

The New York Times

Visa Denials Mean Unfinished Business

By NICOLE COTRONEO
May 20, 2007

FERNANDO BUSTAMENTE maneuvered a sport utility vehicle across his 82-acre farm, Warren's Nursery, to survey the progress of his crew last month. Nearly a hundred privets, bound and cut, that should have been carted away instead lay across a field. Dozens of other plants that were tagged to indicate they had been sold were still in the ground.

The nursery's staff was not slacking; there simply was not enough manpower, Mr. Bustamente said, which he attributed to unusual difficulties in acquiring the H-2B visas normally given to temporary foreign workers.

For the first time in the 14 years Mr. Bustamente has owned the nursery, which includes farmland in Bridgehampton and Quogue and a retail center in Water Mill, the United States Department of Labor rejected his petition to obtain visas for 30 temporary laborers from Guatemala and Mexico. The majority had been approved to work for him in past years, and he is missing half his work force, Mr. Bustamente said.

Such difficulties in acquiring H-2B visas for temporary workers have affected industries all across the East End — landscaping and nurseries, pool construction and maintenance, housekeeping agencies, restaurants and hotels.

The Montauk Chamber of Commerce estimates that East End employers filed 834 petitions for workers this season, said Paul Monte, the chamber's president and the chief executive of Gurney's Inn Resort, Spa and Conference Center. Among those requests, he said, about 500 returning workers were denied visas.

Seasonal employers across the East End depend on the H-2B visa program to compensate for what they say is a shortage of domestic labor. The program enables employers to hire temporary foreign workers after proving that advertising for them locally has failed. The temporary employees are not permitted to work for any other company and must return home at the end of the season.

The federal government sets a biannual cap of 33,000 workers nationwide under the H-2B visa program, although those who have previously received an H-2B visa are not counted against the cap.

This year, employers and their lawyers said they were stunned by what they saw as arbitrary denials and an unusually long application review process. When the Citizenship and Immigration Services announced March 23 that the cap had been reached a week earlier, petitions for visas that had been submitted in November still remained unanswered. The cap was reached earlier than usual, employers said.

The United States Department of Labor and the New York State Department of Labor cited similar reasons for the backlog: a decrease in appropriations for their programs and an increase in visa applications.

William L. Carlson, administrator of the Office of Foreign Labor Certification, said in a call broadcast during a visa discussion at Gurney's Inn last month: "We're not issuing denials to get rid of a backlog. It actually takes longer to process a denial."

Mr. Carlson said the national approval rating for H-2B visas is 80 to 85 percent. But John Gallo, a work visa specialist and head of US Americans, the company that represented Mr. Bustamente in the application process, insisted, "This year there have been more denials than in the 20 years total of the program."

Mr. Bustamente's application was denied, according to a letter from the federal Department of Labor, because the help-wanted pages he submitted were "unacceptable" — they were only a portion of the newspaper page and were folded.

Melinda Rubin, a lawyer in Hampton Bays, said 15 applications she submitted on behalf of clients — restaurants and delis, hotels, pools and landscapers and nurseries — were denied on similar grounds. "There is no real reason to deny someone unless the company doesn't exist," she said.

Employers may appeal, but the initial review process took so long this year that the cap was reached before many could begin the appeals process. They were left scrambling to find returning foreign workers who do not count against the cap yet still need to pass the tedious review process of applications, which is required annually. Some employers have turned to other sources of foreign workers.

Mr. Monte of Gurney's Inn has filled the gap with foreign workers holding four-month J-1 visas. These tend to be college-age workers looking to experience another culture while also earning money. Historically, the East End has had a steady supply of Irish J-1 workers, but this year Czechs have augmented the pool.

"Usually we only have half a dozen J-1 workers," Mr. Monte said. "This year we have over 30."

Jay Schneiderman, a Suffolk County legislator, owns the Breakers Motel in Montauk and said he depends on a pool of Jamaicans to work each season. He speculated that the labor shortage might force him and other hoteliers to increase room rates.

"Or I may have to change my business model," he said. "Maybe rent rooms for a week without maid service."

Employers say they must rely on foreign workers because domestic workers are not interested in such service jobs, especially for the wages the businesses say they can afford. "If you pay someone \$25 to make a hamburger, who can afford to buy the hamburger?" Mr. Monte said.

Overloaded consulates have compounded certification delays for H-2B visas. Consulates in Mexico and Guatemala have been particularly overwhelmed with visa requests, said Leah Sullivan, an aide to United States Representative Tim Bishop of Suffolk County.

Mr. Gallo said he believed the H-2B visa program was “the best form of foreign aid.” But the system is broken, he said, and “it had to be fixed yesterday.”

Ms. Rubin agreed. “Going forward there has to be a more streamlined method,” she said, suggesting online petition submittal. “Employers feel they can’t depend on the program. It puts them in a very fearful state.”

Mr. Bustamente said he felt disoriented. Pausing to view a \$7,500 Japanese cedar still rooted in the nursery, he shook his head. “There’s so much work,” he said, “I don’t know what to do.”