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Guestworker Programs Lessons from the Past and Warnings for the Future

Abstract
Immigration policy is a minefield of controversial issues, and among the most explosive are those programs that permit low-skilled foreign nationals to work in the same labor market as U.S. citizens and permanent resident aliens. Because such endeavors have been undertaken in the past, they have a track record and have been the subject of extensive research. There is no need to speculate about what might happen if any new such venture — such as that proposed by the Bush Administration on January 7, 2004 — were to be enacted. The outcome is easily predicted.

Keywords
immigration, policy, guest, guestworkers, labor, wages, worker, foreign, United States, government, wage, employ, bracero

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Center for Immigration Studies

Backgrounder

March 2004

Guestworker Programs

Lessons from the Past and Warnings for the Future

By Vernon M. Briggs, Jr.

Immigration policy is a minefield of controversial issues, and among the most explosive are those programs that permit low-skilled foreign nationals to work in the same labor market as U.S. citizens and permanent resident aliens. Because such endeavors have been undertaken in the past, they have a track record and have been the subject of extensive research. There is no need to speculate about what might happen if any new such venture — such as that proposed by the Bush Administration on January 7, 2004 — were to be enacted. The outcome is easily predicted.

The Traditional Role

The origin of guestworker policy in the United States and its historic role has been as a national emergency program. During both World Wars and the Korean Conflict, extensive reliance was made on such endeavors. Guestworker programs were included among other policies created during times of national peril such as wage and price controls and the relaxing of antitrust laws. They are extraordinary policies to be used as a last resort — and then only as temporary measures. Unlike other extreme measures that were quickly abandoned after the wars were over, however, guestworker programs have proven to be difficult to end. Starting such programs has always been far easier than stopping them. Moreover, they all have unintended negative consequences that must be included in any assessment of such programs.

The First Bracero Program. Only months after Congress enacted the most restrictive immigration legislation of its time, the Immigration Act of 1917, the first publicly sanctioned foreign-worker program was initiated. Responding to strong pressure from agricultural growers of the Southwest, the Immigration Act of 1917 contained a provision granting entry to "temporary" workers from Western Hemisphere nations who would otherwise be considered inadmissible. The Secretary of Labor was authorized to exempt such persons (in this instance, Mexicans) from the ban on immigrants over the age of 16 who could not read. In May 1917, with the nation officially at war with Germany, a temporary farmworker program for unskilled Mexican workers was created. It was later expanded to permit the employment of some of these laborers in non-farm work. When the program was announced, a number of rules and regulations were set forth. Ostensibly, these rules were designed to protect both citizen workers and Mexican workers and to ensure that the Mexicans returned to their country when their work was completed. As soon became apparent, however, "these elaborate rules were unenforced." [1]

This temporary-worker program was established during World War I. The war ended in 1918, but the program was extended until 1922. In later years the program came to be referred to as "the first bracero program."[2] The term *bracero* is a corruption of the Spanish word *brazo*, which means "arm." (Literally, the term means "one who works with his arms.") The program was terminated in 1922

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because it could no longer be justified as a national defense policy. Organized labor contended that the program had undermined the economic welfare of citizen workers. Other critics argued that labor shortages no longer existed, but that greedy employers wanted the program to continue so that they could continue to tap a cheap source of docile workers. During the life span of the program, 76,862 Mexican workers were admitted to the United States. Of this number only 34,922 returned to Mexico.[3] Thus, the program spawned illegal immigration.

The Mexican Labor Program. With the advent of World War II, the military manpower requirements of the United States and the related need for laborers in manufacturing led to assertions that another labor shortage existed in the nation's agricultural sector. Growers in the Southwest had foreseen these developments before the attack on Pearl Harbor in 1941. They had made two fateful decisions: first, to again tap the pool of cheap labor in Mexico in order to fill the alleged manpower deficit; and second, to ask the federal government to again serve as the delivery vehicle. The initial request in 1941 for the establishment of a new contract labor program was denied, but by mid-1942 the federal government had come to favor the program. The government of Mexico, however, balked at the prospect. In the 1940s the Mexican economy was flourishing. Mexican workers feared that they might be drafted if they went to the United States, they had bitter memories of the efforts to "repatriate" Mexicans in the 1930s, and they were aware of the discriminatory treatment afforded people of Mexican ancestry throughout much of the American Southwest.

