

In immigration fight, farm visas provide an opening

Farmers need more workers to harvest crops but say H2A visas that could help them are tangled in red tape. This issue could be a springboard for comprehensive immigration change.

CLINTON, N.C. — There was a time when Tracy Pope didn't have to worry about finding enough people to harvest the bell peppers, tobacco, squash and zucchini springing forth from his 500 acres of farmland.

Pope, a fourth-generation farmer, used to rely on family, neighbors, teens and a few hired hands to turn out for picking season. But locals increasingly find better work for the same pay outside the fields, so Pope does what many farmers do in America — he hires foreigners.

Unlike many farmers, he does it legally by going through a federal program that gives temporary work permits, known as H2A visas, to non-U.S. citizens to work on farms, ranches and vineyards across the country.

Yet the process is so bureaucratic that Pope, who uses his computer for little more than checking the weather, pays a firm specializing in the visas to handle the immense amount of paperwork and the considerable investment in time required to get them.

"I would eventually do something wrong, whether I knew it or not," Pope said of his attempts to comply with the regulatory process.

As the White House and Congress try to settle on the first major overhaul of immigration laws in a quarter-century, a point of simple agreement would appear to be that the nation's crop producers need a legal and reliable pool of workers. Otherwise, produce will be left rotting in the fields. This is the one piece of the immigration puzzle that affects all Americans, as the stability and affordability of the food supply is at stake.

Members of Congress keenly aware of this problem say that if they can't reach agreement on farm visas, there will be little hope for any meaningful legislation on immigration.

Bipartisan groups in both chambers of Congress have been trying to finalize their bills by this week before leaving Washington for a two-week break. Although they've reached agreement on many aspects of the immigration overhaul — including enhancements to border security, a pathway to citizenship for the nation's 11 million illegal immigrants and enforcement of immigration law — the farm visa controversy festers.

"It's absolutely crucial," said Rep. Mario Diaz-Balart, R-Fla., one of the lead House negotiators on immigration. "It's something that a lot of members expect to be part of any immigration bill. Without that, we potentially lose votes."

U.S. companies employ more than 1 million people to do the field work necessary to maintain the nation's food supply and make the United States an international food exporter. Half of those workers are illegal immigrants, according to the Department of Agriculture. Even though there are no limits to the number of H2A visas that can be granted each year, only 65,000 were issued last year.

One reason farmers avoid the program is that they prefer illegal immigrants who can be paid less and have no rights to complain, according to migrant worker advocates in Mexico. Others simply refuse to deal with the complexity of the system. Farmers must spend two-and-a-half months and hundreds of dollars getting approval from several state agencies and four federal agencies just to get one H2A worker on their land.

"It's really complicated," Pope said with a laugh, boasting that he doesn't even own a smart phone.

Foreign workers don't like the program either. It tethers them to the company that won the approval to hire them. If the workers feel they're being mistreated by the boss, they can't go down the road to find another job.

"You have to live with your eyes open and your mouth shut," said Blas Burboa, 27, a Mexican man who dropped out of the program after two years and is bouncing between jobs in Mexico.

“The farm labor shortage is a myth — it's just an unwillingness to pay a fair wage”

— Bob Dane, Federation for American Immigration Reform

Also standing in the way of changes: Many Americans and labor unions say the United States should not welcome foreign workers when millions of citizens are out of work as the nation's unemployment rate hovers around 8%.

"The farm labor shortage is a myth — it's just an unwillingness to pay a fair wage," said Bob Dane of the Federation for American Immigration Reform, a group that advocates for lower levels of legal and illegal immigration.

DIFFICULTY FOR FARMERS

In 2011, Dale Foreman lost more than \$1 million because he couldn't find enough people to pick apples in his Washington state apple orchard. As he prepared for the 2012 harvest, Foreman convinced his son — an MIT-educated Army veteran — to return from his job in Seattle to help find workers around his orchards in the rural, central part of the state.

"Every night, he started going to churches, campgrounds, motels, bars," Foreman said. "He'd pull up and jump out of his pickup truck and introduce himself. He spent all spring and summer getting us organized."

Farmers, ranchers and growers across the country tell similar tales.

In Vermont, dairy farmers have had difficulty finding workers — legal, illegal, American or not. Daniel Baker, an assistant professor at the University of Vermont's Department of Community Development and Applied Economics who has studied the dairy industry, said farmers have had to get creative, even recruiting mothers with kids in school to help milk their cows.

"Take your kid to school, do the early-afternoon milking and then be home by the time school is out," Baker said.

Still, few take part in the H2A program, seen as too expensive and too cumbersome.

A farmer applying for an H2A visa for a foreign worker must start the application process 2.5 months before the worker is needed. To win approval, the farmer must pay several fees and file separate applications to, and win approval from, several state agencies, the U.S. Department of Labor and U.S. Citizenship and Immigration Services. The farmer must then arrange for the worker to get an interview with the State Department at a consulate in the worker's home country and get the OK from Customs and Border Protection for the worker to cross the border.

That process is further complicated by delays in the paper-based system, which just started going online four months ago. A September report by the U.S. Government Accountability Office found that 63% of applications sent to Labor were returned with requests for changes or additional documentation.

Farmers say that uncertainty often leaves them scrambling for workers during the all-important harvest season.

"In an industry where you're dealing with perishable crops, where just a few days delay could cause tremendous economic damage, that is nerve-wracking," said Mike Gempler, executive director of the Washington Growers League. "Everybody who's been involved in this has scraped their nails to the nub and turned a lot of gray hairs waiting until the last minute to see if you're going to get people here on time."

