relationship, Richard Estrada, Commissioner of the U.S. Commission on Immigration Reform, calls the cheap, unskilled foreign labor supplied by the H-2A program an "opiate to agricultural employers."

Guestworkers are not free. Though not nominally slaves, they cannot freely sell their labor on an open market, for they are legally bound to sponsoring employers. Eyewitness accounts report that the sessions in which growers first meet the guestworkers eerily evoke the slave auctions in U.S. history many would like to forget.

Guestworkers must work for the employer who applies for their entry, and are thus valued for their dedication. This dedication is an illusion - it stems largely from the fact that the worker is essentially indentured to the grower. Unlike indentured servants, however, a guestworker has no expectation of ever obtaining permanent legal status in the U.S.

Growers often warn of a current or eminent farm labor

shortage in the U.S., asserting that a large foreign labor supply is necessary for their economic security and that of the consumer.

But, labor shortages are rare. According to Professor Philip Martin at the University of California - Davis, U.S. agribusiness generally faces an oversupply of labor. There is double digit unemployment in many farm labor supply areas, including Texas, Florida, and California. At least 190,000, or 12% of farmworkers in the U.S. are not working. (Federal News Service, 1997)

Estrada writes that "what [growers] really mean is they can't find workers at the extremely low wages and working conditions they offer." Agribusiness is dependent upon extremely low wages and requires special legislation to keep wages down, at the expense of farmworkers.

Estrada continues, "There is no God-given right to cheap and exploitable foreign labor, and there is no God-given right to cheap fruits and vegetables."

Many economists feel that agribusiness especially seeks a "dependable system of constantly disposable and replenishable labor" who will "work hard and scared." This is the basis of the H-2A guestworker program in the U.S. This desire should not be equated with a need.

Excerpts taken from Richard Estrada's testimony before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims, 7 December 1995.

-- ACTION ALERT --

SAF urges readers to contact their members of Congress as soon as possible to oppose H.R. 2377, H.R. 2595, S. 1563 and S.169, and support fair treatment under the law for migrant and seasonal farmworkers. Call 202-224-3121 to reach the Capitol switchboard and then ask for your Congress-person, or write to your Senator or Representative at the U.S. Senate or House of Representatives, Washington, D.C. 20510.

Upcoming Events

Americorps positions available, applications due immediately: The Association of Farmworker Opportunity Programs (AFOP) is seeking applicants to fill Americorps positions in AR, CA, FL, GA, IN, LA, ME, MD, OH, OR, PA, TX, UT, HI, WA, and WI. Responsibilities include farmworker health, education, and supportive services. Applicants should have strong communication skills in both English and Spanish, and be willing to commit a year of full-time community service from January through December. *Those interested should contact Scott Hirsch at (703) 528-4141, ext. 120.*

February 16: SAF's Into the Fields Summer Internship applications due. Eligible applicants include college or graduate students from schools in NC or SC and from farmworker families nationwide. *For an application, contact SAF at aokie@acpub.duke.edu or (919) 660-3652.*

SAF NEEDS FREQUENT FLYER MILES!

Help students from farmworker families fly from California, Oregon, Pennsylvania, Texas, and Idaho to the Carolinas to participate in SAF's Into the Fields Internship Program by donating frequent flyer miles. *To donate miles, contact SAF at (919) 660-3652.*

HOLIDAY GIFT IDEAS FROM SAF

1. 100% cotton "Farmworkers Feed the World" SAF t-shirt \$14
2. Packet of 10 farmworker family OR Christmas tree notecards \$12

To order:

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