

Reform of Guestworker

The perfect recipe for worker exploitation is to prohibit workers from changing employers, however unfair, abusive, or discriminatory. Yet that is exactly how U.S. guestworker programs are structured.¹ What makes the guestworker program for temporary non-agricultural labor, known as the H-2B visa program, even more susceptible to severe exploitation is that many H-2B guestworkers arrive to the United States deeply in debt. This happens when impoverished men and women, desperate to create a better future for their families, are required to pay for their own transportation to the United States, as well as huge application fees to labor recruiters. Workers, believing that they will be securing a bright future for themselves and their families in the United States, borrow money at high rates of interest or mortgage the family farm or home. When they arrive in the U.S. they may find no work or work at dramatically fewer hours and less pay. Mired in debt and desperate, they become compliant workers for abusive employers.

Contreras soon discovered, “the promises made to us had been lies.” The workers were put to work doing housekeeping and maintenance in Decatur Hotels for an average of 20 to 30 hours a week and paid only \$6 to \$8 an hour. Instead of luxury housing, the workers were installed in a partially-destroyed, rat-infested hotel with eight people to a room. Workers had to walk to the job site, and food was only provided for the first month. In Congressional testimony, Contreras said, “Our dreams were in pieces at our feet. The pressure from our families was unbearable—especially when we received news that our children had fallen sick or that someone from the bank had come by to make threats about our loan payments.”³ Yet the workers were prohibited by law from seeking other employment. When former House Ways and Means Committee Chairman Charles Rangel was asked about the H-2B program, he said, “This guestworker program’s the closest thing I’ve ever seen to slavery.”⁴

In recent years, dozens of criminal prosecutions and civil actions have been launched to address human trafficking, wage-and-hour abuse, involuntary servitude, and fraud involving H-2B guestworkers. In addition, concern has been growing that American industries are using guestworker programs to turn permanent jobs into temporary jobs, undercut U.S. worker wages, and thwart organizing efforts. Advocacy by guestworkers and worker justice advocates on these issues finally bore fruit on February 10, 2012, when the Department of Labor released new H-2B guestworker visa regulations that constituted major reform for this troubled program.

Among the most significant changes were:

► **Employers must make a real effort to hire U.S. workers first.**

The new rules mandate the creation of a national database of jobs to advertise

for guestworkers (currently databases exist only at the state level), require employers to certify and document (not just “attest”) that they actively recruited local workers, mandate employers to advertise at the job site for 15 consecutive days, and to keep records of any U.S. applicants they reject.

► **Employers must pay for all costs related to using the H-2B program,** including transportation costs and visa fees. Additionally, payment to recruiters for job placement fees is prohibited.



H-2B guestworkers from India protest human trafficking at Signal International at a rally in New Orleans in 2008. Photo courtesy of the New Orleans Worker Center for Racial Justice.

Exploitation of guestworkers on H-2B visas was widespread in New Orleans in the wake of Hurricane Katrina. A well-known case involved Decatur Hotels, a group of 15 luxury hotels in New Orleans that brought 290 guestworkers from Peru, Bolivia, and the Dominican Republic to the city to do re-construction work. Workers were promised \$10 to \$15 an hour and 60 hours of guaranteed work per week, comfortable housing with televisions and telephones in every room, and free food and transportation to and from the job site every day. Each of the workers paid between \$3,500 and \$5,000 to cover recruiting fees, travel, and visas.² But as guestworker Daniel

Program Thwarted

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- **Employers must guarantee workers are paid three-quarter of the hours promised to them on a month-to-month basis**, so employers will not over-recruit and workers do not travel all the way to the U.S. to find they have no means to support themselves.
- **New language protects guestworkers from threats or intimidation from employers** if the workers complain or try to organize, and bars employers from confiscating immigration documents.⁵

Jacob Horwitz, an organizer with the National Guestworker Alliance (NGA), headquartered in New Orleans, said, “That the Labor Department is taking this proactive stance is an enormous victory for guestworkers and American workers across the country.”⁶