Negotiations between the two governments ultimately resulted in a formal agreement. In August 1942, the U.S. Congress created the Mexican Labor Program — more commonly known as the Bracero Program. Originally included within an omnibus appropriations bill known as Public Law 45 (P.L. 45), this program was extended by subsequent enactments until 1947. According to P.L. 45, braceros were permitted to work only in the agricultural sector. If they were found working in any other industry, they were subject to immediate deportation. Although the agreement expired on December 31, 1947, it continued informally and without regulation until 1951. In that year, under the guise of a labor shortage caused by the Korean conflict, the bracero concept was officially revived by P.L. 78. This legislation was extended on three separate occasions until the program was unilaterally terminated by the United States on December 31, 1964.

Under P.L. 78, originally only Mexican workers could be hired. Their numbers varied each year but averaged several hundred thousand workers. Its biggest year was in 1959 when 439,000 braceros were employed. Employers were required to pay the prevailing agriculture wage, provide free housing, provide adequate meals at a reasonable charge, and pay the cost of transportation from government reception centers near the border to the worksite. As in the earlier bracero program, these requirements often were not met.[4] Braceros were exempt from U.S. Social Security and income taxes, which meant that they received more income than a citizen worker employed at the identical wage rate.

In Mexico, the federal government determined the actual allocation process by which workers would be selected from the various states. The Mexican state governments in turn made similar decisions for their cities and other political subdivisions. Nevertheless, there were many more applicants than job openings in every designated labor market where recruitment occurred. Corruption in the allocation process soon became widespread at the local level. Potential workers often were forced to pay a *mordida* (a bribe; literally, "a bite") if they wished to be chosen.

The bracero program demonstrated precisely how alien labor policies can adversely affect citizen workers in the United States. Agricultural employment in the Southwest was virtually removed from competition with the nonagricultural sector. The availability of Mexican workers significantly depressed existing wage levels in some regions, moderated wage increases that would have occurred in their absence, and sharply compressed the duration of employment (i.e., income earning opportunities) for many citizen farmworkers.[5]

In its thorough report on the bracero program in 1952, President Truman's Commission on Migratory Labor found that "wages by States [for agricultural workers] were inversely related to the supply of alien labor."[6] Citizen farmworkers in the Southwest simply could not compete with braceros. The fact that braceros were captive workers who were totally subject to the unilateral demands of employers made them especially appealing to many business owners. It also led to extensive charges of abuse of workers by employers as most of the provisions for the protection of braceros' wage rates and working conditions were either ignored or circumvented.[7] Moreover, the bracero program was a significant factor in the rapid exodus of rural Mexican Americans between 1950 and 1970 to urban labor markets, where employment and housing were often difficult to find.[8]

The drive to repeal Public Law 78 was led by the AFL-CIO, various Mexican American groups, and an array of other community organizations generally concerned with the welfare of low-income workers. The Kennedy administration, which came into office in 1961, did not initially support repealing the program. Instead, the administration sought significant amendments to the law that were designed to strengthen the protection of domestic workers from the adverse effects of the program.[9] In mid-1961, the Department of Labor began setting an "adverse effect wage rate" for each state. These were minimum wage rates that the department determined had to be paid to prevent braceros from undercutting the wages of citizen workers. In most cases, the adverse effect wage rates were actually higher than the prevailing wages. They had to be offered to citizen workers if the agricultural employer also intended to hire foreign workers. Under these terms, the bracero program became much less attractive to employers. The bitter political struggle ended in 1963 when the program was extended for one more year with the understanding that it would not be renewed after December 31, 1964. This was 22 years after it had been started. Ending the formal program did not stop its consequences as thousands of former braceros continued to come and seek jobs in southwestern agriculture, albeit as illegal immigrants.

The British West Indies Labor Program. Following the precedent of the Mexican Labor Program, the U.S. government established a similar nonimmigrant program to recruit workers from the British West Indies (Jamaica, the Bahamas, St. Lucia, St. Vincent, Dominica, and Barbados). An intergovernmental agreement was signed in April 1943 pertaining to the supply of agricultural workers. The agreement became the British West Indies (BWI) Program. The BWI program was established in response to concerns voiced by employers along the U.S. east coast that they, too, were experiencing wartime manpower shortages. Because many of the potential BWI workers spoke English, they offered an advantage to employers over the Mexican workers recruited for the bracero program. Like the bracero program, BWI was formalized on the basis of P.L. 45 and was operative from 1943 to 1947. In terms of aggregate number — about 19,000 workers a year — the BWI program was small compared to the bracero program. But its impact was substantial in the particular agricultural labor markets where these workers were employed.[10] Of the 11 east coast states that participated in the program, Florida was by far the largest recipient. During the actual war years, BWI recruits were also permitted to work in the nonagricultural sector.

