

Bordering on disaster

By Cleve Wiese
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Eduardo Perez works for William Brothers Lawn and Tree Service on an H-2B visa. (Submitted Photo)

Five years ago, Chapman Williams realized his Staunton landscaping company, Williams Brothers Lawn and Tree Service, was facing a crisis.

"I finally decided, 'Hey, I've got to figure out something out about labor,' " he said.

The pool of area workers interested in the kind of seasonal, manual-labor positions he could offer was shrinking steadily, while turnover and unreliability in the workers he could find became more of a problem every year, he said. Unwilling to hire illegal immigrants, Williams secured seasonal, nonagricultural work visas – known as H-2B visas – for four workers from a village near Monterey, Mexico. That initial group, along with five other workers he later hired from the same region, has been an essential part of his business ever since, he said. He even bought a van to facilitate their long annual trip from the border.

But because of a rule change that greatly limits the number of available H-2B visas, the workers are arriving two months late this year – and next year they may not come at all.

"There is no legal way he will get workers in 2009 if Congress does not reinstate this law," said Amanda Wright, executive director of The Labor Company, an Amherst-based firm that helps process Williams' visa requests.

The number of H-2B visas granted every year is capped at 66,000 – far below actual demand. But ever since the Save Our Small Businesses Act was passed in 2005, returning workers have not counted toward the limit.

That exemption expired last year. Legislation to extend it was blocked by the Congressional Hispanic Caucus, which hopes to tie the provision to wider-ranging immigration reform.

"The discussion over extending H-2B visas is inherently linked to our nation's greater immigration debate, and it must be resolved within that context," U.S. Rep. Joe Baca, D-Calif., said in a media release. Baca is chairman of the Congressional Hispanic Caucus

Business owners across the country were left scrambling for the available slots. Because the visas are divided into two, six-month seasons – October to March and April to September – and made available on a rolling basis, employers such as Williams, who need workers to start at the end of either period, are at a great disadvantage.

"[Williams] can't file his paperwork before the middle of October because he needs his workers in mid-February and you can't file more than four months before the start date," Wright said. "There are people who need workers in October and November who are filing months before him and they are taking the cap away."

The October-March cap was reached long before Williams could submit his requests, so he was forced to file for an April start date. But that strategy is unlikely to work next year.

“Without this legislation, I believe the cap on the first half will hit in August, and the cap on the second half will hit in November, long before he can even get to the Department of Labor.”

If that happens, Williams said he will have to scale back his operations.

“If there comes a year when I can’t get my seasonal workers, I’m going to be out of that part of the business,” Williams said, referring to the mowing and lawn care services he currently offers.

For other, less fortunate employers, painful cuts are already a reality. Ken Tomlin, spokesman for Forest Foundations, a construction firm in Forest, near Lynchburg, said the loss of six H-2B workers this year will cost the company about \$500,000.

“We will work short this year,” Tomlin said. “That means we will have to reduce our workload. We lose money, I have to work a lot harder, there’s a lot of stress. I’ll probably shorten my life by about five years.”

Before employers can even apply for H-2B visas, they are required by the U.S. Department of Labor to conduct labor market tests, advertise their job openings in local media and register with area employment agencies.

“Any American that wants the job has first shot at the job and the employer has to hire the American,” Wright said.

Once they are brought in, workers with H-2B visas must be paid a “prevailing wage” for the area where they are employed – almost always more than minimum wage. In Staunton, the rate is \$8.33 an hour, Williams said, but he pays some of his foreign workers much more than that, depending on how long they have worked for him and their level of responsibility.

“You always hear about Hispanic labor being cheap, but that’s not true in my case,” Williams said. “That wasn’t the issue at all – I just couldn’t fill the jobs.”