



Migration that Works

More Guestworkers Is Not the Answer

As policymakers debate how to address the so called build up at the border and the many ways that the U.S. immigration system needs rehaul, several groups have suggested that part of the answer may lie in the creation of new or expanded guestworker programs to stem the number of migrants fleeing dangerous conditions and poverty in their own countries.

These programs should not be expanded or used as part of a solution to current immigration challenges. U.S. guestworker programs create vulnerable workers who are often subject to labor and human rights abuse by unscrupulous employers. They also harm the welfare of U.S. workers by driving down wages and eroding working conditions for all who work in similar industries.

These programs are not designed to provide humanitarian relief but have been set up to provide U.S. employers with cheap and pliable labor.

“The modern “guestworker” system in the U.S. has its roots in temporary labor programs designed to supply employers with agricultural workers... Following the establishment of these agricultural worker programs, the proliferation of other visa categories quickly followed, as employers in other sectors sought their own avenues to cheap and transient labor. They also vigorously resisted any regulations that might have allowed these visas to serve the interests of foreign and U.S. workers, and not just their own..”

Visas, Inc.: Corporate Control and Policy Incoherence in the U.S. Temporary Foreign Labor System, Ashwini Sukthankar, Global Workers Justice Alliance (2012), available at https://683ba61a-c54c-40f0-acc5-a9f6c778d737.filesusr.com/ugd/64f95e_31649e341fed4c8e9a73dd9922e7b6b1.pdf

Specifically, there are multiple problems inherent in the U.S. guestworker system that put visa holders and U.S. contemporary workers at risk, including:

- No Freedom of Movement, Visa Portability

Workers are generally tied to one employer, cannot control where they live, and often have their passports and documents confiscated.

“(H-2) programs permit the guestworker to work only for the employer who petitioned the Department of Labor (DOL) for his or her services. If the work situation is abusive or not what was promised, the worker has little or no recourse other than to go home. That puts the worker at a distinct disadvantage in terms of future opportunities in the United States, because his ability to return during any subsequent season depends entirely on an employer’s willingness to submit a request to the U.S. government. In practical terms, it means that an employee is much less likely to complain about wage violations or other abuses.”

A Brief History of Guestworkers in America, Close to Slavery: Guestworker Programs in the United States, Mary Bauer, Southern Poverty Law Center (February 2013) available at <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>

- Economic Coercion

Recruiters charge workers recruitment fees, employer contracts include breach fees, and travel and subsistence costs result in work-related debt that force workers to remain with abusive employers.

“Employers, recruiters and their agents charge illegal recruitment fees and fail to reimburse visa, travel and recruitment-related expenses incurred by workers. Despite bans on recruitment fees in both U.S. and Mexican law, it remains standard practice in Mexico for recruiters to charge workers for their services. Fifty-eight percent of workers surveyed reported paying a recruitment fee to their recruiter. The average recruitment fee charged was \$590.”

Recruitment Revealed, Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change, Centro de los Derechos del Migrante (February 2018) available at https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf

- Lack of Self Determination and Full Participation in Society

Work visas are time-limited, and workers must return home when their visas expire. Workers are denied any opportunity for political participation and generally cannot acquire citizenship.¹

Many nations have “brought great numbers of temporary workers in to occupy economic roles that nationals of these countries no longer wanted to perform, but without the intention of ever including them as full members, they have found themselves with communities of ‘temporary’ economic migrants who were temporary in name only”

The Theory and Practice of Citizenship in the 21st Century: A Few International Trends, David Weinstock, *Canadian Diversity* 6(4): 3-6, (Fall 2008), available at <https://docplayer.net/102905233-Citizenship-in-the-21-st-century-au-xxi-e-siecle-internationales-guest-editor-directeur-invite-daniel-m-weinstock-universite-de-montreal.html>

- Lack of Equal Labor Protections

The law limits some workers’ rights and labor protections. Workers are paid less as compared to U.S. workers, which undercuts wages and working conditions for all workers. Employers use work visas to displace existing workers. Genuine need is established before posting job opportunities.

“There is abundant evidence that the laws and regulations governing major temporary work visa programs—such as H-2B and H-1B—permit employers to pay their temporary migrant workers much less than the local average wage for the jobs they fill. For example, in the H-1B program—which has a prevailing wage rule that is intended to protect local wage standards—60% of all H-1B jobs certified by the U.S. Department of Labor (DOL) in 2019 were certified at a wage that was below the local average wage for the specific occupation. However, most work visa programs have no minimum or prevailing wage rules at all—perhaps that’s why some employers have believed they could get away with vastly underpaying their temporary migrant workers, as one Silicon Valley technology

¹ Trump Secretary of Agriculture explained the importance of separating citizenship from temporary work permits in a January, 2020 meeting in Texas. “Perdue said he has been trying to persuade others in the administration ‘to separate immigration, which is people wanting to become citizens, with a temporary, legal guest-worker program. That’s what agriculture needs, and that’s what we want,’ Perdue said. ‘It doesn’t offend people who are anti-immigrant because they don’t want more immigrant citizens here. We need people who can help U.S. agriculture meet the production.’” *Last MFP Payment Imminent Ag Secretary Highlights Trade, Crop Surveys, Ag Labor Issues*, Chris Clayton, *Progressive Farmer*, January 21, 2020, available at <https://www.dtnpf.com/agriculture/web/ag/news/world-policy/article/2020/01/21/ag-secretary-highlights-trade-crop>

company in Fremont, California, did by paying less than \$2 an hour to skilled migrant workers from India on L-1 visas who were working up to 122 hours per week installing computers.”

