

The Looming Agricultural Labor Crisis and Legislative Remedies

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The U.S. agricultural industry faces an imminent labor catastrophe. The commercial sector of U.S. agriculture is absolutely dependent on an adequate supply of hired labor at wage rates that enable U.S. agricultural producers to remain competitive in domestic and global markets. Yet the U.S. hired agricultural workforce is largely dependent of illegal alien workers, and growing more so by the day.

More than 550,000 farms reported hiring labor in the 2002 U.S. Census of Agriculture. U.S. farmers spent \$22 billion on hired farm labor in 2002, and the hired farm labor payroll represented more than one in every eight dollars of farm production expenses. More than 24,000 farmers in Pennsylvania and New York State hired labor, and paid \$950 million in payroll in 2002.

Foreign-born workers have always been a significant source of agricultural labor in the United States. Workers from Mexico, in particular, supported the development of irrigated agriculture in the sparsely populated western states. As economic development has created new non-farm job opportunities and the native born workforce has shrunk relative to the total population, foreign-born farm workers have become increasingly important in the eastern United States, as well. The U.S. Department of Labor's National Agricultural Worker Survey (NAWS) reported that in the eastern states 74 percent of seasonal-hired agricultural workers were foreign born in the 1997-2000 survey cycle, and a shocking 100 percent of new hired farm workforce entrants (i.e. persons who were working their first season in U.S. agriculture at the time surveyed) were foreign born!¹

It is not surprising, therefore, that the majority of hired workers employed in U.S. agriculture are not legally authorized to work in the United States, and the proportion of illegal aliens in the U.S. hired farm workforce is growing steadily. A majority, 52 percent, of the workers in the 1997-2000 NAWS survey cycle, reported that they were not authorized to work in the United States. (Virtually all experts agree that the actual percentage is much higher.) This was an increase from 37 percent in the survey cycle only 3 years earlier and 12 percent a decade before that. In the 1997-2000 survey cycle, an astonishing 99 percent of "newcomers" working in the eastern states reported that they were not authorized to work in the United States.

Increased concern about national security, border integrity, and accurate payroll reporting of Social Security taxes, among other issues, have led to demands to control illegal immigration and to deal with the large population of undocumented aliens already in the United States. To the extent that these measures are even partially effective, they could have a devastating impact on U.S. agriculture. Even without such measures, lack of a reliable labor supply is retarding the growth and the profitability of significant segments of the U.S. agricultural industry.

The entire U.S. economy faces a shortage of native labor, and U.S. demographic trends clearly show this shortage will become more severe in ensuing years. The shortage of native labor occurs across the entire spectrum of skill levels, including low skilled and unskilled manual labor. Agricultural work, particularly seasonal and/or migratory agricultural work, is the

residual claimant for labor in our economy. Thus, any shortage of labor disproportionately affects agriculture.

The current federal immigration programs that were designed to address the problems of insufficient seasonal and permanent labor are paralyzed and unworkable. Quotas for unskilled permanent residents are set at unrealistic levels, and the processing time for such applications is measured in years. The H-2A provisions of the Immigration and Nationality Act, which are supposed to admit seasonal agricultural workers, are similarly unworkable for most farm employers. The quota on the admission of unskilled workers for employment in the entire economy is only 10,000 annually for a civilian workforce in excess of 140 million, and the temporary agricultural worker program admits fewer than 50,000 workers annually in a U.S. hired farm workforce in excess of 2 million.

Thus, the reality of the current situation is that the U.S. agricultural industry is dependent on an alien, and largely illegal, hired workforce. The hired farm workforce, for its part, is alienated from the American system, faces a highly uncertain future, and is vulnerable to exploitation.

The agricultural industry has been working nearly a decade for enactment of corrective legislation. The focus of this legislation has been on addressing the status of those undocumented farm workers who are now more or less permanent residents of the United States, and providing a workable legal means by which seasonal workers, upon which the industry is heavily dependent, can enter and depart the United States.

In the current 108th Congress, this legislation is the “Agricultural Job Opportunity, Benefits, and Security Act of 2003”, S. 1645 and H.R. 3142, popularly known as “*AgJobs*”. It was introduced by Senator Larry Craig (R-ID) and Rep. Chris Cannon (R-UT) in September 2003. The

Senate and House versions are identical. S. 1645 currently has 62 co-sponsors and H.R. 3145 has 124 co-sponsors. *AgJobs* will substantially restructure and reform the H-2A temporary agricultural worker program and provide a means for agricultural workers currently living and working in the United States without documentation who have made a substantial commitment to farm work in the United States to earn adjustment to legal permanent resident status.ⁱⁱ

While H-2A reform and/or farm worker adjustment of status bills have been introduced in every Congress for the last eight years, this is the first time that such legislation has a serious prospect of enactment. *AgJobs* has received strong bipartisan support, as evidenced by the large number of co-sponsors who are almost equally divided along party lines. It has been endorsed by more than 400 national organizations representing organized labor, farm worker advocates, and Hispanic organizations, including a broad coalition of more than 80 agricultural organizations, associations of H-2A employers, and individual H-2A program users. The legislation has received the endorsement of the general business community, including the U.S. Chamber of Commerce. It has also received the endorsement of hundreds of media outlets, including most major national daily newspapers.