Unfortunately, the joy that guestworkers and their advocates were to experience for such a substantive, game-changing victory was to be short-lived. The rules were scheduled to take effect April 27, 2012. On April 16, five Florida businesses and the U.S. Chamber of Commerce filed a lawsuit to stop implementation of these sweeping reforms. The businesses are in industries that have become heavily dependent on H-2B workers—namely, landscape and forestry services. Plaintiffs argue that the Department of Labor, whose core mission is to “assure work-related benefits and rights,”⁷ does not even have the authority to change H-2B program requirements. Rather, plaintiffs assert, such regulatory power lies solely in the purview of the Department of Homeland Security.⁸ The U.S. District Court for the Northern District of Florida issued a preliminary injunction blocking the new rules on April 26.⁹

The crushing blow to H-2B visa reform, however, came from Congress, led by legislators from the Gulf South. Rep. Rodney Alexander (R-LA) filed a resolution on February 28 to get both houses to pass a resolution barring the new regulations.¹⁰

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Four months later, in the Senate Appropriations Committee, Sen. Richard Shelby (R-AL) introduced an amendment to the Department of Labor funding bill to prevent implementation of the new H-2B rules for one year. Four Democrats, including Sen. Mary Landrieu (D-LA) and Sen. Barbara Mikulski (D-MD), joined Republicans to block the rules in a 19-11 vote on June 14.¹¹ On July 18, the U.S. House Appropriations Committee voted to block funds for the Department of Labor to implement new wage rules for the H-2B program. According to Stephen Boykewich, an organizer with the NGA, business and corporate lobbying efforts to block any changes in the H-2B program, which includes about 66,000 workers a year, were “massive.”¹²

The origin of Catholic social teaching is closely bound up with the Church’s concern for workers and the plight of immigrants. Recent developments in the H-2B visa program should be of great concern to Catholics and everyone concerned for the dignity and rights of workers and just immigration reform. President Obama reiterated his support for fixing our broken immigration system during his acceptance speech. Soon after, major Republican leaders acknowledged the need to address immigration reform. Guestworker programs will certainly be a major component of any deal that Congress might negotiate. The myriad injustices of U.S. guestworker programs must be addressed if a just and lasting resolution to our nation’s immigration crisis can be realized.

ENDNOTES

- 1 There are a number of guestworker visas, including H-1B (for professional workers); H-2A (for agricultural workers); H-1C (for nurses in underserved areas); and L-1 (for intra-company transfers). This article focuses on the H-2B visa.
- 2 Mary Bauer, *Close to Slavery: Guestworker Programs in the United States*, Southern Poverty Law Center, March, 2007, p. 12.
- 3 Testimony of Daniel Angel Castellanos Contreras at House Committee on Oversight and Government Reform, Domestic Policy Subcommittee, April 23, 2009, at www.guestworkeralliance.org/wp-content/uploads/2010/09/Daniel-Castellanos-testimony.pdf
- 4 Mary Bauer, *Close to Slavery*, p. 2.
- 5 See *Department of Labor Wage and Hour Division Final Rule: Temporary Non-Agricultural Employment of H-2B Aliens in the United States* at www.dol.gov/whd/immigration/H2BFinalRule/index.htm
- 6 Cara Bayles, New guestworker rules resurrect old debates, *Houma Today*, February 14, 2012, at <http://www.houmatoday.com/article/20120213/ARTICLES/120219883>
- 7 See www.dol.gov/opa/aboutdol/mission.htm
- 8 Amy Nice, Chamber joins lawsuit challenging new H-2B visa regulations that will devastate small businesses, *Free Enterprise*, April 16, 2012, at www.freeenterprise.com/immigration/chamber-joins-lawsuit-challenging-new-h-2b-visa-regulations-will-devastate-small. Plaintiffs also argue that DOL violated the Regulatory Flexibility Act (FRA) by failing to consider the impact the rule will have on small businesses.
- 9 Federal judge blocks H-2B visa program overhaul rule, *GCSAA*, April 30, 2012, at www.gcsaa.org/_common/templates/GcsaaTwoColumnLayout.aspx?id=5125&LangType=1033
- 10 Chamber of Commerce sues Labor Department over Guest-Worker rule change, *International Business Times*, April 20, 2012, at www.ibtimes.com/chamber-commerce-sues-labor-dept-over-guest-worker-rule-change-439952.
- 11 Andrew Taylor, Senate panel blocks new rules on foreign workers, *Associated Press*, June 14, 2012, at <http://bigstory.ap.org/article/senate-panel-blocks-new-rules-foreign-workers>. The amendment also renews the language that blocks new H-2B prevailing wage rules.
- 12 Phone conversation with author on October 12, 2012.