



From: NSAC and CAFF

To:

RE: Agriculture Immigration Proposal

Date: December 6, 2016

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### **Drastic Reform of US Guestworker Programs Needed**

The failure of Congress to pass comprehensive immigration reform and to address the status of the estimated 11 million undocumented immigrants has created a policy pause that provides the opportunity to reassess the United States' approach to "temporary" workers and the structural defects in the existing guestworker programs, none of which were satisfactorily resolved in the Senate's comprehensive immigration bill in 2014. Since dialogue on immigration reform has now resumed in anticipation of a new administration in 2017 there is an opportunity, as well as an urgent need, to "get it right" and to genuinely reform our policies regarding foreign-born workers.

The so-called guestworker programs such as H-2A, and H-2B suffer from the same structural defect—they provide temporary workers to the companies that have been least successful in attracting a labor force. The visas are given to workers, but the visas are tied to specific businesses, which often use intermediaries to recruit, transport, and supervise the workers. The lack of portability of the visa inevitably leads to abuses by the intermediaries or employers—such as taking bribes, charging workers for equipment or transport, or demanding a portion of future earnings—since the workers fear retaliation if they complain. These heavily bureaucratic programs should be abandoned for an approach that gives the workers a portable work visa and allows the labor market to function.

The H2 program began in the 1940s as a small program to bring in Jamaican workers to the sugar and apple industries of the East Coast. It gradually evolved into a wider program to supply workers to vegetables, tobacco, potatoes and other crops in many regions of the United States. In 1986, it changed its name to the H-2A program, as the H-2B program for non-agricultural workers was split off under IRCA. The H-2A program has been widely criticized as overly bureaucratic and costly—it is estimated that an H-2A worker costs 40% more than one hired off the street—as employers are forced to bear a number of recruitment, transport, and housing costs, some of which—such as the endless efforts to recruit domestic workers who don't want the jobs—make little sense. H-2A workers are requested by employers and are tied to those employers. They can stay a maximum of 3 years before they have to leave the country for at least 3 months. However, it is an uncapped program, and in recent years, agricultural employers have increased their use of it from its historical level of 30-50,000 placements per year to over 130,000 in 2015. Allowed to continue to grow, the program will undermine domestic farm labor markets and create an undesirable form of circular migration.

### **Solution: the North American Agricultural Work Visa (NAAV)**

- Instead of H-2A, create the North American Agricultural Work Visa (NAAV) for new entrants, where they are screened by Embassies for qualifications and background checks. To qualify for the visa they would need to secure an initial job offer from an agricultural employer registered with USDA, but the visa would be portable, allowing them to work for other registered agricultural employers also. The visa would be valid for 3 years. Workers could come and go from the United States. They would be required to work 100 days a year in agriculture each year in order to renew the visa. After two three-year cycles they could apply for a green card or renew the work visa again.
- Because the vast majority of current farm workers were born in Mexico or Central America, we propose that the program be focused on this region
- The NAAV program would be a component of comprehensive immigration reform legislation (CIR), complementing the provisions for legalizing existing workers (likely to be similar to the “Blue Card” provisions in S. 744). NAAV represents an innovative approach to overcoming some of the well-documented shortcomings of IRCA.
- Employers would be required to deduct FICA and UI contributions from NAAV workers’ checks. NAAV workers would be immediately eligible for UI but would not become eligible for FICA-funded benefits until they transitioned into LPR status.
- The numbers of visas to be issued in any year would be determined by a commission that includes representatives of employers, labor, government, and university researchers. (A similar commission was agreed to in the Senate CIR bill for the non-agricultural “W” visa). No “emergencies,” but some consideration of the labor needs of specific crops and regions.
- Workers would pay a reasonable fee for their visa, but low enough that potential migrants are encouraged to pursue this legal channel for immigration, even if they have to wait for a couple of years. This would undermine the immigrant smuggling businesses which continue to bring unauthorized immigrants northward and it would support NAAV program operations at no cost to the taxpayer.
- Workers would be independent. No intermediaries could seek the visas in countries of origin. This would stem abuses documented in reports such as GAO’s 2015 study.
- Employers would list available jobs. Prospective NAAV applicants would submit information about the kind of work they are qualified for. The US consular service would provide basic screening of applicants’ qualifications and grant a provisional visa contingent on the worker securing (and documenting) a job offer from a bona fide agricultural employer.
- Employers would have to register with USDA and prove they are agricultural employers and comply with all relevant labor laws. They would pay a fee per NAAV worker hired, would be required to pay the AEWR to all NAAV workers, and would be required to report annually to USCIS the number of days each NAAV worker they employed had worked. This would provide the basis for determining whether a NAAV worker had worked the required 100 days a year in agriculture.
- NAAV does away with much of H-2A bureaucracy. The employers that are historically dependent on H-2A can continue to recruit in Mexico, but newly-admitted workers will pay for their own transportation and housing and can, after completing their first contract, change employers.

NAAV is cheaper than H-2A for employers, cheaper for the US government, and guarantees NAAV visa holders the basic human right to change jobs if they wish.

### **Advantages for employers**

NAAV relies on market forces rather than bureaucracy to achieve a well-tuned balance in meeting agricultural employers' labor needs and protecting workers' rights without imposing a multitude of special requirements on employers. It eliminates positive recruitment, housing, and transport obligations, retaining only a minimum wage requirement—the Adverse Effect Wage Rate—to compensate for the very uneven minimum wages across the country. It provides a new stream of legal workers who can return home in the off-season. The program has no arbitrary time limit on length of employment, so livestock and dairy employers can keep workers year-round and businesses' investments in training new workers can yield a reasonable return. Workers are required to work 100 days a year in agriculture so they cannot just abandon agriculture. NAAV reduces lawsuits by legal services over details of compliance with H-2A regulations.

### **Advantages for workers**

NAAV workers can change employers if poorly treated. During periods of high seasonal unemployment, workers can return home to their country of origin, or seek non-agricultural work, reducing the social costs associated with seasonal employment. NAAV limits side payments to intermediaries. NAAV workers, like U.S. workers, would be covered by AWPAs and could seek remedies if their legal rights are violated. NAAV provides an opportunity for workers to be trained and move upward if they remain with their employers for a substantial period of time. If they remain in the farm labor force for the required 6 years and transition into LPR status, they will be eligible for benefits funded by FICA contributions. They will be eligible for UI benefits and job search assistance on the same terms as U.S. workers. Ending the H-2A program will, at the same time, provide more accessible employment opportunities for domestic workers, who can seek work at establishments that have previously sought to have a captive labor force. The Foreign Labor Commission review of the need for new entrants will eliminate the threat of massive influxes of foreign-born workers.

### **Advantages for taxpayers and U.S. society**

NAAV relies on market forces to allocate workers rather than costly bureaucratic mechanisms. It reduces incentives for undocumented migration or desertion from H-2A. It reduces immigrant smuggling and associated enforcement costs. It provides an avenue for ongoing legalization of the labor force in agriculture, allowing for eventual implementation of E-verify. It encourages immigrant integration since newly-admitted foreign workers are encouraged to seek off-season work and remain in the U.S. if they wish and if they continue to work. NAAV visa holders are not housed in separate on-farm gender-segregated quarters, and portable visas, paid for and held by individuals and not linked irrevocably to a single employer, will reduce longstanding gender discrimination in worker recruitment.

This approach has similarities to the "W" visa included in S 744, and we would propose that the agricultural-type jobs in the H2B program be moved to the NAAV framework while the non-agricultural jobs would be under the W program.