

Visa reforms mired in debate



Paul Dickens, who worked in the kitchen at Molly's in Yarmouth now works in a kitchen at Jerky's, a restaurant in Montego Bay, for a fraction of the pay he made on the Cape.

Cape Cod Times/Paul Blackmore

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CULLODEN, Jamaica — As Donovan Fraser led visitors down a roughly paved road toward his house this summer, he flipped through the pages of his passport.

A visa was adhered to almost every page, each one representing a year that Fraser had traveled to the United States, worked for several months and returned to his home in Jamaica.

"I go and come back nine times," he said.

He seemed amazed at the idea that he might want to settle permanently in United States.

He has a family in Jamaica, and friends. He has a house he has spent years building.

The only thing he doesn't have in Jamaica is a job; for that he has depended on going to Cape Cod as a seasonal worker on an H-2B visa, one of several work authorizations that let foreign residents hold temporary jobs in the United States.

The practice of hiring temporary guest workers like Fraser is a central element of most recent attempts at immigration reform.

But as lawmakers look to existing programs as models for future reform, the H-2B visa system shows that while the temporary, legal employment of foreign workers can be a boon to American businesses, questions

What is the prevailing wage?

Employers who hire workers on H-2B visas do not decide what wages they will pay. They submit a description of the open position to the state Department of Labor, which determines the appropriate wage using federal guidelines. The location of the job, the type of work, and the degree of experience required all figure into the final number. Some sample hourly wages for Barnstable:

- Waitstaff: \$9.24 to \$13.65
- Bartender: \$8.38 to \$13.99
- Food preparation: \$8.51 to \$11.75
- Restaurant cook: \$9.51 to \$14.90
- Hotel housekeeper: \$9.30 to \$11.72

Source: Foreign Labor Certification Data Center
Online Wage Library

persist about the economics and ethics of the current approach.

The H-2B program began in 1986 as a way to authorize businesses to use foreign workers when no American employees could be found.

The program's regulations include provisions intended to ensure that workers from abroad don't take jobs from Americans or drive down wages. Employers applying to use workers on H-2B visas must provide proof that they have searched unsuccessfully for U.S. workers and they must pay the prevailing wage for a particular job, as defined by the federal Department of Labor.

Visa holders can stay in the country for up to nine months, and may work for only the company, or companies, that originally applied for the visa.

When that position ends, they may apply for a visa extension to work a new job. In total, H-2B workers may stay in the country for three consecutive years.

The number of H-2B visas that can be issued each year is limited to 66,000.

This cap was reached for the first time in 2004, and Cape employers, dependent on their annual work force of 5,000 to 6,000 H-2B workers, found themselves scrambling to staff their businesses.

In May 2005, Congress provided relief by passing legislation that allowed workers who had previously come to the country on H-2B visas to return under an authorization known as H-2R. The law was renewed in October 2006, but expired a year later.

Since then, several attempts have been made to extend the returning worker exemption, but none has succeeded.

The main obstacle has been the opposition of members of the Congressional Hispanic Caucus, who would prefer to see a comprehensive immigration reform package rather than piecemeal changes to individual programs.

Because the workers know they will be able to return to desirable jobs each year, they are generally considered less likely to overstay their visas.

Though no federal data are available, those with close knowledge of the program on the Cape and in Jamaica said that H-2B visa overstays are very rare.

"I'd be surprised if it's more than 2 percent," said Matthew Lee, a Centerville lawyer who specializes in immigration.

This cycle of working abroad and returning home, known as circular migration, is considered by some immigration policy experts to be highly desirable.

Employees' home countries receive remittances that help improve their economies, and, when the workers return, they may bring with them new skills and knowledge that could benefit their communities, said Dovelyn Agunias, associate policy analyst for the Migration Policy Institute, a Washington, D.C., think tank that believes immigration can be socially and economically advantageous.

The countries that receive these workers get a valuable source of labor to fill jobs that domestic workers are reluctant to take, she said.

The H-2B visas are particularly vital for employers in areas that are heavily dependent on seasonal tourism, supporters of the program said. These regions, such as the Cape, rarely have enough domestic workers to staff the large numbers of jobs that open up during the peak season.

"Our problem is that we have seasonal jobs available and not full-time jobs," said William Zammer, who owns three restaurants on Cape Cod and has, in seasons past, employed more than 100 H-2B workers. "People want full-time jobs."

The program also benefits U.S. workers, said Cape employers.

Mac Hay, one of the owners of Wellfleet-based Mac's Seafood, said that having access to reliable labor has helped him expand his business over the years, creating new full-time management positions that have gone to local applicants.