During the years 1947-1952, the BWI program was converted into a temporary-worker program, as allowed under the provisions of the Immigration Act of 1917. Tripartite contracts were drawn up between U.S. employers, the foreign workers, and the governments of the participating nations of the West Indies. The U.S. government was not a direct participant. Travel and recruitment expenses were paid entirely by U.S. employers, and the workers who were recruited were employed only in agriculture.

A review of the BWI program by the President's Commission on Migratory Labor in 1951 led to condemnation of the administration of the program. The Commission attacked the lack of "vigilance for the protection of living and working standards" of these workers.[11]

During the legislative debate over the continuation of the Mexican Labor Program in 1951, east coast employers — especially those in Florida — specifically requested that BWI workers not be included in the legislation. The language of the bill was changed and only "agricultural workers from the Republic of Mexico" were included. The east coast employers preferred to keep the BWI program as it was, and hence the program continued to function according to the provisions of the Immigration Act of 1917.

The Non-Traditional Role

The vastness and complexity of the U.S. labor market has also, on occasions, led to the use of guestworker programs for low skilled workers during peacetime under certain circumstances. There are sometimes spot shortages of labor to which the normal working of a relatively free labor market cannot easily respond. These adjustment problems are normally due to geographical factors (i.e., isolated labor markets) or seasonal conditions (i.e., time limits on the duration of labor demand). But even in these seemingly logical cases, there have usually been undesirable side effects that challenge the efficacy of their replication in the future.

The H-2 Program. In 1952, the Immigration and Nationality Act was passed. Among its many provisions was the formal creation of the various entry categories for nonimmigrants. Among these was the H-2 program for "other temporary workers." Initially, it was agricultural employers who made the greatest use of the program. Its height of usage was in 1969 when over 69,000 visas were issued. In the Southwest

especially, the arid nature of the much of the land means that it is often not possible for farmworkers to live nearby. Hence, either migrant workers who are citizens must be hired or foreign workers must be recruited to do the seasonal planting and harvesting. The program also became popular with sugarcane growers in Florida and apple growers in the Northeast who argued that the arduous work only existed for short periods of time making it difficult to attract and hold citizen workers. But other non-agricultural workers were also sought to do various service jobs that were of "a lower status than those entering on H-1 visas" (i.e., temporary workers "of distinguished merit or ability").[12] In 1986, IRCA split the H-2 visa into two separate temporary visas — the H-1A for non-agricultural workers, and the H-2A for agricultural workers.

Theoretically, H-2 workers can only be admitted if unemployed citizen workers cannot be found to do the work. But the entire process of testing labor market availability and the appropriate wage rate to be paid has been a never-ending source of controversy. As a result (and because of the growing availability of illegal immigrants), usage of the program has declined significantly from its peak in 1969 — although usage of H-2B visas (for non-agricultural seasonal workers) has been soaring in recent years.

H-2 programs have also been criticized for being forms of indentured servitude. The participating workers are totally dependent on their employer. They are tied to their jobs by contractual terms. For this reason it is believed that they are preferred workers by employers if they can get them.[13]

The Virgin Islands H-2 Program. In the 1950s, the H-2 program was used on the U.S. Virgin Islands to allow unskilled workers from various neighboring islands to work in the agricultural and tourist industries. By the 1960s, these foreign workers were being employed "for any job" on the Islands. More and more jobs ceased to be temporary so by the end of the 1960s H-2 workers accounted for almost half of the entire workforce. As the cost of living on the Islands is high, citizen workers were reluctant to work for the low wages paid to the H-2 workers, and their unemployment increased dramatically. In the meantime, housing, education, and social conditions worsened and the H-2 program was described as being "the biggest single problem" on the Island.[14] As the number of H-2 workers kept increasing, there was even fear that the native-born population might lose political control of their homeland. Efforts were made to stop the children of the H-2 workers from attending public schools but federal courts intervened. As the economy became dependent on H-2 workers a two-tiered labor market developed. Ultimately the program was abandoned in 1975 but most H-2 workers were allowed to adjust their status to become permanent resident aliens because, by this time, they had put down roots in their new land.

The Guam Program. The island of Guam also made extensive use of the H-2 workers. In reality, the H-2 program ratified a practice that was already underway. Foreign workers had been recruited by defense contractors working on the rebuilding of the economy following World War II. When the H-2 program was created in 1952, many of these workers were granted this status even though they had been on Guam for many years. Before long, a "triple wage system" evolved: one for "state siders;" one for the native-born on Guam; and the lowest wages for H-2 workers.[15] As criticisms mounted about the H-2 workers receiving "slave wages," the U.S. Immigration and Naturalization Service (INS) began to phase-out the program for non-defense sector jobs and eventually for defense-related jobs, beginning in 1959. But there was immense criticism by employers of these attempts. Finally, the U.S. Department of Labor acknowledged that employers were not complying with the H-2 provisions and that as efforts to end the program were initiated, illegal immigration soared. Ending the program was no easy feat.

