

Overview of the Congressional Debate on Guest Worker Programs

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Context for Current Guest Worker Debate

- Comprehensive immigration reform
- Employers
- Workers

Current Guest Worker Programs

- H-2A program for temporary agricultural workers
- H-2B program for temporary nonagricultural workers

Selected Features of Current Programs

- Labor certification
- Numerical limitations
- Temporary nature of work
- Temporary stay

Labor Certification

- Department of Labor (DOL) certification that:
(1) qualified U.S. workers are not available &
(2) employment of foreign workers will not adversely affect U.S. workers.
- U.S. worker recruitment required
- Wage and other requirements
- Different requirements under H-2A and H-2B programs
- Employer and worker dissatisfaction with process

Numerical Limitations (Cap) and Admissions Levels

- H-2B statutory annual cap of 66,000
- Temporary returning worker exemption
- H-2B visa issuances
 - FY2004: 76,169
 - FY2005: 89,135
 - FY2006: 122,541
 - FY2007: 129,547

Numerical Limitations (Cap) and Admissions Levels (Cont.)

- No H-2A statutory annual cap
- H-2A visa issuances
 - FY2004: 31,774
 - FY2005: 31,892
 - FY2006: 37,149
 - FY2007: 50,791

Temporary Nature of Work

- Work of seasonal or temporary nature
- “Temporary” work for purposes of H-2B visa

Temporary Stay

- Foreign residence
- No intent to reside permanently in the United States
- Initial period of admission of up to 1 year
- Maximum stay of 3 years
- Limited ability to adjust to legal permanent resident (LPR) status

Guest Worker Reform: Agricultural Workers

- AgJOBS package of H-2A reform and legalization
- AgJOBS Act of 2007 in 110th Congress (S. 237/S. 340/H.R. 371)

AgJOBS Act of 2007: H-2A Reform

- Labor attestation
- Required assurances different for jobs covered and not covered by collective bargaining agreements
- DOL certification that application filed
- Changes to H-2A requirements on minimum wages and benefits

AgJOBS: Legalization of Agricultural Workers

- Two-stage legalization process
- Temporary resident (“blue card”) status
 - Work and other requirements
 - Up to 1.5 million workers
- Legal Permanent Resident (LPR) Status
 - Adjustment to LPR status in the United States
 - Work and other requirements

AgJOBS vs. Alternatives

- Alternative bills proposing H-2A reform without a legalization program
- AgJOBS incorporated into larger immigration reform measures
- AgJOBS revisions

Bush Administration H-2A Reform Efforts

- Reform within current law
- DOL directed to make changes to H-2A regulations
- Changes under consideration

Guest Worker Reform: Nonagricultural Workers

- Major immigration bills in 108th and 109th Congresses included provisions to reform H-2B program and establish new programs

Selected Features of Nonagricultural Guest Worker Reform Bills in 108th and 109th Congresses

- Labor attestation and streamlining of application process
- Increases in cap
- Move away from temporary nature of work requirement
- Longer periods of stay
- Self-petitioning for LPR status

H-2B reform in 109th Congress

- Enacted in FY2005 Emergency Supplemental Appropriations bill (P.L. 109-13)
- Temporary returning worker exemption from cap
- Other changes

Nonagricultural Guest Worker Reform in S. 1639 in 110th Congress

- New Y-2 visa for seasonal workers
- New Y-1 visa for temporary workers
 - To sunset after 5 years
- Labor attestation and streamlining of application process
- Increases in cap

Nonagricultural Guest Worker Reform in S. 1639 in 110th Congress (Cont.)

- Length of stay provisions
 - Y-2 visa
 - 10 month period of admission; then required 2 months outside the United States prior to readmission
 - No limit on number of readmissions
 - Y-1 visa
 - 2 year period of admission; then required 12 months outside the United States prior to return on 2-year extension of stay
 - Limit of one or two 2-year extensions depending on circumstances
- No provisions for new guest workers to adjust to LPR status

Challenges to Guest Worker Reform

- Employers and workers
- Comprehensive immigration reform