

The H-2A Program and Immigration Reform in the United States

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Introduction

The Immigration and Nationality Act (INA) of 1952 authorized a nonimmigrant visa category, known as H-2, for foreign agricultural and nonagricultural workers to come to the United States and perform temporary services. The Immigration Reform and Control Act (IRCA) of 1986 amended the INA of 1952 by dividing the H-2 program into two parts, H-2A for agricultural workers and H-2B for nonagricultural workers. The Employment and Training Administration (ETA) of the Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) administer both the H-2A and H-2B programs. The United States DOL describes the H-2A program as “a means for agricultural employers who anticipate a shortage of domestic workers to bring in nonimmigrant foreign workers to the United States to perform agricultural labor or services of a temporary or seasonal nature (DOL, 2016).”

The specialty crop industries within the United States are labor intensive and have been increasingly dependent on a large number of foreign-born immigrants. The recent debates by Congress over immigration reform have highlighted the fact that a majority of United States agricultural workers are not authorized to work in the United States. More than half (52%) of the crop workers surveyed in 2009-2010 National Agricultural Workers Survey (NAWS) self-reported that they were not legally authorized to work in the United States, up 3% from the 2007-2008 NAWS. Of these workers, 90% were working in specialty crops. A recent study in the Florida strawberry industry found that half the growers believed that unauthorized workers accounted for 90% of the industry work force; only one-fifth of the growers believed that the unauthorized workers were less than 70% (Guan et al., 2015). Another study found evidence of labor shortages among farm labor contractors who were engaged in production practices including soil preparation, planting, cultivating, and harvesting of other fruit and vegetable crops (Hertz and Zahniser, 2013). Labor shortages are a major threat to the industry and could lead to a significant amount of fruit being abandoned in the fields at the peak of harvesting times. In addition, the Guan et al. (2015) survey revealed that many strawberry growers couldn't depend on American workers to do agricultural labor work as they complained “Americans don't want to do labor work” in the field. To protect against disruptions in the farm labor supply, many growers are turning to the H-2A program to import foreign guest workers. The H-2A program, however, has been considered expensive and cumbersome (Guan et al., 2015).

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Temporary Agricultural Workers: What is the H-2A Program?

The H-2A program allows agricultural employers who anticipate a shortage of domestic workers to petition to the United States Department of Labor (DOL) for nonimmigrant foreign workers to be brought into the United States. Given the seasonal nature of agricultural production, an H-2A petition is for temporary employment of foreign workers for a defined period of time not longer than one year.

Two conditions must be met before the DOL Employment and Training Administration's (ETA) Office of Foreign Labor Certification approves an H-2A petition. First, the employer must demonstrate that there are not a sufficient number of “qualified” U.S. workers available to perform the agricultural jobs that the nonimmigrant, foreign workers are being requested for. “Qualified” workers are defined as those individuals who are willing and able to do the job. Specific job experience may not be necessary. Second, the employer must also demonstrate that the importation of foreign workers will not adversely affect the earnings and working conditions of similarly employed U.S. workers. DOL’s Office of Foreign Labor Certification requires that employers must initially try to recruit U.S. workers to fill positions and must continue to recruit U.S. workers even after H-2A workers are recruited.

The petition process starts when an employer files ETA Form 790, also known as the Job Order, with the State Workforce Agency (SWA). Florida’s SWA is the Department of Economic Opportunity. The Job Order specifies the number of workers needed to perform specific jobs on specific crops over a defined period of time in the area of intended employment. ETA 790 is filed between 60 and 75 days before the date of need for workers. After the SWA approves ETA 790, employers must also fill out H-2A application for temporary employment certification or ETA Form 9142A and submit it together with ETA 790 along with all supporting documentation to the DOL-ETA National Processing Center (NPC) in Chicago, IL, no less than 45 days prior to the employer's date of need. Officials at the NPC establish the extent to which an employer will advertise for domestic workers beyond the area of intended employment. In most cases, three adjoining states are chosen as potential areas for active recruitment of domestic workers.

Once ETA 9142A has been approved, officials in the office of United States Citizenship and Immigration Services (USCIS) are notified through Form I-129, a petition for nonimmigrant workers. In the meantime, the employer is recruiting foreign workers and once he/she is notified that their petition has been certified by both DOL-ETA and USCIS, appointments for worker interviews are arranged at a U.S. consulate. During the interview, workers are vetted against U.S. databases and questioned about their understanding the terms and conditions of the H-2A contract they are about to sign. Once approved, the workers are given H-2A visas, board busses or other forms of transportation to begin their journey to the employer’s housing facility designated on the ETA 790.

In recent years, interest in hiring H-2A workers has increased and more and more growers are turning to the H-2A program due to labor shortages (Guan et al., 2015). In addition to paying for all the petition, visa, recruitment, transportation and housing costs, an H-2A employer has to pay a significantly higher minimum wage, known as the adverse effect wage

rate (AEWR), so that the employment of foreign guest workers does not adversely affect wages or earnings of domestic workers performing similar tasks. As of January 1, 2017 the AEWR in Florida was \$11.12 as compared to the state minimum wage of \$8.10. Moreover, the H-2A guest worker program requires employers to offer the same benefits to domestic workers doing similar tasks on the farm.

The Growing H-2A Program

The recruitment of H-2A workers has been increased significantly in recent years, and most notably in Florida. The total number of certified H-2A workers across the United States increased from 79,011 in 2010 to 165,420 in 2016, an increase of 109% (Table 1). In Florida, certified H-2A positions have increased more than four-fold from 4,432 in 2010 to 22,828 in 2016. As a percentage of the national total, Florida’s share of H-2A workers increased from 5.6% to nearly 14% between 2010 and 2016. The average number of workers per application has fluctuated between 80 and 100 (Table 1). DOJ has a rule that defined as the ‘area of intended employment’ that to be no greater than a 60-minute driving radius from the employer’s H-2A housing facility. The rule applies only to farm labor contractors (FLCs) but growers who hire H-2A are not affected by the rule.