AgJobs is the product of several years of arduous negotiations between agricultural employers, farm labor organizations, and a bipartisan group of Congressional leaders. Unlike previous reform bills, and several other bills in the current Congress, *AgJobs* is legislation that can be enacted because it has broad bipartisan support. It represents the first and best chance for statutory reform of the H-2A program and the U.S. agricultural labor system in more than a decade. It is the only chance for such reform in the near future.

AgJobs has two principal purposes. One is to create a means for aliens who have made

a substantial commitment to agricultural work in the United States, but do not have valid documentation, to earn adjustment to legal status by meeting specific prospective agricultural work requirements. One of the principal benefits of this program is that it will enable workers employed on farms in yearround agricultural jobs, and therefore not eligible to participate in the H-2A program, to earn legal status.

As *AgJobs* is currently written, to qualify for adjustment to *temporary* legal status, S.1645 requires a farm worker to prove he/she worked 100 days in a 12 consecutive month period during the 18 months prior to August 31, 2003. For a qualifying worker to adjust to *permanent* resident status, he or she must work 360 days in agriculture during the 3- to 6-year period after enactment. The prospective work obligation is structured such that a worker must work in agriculture at least 75 days in three consecutive 12-month periods, and a total of 240 days during the first three years after enactment. The prior and future work requirements are based upon the fact the adjusting workforce is largely seasonal in nature, as is the vast majority of labor intensive agricultural work. If the alien does not complete the future work requirement, the alien's temporary status expires and the alien must leave the United States. It is estimated that approximately 500,000 aliens currently working in agriculture illegally will qualify for adjustment of status under *AgJobs*. These are yearround agricultural workers and the more long term seasonal workers.

The other major purpose of *AgJobs* is to restructure and reform the current H-2A temporary agricultural worker program. This is accomplished by substantially streamlining the program's administrative procedures and reforming the requirements for H-2A employers, including an immediate reduction and gradual elimination of the Adverse Effect Wage Rate. *AgJobs*:

- eliminates the labor certification process

- eliminates the requirement to file an Interstate Clearance Order
- reduces advertising and other domestic recruitment obligations and costs
- preserves the role of grower associations in the H-2A program
- eliminates the open-ended "adverse affect" criteria
- freezes and gradually eliminates the Adverse Effect Wage Rate
- provides the option of a housing allowance under certain circumstances
- eliminates double jeopardy under H-2A for violations of other labor laws
- mandates expedited processing of H-2A petitions
- provides immediate work authorization upon filing petitions for extension of stay
- provides a process for speedy replacement of aliens who abscond
- mandates removal of aliens who abscond or otherwise violate their visas
- provides a one-time waiver of debarment for illegal presence
- provides a secure identity and work authorization document for H-2A aliens

At this writing, before the presidential election and before the post-election "lame duck" session of Congress, *AgJobs* has not yet reached the floor for a vote in either the Senate or the House. It is expected that the

Senate, where the bill has a filibuster-proof majority, will be the first to take up the legislation. This could occur during the “lame duck” session. An update on the posture of the legislation will be provided at the conference.

There are several other proposals for agricultural immigration reform that have been introduced in the current Congress, but none has attracted any significant political support either from other legislators or from interest groups. None of these bills is given a chance of passage.

There are also several more general and comprehensive immigration reform bills in Congress, not addressing agriculture specifically, but which would cover at least some aliens who work in agriculture. Early this year, President Bush also made some broad proposals for immigration reform that have yet to be introduced in the form of specific legislation. However, with serious immigration crises on several fronts - including the expiration of the Fiscal Year 2005 H-1B high tech worker cap in one day, October 1, 2004, the H-2B temporary non-agricultural program having reached its cap in early March, 2004, and the looming crisis in agricultural labor - immigration issues are likely to be high on the agenda of the 109th Congress that convenes in January, 2005, whether or not *AgJobs* is enacted during this fall’s “lame duck” congressional session.

ⁱ The data in this and the following paragraph are from Research Report No. 8, “Findings from the National Agricultural Worker Survey (NAWS) 1997-1998”, U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Program Economics, Washington, DC, and from unpublished tabulations of the survey data for the “east” region.

ⁱⁱ Several white papers by the author describing the provisions of S. 1645/H.R. 3142 are available from the National Council of Agricultural Employers in Washington, D.C.