



Can We Still Change Immigration Policy?

Columbia Room B

10:45 AM - 11:35 AM

Hyatt Grand Regency Capitol Hill

Tuesday September 9, 2014



THE
WASHINGTON
CONFERENCE

#UnitedTWC

Immigration Reform and Agriculture

USDA Presentation for the United Fresh
Produce Association Policy Conference
September 9, 2014

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Present Situation

- Approximately one million agricultural workers in the U.S. – At least half are thought to be unauthorized workers
- Farmers have access to a guest worker program (H-2A) for temporary
- Senate Bill -- Border Security, Economic Opportunity, and Immigration Modernization Act
 - All encompassing bill, about a fourth devoted to agricultural immigration issues
- House Bill – Agricultural Guest Worker Act
 - More limited -- specific to a new guest worker proposal

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Senate Bill: Undocumented Farm Workers Presently in the U.S.

- Resident aliens who have worked at least 100 days per year in agriculture during the two year period ending in December 31, 2012 can apply for documentation (“blue card”)
 - Spouses and children also eligible
 - One year application window – pay fee/penalty
 - Blue card expires after 8 years
- The blue card holder must continue to work in agriculture to ultimately apply for permanent resident status within five to eight years
 - 8 Year period – 100+ days/year for at least 5 years
 - 5 Year period – 150+ days/year for at least 3 years

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H-2A Guest Worker Program

- Allows farmers to hire workers to perform temporary occupations lasting less than a year
- Criticisms
 - Mandated wage rate is too high
 - Housing requirement difficult to comply with
 - Application process is long and uncertain
 - Only for seasonal occupations – some industries (e.g., dairy) do not have access to the program
 - Employees have no mobility – they must work for a single employer and return home when the job is complete

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Entry Into the Program

Existing H-2A

- Demonstrate a shortage
 - Newspaper ads, contact former employees, state work force ad
- Petition the U.S. DOL for temporary certification
- File form (I-129) with DHS
- Worker applies for a visa in his home country

Proposed Senate Program

- Demonstrate a shortage
 - State work force ad sufficient
- Employer registers with USDA
 - “Designated Agricultural Employer” – good for 3 years
- File form (I-129) with DHS
 - DHS must grant within 7 days
- Worker applies for a visa in his home country

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Housing, Travel and Compensation

Existing H-2A

- Employer pays employee transportation cost
- Employer provides on-site housing
- Employer must hire any U.S. worker until 50% of the job is complete
- Employer must pay three fourths of contract hours

Proposed Senate Program

- Employer pays employee transportation cost
- Employer provides on-site housing, or vouchers
- Employer must hire any U.S. worker until H-2A workers arrive
- Employer must pay three fourths of contract hours
 - Appeal process for natural disasters

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Numbers and Length of Stay

H-2A Program

- No cap on employees
- Only available for seasonal work
- Workers return home when the contract is fulfilled

Proposed Senate Program

- Capped at 112,333 per year
 - Secretary of Agriculture has discretion to change cap (after consultation with the Department of Labor)
- Available to seasonal and non-seasonal work
- Workers must fulfill initial contract, then become “at-will” workers
 - Can work for any designated agricultural employer
 - Can stay in the U.S. for 3 years (+3 year extension)

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Wages

H-2A Program

- Wage rate set by the U.S. Department of Labor, known as the “adverse effects wage rate”
- Same wage for all workers in different regions of the U.S.
- Across regions, it ranges from \$9.87 to \$13.41 in 2014.

Proposed Senate Program

- Six occupations identified with separate wages initially set either by statute or by USDA
 - Supervisors (Set by USDA)
 - Animal breeders (Set by USDA)
 - Graders and sorters (\$9.37, \$9.60, \$9.84)
 - Equipment operators ... (\$11.30, \$11.58, \$11.87)
 - Crop/nursery/greenhouse (\$9.17, \$9.40, \$9.64)
 - Farm/ranch, aquaculture (\$10.82, \$11.09, \$11.37)

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Enforcement

- Enforcement
 - Worksite labor laws apply to guest workers – enforced by the DOL (same as H-2A)
 - DOL has the power to fine employers (same as H-2A); USDA has the power to remove employers from the program
- Winners and Losers? -- Both sides benefit
 - Wages now tied to skill level
 - Housing vouchers
 - Streamlined process with DOL removed
 - More worker mobility with no contracts
 - Longer term visas
 - Both seasonal and non-seasonal employers have access

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Entry Into the Program

Existing H-2A

- Demonstrate a shortage
 - Newspaper ads, contact former employees, state work force ad
- Petition the U.S. DOL for temporary certification
- File form (I-129) with DHS
- Worker applies for a visa in his home country

Proposed House H-2C Program

- Demonstrate a shortage
 - State work force ad sufficient
- Petition USDA for temporary certification
 - USDA must grant petition within 10 business days
- File form (I-129) with DHS
 - DHS must approve within 7 days
- Worker applies for a visa in his home country

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Housing, Travel and Compensation

Existing H-2A

- Employer pays employee transportation cost
- Employer provides on-site housing
- Employer must hire any U.S. worker until 50% of the job is complete
- Employer must pay three fourths of contract hours

Proposed House H-2C Program

- Employer does not pay employee transportation cost
- Employer does not provide on-site housing, or vouchers
- Employer must hire any U.S. worker until H-2A workers arrive
- Employer must pay one half of contract hours
 - Appeal process for natural disasters

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Numbers and Length of Stay

H-2A Program

- No cap on employees
- Only available for seasonal work
- Workers return home when the contract is fulfilled

Proposed House H-2C Program

- Capped at 500,000 total
- Available to all types of agriculture including processing
- Workers must fulfill initial contract, then ...
 - Can work for any agricultural employer who petitions USDA
 - Can stay in the U.S. for either 18 months (seasonal employment) or 36 months (non-seasonal employment)

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Wages

H-2A Program

- Wage rate set by the U.S. Department of Labor, known as the “adverse effects wage rate”
- Same wage for all workers in different regions of the U.S.
- Across regions, it ranges from \$9.50 to \$12.33 in 2013.

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Proposed House H-2C Program

- Wages are the greater of the minimum wage and the prevailing wage

Enforcement

• Enforcement

- USDA and DHS have the power to fine employers who fail to meet the required employer conditions
- USDA has the power to remove employers from the program
- DOL role? Bill does not elaborate on who enforces job site conditions

• Winners and Losers?

- Mostly benefits employers

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