Table 1. Certified H-2A Applications and Positions in the U.S. and Florida for 2010-2016

Fiscal Year (FY)	2010	2011	2012	2013	2014	2015	2016
	Certified H-2A Applications						
U.S.	6,988	7,000	7,845	8,118	9,152	9,962	8,297
Florida	51	54	78	108	169	192	N/A
	Certified H-2A Positions						
U.S.	79,011	77,246	85,248	98,821	116,689	139,832	165,420
Florida	4,432	5,741	6,945	10,051	13,544	17,942	22,828
Florida % Certified Positions	5.61%	7.43%	8.15%	10.17%	11.61%	12.83%	13.8%
Florida H-2A workers per application	87	106	89	93	80	93	N/A
Florida Adverse Effect Wage Rate (\$/hr)	\$9.20	\$9.50	\$9.54	\$9.97	\$10.26	\$10.19	\$10.70

Source: Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification. Annual Reports Performance Data. 2010-2016.

Immigration Reform

The latest immigration legislation in the U.S. was the 1986 Immigration Reform and Control Act. Between 2006 and 2013, both the U.S. Senate and House proposed some immigration legislations that included enforcement, legalization of unauthorized immigrants, and an expansion of the guest worker program. Illegal immigration has been a focus of the Trump administration's first few months. He has called for mass deportations of all undocumented workers in the U.S. and construction of a wall along the border with Mexico. This policy has appealed to a large conservative constituency of his election campaign. However, some argue that large-scale deportation of illegal immigration immigrants by the new administration could be detrimental to the U.S. economy and that the United States cannot afford to suddenly lose majority of the immigrants who work without legal documents in agriculture, golf courses, landscaping, construction, hotels, and other hospitality industries. According to the USDA Economic Research Service study (USDA-ERS, 2012), a large reduction in the number of unauthorized workers will result in a long-run reduction in output and exports for both agriculture and the broader economy. Other studies in the literature also confirmed the resulting detrimental effects of enforcing current immigration law on agriculture (O'Brien et al. 2014). The immigration reform regarding illegal immigration touches on multiple dimensions: economic, legal, and political. Whatever policy eventually prevails, it will be a balance of interests of different groups.

Labor shortages, legal risks of employing undocumented workers, and uncertainties associated with the political environment seemed to have driven the increasing adoption of the H-2A guest worker program. However, the program has received criticisms from both farm worker advocates and critics of immigration reform. Farm worker advocates have long viewed the H-2A program with grave suspicion. Not only do they argue that domestic farm workers should be paid higher wages and offered better working conditions, they fear that many foreign guest workers will be subject to abusive situations as they are bound to a single employer for the duration of the H-2A contract. Critics of immigration reform worry that a number of H-2A workers will abandon their contract and become part of the wider illegal immigrant community. Nevertheless, there are benefits associated with guest worker programs. Zahniser et al. (2011) showed that agricultural employers would benefit from expanded use of H-2A guest worker program, particularly the labor-intensive agricultural sectors. Their simulation model results indicated that increasing the number of guest workers would lead to increases in the production of crops, and decreases in the supply of unauthorized workers would lead to a fall in crop production. Labor shortages have made immigration reform a critical issue for agriculture. It will have significant implications for the labor-intensive specialty crop industry.

Concluding Remarks

Despite various complaints from agricultural employers about the H-2A guest worker program, the adoption of the H-2A program has been increasing rapidly in last few years. This is largely

driven by labor shortages, legal concerns and political uncertainties. Agricultural employers would benefit from expanded use of Guest Worker Programs or H2A guest worker program (Zahniser et al., 2011; USDA-ERS, 2012; O'Brien et al. 2014). Increasing employment of temporary nonimmigrant farmworkers or H-2A workers could provide a reliable solution. As employers have been expressing dissatisfaction with the costs of employing foreign H-2A workers, more research needs to be done to assess the trade-off between the potential “adverse effects” of the H-2A workers on the domestic labor market and the economic contribution of the program to U.S. agriculture, which will provide justifications for reform of the H-2A program, or immigration reform in general. In particular, decreasing costs and bureaucratic challenges associated with the H-2A guest worker program and making the program more economically feasible will increase the adoption of the program and help address labor shortages in U.S. agriculture.

References:

Department of Labor (DOL). 2016. Employment Law Guide: Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas). Available at <https://webapps.dol.gov/elaws/elg/taw.htm>

Guan, Z., F. Wu, F.M. Roka, and A. Whidden. 2015. Agricultural Labor and Immigration Reform. *Choices* 30(4): 1-9.

Hertz, T. and S. Zahniser, 2013. Is There a Farm Labor Shortage? *American Journal of Agricultural Economics* 95 (2): 476-81.

O'Brien, P., J. Kruse, and D. Kruse. 2014. Gauging the Farm Sector's Sensitivity to Immigration Reform via Change in Labor Costs and Availability. WAEES. American Farm Bureau Federation.

USDA-ERS (2012). “Immigration Policy and Its Possible Effects on U.S. Agriculture” by S. Zahniser, T. Hertz, P. Dixon, and M. Rimmer. Amber Waves Articles. Available at <https://www.ers.usda.gov/amber-waves/2012/june/immigration-policy/>

Zahniser, S., Hertz, T., Dixon, P., and M. Rimmer. 2011. Immigration Policy and Its Possible Effects on U.S. Agriculture and the Market for Hired Farm Labor: A Simulation Analysis. *American Journal of Agricultural Economics* 94(2): 477-482.