

A guest worker program is shrinking despite high demand in Texas

A program that lets foreigners take jobs legally is shrinking despite high demand from Texas companies

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When the time came last year for Elizabeth Montero to make the trek from the Mexican coast to the rich Texas job market, she didn't have to sneak across the border or dodge immigration officers.

From left: Karime Martinez Prado, Monica Ceron Marquez and Elizabeth Montero prepare sandwiches at the Balcones Springs retreat near Marble Falls, Texas. The Mexican women are employed legally through a guest worker program that lets them be in the U.S. for up to 10 months.

Instead, packing a temporary work visa, she arrived for her job as a kitchen worker at an idyllic retreat in the Texas Hill Country. She left after just a few months, returning this year for another government-backed, temporary stint, this one lasting 10 months.

As the controversy rages over illegal immigrants holding U.S. jobs, thousands of employers are quietly turning to a legal source of foreign workers once used almost exclusively by builders and landscapers.

Now, however, the broader debate over revamping immigration policy threatens to shrink this program at exactly the time it is most in demand.

An exemption to federal law that has allowed the number of workers in the H2B guest worker program to swell is expiring today. That snaps the national cap back to the statutory limit of 66,000 workers each year, compared with the nearly 72,000 who came here in 2006.

Texas, the single largest user of H2B labor in the United States, will be especially affected.

"It's terrible timing," said Austin attorney Robert Kershaw, whose firm, Reina & Kershaw, has been processing H2B visa applications since 1999.

"If they fail to [keep the expanded number], it will mean more than a hardship. Many of these businesses will not be able to stay in business. I think you'll have a lot of outrage from business owners."

Under the H2B program, foreign nonagricultural workers like Ms. Montero each year are granted visas allowing them to temporarily hold a variety of U.S. jobs, from auto body mechanic to dining room attendant.

The U.S. government began handing out the visas in 1990 in a modest bid to help U.S. employers with seasonal, peak load, intermittent or one-time needs.

H2B is similar to programs that bring in highly skilled foreign workers (H1B) and agricultural workers (H2A).

Demand for these workers is booming. The number of H2B workers sought by U.S. employers jumped from about 100,000 in fiscal year 2000 to nearly 250,000 in 2006.

Those numbers are still small compared with the inflow of immigrants seeking work on U.S. turf.

An estimated 515,000 illegal immigrants arrived in the United States each year between 2000 and 2006, according to a U.S. Department of Homeland Security study released in August. Texas alone saw an average annual increase of 91,667 in its unauthorized immigrant population during that period – more than any other state, the study said.

Only about 2,400 H2B visas were issued to workers in 1995. But with the allure of a government sanction, the H2B program has grown exponentially.

At the limit

In fiscal year 2004, the 66,000 annual visa allotment was tapped out for the first time.

That left employers scrambling to find legal workers to shuck shellfish on the Texas coast or fix tacos in San Marcos.

The lid on the number of H2B visas was eased in May 2005 via the Save Our Small and Seasonal Businesses Act, authored by Sen. Barbara A. Mikulski, D-Md. The measure included, among other things, a provision for seasonal workers who were returning to the U.S. after the mandated two-month break at home. Under the act, such "returnees" weren't counted against the cap of 66,000. Hence the growth to 72,000 workers last fiscal year.

No hearing is scheduled on a new bill that would continue the expanded headcount until 2012. Attempts to address the issue through amendments to other bills have failed.

Meanwhile, a threatened employer crackdown by the U.S. Bureau of Immigration and Customs Enforcement has some bosses running scared. Many are looking to replace workers who may not have authentic paperwork with those like Ms. Montero, whose arrival was blessed by at least four government agencies.

It was that fear that pushed San Antonio restaurateur Salvador Garcia, founder of Los Valles Produce, to the H2B program in 2006.

With 40 workers at his two outlets, he suspects some lack legitimate documentation.

"I'm scared of losing everything," Mr. Garcia said in Spanish. "I'm going to use the program if God lets me live another year. I don't want problems with the government."

He will have lots of company from other entrepreneurs in the Lone Star State.