Combat Illegal Immigration?

As the scale of illegal immigration was finally acknowledged as an issue of national concern the 1970s, guestworker programs were proposed as a possible remedy by several scholars as well as by some employer groups.[16] Meanwhile, President Jimmy Carter requested the National Commission on Manpower Policy (NCMP) in August 1978 to study whether the existing H-2 provisions of the Immigration and Nationality Act should be expanded as an alternative to employers' (especially those in agriculture) use of illegal immigrants. After lengthy study of the idea, the Commission advised the President in May 1979 that it was "strongly against" any such expansion of the H-2 program.[17]

During this same time span, Congress established the Select Commission on Immigration and Refugee Policy (SCIRP) chaired by Rev. Theodore Hesburgh. It was requested to study all elements of the nation's immigration and refugee policies and to

make relevant recommendations for changes. The notion of creating a guestworker program as a possible remedy to illegal immigration was given intensive scrutiny and was eventually rejected.[18]

In follow-up hearings jointly held by the subcommittees on immigration of both the Senate and the House of Representatives, Rev. Hesburgh carefully explained that:

> *The idea of a large, temporary work program is tremendously attractive. Perhaps a better word though, would be "seductive." There is a superficial plausibility to this argument and the Commission gave it serious consideration for more than a year and a half. I can recall being very much entranced by it when I first joined the Commission. In the end, we were persuaded, after much study, that it would be a mistake to launch such a program.*[19]

He elaborated the reasons for its rejection as follows:

1. A large, temporary worker program "would have to have some limits which would have to be enforced. It wouldn't be a completely open program." Who would be eligible? What kind of jobs can they hold? How long can they stay? Can they renew their participation? Who is going to enforce these terms and how capable would such a body be to perform these tasks?

2. "It is difficult to turn off such a program once it gets started."

3. "A large program would build a dependency on foreign labor in certain sectors of the economy."

4. "Certain jobs would be identified with foreigners," which would effectively stigmatize such jobs.

5. "A second class of aliens would be established in our country who are not fully protected by the law and its entitlements and who could not participate effectively in mainstream institutions."

6. Without the strict enforcement of employer sanctions against hiring other illegal immigrants elsewhere in the economy, a temporary worker program "would stimulate new migration pressures in the long run, and again we [would] have the specter of law disrespected as we have now."

In summing up, he concluded:

> *We do not think it wise to propose a program with potentially harmful consequences to the United States as a whole.*[20]

Responding to the SCIRP report, the Reagan Administration accepted to wisdom of most of its conclusion but it proposed "an experimental temporary worker program for Mexican nationals" be included in the reform legislation and, if it proved feasible, it be expanded significantly in scale.[21]

When Congress took up immigration reform in 1982, the sponsors of the original bill, Sen. Alan Simpson (R-Wyo.) and Rep. Romano Mazzoli (D-Ky.), did not include a temporary worker program. It did propose liberalizing the existing H-2 program (which did not have any ceiling on the number of workers who could be admitted). Over the ensuing five years as the various versions of what would become the Immigration Reform and Control Act (IRCA) worked its way though the legislative process, no issue proved to be more difficult or controversial than efforts to add a guestworker program for agricultural workers to the bill. Numerous efforts were made. Indeed, after failing to pass Congress in both 1982 and 1984, it appeared that the legislation would die in 1986 for this very reason.[22] It passed only after the adoption of an extremely controversial amendment offered by Rep. Charles Schumer (D-N.Y.) that eventually would give permanent resident alien status (a green card) to any person who could prove he or she had worked in perishable agriculture for 90 days between May 1, 1985, and May 1, 1986. It was, in reality, a second amnesty added to the general amnesty provided for elsewhere in the legislation. The provision set off a firestorm of protest but it was given a debate rule that prohibited any changes in this particular provision to be made on the House floor. Representatives opposed to the compromise had only one choice: kill the whole reform package or accept this amendment as is. The idea could not withstand a vote on its own merits. Despite such criticism, the amendment enabled IRCA to be passed and signed into law by President Reagan in 1986. As a consequence, this adjustment program — known as the Special Agricultural Workers program (SAW) — led to 1.2 million persons applying for its adjustment of status benefits. Of these, 997,000 applications were approved. The number of applicants far exceeded anyone's estimation of the number who would be

eligible. The explanation for the large number of applicants was the widespread usage of fraudulent documents that were used to claim eligibly. Indeed, *The New York Times* described the SAW program as being "one of the most extensive immigration frauds ever perpetrated against the United States government."[23]

