

The H-2B Program

Separating Myth from Reality

Spring 2008

The H-2B cap crisis has shown a bright light on the need by America's communities and businesses for temporary seasonal labor. US employers would rather hire American workers than turn to foreign national seasonal help. As many employers know, the H-2B visa process involves going through a complicated and resource-consuming process involving four separate government agencies means. This represents a great deal of agony, frustration and money just to get workers for a few months.

However, because the temporary seasonal labor shortage is so severe in many parts of the country, especially in the summer months, law-abiding employers have no choice but to turn to the H-2B program. The employers already hire American workers, and would hire more if they were available. They turn to this inefficient and burdensome visa category because they have no choice in the matter.

Unfortunately, the increased attention on the H-2B visa cap has also brought out foes of immigration whose understanding of the program is not complete. Given the complex nature of immigration and immigration law, it is easy to see how misunderstandings can arise. Here, we try to separate myths about the program from reality:

Myth 1: The H-2B program takes jobs from Americans.

Reality: Employers utilizing the H-2B program go through an intensive recruitment period under the supervision of the Department of Labor. Only after each State's Workforce Agency and the U.S. Department of Labor certify that these people will not negatively impact American jobs are the workers allowed to come.

Myth 2: If there are unemployed Americans then there is no need for non-immigrant workers.

Reality: H-2B positions are short-term positions. These jobs seldom lead to full-time, gainful employment. A presently unemployed person accepting one of these positions will more than likely be unemployed again within 3-6 months because the job has ended. The point of a job search is to find an opportunity where an individual will remain employed.

In addition, a professional, who has been recently laid off, more than likely does not want to work for three months at the beach hot dog stand. Unemployed individuals are searching for circumstances that are similar to their previous work environments.

Finally, many H-2B positions are in areas where unemployed individuals are not. For example, resort communities seldom have high unemployment rates because these are very transient communities. At most beach and ski resorts the actual population in these towns is very low...leaving not enough individuals to cover the peak workload. Furthermore, there are many other H-2B jobs that are located in remote areas of the country (i.e. the forests of Maine, the coast of

Alaska). The bottom line is this: H-2B employers want to hire as many Americans as possible.

Myth 3: The H-2B program encourages illegal immigration.

Reality: The H-2B program discourages illegal immigration. This job classification offers employers the one legal means to fill peak workload job vacancies. Without the H-2B program employers would be forced to violate labor laws by hiring illegal workers in order to remain in business.

Also, in order to continue to use this work program, employers must ensure that their workers return home at the end of their stay. An unfavorable return rate often leads to the State Department taking action against the employer.

The words “Non-Immigrant Worker” mean that the work does not stay in country! And if the worker is terminated, the law states the employer must pay for their immediate flight ticket home.

Myth 4: People on welfare should be taking all of these jobs.

Reality: While in some cases individuals on welfare could be at least temporarily supporting themselves, often welfare recipients are not qualified to do the available job or are not located in the area the job is being offered. For example, an oceanfront lifeguarding position requires that the applicant can swim. Not all welfare recipients can swim. Construction jobs often require the ability to do heavy lifting. Not all welfare recipients can handle the physical challenges associated with construction. Resort maid services often have duties that most individuals could perform, but the person would need to relocate to the area of the resort during the short period of time the job is available.

Once again, H-2B employers want to hire as many Americans as possible.

Myth 5: H-2B is legalized indentured servitude.

Reality: What is interesting is that many times it is the same groups screaming that Americans are being denied jobs that use this same argument as well.

Most Americans are confused as to why someone from Central America or Eastern Europe would want to spend so much money to come to the US and yet make so little while they are here. What Americans cannot comprehend is that in many countries it is not uncommon for the annual family income to be less than \$5,000 per year. Thus an H-2B worker can often make in 4 months what it would have taken a year for their family to make at home.

It is true that H-2B workers are only allowed to work for the employer that has sponsored them. Therefore, this worker is not allowed to freely move from job to job as an American would. This however is in-place to guarantee that the worker does not displace any American workers while they are present in the US. There is, however, portability in the fact that an H-2B worker can move employers as soon as a new petition has been approved. And, if he or she does not like the work, the H-2B worker can always opt to collect wages owed and return home.

Myth 6: Recently opponents of the H-2B program have been saying, “It just shows how businesses have become increasingly adept at gaming the system to get cheap servile labor. They're willing to work for lower wages for less benefits, and can't quit without being thrown out of the country, so they're tied to their employer, and they're sort of indentured labor, and they're not likely to make too many other demands on the employers.”

Reality: In response to these accusations:

(a) The wages paid to H-2B workers are set by the Department of Labor as the average prevailing wage for the duties being performed. These averages are calculated based on all workers (i.e. AMERICANS) performing these duties in the given geographical area.

(b) The H-2B worker can quit and return to the previous circumstance from whence they came.

(c) In most cases, H-2B workers put more demands on their employers, as the employer becomes the support mechanism for their worker in a foreign land. Interviews, orientations and trainings often must take place abroad adding additional burden and expense on the employer.

Myth 7: H-2B program continues the trend of “Out-Sourcing” jobs.

Reality: If anything the H-2B program should be considered “In-Sourcing” jobs. Taxes are paid to the US government, FICA is paid into the Social Security System with the employee having little hope of ever collecting, and businesses keep flowing with the essential workers they need.

It can be argued that unemployment will rise without the H-2B program, as many seasonal business owners will no longer be able to operate without it.

Myth 8: Seasonal businesses should just pay more and then they would be able to find workers.

Reality: While it is true the more you pay the more willing people are to work...this statement is not reasonable for business. Pay should be commensurate to the tasks being performed. A business owner can pay \$20 per hour to have hamburgers made, but will anyone be able to afford to buy them?

Myth 9: College students should fill these jobs.

Reality: This is exactly what H-2B employers do, and they gladly hire hundreds of thousands of college students each year. Unfortunately for seasonal employers, college students are being more and more enticed by summer school and internships. In addition, while they are capable of doing the job, often times their vacation does not match when the vacancies are available, the duties are ones they do not want to perform, and/or the jobs are located in areas that they do not want to work. H-2B employers want to hire as many Americans as possible, and would hire any college student looking for seasonal work.