H2B visas are issued from a pool of applications approved, or "certified," by the U.S. Department of Labor. For the fiscal year that ended Sept. 30, 2006, DOL certified requests from Texas employers for more than 26,000 jobs, more than any other state.

Total requests from Texas employers – certified and denied – jumped from 476 in the 2000 fiscal year to 1,291 in 2006, according to an analysis of DOL data by *The Dallas Morning News*. (One request often asks for numerous workers.)

Employers' perspective

"We don't know what we would do without this program," said Leslie Moore, general manager of the Balcones Springs Executive Retreat & Conference Center near Marble Falls, Texas, which uses seven H2B workers, including Ms. Montero.

"We're in a rural area," he said. "We have a tough time finding workers out here. It would be pretty near impossible to run this business" without the H2Bs.

In the Dallas area, such well-known places as The Mansion on Turtle Creek and Fairmont Hotel were certified by the Labor Department to use H2B workers in 2006. (Executives at those companies declined to talk about the program.)

Employers willing to talk to *The News* seem to delight in the program's ability to provide eager, legal workers.

Among the fastest-growing segments seeking to tap into the program is food service. Nationwide, requests from food-related employers nearly doubled between 2000 and 2006 – from 968 to 1,853.

Mike Shutley, director of legislative affairs for the National Restaurant Association, said that the industry's traditional labor pool – teens and people in their early 20s – is not expected to grow much in the U.S. over the next 10 years.

"This 16- to 24-year-old demographic is half our workforce," said Mr. Shutley. "The only other legal way to get seasonal workers is to turn to the H2B visa."

For workers who come to the U.S. to wash dishes or mow lawns, the program adds a sense of security.

'Your job is safe'

"One of the advantages is that you can walk down the street without worrying," the 25-year-old Ms. Montero said in Spanish, comparing her immigration status to that of the estimated millions of undocumented workers from south of the border. "You can go out, and the *migra* [immigration authorities] can't grab you. You know your job is safe."

Ms. Montero's mother, Josefina Toral, 45, has used an H2B visa to work at the Balcones Springs retreat for the last half-dozen years, leaving her mother and son, now 13, behind in Veracruz, Mexico.

Last year, when Ms. Montero made the journey from the family home in Veracruz, she joined nearly 43,270 other H2B workers coming from our southern neighbor, the largest source of H2B labor.

A day in the life

On the job, Ms. Montero spends her days cutting vegetables, making sandwiches and washing dishes amid the steel counters, sinks and refrigerators of the camp kitchen. Balcones Springs handles everything from summer camps for kids to corporate retreats.

In the evenings, the young woman shares a room with her mother in a narrow three-bedroom home on the campgrounds.

Stacked in their kitchen are crates of green and dark red fruit from the prickly pear cactus, offering a taste of home.

Will Ms. Montero apply to come back next year? Probably.

Yes, she misses her friends and relatives. But she finds the green in her wallet as attractive as the verdant rolling hills surrounding her workplace.

Ms. Montero earned a bachelor's degree in industrial engineering back in Mexico. Here, she makes about \$7 an hour, taking home about \$860 a month after taxes. The camp pays for food, lodging and utilities.

Ms. Montero and her mother typically send at least \$1,000 a month to Ms. Montero's grandmother and younger brother back in Veracruz.

At a nearby restaurant, Christian Van Der Walt, 24, is on his second H2B stint, working as a server at the Horseshoe Bay Resort.

He is a native of South Africa, the third-largest supplier of H2B labor.

The job means months of separation from his mother and stepfather, two sisters and his younger brother. Although he may be missing family dinners – and possibly his sister's wedding in December – he's not aching to leave. Instead, he hopes to extend his visa and possibly convert it to a student visa, which would let him stay while going to school here.

As with Ms. Montero, money is the main draw. "I make more money here as a server than I would back home as an IT manager," he said. "Way more here."

He calls it a privilege to work here.

The critics

Critics argue that the very presence of Mr. Van Der Walt and the other H2Bs undermine the U.S. economy by keeping wages artificially low for U.S. workers and stifling the drive to find less labor-intensive solutions using technology.

"The idea that there are not enough people [here] for businesses to hire is absurd," said Mark Krikorian, executive director of the Washington, D.C.-based Center for Immigration Studies, a research group that supports tighter controls on immigration.

