

<< [Enforcement: Swift Fallout, Mismatches](#) | [<< back](#) | [Canada, UK, Middle East](#) >>

## Immigration Reform: AgJOBS

Rural Migration News Vol. 14 No. 2, April 2007

 [Print-Friendly Version](#)

The Senate Judiciary Committee took up immigration reform on February 28, 2007. Bush administration officials endorsed an expanded guest worker program, but not necessarily a path to immigrant status for unauthorized foreigners in the US. Department of Homeland Security Secretary Michael Chertoff, noting that only about a third of those who legalized in 1987-88 had become citizens by 2007, asserted that many unauthorized foreigners may not want a path to naturalization.

Commerce Secretary Carlos Gutierrez, saying that "without people to fill the jobs... our economy will not continue to grow," repeated President Bush's requirements for turning unauthorized workers into guest workers: "undergoing a criminal background check; paying a meaningful penalty; paying taxes; requiring them to wait their turn in line; learning English; and having a job."

Senator Dianne Feinstein (D-CA) said that the Senate's comprehensive bill approved in May 2006 may have been too ambitious, and that immigration reform might be better accomplished in increments. She said that DREAM (which would legalize unauthorized graduates of US high schools) and AgJOBS (which would legalize farm workers and reform the agricultural guest worker program) should be the top priorities in 2007.

Senator Ted Kennedy (D-CA), after fruitless negotiations with Senator John McCain (R-AZ), announced in mid-March 2007 that the starting point for 2007 immigration reform efforts would be a March 2006 report from the Senate Judiciary Committee, approved 12-6 when the committee was under the control of Republicans.

McCain reportedly changed his views about an easy path to legalization for unauthorized foreigners after repeated campaign trips to Iowa, which holds presidential selection caucuses in January 2008. Most Iowa Republicans favor tough steps to reduce illegal migration. Former Governor Mitt Romney has attacked what he calls McCain-Kennedy immigration reform, saying "The current system is a virtual concrete wall against those who have skill and education, but it's a wide open walk across the border for those that have neither. And McCain-Kennedy isn't the answer."

President Bush in Mexico in mid-March 2007 pledged to "work as hard as I possibly can to pass comprehensive immigration reform." He suggested that he could sign a bill into law by August 2007. Bush endorsed a guest worker program: "If people can come into our country, for example, on a temporary basis to work, doing jobs Americans aren't doing, they won't have to sneak across the border."

Bush emphasized that Americans oppose giving guest worker or other legal statuses to unauthorized foreigners because immigration is perceived to be out of control. Adding 6,000 National Guard troops, building a 700-mile border fence, and stepping up workplace enforcement are necessary measures to persuade Republicans to support guest workers, according to Bush. (Workplace apprehensions were three times higher in 2006 than in 2005.)

On the question of what to do about 12 million unauthorized foreigners in the US, Bush rejected amnesty, saying: "Amnesty is not going to fly. There is not going to be automatic citizenship; it just won't work. People in the United States don't support that, and neither do I. Nor will kicking people out of the United States work. It's not practical." Bush said "we can find a rational way forward, somewhere in between automatic citizenship and kicking people out of the country."

In April 2007, Republican senators who worked closely with Bush advisor Karl Rove announced a plan that would link DHS and Social Security Administration databases to help prevent unauthorized workers from getting US jobs and strengthen enforcement on the Mexico-US border.

There would be three new guest worker programs under the White House plan. The first would grant some unauthorized foreigners in the US three-year "Z" visas that could be renewed indefinitely after a "trigger" is satisfied that signifies enforcement efforts are successful. Foreigners would pay a \$2,000 fine and \$1,500 fee to receive three-year Z-visas that could be renewed for another three years for another \$3,500 fee. These Z-visas could be converted to immigrant visas if the migrant returned to her country of origin, paid a \$2,000 application fee and an \$8,000 fine, and re-entered the US legally.

A second guest worker program would grant a number of two-year visas to migrants dependent on labor market conditions. They would be renewable twice, for a total of six years US work, but require the guest workers to leave the US for at least six months between two-year work stints.

The third guest worker program would combine the current H-2A and H-2B programs into a single seasonal program that allowed foreigners to work in the US for up to nine months a year. After returning home for three months, seasonal guest

workers could return to the US without their families indefinitely for nine-month work stints.

Representatives Luis Gutierrez (D-IL) and Jeff Flake (R-AZ) introduced the 700-page Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act (HR 1645) on March 21, 2007 that would require the president to certify that new enforcement strategies are working before unauthorized foreigners in the US could legalize their status. The Gutierrez-Flake proposal would create a new biometric system that, by the end of 2008, employers would have to use to verify that their employees have legal status.

