



PRIORITIES IN IMMIGRATION REFORM
BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION
MODERNIZATION ACT (S. 744) ANALYSIS

July 14, 2013

Centro de los Derechos del Migrante, Inc. (CDM) is a transnational nonprofit organization with offices in Mexico City, Oaxaca, and Baltimore with the mission of improving the conditions of migrant workers who labor in the United States. Through outreach and legal work on both sides of the U.S.-Mexico border, CDM has uncovered critical flaws in U.S. policy that result in abuses of migrant workers. Below, we highlight the organization's key priorities for migrants in immigration reform and analyze the effects of the Border Security, Economic Opportunity, and Immigration Modernization Act (Senate Bill) on current abuses.

Justice in International Labor Recruitment

Labor contractors who recruit migrant workers for U.S. companies often engage in abusive practices. In a study of over 220 workers on H-2 temporary visas, CDM found that more than 58 percent had paid recruitment fees. In order to pay these high fees, workers often take out loans that make them even more vulnerable to exploitation. In worst-case scenarios, unscrupulous employers and recruiters traffic workers into the U.S. Regulation and oversight of foreign labor recruiters is much needed, as is a system to hold U.S. employers who utilize such recruiters jointly responsible for abuses.

WHAT THE SENATE BILL WOULD DO: The Senate Bill includes much needed reforms to address abuses in international labor recruitment. The key measures to address recruitment abuse are a required set of disclosures given to workers, a prohibition on employers charging workers recruitment fees, a prohibition on discrimination in recruitment, a foreign labor contractor registry at the DHS and the State Department, extensive data gathering and data publication, and critical enforcement mechanisms.

The Bill would require that important information be disclosed to workers at the time of recruitment. These disclosures are important so that workers know the terms and conditions of their employment and visa before leaving their homes for employment in the U.S. The required disclosures include the following: the identity of the employer and the recruiter; the terms of employment; a copy of the signed contract; the type, length, and terms and conditions of the visa; any costs and expenses associated with the work; any training that will be provided or required; and worker's compensation or insurance coverage in the event of injury or death, among others.

The Bill addresses the economic coercion of workers who pay recruiters high fees, often incurring debt with exorbitant interest rates in order to come to the U.S. Specifically, the Bill prohibits employers,

labor contractors, and agents from charging recruitment fees to workers and requires employers to reimburse all costs associated with their recruitment, including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs to a worker for any foreign labor contracting activity. The Bill also requires several disclosures related to fees.

The Bill provides some visa-specific worker protections. With respect to the H-2B program, the Bill would require that employers pay transportation costs, including reasonable subsistence costs during travel, from the place of recruitment to the place of employment and from the place of employment to the place of permanent residence or the subsequent worksite. The Bill would require that employers pay any fees related to hiring the worker and would prohibit deducting such fees from workers' wages. With respect to the newly created W visas, the Bill would also require that employers pay fees related to hiring workers but would not require that workers be reimbursed for travel and transportation costs. The Bill is not comprehensive in its protections of H-2B workers and fails to provide other much-needed improvements to the H-2B program.

Freedom from Discrimination

During the recruitment process, internationally recruited workers are subject to various forms of discrimination. Recruiters and employers limit access to the recruitment stream by national origin, sex, and age. They segregate workers into jobs and visa categories based on racialized and gendered stereotypes. They also retaliate against and blacklist workers who complain about unfair or unlawful treatment.

WHAT THE SENATE BILL WOULD DO: Pursuant to the Senate Bill, foreign labor contractors would be prohibited from failing to hire or refusing to hire, discharge, intimidate, threaten, restrain, coerce or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, sex, national origin, religion, age, or disability.

Access to Justice and Protection from Employer Retaliation

Migrant workers face barriers to seeking and obtaining justice in the United States. Migrant workers should receive information on their rights before coming to the U.S. and should have access to legal assistance once they arrive in the U.S. They should be able to remain in the United States to pursue employment related claims before administrative bodies and civil and criminal courts. They should be allowed to reenter the country in pursuit of justice.