"The basic premise – that Americans won't do this work – is economic gibberish," he said. "What they mean is: Americans won't work for what they're willing to pay."

Mary Bauer of the Southern Poverty Law Center, a nonprofit agency based in Montgomery, Ala., compares the guest worker program to modern-day slavery in a report she wrote in March.

Open to abuses

A key concern is an H2B provision that requires the laborers to work for the employer who sought their visa – or go home. That, she said, makes them vulnerable to abuse.

"Those workers tend to pay a lot of money to come to the U.S.," Ms. Bauer said, referring to fees paid for visas and sometimes to recruiters. "They come to the job very dramatically in debt."

They often can't afford to complain, she said, because losing their job would mean returning home in debt.

Companies that hire these workers face their own risks.

Jacob Monty, a Houston immigration attorney, said desperate employers are "listening to quacks" who convince them that undocumented workers now in the U.S. illegally can be converted into legal H2Bs.

"I've seen a lot of [processors] sell employers down the river," said Mr. Monty. "People at the U.S. consulate in Monterrey [Mexico] are cracking down on fraud."

Mr. Monty said he is not a fan of the program because of the restrictions and mountainous paperwork involved and because the "temporary work" stipulation means many employers won't qualify without stretching the truth about the nature of the job.

Despite its drawbacks, Mr. Monty is not surprised by the attention being paid to this once tiny program.

There were threats earlier this year from Immigration and Customs Enforcement to fine employers up to \$10,000 for each worker whose numbers didn't match data on file with the Social Security Administration.

That was put on hold in August by U.S. District Judge Maxine Chesney in San Francisco. U.S. District Judge Charles Breyer, also in San Francisco, is expected to review the case Monday.

"Of course, there are increased inquiries [for H2B employees], with ICE raining down on employers," said Mr. Monty. "It sounds like a panacea for all of our labor and immigration ills."

Several employers agreed the program has shortcomings. But, they said, in the absence of a viable alternative, a cumbersome fix beats a costly fine.

The logistics and the legalities

Obtaining hired hands through the H2B guest worker program is a time-consuming, complex process, and most business owners need professional help to complete it. Here are the basic steps:

Step 1

Karen's Bistro wants to boost its staff for the summer months by using H2B workers. To qualify, the bistro must have a full-time need (generally 40 hours per week) that is temporary and seasonal, peak-load, one time (prompted by a one-time contract) or intermittent. Generally, for seasonal or peak-load jobs, workers are limited to 10-month stints. They must then go home but are eligible to return after two months.

Employers can apply for the foreign workers no closer than 120 days before the date the workers would start. Karen's Bistro expects to need extra help in May, so it plans to apply for the workers in January.

Step 2

The owner of Karen's Bistro contacts an application processor, often an attorney, to handle the paperwork and place a want ad in the local newspaper for at least three days, using wording approved by the Texas Workforce Commission. This addresses the issue of whether H2B workers take jobs from U.S. citizens.

Step 3

After demonstrating a good-faith effort to find U.S. workers, if no one competent applies, the Texas Workforce Commission processes the request, sending it along to one of the U.S. Labor Department's National Processing Centers.

Step 4

The Labor Department either denies the request or certifies to the Homeland Security and State departments that there are no available U.S. workers to fill the positions and that bringing in foreign workers wouldn't adversely affect U.S. workers.

Step 5

Karen's Bistro uses its certification to petition the U.S. Citizenship and Immigration Services for visas, which are given on a first-come, first-served basis. Homeland Security does background checks on all workers and companies applying.

Step 6

Foreign workers – often ones Karen's Bistro has used before or relatives of former workers – apply for visas at the U.S. Consulate in their home country. Workers may also be signed up by recruiters in the foreign country who work with Karen's Bistro's local application processor. Workers can come from anywhere in the world that is in good diplomatic standing with the U.S.

Step 7

Once workers and employers are paired, those workers are required to work only for the employer that sought their visas. Benefits and working conditions vary. In some cases, workers reimburse the employer for room and board; in others, it's part of their compensation.

Step 8

When the workers' visas expire (typically after 10 months) or they quit, they are required to return to their home country.

SOURCE: Dallas Morning News research