

League of Women Voters Grand Traverse Area Leelanau Unit Committee Report

on a Study of Agricultural Migrant Worker Visas

February 1, 2012

Current Visa Programs and E-Verify

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Thank you all for coming today. I am BJ Christensen and my topic includes the Legal Permanent Resident Permit or Green Card, H-2A visa, and E-Verify.

This is how they work.

Legal Permanent Resident or Green Card

A Green Card is a slang term often used to describe the permit that indicates that an immigrant has the status of a Legal Permanent Resident (LPR). There really is no such thing as a “green” colored card.

A Green Card Through a Job Offer

Many people become legal permanent residents through a job or offer of permanent employment in the United States although that is not the only category. Some job categories require a certification from the U.S. Department of Labor to show that there are not enough U.S. workers who are able, willing, qualified, and available in the geographic area where the immigrant is to be employed and that no American workers are displaced by foreign workers. Most categories require an employer to file for you a labor certification Form I-140 Immigrant Petition for Alien Worker. *Source: US Department of Citizenship and Immigration Services* www.uscis.gov

Many immigrants in Michigan have their green Cards through a family member: spouses, unmarried children under the age of 21, and parents of US citizen petitioners 21 and older. In our three county area immigrants primarily use the green card.

H-2A Visa

The H-2A visa is a temporary visa used for seasonal agricultural workers. This visa is one of the most controversial, with growers claiming its restrictions make it impractical and farm worker advocates claiming that it does not provide sufficient protections for US workers and leaves foreign workers open to abuse and mistreatment. The last time any substantial revisions were made to the program was in the Immigration Reform and Control Act of 1986. *Source: ABC's of Immigration—H-2A Visas for Temporary Agricultural Workers.* www.visalaw.com

Some criticisms of the H-2A Visa by Employers

- The H-2A visa process is too expensive, too time-consuming, and very cumbersome.
- The employer is required to first advertise for workers through the newspapers and local employment agency. If no workers are available with those qualifications, then the migrant

- workers can be hired from their home country. If a US citizen wants the job even after the migrant has begun employment, the US citizen gets the job and the migrant has to be returned to his/her country of origin at the farmer's expense without going to another employer in the area. *Source: Interview with Kevin Benson Michigan Works! Traverse City.*
- The employer must show the use of foreign workers will not create an adverse effect on the wages or working conditions of similarly employed US workers.
- Employers must pay H-2A workers the same wage as US workers—federal or state minimum wage, prevailing wage, or average hourly wage from the previous year for Ag workers. This varies by location.
- The employer must provide transportation to and from the worker's temporary home to the workplace.
- When the contract period is up, the employer must provide the worker with transportation home.
- Employers must provide housing to all H-2A workers who do not commute across the border. The housing must be inspected by the Department of Labor and must meet minimum federal standards for temporary labor camps.
- The employer must either provide three meals a day or facilities in which the worker can prepare food.
- The employer must provide any tools and supplies necessary to perform the work.
- The employer must also provide workers' compensation insurance to H-2A workers.
- The employer must apply to the Dept. of Labor for an H-2A visa for each migrant employee 60 days before workers are needed. DOL must approve it 20 days before the starting work date. Then an application must be filed with Homeland Security, and when approved is forwarded to the appropriate US consulate in the foreign country where the workers apply for visas
- The H-2A application is 35 pages long.
- An employer can lose an entire crop if it is not harvested when ready. The H-2A visa process does not allow for this flexibility.
- The employer must pay a base fee of \$100 plus \$10 for each worker certified up to a max of \$1000.
- The H-2A visa is good for one year with extensions possible for up to 3 years.

Some criticisms of H-2A visas by employees

Based on a review of published interviews with current and former H-2A workers, information from media exposés, lawsuits against H-2A employers, and the experiences of workers and advocates over the past 30 years the following pattern of concerns are found:

- As more than one-half of the farm workers on U.S. farms and ranches lack authorized immigration status, they often live in fear, and as a consequence have little bargaining power and political influence.