Temporary work visa programs and the need for reform, Daniel Costa, Economic Policy Institute, (February 3, 2021), available at <https://www.epi.org/publication/temporary-work-visa-reform/>

- **Discrimination**

Employers and recruiters hire and assign job duties based on discriminatory bases.

“The U.S. government’s anti-discrimination laws aim to convert the U.S. workplace into an engine for social equality. The laws prohibit discrimination in hiring and employment on the basis of race, color, sex, religion and national origin. Yet, government-sponsored temporary worker programs are quietly reclassifying entire sectors of the U.S. workforce by race, gender, national origin and age. These programs also are weeding out workers who speak out against unlawful employment practices, assert their rights under the law or organize for better working conditions. During the recruitment process, internationally recruited workers are subject to various forms of invidious discrimination. Recruiters and employers limit access to the recruitment stream by national origin, gender and age. They sort workers into jobs and visa categories based on racialized and gendered notions of work.”

The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse, International Labor Recruitment Working Group, (February 2013), available at <https://migrationthatworks.files.wordpress.com/2020/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf>.

- **No Right to Organize, Lack of Whistleblower Protections and Personal Security**

Workers face barriers when they attempt to organize and join unions. Workers who do organize can face retaliation. Employers and recruiters retaliate against workers, threaten to blacklist workers who complain, and attack workers.

“Employers and recruiters can also weed out workers who might dare to speak out against unlawful employment practices, assert their legal rights, or organize for better working conditions by joining or forming a union. They can do this by refusing to hire workers whom they think will be likely to complain, and retaliating against workers who do speak up or complain—for instance, by firing them and effectively forcing them to leave the country, or by threatening to blacklist them from being hired for future job opportunities.”

Temporary work visa programs and the need for reform, Daniel Costa, Economic Policy Institute, (February 3, 2021), available at <https://www.epi.org/publication/temporary-work-visa-reform/>

- **Guestworkers are often Trafficked**

Several sources over the past few years have described the pervasiveness of human trafficking on temporary foreign work visas.

In April of 2018, Polaris, operator of the National Human Trafficking Hotline, released a report detailing human trafficking of non-immigrant visa holders. From 2015 through 2017, Polaris identified 797 victims of trafficking who held a work visa at the time of their abuse. During the 2016 calendar year alone, the National Human Trafficking Hotline and the BeFree Textline identified 1,067 labor trafficking victims in the United States, and 342 (representing 32% of the total) were holders of temporary non-immigrant visas.

Data published by the Human Trafficking Legal Center indicates a significant number of federal human trafficking cases involved victims holding non-immigrant work visas. From 2003 through May of 2020, 422 civil lawsuits containing claims of human trafficking were filed in federal court. Of those, 174 alleged the trafficking of a non-immigrant visa holder. Accordingly, over 40% of the civil human trafficking federal lawsuits filed in the U.S. counted nonimmigrant work visa holders as victims. These victims worked legally under one of eleven visa classifications, from the more commonly known H-2A agriculture visa to the lesser-known A-3 and G-5 domestic worker visas.

In 2014, the Urban Institute and Northeastern University studied 122 closed labor trafficking victim service records from service providers in four United States cities. The vast majority of trafficking survivors sampled (71%) entered the U.S. on a temporary visa. The most common temporary visas were H-2A visas for work in agriculture and H-2B visas for jobs in hospitality, construction, and restaurants. The study also identified female domestic servitude victims who had arrived in the United States on diplomatic, business, or tourist visas.

See *Human Trafficking on Temporary Foreign Work Visas in the U.S.A.*, Justice in Motion, (June 2018), available at <https://www.justiceinmotion.org/temporary-foreign-work-visas>

- **Guestworker Programs are not Transparent**

The breadth of data already collected by the government on guestworker visa programs is considerable, but much of these data are not shared with advocacy groups or the public, nor even between federal agencies.

“Despite clear evidence of human trafficking taking place under nonimmigrant visas, workers, anti-trafficking advocates, and policymakers alike face an alarming dearth of information about these visa programs. The sprawling, employer-driven web of visa categories is little understood, and lack of unified and transparent data about visa programs increases worker vulnerability to trafficking, hampers prevention efforts, and blocks policymakers from crafting effective, bipartisan reforms to improve guestworker programs.”

See *The Case for Transparency*, Justice in Motion, (Sept. 2020), available at <https://www.justiceinmotion.org/case-for-transparency>

U.S. guestworker programs are exploitative and create unique vulnerabilities in their participants. We should not attempt to stem the arrival to our southern border of desperate neighbors by subjecting those potential arrivals to exploitation, abuse, and even human trafficking through temporary employment. Guestworker programs in the U.S. should not be expanded until they have been extensively reformed.

About Migration that Works

Migration that Works is a coalition of labor, migration, civil rights, anti-trafficking organizations and academics advancing a labor migration model that respects the human rights of workers, families and communities and reflects their voices and experiences. Founded in 2011 as the International Labor Recruitment Working Group (ILRWG), Migration that Works is the first coordinated effort to strategically address worker rights abuses across industries and visa categories. For more information, contact Mari Perales Sánchez, mariap@cdmigrante.org, or visit migrationthatworks.org.