Under the Gutierrez-Flake proposal, unauthorized foreigners in the US before June 1, 2006 could pay a \$2,000 fine and back taxes and, after six years of continued US residence, passage of an English-civics test, and proof that the head of household had left (to Canada or Mexico is OK rather than to the migrant's country of origin) and re-entered the US legally, the family could become immigrants.

Gutierrez-Flake includes DREAM, which would allow unauthorized graduates of US high schools to legalize their status, and AgJOBS, a legalization and temporary worker program for agriculture. In addition, a new guest worker program could admit up to 400,000 guest workers a year with three-year visas. These "new guest workers" could change US employers. Their US employers could apply for immigrant visas on their behalf after three years of US work, and the migrants could apply on their own after five years of US work.

AgJOBS. On January 10, 2007, the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS) was re-introduced in the Senate (S 340) and House (HR 371). AgJOBS would allow unauthorized farm workers to earn legal immigrant status and make the H-2A program more employer friendly.

Up to 1.5 million farm workers who worked at least 150 days or 863 hours in the 24-month period ending December 31, 2006 could apply for "blue card" probationary immigrant status through a government-approved qualified designated entity, a licensed attorney, or an immigration practitioner recognized by the DHS Board of Immigration Appeals during a seven-month period following enactment (legal aid programs funded by the federal government could also aid applicants). Blue-card applicants must pay an application fee as well as a \$100 fine, and apply in the period between seven and 18 months after enactment.

Blue-card holders could earn an immigrant status by doing at least 150 days (a day is at least 5.75 hours) of farm work during the first three years, 150 days of farm work per year for three years and 100 days in one year in the first four years, or 100 days of farm work a year during the first five years (while in blue-card status, they could also do nonfarm work and travel in and out of the US). After proving that this farm work was done and that income taxes were paid, blue-card holders can pay \$400 plus an application fee and apply for immigrant status for themselves and their immediate families.

Farmers are required to provide evidence of employment to the unauthorized farm workers they hired in 2005-06. Blue-card workers could do nonfarm work, but they would lose their status if they did not do the required farm work. However, if they are fired without "just cause" from farm jobs, they could file requests for credit for farm work not done because of the firing. Blue-card workers are eligible for UI and EITC benefits, but not welfare benefits such as Food Stamps.

There would be three major changes in the H-2A program aimed at making it easier for farm employers to hire legal guest workers. These changes would begin one year after the enactment of AgJOBS, except for the AEW rate change, which would be effective immediately. The expectation is that the number of jobs certified to be filled by H-2A workers, now about 45,000 a year, will not increase quickly because of blue-card legalization.

First, attestation would replace certification. Under attestation, employers control the border gate by making assertions (assurances) to the US Department of Labor that they have vacant jobs, are paying at least the minimum or prevailing wage, and will comply with other H-2A requirements. Their job offers, filed at least 28 days before workers are needed, are to be posted on America's Job Bank, and DOL must approve employer applications within seven days of receiving them.

Foreign H-2A workers would arrive and go to work, and enforcement would respond to complaints of violations of H-2A regulations, such as guaranteeing work for at least three-fourths of the work period specified by the employer, hiring local workers (including blue-card holders) who apply for jobs until 50 percent of the work is completed, and reimbursing transportation costs of workers who complete the job.

Second, farm employers could pay a housing allowance of \$1 to \$2 an hour rather than provide the free housing required under the current program, if the state's governor certifies that there is sufficient rental housing for the guest workers in the area.

Third, the Adverse Effect Wage Rate, the minimum wage that must be paid to legal guest workers, would be frozen at its 2002 levels and studied, rolling it back from \$9.20 an hour in 2007 in California to \$8.02 an hour, and a similar five to 10 percent in other states. Eventually, the AEW rate could be adjusted each year by the change in the Consumer Price Index the year before, up to a maximum four percent.

H-2A workers would continue to be excluded from the protections offered by MSPA of 1983, which requires disclosure of wages and working conditions at the time and place of recruitment and requires farmers to use only federally licensed FLCs. H-2A workers would be able to file federal suits if their contracts were violated, but either party could insist on free non-binding mediation to delay the litigation for up to 90 days. DOL would be responsible for establishing an office to which H-2A workers could complain that their rights were violated.

The H-2A program permits temporary foreign workers to fill temporary farm jobs in the US. One exception to this double-

temporary condition is sheepherding--H-2A shepherds can remain in the US for three consecutive years. Under AgJOBS, US dairy and goat farmers could also hire H-2A workers for three consecutive years, and H-2A workers employed as sheep or goat herders or dairy workers could apply for immigrant status after three years of US work. H-2A workers employed in crops could not apply for immigrant status.

<< [Enforcement: Swift Fallout, Mismatches](#) | [<< back](#) | [Canada, UK, Middle East](#) >>