Over concern of what the impact of IRCA might be on the agricultural industry, the law contained provisions to create the Commission on Agricultural Workers (CAW) in 1986. It was chaired by Henry Voss, the Director of the California Department of Food and Agriculture. Despite being disproportionately composed of agricultural industry representatives, the final report of CAW was remarkably frank. After six years of study, it described a story whereby the living and working conditions of farmworkers had shown little if any improvement due largely to the continuing influx of illegal immigrants.[24] It boldly stated that "there is a general oversupply of farm labor nationwide" due to the fact that "unauthorized migrants continue to cross the southern border in large numbers."[25] It noted:

> *The surplus of labor in most areas militates against improvements in wages and working conditions for seasonal agricultural employees… Illegal immigration has a negative effect on workers who are faced with increasing job competition and employers who are concerned about their continuing access to a legal labor supply.*[26]

The report stated that "employer sanctions have been ineffective" with fraudulent documents being the major cause for their failure. Based on the experience of the industry with SAW, the report concluded that "worker-specific and/or industry-specific legalization programs as contained in IRCA *should not be the basis of future immigration policy.*"[27]

Within three years of the passage of IRCA, it was clear that the legislation had not succeeded in its efforts to stop illegal immigration. Employer sanctions, which were the "centerpiece" of the deterrent measures, were being circumvented by the use of fraudulent documents and by inadequate enforcement personnel and funds. Congress, rather than address these inadequacies, ignored the issue when it passed the Immigration Act of 1990, dramatically increasing the annual level of legal immigration to the country based on the assumption that the "back door" of illegal immigration had been closed. The premise was, of course, false. This legislation did, however, create another bipartisan commission to study the nation's immigration system. It was given seven years (six in reality) to conduct its investigation. The Commission on Immigration Reform (CIR), as it was called, was chaired for most of its life by the late Barbara Jordan. CIR identified illegal immigration as the most pressing problem confronting the nation's immigration policy and recommended a number of policy changes. But with regard to guestworker programs, it adamantly rejected any notion that they be viewed as part of any solution. In its final report, CIR stated that it "remains opposed to implementation of a large-scale program for temporary admission of lesser-skilled and unskilled workers."[28] It went on to say specifically that "a guestworker program would be a grievous mistake."[29] The Commission stated in unequivocal terms the reasons for its conclusions:

1. "Guestworker programs have depressed wages."

2. Those whose wages are most adversely affected are "unskilled American workers, including recent immigrants who may have originally entered to perform needed labor but who can be displaced by newly entering guestworkers."

3. "Foreign guestworkers often are more exploitable than a lawful U.S. worker, particularly when an employer threatens deportation if workers complain about wages or working conditions."

4. "The presence of large numbers of guestworkers in particular localities — such as rural counties with agricultural interests — presents substantial costs in housing, healthcare, social services, schooling, and basic infrastructure that are borne by the broader community and even by the federal government rather than by the employers who benefit from inexpensive labor."

5. "Guestworker programs also fail to reduce unauthorized migration" [because] "they tend to encourage and exacerbate illegal movements that persist long after the guest programs end." …[and]… "guestworkers themselves often remain permanently and illegally in the country in violation of the conditions of their admission."

Concluding Observations

The actual program experience of the past as well as the wise counsel of the distinguished Americans who served on the host of national commissions cited in this paper all warn in the starkest of terms against

pursuing such programs. I know of no other element of immigration policy in which the message *not* to do something is so unequivocal.

The heart of the problem is that guestworker programs seek to reconcile two sharply conflicting goals: the need to protect citizen workers from the competition of foreign workers who are willing to work for wages and in conditions that few citizens would tolerate versus the wishes of some employers who rely on labor-intensive production and service techniques to secure a plentiful supply of low-cost workers. In addition, there are always unforeseen side effects that harm the wider society.

With 34 million low-wage workers in the current civilian labor force, the problem to confront is *not* a shortage of low-skilled workers; it is the oversupply of from nine to 12 million illegal immigrants that needs to be addressed. Getting illegal immigrants out of the labor force should be the first order of business for policymakers. Neither guestworker programs nor amnesties of any kind should be part of the efforts to end this labor-market nightmare. Guestworker programs do nothing to stop further illegal immigration and, in fact, they serve to condone past illegal conduct while encouraging more illegal immigration.

Except in national emergencies, guestworker programs are bad public policy. They may meet the short-term pleas of private interest groups, but they can never meet the higher standard of being public policies that serve the national interest.

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Backgrounder

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By Vernon M. Briggs, Jr.

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