

WebMemo



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Help Wanted: Administration Proposes Needed Changes in the H-2A Visa Program

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The Labor Department estimates that 600,000 to 800,000 immigrants are currently working illegally on America's farms. Many fear that the increase in internal immigration enforcement will have serious repercussions for the agricultural sector. In response to this problem, the AgJOBS Act of 2007 would have granted amnesty to the illegal immigrants who currently work in the agricultural industry. That approach was deeply flawed and irresponsible.

The Department of Homeland Security (DHS) and Department of Labor (DOL) are now taking the correct approach by proposing changes in the H-2A Visa program. H-2A Visas are temporary visas for nonimmigrant workers who perform agricultural labor. The Labor Department estimates that only 75,000 workers in the agricultural sector are in the H-2A program. Two main reasons account for this: The wages required by H-2A are higher than prevailing wages, and the application process is too cumbersome.

The Administration's proposal would address these problems, making the program more attractive to employers. Congress should support these efforts, and both Congress and the Administration should consider further improvements that would help the program to meet today's workforce demands.

Problems with the Program. The limited use of the H-2A program can be attributed primarily to the inflated wages that employers are required to pay H-2A workers. The current method by which the DOL calculates wages is flawed, resulting in wages that are higher for H-2A workers than for American employees.

Also, the application process is notoriously bureaucratic. Employers must file paperwork with three different departments: They must give a temporary agricultural labor certificate to the Department of Labor, file an I-129 petition with the DHS, and apply for visas at the State Department. Along the way, employers run into numerous obstacles. For example, employers must identify the workers when filing a petition with the DHS. The entire process takes months, and workers are often no longer available when the visas are granted.

Smart Solutions. The new rules proposed by the DHS and DOL aim to make the program more flexible while reinforcing security measures. The most significant proposals are the following:

- *Adjust the methodology of the Adverse Effect Wage Rate (AEWR).* The changes would allow wages to better represent the market, locality, occupation, and the skill level of the H-2A worker.
- *Allow nonimmigrant workers to work for up to 120 days while the employer is waiting for a petition to be approved.* This rule would apply to employers who wish to hire H-2A workers already residing in the United States.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Immigration/wm1814.cfm

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- *Allow employers to apply for petitions for unnamed workers.* This change, which has already been implemented by the DHS, is meant to make the process more flexible for agricultural employers.
- *Establish a pilot land-border exit program for guest workers.* The system would ensure that H-2A workers are not overstaying their visas. It would also record either biographic or biometric information.

Keeping America's Door Open. A flexible H-2A Visa program is the right approach because internal enforcement alone will not be enough to motivate employers to hire legal immigrants. To continue on this path, policymakers should also make the following reforms:

- *Further streamline the application process.* Policymakers should reduce the number of departments an employer must go through and find ways to process and turn around documentations, including visas, in a quicker manner.
- *Require bonds to ensure timely exit.* The DHS should rapidly implement the voluntary exit systems at the land borders. Once the system is in place, employers should be required to put up a bond to ensure that H-2A workers exit the country before their visas expire.

Conclusion. Foreign workers have always been a pillar of the American economy. As it currently functions, the H-2A Visa program limits the ability of employers to hire nonimmigrant workers. Rather than protecting American jobs, these regulations are punishing the American employer and encouraging illegal activity. Reforming work visas is a pivotal step in fixing the U.S. immigration problem.

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