

## Visa changes could bar foreign workers, say area businesses

By Jeremy Fugleberg, Journal staff Monday, September 15, 2008

Sandra McFarland got some calls for help from Jamaica this spring.

The callers, guest workers hired by McFarland to help during the tourist season, returned home only to find that changes in United States law barred them from coming back to work for her again.

McFarland wants to help them get back to work at the Cattleman's Steakhouse & Fish Market and Dark Horse Steak and Brew in Custer.

It's an uncertain time for some owners of area hotels and restaurants who need foreign workers to do the work they say Americans won't. The federal government is considering rules that could make it more difficult to get and keep guest workers, they say, and has yet to make it possible for more workers to come into the country. Public comment on the proposed rules ends Friday.

The problems couldn't come at a worse time, according to Daniel Ellenberger, human resources manager at Custer State Park Resorts. Despite intensive recruitment efforts at job fairs throughout the region, the resorts needed more workers this year for jobs not currently popular with young American workers.

"Nobody wants to be a dishwasher, and nobody wants to be a housekeeper," he said. "We would love to hire nothing but Americans. It would save us a lot of money, and they would speak English, and they could relate."

Instead, he hired 95 foreign workers under the visa program. Even they weren't enough to fill the 150 slots he had available, half his total work force.

The H-2B guest worker visa is open for foreigners who want to work in a seasonal or temporary non-agricultural job. The law requires employers prove the job was first offered to American workers.

In previous years, Congress said that people awarded a guest worker visa could work in the U.S. up to a total of three years, though with a cap of 66,000 visas. Last year, Congress did not re-approve that measure, along with a comprehensive immigration reform package that included changes to the guest worker visa program.



Devid Ramdo of Indonesia pulls ingredients out of a cooler as he prepares for dinner Friday afternoon at the State Game Lodge in Custer State Park. (Photo by Seth A. McConnel, Journal staff)

In the wake of that inaction, federal departments are pushing to make their own changes to the visa rules.

In 2005, 61 South Dakota employers sought to fill 1,161 positions with foreign workers under the H-2B program, according to state Labor Department figures obtained by the Journal earlier this year. The high-water mark for H-2B workers in South Dakota was 2004, when 92 employers had 1,689 openings. In 2000, only 17 companies were involved, and they had only 235 jobs to fill.

Businesses in the Black Hills aren't the only ones to feel the effect of the current visa limbo.

Employers nationwide say they are concerned about the proposed rule changes and the federal reauthorization of the cap rules. Ski-resort owners are afraid they won't have their usual crews of ski instructors, lifter operators and cooks. Members of the Maryland seafood industry worry they'll lose foreigners who are expert crab pickers and oyster shuckers.

Some of the proposed changes would likely benefit employers. One change would shorten from 6 months to 3 months the length of time a foreigner must remain overseas before reapplying for a visa. Another change would allow workers to stay at the same temporary job for up to three years -- essentially, a way around the current cap.

"Provided they can demonstrate that there's no American worker available to do that work, because we do put Americans first," Homeland Security Secretary Michael Chertoff said in a June address.

Some of the proposed rule changes seem to reflect concerns by workers' rights activists. In testimony before Congress, some gave examples of extortion and near slavery of foreigners who come to the U.S. for seasonal non-farm work.

"These are not subtle violations of the law, but the wholesale cheating of workers. We have seen crews paid as little as \$2 per hour, each worker cheated out of hundreds of dollars per week," said Mary Bauer, director of the Immigrant Justice Project at the Alabama-based Southern Poverty Law Center, in testimony before Congress in April.

If you're looking for that kind of abuse, you've got the wrong part of the country, Black Hills employers say.

"That's not happening here," said McFarland, head of human resources for Chief Enterprises, which owns the Cattleman's Restaurant and Dark Horse Steak and Brew.

She hired more than 20 foreign workers last year under the government's H-2B visa program.

Guest workers earn the same wages Americans would earn, and get all the same benefits and chances for promotion, area employers say. McFarland said there are probably some employers who treat guest workers poorly, but the phone calls from Jamaica are proof that isn't happening here.

"They were expecting to come back to their jobs, and they were calling and calling and calling all spring," she said. "That's proof people are not being mistreated, when people are wanting to come back and when they're calling and asking, 'What can you do for me to help me come back?'"

Other changes under consideration would bar visas for workers from some countries, including India and Jamaica, which provide many workers for the Black Hills area. The government says those countries have resisted U.S. deportations.

Another change would bar recruiters from charging potential workers. Workers' rights activists hail that potential change and decry examples of over-charging and high-interest loans. But Sandie Azinger, a Hot Springs-based recruiter who funnels most of the Black Hills' foreign workers here, faxed information to her clients, arguing that recruiters play an important role for a relatively

low cost.

Although some recruiters are accused of charging foreigners up to \$20,000, the amounts paid by those who come to work in the Black Hills appear to be much lower. Azinger, who heads International Hospitality Resources Agency, said the industry standard is between \$400 and \$750. Alliances Abroad, a large recruiting firm based in Austin, Texas, charges \$750 per person.

Employers in the Black Hills defended Azinger's work. Without recruiters, it would be much more difficult for businesses to find good workers, they say.

"Most of the agencies are really screening people; they're really doing a lot of work," McFarland said. "If you put all this work back on the employers, you'll run some of them right out of business."

The agents know what they're doing, and their work saves businesses time, said Jim Sellars, general manager of Durst Enterprises, which owns several hotels in Keystone. That would change if recruiters can't get paid for their work.

"It would take a lot more time on our end," he said. "It would add an extra tier or two of work that the employer would have to do to be part of that program."

For now, like the Jamaicans on the telephone, recruiters including Azinger and employers like Sellars and McFarland will hold their breath and wait for the federal government's decision on the rule changes and reauthorization of laws to allow more foreigners to work in the Black Hills.