It's difficult to predict months in advance when workers will be needed.

Bert Lemkes, co-owner of Van Wingerden International greenhouses in Mills River, N.C., said he needs up to 350 workers to prepare the flowers and potted plants his business ships to Walmart and Target stores throughout the region. He shudders to think what would've happened to those contracts last year when winter broke two weeks early.

Lemkes said the government should screen potential guest workers, allow them into the country and let them find work themselves.

"We would like to see a visa system that we can get people in here that are legal, we can ask 'Where's your visa?' and if they have that, we can put them to work," Lemkes said.

DIFFICULTY FOR WORKERS

The road isn't an easy one for the foreign workers, either. And it starts long before they step foot on U.S. soil.

Allegations of recruiting irregularities have been rampant in Mexico, the main provider of H2A workers. Many pay recruiters for the right to secure the coveted visas — illegal under both U.S. and Mexican law — and take out large loans to pay them, according to a survey released last month by the Centro de los Derechos del Migrante (CDM).

Ten percent said they paid fees for jobs that never materialized. Fifty-eight percent said they paid fees that averaged \$590 to recruiters, and 47% took out loans, often to the recruiters themselves at interest rates sometimes topping 70%.

"That's the option workers see: I will pay this guy to get me a job in the U.S.," said Jessica Stender, CDM legal affairs director in Mexico City.

Even if they find a good employer, guest workers say, it's a hard, lonely life.

Pedro Becerra, 27, has worked at a Christmas tree nursery in Flintwood, N.C., since 2007. He has been able to save up enough money to buy a new house, a new TV and a refrigerator for his wife and 3-year-old son back in Mexico. But he said the nine months he must spend away from home each year has been brutal.

"You lose a lot being here," Becerra said. "But I'm here so my son doesn't have to fight as hard as I do. Everyone is trying to make a better life for their kids, right?"

Becerra said he has been treated well by his employers. For those working for other kinds of bosses, the options are few.

Blas Burboa was studying to be a lawyer in Morelia, Mexico, when he ran short of money to finish school. He heard the glowing tales from friends — legal passage into the USA, an air-conditioned bus to cross the border instead of the brutal march through deserts and mountains, and salaries 10 times higher than he could find in Mexico.

What he encountered was something else entirely.

"They treated us like animals," he said.

Burboa took a job at a tomato operation in Arkansas run by Candy Brand. Burboa said he suffered daily verbal abuse from the work chief. He said laborers were not allowed to leave the farm and worked from sunrise to sunset every single day, "except July Fourth."

"I was scared they would kick me out if I said anything bad."

— Blas Burboa, foreign worker

What frustrated him the most was the fact that none of the workers was paid overtime — the main reason so many of them came over. He was afraid to tell anyone because he knew that would earn him a ticket back to Mexico.

"You're in a foreign country; you're working for a foreign company," he said. "I was scared they would kick me out if I said anything bad."

Burboa eventually joined a class-action lawsuit against Candy Brand. The company and its officers agreed to a settlement with about 1,900 workers in Dec. 2011 and paid them \$1.9 million for unpaid overtime and other expenses. The Southern Poverty Law Center, which represented the workers in the lawsuit, said such victories are rare.

In a report titled "Close to Slavery," SPLC's legal director, Mary Bauer, said Burboa's reluctance to plead for better treatment is a common theme among workers. Employers decide which workers come to the USA and when they should be sent back, which Bauer said leaves workers at the mercy of their bosses.

"Because of this arrangement, the balance of power between employer and worker is skewed so disproportionately in favor of the employer that, for all practical purposes, the worker's rights are nullified," Bauer wrote. "At any moment, the employer can fire the worker, call the government and declare the worker to be 'illegal.'"

Immigration advocates are pushing Congress to grant "portability" to workers — allowing them to move from one employer to another if they are being mistreated or paid too little. Even some agribusiness owners support such a proposal.

"It's totally American. It's competitive," Lemkes said. "If I take care of my employees here, they don't want to go work for my neighbor. If my neighbor treats them better, they should go work for him."

AMERICAN JOBS

Bill Carrothers grew up on a farm in Arkansas, spent years in the border state of Arizona and now lives in Monterrey, Calif., surrounded by some of the most fertile land in the country. And, of course, that means he's surrounded by foreign workers — legal and illegal.

From his perspective there, Carrothers, 70, wonders why so little focus in the immigration debate has been on American workers.

"American jobs for American workers, and Mexican jobs for Mexican workers," said Carrothers, a retired high school science teacher. "What is so wrong with that? What is so heretical about this thought?"

He and others say many business owners in the USA, especially in agribusiness, have cried wolf about the state of their industry so they can rely on illegal immigrants for cheaper labor.

That argument is supported by a 2011 report from the Federation for American Immigration Reform. According to the report, agriculture companies reported an average 77% increase in their corporate earnings from 1998-2008, faring far better than companies in mining, manufacturing, utilities and construction.

Eric Ruark, the report's author, said that though family farmers are indeed struggling, large-scale commercial farms — which account for 84% of agricultural output — would fare just fine paying higher wages.

"If you're a large operator, there's a good chance you're raking in the bucks," he said.

Ruark said agribusiness has made the work so difficult and the pay so low that Americans go for jobs that pay as much or more and are far less difficult. What's needed, he said, is a system that better prohibits illegal immigrants from getting employment.

Only then, Carrothers said, could the proper balance finally be struck, and foreign workers will no longer be needed.

"I love you guys, but you need to go home and straighten out your own country," he said, referring to foreign farmworkers. "To Mexico, with love."