



## Visa cap could cause staff problems

By Yordanka Kraykova • Monday, October 8, 2007 1:00 AM EDT

Foreign summer workers expecting to return to Block Island may fall under a seasonal cap of 33,000 H-2B visas if lobbying attempts by countrywide tourism associations fail, says Dale Venturini, president and CEO of the Rhode Island Hospitality and Tourism Association (RIHTA).

While Venturini and other RIHTA representatives lobbied in Washington last week for extending House Bill 1843, which would exclude returning workers from the cap, the U.S. Citizenship and Immigration Services (USCIS) announced that it will not accept any more visa petitions for the first half of Fiscal Year 2008. As of September 27, the limit of 33,000 for the winter season has been reached, a USCIS press release reads.

"This is the first time the cap was met before Fiscal Year 2008 even started," says Arnulfo Hinojosa Vice President of Federation of Employers and Workers of America (FEWA). Last year the first cap was met on November 28, he says.

For Block Island employers who are more interested in the second half of the fiscal year, the second paragraph of the press release was of utmost concern: "Under current law, a 'returning worker' ... was exempt from being counted against the FY2007 H-2B cap. As of today, Congress has not reauthorized or extended the 'returning worker' provisions for FY2008." Returning foreign workers seeking employment in the United States between October 1, 2007, and April 1, 2008 fall under the 33,000-visa cap.

As for after April 1, 2008, "we'll keep lobbying," says Venturini.

"Congress is still in session and we're trying to get associations around the country to support that bill," she says. Excluding returning workers from the cap was "the one thing we were fighting for more than anything."

Hinojosa says that the provision for returning workers "hasn't been denied, so that's not the issue, it's a time issue."

The H-2B program has become important to small businesses across the country, Venturini says, because of the lack of U.S. citizens to fill these jobs. "We are not replacing U.S. workers," Venturini says. "If we could hire them, we would."

Julie Fuller, general manager of the National Hotel, raised the issue at the summer wrap-up meeting of the Chamber of Commerce and Tourism Council last week. Recruiting foreign workers has become harder over the years, said Fuller. The National Hotel's staff consists of about 30 percent foreigners. "The people who come on these visas are hard workers and we need them," she said.

H-2B visas are issued to foreigners seeking non-specialized positions mainly in the tourism industry. Employers interested in sponsoring an H-2B visa have to first get a labor certification from the state Department of Labor to prove that there are no U.S. citizens available to fill the offered positions.

With the labor certification the company may petition the Bureau of Citizenship and Immigration Services for as many worker visas as they can show the need for, Hinojosa says. The petitions are then approved as a whole. The law also reads that employers have to cover travel, visa, recruitment and other expenses.

"This is not an easy process," says Venturini. "Employers would never go through so much work if they could find the employees they need here in the States."

The caps currently call for 33,000 H-2B visas per fiscal season. FEWA facilitated the employment of about 7,000 H-2B workers last year, Hinojosa says, most of which for the second half of the fiscal year. The summer cap was met on March 16 but without the returning workers exemption securing summer staff "will be a scramble because the process is first-come-first-serve," said Venturini.

Last year the state Department of Labor did not issue Fuller a labor certification until after the cap was met, so she couldn't file a petition for new workers. Five returning workers still received their H-2B visas, since last year they did not fall under the cap.

The other type of visa for seasonal foreign labor is the J-1. The procedure is less cumbersome for employers, but restricts the worker pool to full-time students. The J-1 visa, originally established for cultural exchange, entitles students to four months of work and one month of travel in the United States during their summer break.

Although many summer businesses have switched to employing students on J-1 visas, the H-2B workers have an advantage of being able to stay for the shoulder seasons and gaining experience over the years. Fuller said the National Hotel employed ten J-1 workers and five H-2B "because that was all I could get."