"The system helps create opportunities for companies to hire managers," he said.

None of the stakeholders, however, thinks the H-2B program is perfect.

For many, the chief limitation of the system is the visa cap.

In 2006, the last year for which numbers are available from the U.S. Department of State, more than 122,000 H-2B and H-2R visas were issued in all. This number, many say, demonstrates that there is far more demand for foreign workers than can be met if the limit of 66,000 continues.

The cap may also tempt workers and employers to break the rules, some experts said.

Enforcing the limit, they said, may take away the incentive for foreign labor to use legal channels to obtain work.

Knowing it could be difficult to return to the U.S., workers already in the country may choose to overstay their visas and continue to work without authorization, Agunias said.

"The policies that limit access to the labor market are actually the same policies that might tell them to not abide by the rules and stay in the country of destination," she said.

Even now, many visa holders take on additional, unauthorized jobs when they are in the United States. Several Jamaican H-2B workers who reported doing multiple jobs on Cape Cod said that they had done so with the explicit encouragement of their primary employer.

"It's a problem that you have people working illegally," Lee said, "but it is a reflection of the fact that there's not enough visas."

Some, however, argue that the problem is not how many visas are available, but when employers have access to them.

Under current law, 33,000 visas are issued for each half of the fiscal year. Employers cannot begin the visa application process until 120 days before workers are needed.

Increasingly, this rule means that visas have been snapped up before many businesses with later start dates for high season have even begun to submit paperwork.

Modifying the distribution of visas throughout the year or the application dates could help ease the labor crunch, some said.

"Our more recent advocacy would be to change some of the rules to create a more level playing field," said Spyro Mitrokostas, executive director of the Dennis Chamber of Commerce. "Not necessarily higher caps, but better access to the cap that's available."

Others worry that the H-2B program makes it too easy for unscrupulous employers to deceive or abuse workers.

"Close to Slavery," a 2007 report by the Southern Poverty Law Center, highlights the stories of H-2B workers who were forced to work arduous hours and cheated out of the wages they were promised. Some were forced to live in substandard housing and denied medical coverage for on-the-job injuries.

On the Cape, a handful of businesses have been caught violating visa regulations.

In 2001, for example, Ocean Edge Resort in Brewster paid more than \$10,000 after the state attorney general's office concluded that the company had withheld too much money for housing from workers' wages. In 2003, the U.S. Department of Labor ordered Provincetown's Crown & Anchor and Crowne Pointe Historic Inn to pay more than \$82,000 in back wages and penalties for failing to properly pay overtime to workers, most of whom were in the country on H-2B visas.

One of the main reasons for abuses, the law center report concludes, is that the visa allows the holder to work only for the employer who originally petitioned the government for authorization to hire foreign help. The worker, therefore, is not able to search for a new position if conditions are objectionable at the original job.

Furthermore, the report contends, government oversight of the program is nearly nonexistent, making it easy for employers to get away with violations.

The Southern Poverty Law Center would like to see visas that do not tie guest workers to a specific employer. It also recommends a massive increase in federal enforcement efforts to ensure that foreign workers are not mistreated.

There are also those parties who argue guest worker programs should be abolished entirely.

"There is no such thing as a labor shortage," said Mark Krikorian, executive director of the Center for Immigration Studies, a Washington, D.C.-based group that advocates a strict immigration policy. "When companies find it hard to find American workers, that's a free-market signal that they need to change what they're doing."

Whether the H-2B visa is modified, eliminated or replaced entirely with a new guest worker system, the much-desired changes are unlikely to occur quickly.

Legislators and employers doubt that any action will be taken on the H-2B program before the new president takes office early next year.

"I think you'll see the Congress revisit the issue again next year," said Mark Forest, spokesman for Rep. William Delahunt, whose district includes the Cape and Islands. "But unless something fundamental changes, it's still going to be difficult."

Both John McCain and Barack Obama have promised they will make immigration reform a priority if they are elected, and both have previously expressed support for guest worker programs.

Obama would specifically pursue "increasing the legal limit on visas for seasonal nonagricultural laborers," said campaign spokeswoman Gannet Tsegai.

The McCain campaign did not respond to a request for comment.

In the meantime, the workers who depend on these visas for their livelihood are in their home countries awaiting word that they will be able to return. And on Cape Cod, their employers are already wondering how they will be able to keep their businesses operating smoothly if they are faced with another year of visa limitations.

"This is not an immigration issue; it's a labor issue," said Hay of Mac's Seafood. "We're at the whim of the political system, and it's very frustrating."