Due to threats of deportation and other forms of retaliation, many migrant workers are afraid to voice their concerns out of fear of losing their jobs and visas. Most temporary visas bind a worker to a single employer, so a migrant worker cannot change employers, even in the face of exploitative wages and working conditions. Visas need to be portable, so that workers can leave abusive employers and seek employment elsewhere.

WHAT THE SENATE BILL WOULD DO: The Senate Bill would require that, before issuing visas, consular officers provide visa applicants with a know-your-rights pamphlet in a language the applicant understands and review the pamphlet with the visa applicant. The Bill would also expand access to Legal Services Corporation funded legal services to migrants who suffered certain recruitment abuses and to agricultural workers in certain circumstances.

The Bill would prohibit retaliation against internationally recruited workers and their family members based on worker disclosures or complaints about a violation of his/her rights in the recruitment process. The Bill would enable the Attorney General and the Secretary of Homeland Security to grant advance parole to permit workers to remain legally in the U.S. in order to fully and effectively participate in all legal proceedings related to recruitment abuses.

The Bill would create a new W visa category for certain sectors of nonimmigrants. With the W visa, workers would have a limited ability to change employers while in the U.S.

Also, the Bill would expand U visa qualifying crimes to include the labor crimes of fraud in foreign labor contracting and serious violations involving workplace abuse, exploitation, retaliation, or violation of whistleblower protections. Qualifying migrants who are arrested or detained and who are necessary for the investigation or prosecution of a workplace claim would not be removed from the United States until being interviewed as witnesses; migrants pursuing U visas would be provided with stays of removal. The Bill would increase the number of U visas available to victims of crimes, meaning that U visas would be more available to migrants who suffered certain qualifying labor crimes.

Transparency

Unscrupulous employers and recruiters are currently gaming the employment-based visa system. In a recently released groundbreaking study, CDM uncovered significant fraud in recruitment practices. The recruitment system needs to be made more transparent so that the public and workers can identify the bad actors and fraudulent recruiters. Data should be gathered to monitor international labor recruitment and should be publicly available. More data should be provided on how many U and T visas are issued to migrant workers due to labor and employment-based complaints.

WHAT THE SENATE BILL WOULD DO: The Senate Bill would require the Department of Homeland Security to create a public registry of foreign labor contractors containing information about the employers, visas, and locations for which they contract workers, as well as a list of foreign labor contractors whose certification has been revoked. All foreign labor contractors besides employers would be required to register and receive a revocable certification from DHS. Employers would be required to notify DHS of the foreign labor contractors they use. The Secretary would require foreign labor contractors to post a bond to ensure both the fulfillment of the contractor's responsibilities and the wages of the workers.

The Bill would also improve transparency by requiring the Secretary of State to maintain information related to the identities of foreign labor contractors and the employers to whom the foreign labor contractors supply workers. This information would be made available on-line, including on the websites of U.S. embassies in the official language of that country. The Secretary of State is also charged with annually disclosing data in an on-line, public format regarding the gender, country of origin and state, date of birth, wage, level of training and occupation category, disaggregated by job and by visa category of visas processed.

Fair Wages and Safe Working Conditions

Many migrant workers are paid below-market wages and are not compensated for overtime. Migrant workers should be paid a fair wage and should have the ability to switch employers. Many migrant workers are unable to recover workers' compensation after job-related injuries.

WHAT THE SENATE BILL WOULD DO: The Senate Bill would require that H-2B workers be paid the greater of the actual wage level paid by the employer to other employees with similar experience and qualifications for such position *or* the prevailing wage level for the occupational classification of the position based on the best information available at the time the application is filed. The wage structure would improve wages for some H-2B workers from the 2008 prevailing wage schema that was recently declared invalid by the *CATA* court. It would not improve wages for industries such as seafood, where an employer survey is used to calculate the prevailing wage.

The new W visa would have a wage structure requiring that workers be paid the greater of the level 4 wage set out by the Foreign Labor Certification Data Center Online Wage Library for such occupation in that metropolitan statistical area *or* the mean of the highest two-thirds of wages surveyed for such occupation in that metropolitan statistical area.