- Some employees at H-2A employers have experienced wage theft and other unlawful practices with little lawful recourse; The H-2A recruitment system has led to documented cases of debt, human trafficking, and forced labor;
- Many guest workers must pay recruiters for H-2A jobs and enter the U.S. indebted, desperate to work, and fearful that the loss of their job will lead to financial ruin;
- Lax enforcement by the Department of Labor against abusive practices and failure to develop methods for farm workers to come forward confidentially and anonymously to file complaints;
- Employees are driven underground where many of these criticisms occur because the H-2A visa is so complex, cumbersome, and rigid.

* Sources: Farmworker Justice: “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers”, <http://farmworkerjustice.org/ebook.html>; National Guest worker Alliance, <http://www.guestworkeralliance.org/about-nga/vision/>; Michael Blanding, “Silence in the Fields,” Mother Jones (Jan-Feb 2011); Southern Poverty Law Center’s “Close to Slavery” (2007); Farmworker Justice and Oxfam, “Weeding Out Abuses, Recommendations for a law abiding farm labor system” (2010)

The Michigan Civil Rights Commission 2010 Report on the Conditions of Migrant and Seasonal Farmworkers found similar concerns here in Michigan: housing problems, discrimination against women and sexual harassment, national origin and racial discrimination; forms of wage theft and piece rates resulting in below minimum hourly wages; language barriers hindered migrant farm workers accessing services; difficulties obtaining drivers’ and marriage licenses, problems with state and local law enforcement, and racism and other forms of worker mistreatment by some people in local communities.

E-Verify

E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm eligibility for employment. The Spanish version of Form I-9 is only available in Puerto Rico.

All U.S. employers must complete and retain an Employment Eligibility Verification Form I-9 for each individual they hire for employment in the United States whether a citizen or a noncitizen. On the form, the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9.

While participation in E-Verify is voluntary for most businesses, some companies may be required by state law or federal regulation to use E-Verify. For example, all employers in Arizona and Mississippi are required to use E-Verify. In Georgia, if an employer has more than 10 employees, they are required to use E-verify. E-Verify is also mandatory for employers with federal contracts or subcontracts.

Source: US Department of Citizenship and Immigration Services www.uscis.gov

Additional information to help answer possible questions. H.R. 2885—E-verify

An Opposition coalition includes conservative, tea-party, libertarian and liberal groups who all oppose the measure.

Democrats oppose H.R. 2885, contending the bill will harm workers and businesses. During the Judiciary Committee's September 15, 2011, [hearing](#) (pdf) on the bill, the Committee's ranking Democrat, Jon Conyers (MI) said that mandating E-Verify use "would simply push employers to go off the books" or "classify workers as independent contractors." Additionally, Rep. Conyers noted that inaccuracies in the E-Verify database could impact legal workers' ability to secure employment. Rep. Zoe Lofgren (D-CA) cited a [Bloomberg government study](#) (pdf) concluding that mandatory E-Verify would cost small businesses about \$2.6 billion every year to verify new hires.

Even fellow Republicans expressed concern. Rep. Dan Lungren (R-CA) believed the Legal Workforce Act could negatively impact agriculture employers, which rely strongly on foreign labor.

Source: www.globalimmigrationcouncil.com

It is unclear whether all employers must verify eligibility to work under through a government agency or through a private company. That could create a cause for privacy concerns. For instance, www.everify.com is a private enterprise that performs deep searches of any individual including photos, videos, blogs, and social media, criminal records, phone numbers, e-mail addresses, birth records, death records, relatives and associates, court records, property records, asset records, marriage and divorce records. They have over a billion records. Their disclaimer says the information may not always be accurate and up-to-date. Searches are 100% confidential.

Ability to access all this information about a potential employee whether legal or undocumented has the potential for all kinds of corruption and abuse. There is a good topic for further research.