



The H-2A Agricultural Worker Program: Continued Increase in Use Demonstrates Program Accessibility and Urgent Need for Immigration Reform

The H-2A agricultural worker program more than doubled in size in a mere eight years. That rapid growth demonstrates the program’s usefulness and responsiveness to agribusiness but also the importance of passing immigration reform that grants undocumented farmworkers an opportunity to earn immigration status and citizenship.

The H-2A guestworker program permits employers who anticipate a labor shortage for seasonal farm jobs to apply to hire foreign workers on temporary work permits. To bring in H-2A guestworkers, employers must show that they have tried and are unable to find U.S. workers to meet their labor needs. Employers must offer certain minimum job terms to demonstrate that bringing in guestworkers will not displace U.S. workers or adversely affect their wages and working conditions. The H-2A program has no limit on the number of H-2A visas that can be issued per year.

Expansion in H-2A Program Usage Demonstrates Accessibility:

The H-2A program has seen a large expansion in recent years: from about 48,000 worker positions certified in FY 2005 to about 99,000 worker positions certified in FY 2013—an increase of over 100%.

From FY 2012 to FY 2013, several states saw significantly large increases in program usage, including an increase of 109% in North Carolina, 49% in Washington, 46% in California, and 45% in Florida.¹ This expansion belies agribusiness employers’ complaints that the H-2A program is unworkable and overly bureaucratic. Typically employer complaints about H-2A program “bureaucracy” reflect a dislike of DOL’s oversight and the program’s modest protections that are critically important in protecting U.S. workers’ jobs and labor standards. DOL, in fact, continues to approve an overwhelming majority of grower

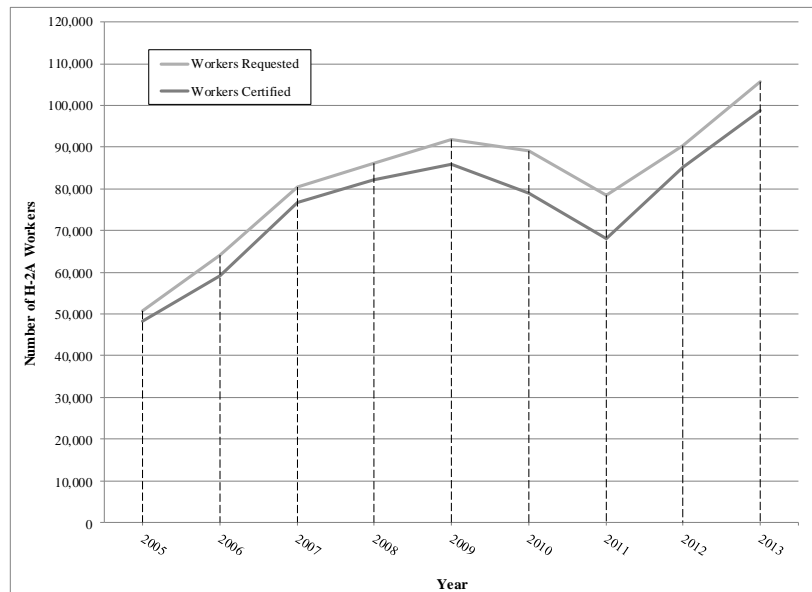


Figure 1: Number of H-2A Workers Requested & Certified from 2005-2013

¹ U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, H-2A Temporary Agricultural Visa Program – Selected Statistics, FY 2012 YTD (on file) and U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, H-2A Temporary Agricultural Labor Certification Program – Selected Statistics, FY2013, available at http://www.foreignlaborcert.doleta.gov/pdf/H-2A_Selected_Statistics_FY2013_YTD_Q4_final.pdf.

applications, with approximately 96% of all applications approved in FY 2013.² Farmworker advocates view the H-2A program's protections, which developed over decades and are rooted in the abuses associated with the Bracero program of 1943-64, as [too weak and inadequately enforced](#).

Increased Use of the H-2A Program Highlights the Need for Immigration Reform:

The increased use of the H-2A program demonstrates another issue - the desperate need for immigration reform. While there is no national shortage of agricultural workers, there is a shortage of farmworkers with work authorization. At least one-half of the farm labor force is undocumented. These undocumented workers are vulnerable to abuse and live difficult lives on the margins of an economy in which they make vital contributions. Yet farmers and consumers depend on these skilled workers for their important role in cultivating and harvesting our nation's food supply.

As immigration enforcement continues to impact local communities, more and more workers are ensnared in immigration detention and deported, and more and more employers undergo I-9 audits or are fearful of being caught up in I-9 audits. As a result of these and other factors, the H-2A program has grown substantially over the last 10 years and could continue to grow to bring in hundreds of thousands of temporary foreign workers.

It is untenable to continue this way. It makes no sense to bring in additional vulnerable temporary agricultural workers when there already is a skilled labor force that is ready and able to perform this work. Our nation needs the contributions of these productive workers. Immigration reform must be enacted that creates an immigration process to provide a roadmap to immigration status and citizenship for undocumented farmworkers and their family members, in addition to other aspiring citizens.

The Senate bill, S. 744, which passed the Senate almost a year ago in June 2013, includes a bipartisan agricultural stakeholder agreement on immigration policy. The hard-fought, detailed compromise contains: 1) an earned legalization program that would provide certain undocumented farmworkers and their family members an opportunity to earn legal immigration status followed by lawful permanent residency and then possible citizenship; and 2) a new agricultural worker visa program that would replace the H-2A program. The new program (providing W-3 and W-4 visas) would end or weaken certain longstanding H-2A labor protections, such as the DOL labor certification process, "the 50% rule's" required recruitment of U.S. workers, and the Adverse Effect Wage Rate, but would also provide important new rights for agricultural visa workers, such as a cap on the number of visas issued, limited portability for some workers, and equal coverage under laws that apply to US farmworkers, including the Migrant and Seasonal Agricultural Worker Protection Act. S. 744 also provides an important opportunity for agricultural guestworkers and others to become immigrants and eventual citizens of the U.S. through a new points based visa system, which though very limited in terms of visa numbers, is an important step towards welcoming needed workers into our society as immigrants, not temporary workers. Finally, S. 744 includes important protections against international labor recruitment abuses. The stakeholder agreement is based on careful consideration of competing interests and realities on the ground and should be respected. In the House, H.R. 15 also includes the agricultural stakeholder agreement and as well as other important provisions.

Immigration reform will enable an above-board agricultural labor relations system. The agricultural stakeholder agreement represents a compromise that will benefit workers, employers, consumers and the nation.

² U.S. Department of Labor, Office of Foreign Labor Certification, Foreign Labor Certification Performance Reports available at: <http://www.foreignlaborcert.doleta.gov/>.