

New temporary worker visa procedures to cut bureaucracy

The Department of Labor is rewriting H2B rules to help employers find and hire immigrant workers more quickly and efficiently than current guidelines allow.

By Nicole Gaouette, Los Angeles Times Staff Writer
May 22, 2008

WASHINGTON -- With restaurants and resorts facing summer staff shortages, the Bush administration will announce federal regulations today to streamline the way foreign workers enter the country for seasonal jobs.

The Department of Labor is rewriting rules to help employers find and hire workers for temporary jobs as landscapers, waitresses and crab pickers more quickly and efficiently than current guidelines allow.

In one major change affecting industries such as construction and shipyards, the definition of "temporary" will be drastically expanded -- from the current 10 months to three years.

Adjusting the so-called H2B visa program is part of an ongoing administration effort to reconfigure immigration laws on a piecemeal basis in the absence of a comprehensive overhaul.

Last year, an attempt to remake the nation's immigration laws collapsed in Congress amid conservative anger over proposals to grant legal status to many illegal immigrants currently in the country.

A frustrated President Bush, who had favored the overhaul, responded with a 28-point plan to tighten enforcement at the border and in the workplace -- moves largely meant to placate conservative Republicans. That has led to more aggressive immigration raids and an even greater shortage of workers.

But in an effort to aid businesses, Bush also outlined plans to simplify existing visa programs for foreign farmworkers, highly skilled professionals and the short-term workers from all over the world who enter the country with H2B visas.

There are limits, however, to the administration's ability to change the seasonal visa program, especially in one crucial area: the number of visas available.

Employers consider the 66,000 new visas offered every year to be woefully inadequate, and efforts to expand the H2B visa program have been stymied in Congress. So federal officials hope that by smoothing out the procedures, some of the difficulties businesses are having in filling jobs with foreign workers will be eased.

Labor Secretary Elaine Chao said in an interview with The Times that the changes being announced today would cut down bureaucratic delays.

"Use of the program has increased in recent years, but duplicative requirements have . . . [meant] employers have failed to get workers in a timely fashion," Chao said.

And allowing shipyards and construction firms to bring workers in for three years, Chao said, would help those industries remain competitive in a global market.

"Sometimes temporary work is not confined to one year," she said.

The new rules also are meant to protect American workers, she said. Foreign workers will have to reapply annually and labor markets will be tested yearly to ensure there are no able and available U.S. workers for the jobs, Chao explained.

"We're trying to be very judicious and make sure we are doing this in a careful way," she said.

But critics who would like to see tighter restrictions on immigration argue that the H2B visa program should be shut down.

"The administration is trying in the only way it can to respond to business pressure," said Mark Krikorian, director of the Center for Immigration Studies. He argued that if employers paid high enough wages, Americans would take these jobs.

"Why do we even have such a program?" Krikorian asked. "Employers are never satisfied with how cheap labor is."

The seasonal visa program received added negative attention recently when several Indian workers went on a hunger strike to protest their treatment at a Mississippi shipyard. One of the H2B workers was hospitalized this week.

For employers like Matt Edmundson, whose Arbor Valley Nursery in Brighton, Colo., has 21 H2B workers, any changes that simplify the program are welcome.

"It's getting more and more difficult to function," said Edmundson, who recently began checking all of his job applicants' eligibility. "We found less than 2% of our applicants are eligible to work. Right now, if I didn't have the H2B laborers that I have this year, I would be in a really big pinch."

Few California employers have used the program partly because of the bureaucratic requirements, said Kevin Johnson, a law professor at UC Davis who writes about immigration issues.

"Easing some of the requirements on employers will make it much more likely that California will use the program," Johnson said. "I think it could have a sizable impact in the state."

The Department of Labor is proposing to speed the visa process by allowing employers to file applications directly to the federal government, cutting a current requirement that applications first go to a state workforce agency. Employers no longer will have to fill out paperwork showing that they have complied fully with program requirements. Instead they will be able to attest, under threat of penalties and fines, that they are complying.

Companies would be barred from passing on any program expenses to workers, including recruitment costs or attorney's fees. Labor officials will begin an auditing program to make sure employers are following the rules; those who don't face fines of as much as \$10,000.

Lawmakers have been deadlocked for months over making revisions to the H2B visa program. A temporary extension had allowed workers already here on H2B visas to return to their U.S. jobs without being subject to the 66,000 cap. Since that exemption expired in September, the Congressional Hispanic Caucus has blocked bipartisan attempts to extend it.

Caucus members argue that piecemeal efforts to deal with immigration make broad reform less likely.

Sen. Robert Menendez (D-N.J.) thwarted an attempt Tuesday by Sen. Barbara A. Mikulski (D-Md.) and Sen. Judd Gregg (R-N.H.) to increase the number of H2B visas.

"The provisions [in the proposed legislation] did everything for business and nothing for hardworking families," Menendez said. "The sooner the business community understands that it must join us in promoting relief for families as well as business, the sooner we will succeed in beginning to reform our broken immigration system."

nicole.gaouette@latimes.com