



The Vital Importance of Oversight of the International Labor Recruitment System *No Way to Treat a “Guest”*

Diego, a citizen of Peru, had been a teacher but when he was told he could make \$1,300 a month as a shepherd in the U.S. he jumped at the chance... But (upon arrival in Colorado) he learned that he would be working 11-14 hour days, seven days a week, for only \$750 a month. His employer took his passport, social security card, and other documents...

Diego, H-2A worker in Colorado

To pay the recruitment fee of about \$11,250, Chinnawat took out loans with his house as collateral... Within weeks, only a few workers were allowed in the fields each day and the rest received no pay... Without money for food, Chinnawat was so hungry he caught and cooked a pigeon...

Chinnawat, H-2A worker in Southeastern United States

Victor was recruited for agricultural work on an H-2A visa, but after paying two recruiters and visa fees, and traveling to rural Georgia, the employer told him that there was no work, forcing him to return home, indebted.

Victor, H-2A Worker in Georgia

Background

Experiences over many years across various visa programs demonstrate the need for oversight, monitoring, transparency and regulation of international recruitment systems. **Farmworker Justice and the United Farm Workers believe that immigration reform must address the rampant abuses taking place during international recruitment to protect U.S. and international workers and to maintain the integrity of our immigration system.** We applaud the inclusion of provisions regulating international labor recruitment in the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S.744 (in subtitle F of Title III, “Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad.”), and we urge the House to address these issues as well.

Workers’ Experiences during Recruitment Abroad

Workers’ experiences during recruitment abroad – in Thailand, Mexico, Jamaica and elsewhere – have a substantial impact on their earnings and conditions in the U.S., as well as on the U.S. workers in the labor market where the foreign workers are employed. Many foreign citizens recruited for jobs under temporary work visas are charged high recruitment fees to obtain U.S. employment. To afford those fees and transportation costs, workers often borrow money from the recruiters, frequently at high interest rates. In some cases, recruiters misrepresent the amount and conditions of work that will be available in the U.S. Upon arrival in the U.S., these indebted workers are too fearful of losing their jobs and being deported to

challenge unfair or illegal conduct. Moreover, employers regularly rely on international labor recruiters to discriminate in hiring on the basis of gender and age. In these circumstances, U.S. workers are often viewed as insufficiently compliant and undesirable. Responsible, law-abiding employers should not suffer unfair competition from businesses that benefit from abusive international labor recruiting.

Chinnawat, a citizen of Thailand

Chinnawat, a citizen of Thailand, was recruited to the H-2A program with the promise of a job in the U.S. at \$8 an hour for 40 hours a week; free housing and food; and a year-long contract that would be extended for two years. To pay the recruitment fee of about \$11,250, Chinnawat took out loans with his house as collateral. On arrival in August 2005, the workers were housed in a crowded motel room and then a barn infested with insects and mice. The workers slept on a dirty vinyl floor and washed their hands and clothes at an outdoor faucet. They were served only rice and vegetables and scrounged for extra food in the fields. Within weeks, only a few workers were allowed in the fields each day and the rest received no pay. The workers panicked because they had no money to pay interest on their debt. They were threatened and told not to leave the farm; they feared that the police might arrest them if they disobeyed. After Hurricane Katrina, the contractor took Chinnawat to New Orleans to do clean-up work, which lasted only a few days. Without money for food, Chinnawat was so hungry he caught and cooked a pigeon. After returning to North Carolina, he met a legal aid attorney who helped him organize an escape from the farm. Chinnawat obtained a visa reserved for victims of trafficking.

Diego, a citizen of Peru

Diego, a citizen of Peru, had been a teacher but when he was told he could make \$1,300 a month as a shepherd in the U.S. he jumped at the chance to better provide for his wife and child. He paid more than \$5,000 in recruiting fees, and \$1,000 for visa fees, arriving in Colorado on an H-2A visa in spring 2009. But he then learned that he would be working 11-14 hour days, seven days a week, for only \$750 a month. His employer took his passport, social security card, and other documents. On the ranch, he was housed in a small sheep wagon with holes and a door that did not shut properly. There was no bathroom or refrigerator to store food. Though his employer was supposed to provide him with food every weekend, he would often not show up. When he protested, the ranch owner threatened to send him back to Peru. Soon, Diego was sent to herd sheep in the mountains. He lived in a tent and became ill. Though \$27 per month was deducted from his pay for health insurance, the rancher refused to take him to the doctor. And he could not use ranch vehicles to go to town and buy food. In August, he left, and the local police led him to a legal services attorney, who was able to help him reclaim his documents and some of his stolen wages.

Victor, citizen of Mexico

In 2012, Victor and several other Mexican citizens were recruited to harvest melons, onions and peppers in Georgia on an H-2A visa. He received a document showing his piece-rate wage and was promised reimbursement for travel and visa costs. Upon arriving in Nuevo Laredo, Mexico as instructed, he was required to pay a second recruiter \$100 dollars and to pay the H-2A visa fees. To cover the expenses totaling about \$788, Victor had taken out a loan of 11,000 pesos. Before departing Mexico, Victor spoke by telephone with the employer, who instructed him to travel there. Upon arrival, the employer informed the workers that there was no work, that she had helped

them obtain the visas, and that they could work wherever they pleased. Victor did not want to violate the terms of his visa. He worked approximately 2 weeks, just to make enough money to get home and then returned to Mexico. He has been unable to pay back his loan.

The Need for Improved Protections, Oversight and Enforcement

Improved protections must be put in place to ensure workers are provided accurate disclosures about the employment at the time of recruitment and to prevent fraud and misrepresentations; prevent discrimination based on age, gender and other protected categories; and ensure workers do not pay recruitment fees. While recruitment fees are prohibited in some visa programs, such as the H-2A program, they continue to be commonly charged. Workers have little incentive to come forward to report violations as they will likely lose their chance of obtaining a visa if they do so, limiting any ability to repay the debt they have accrued. Disclosure requirements, too, are frequently flaunted. Under the current H-2A program, for example, employers are supposed to provide H-2A workers with a copy of their work contract no later than when the worker applies for a visa, but this rarely happens.

Subtitle F in the Senate immigration bill, S. 744, contains some important provisions that would help prevent trafficking and other abuses in international labor recruitment across all visa programs. Much of subtitle F originated from the bipartisan Trafficking Victims Protection Reauthorization Act of 2011, HR 2830. Subtitle F contains the following:

Protections for Internationally Recruited Workers

- Requires written disclosures of information about the employer and labor contractor, employment opportunity terms and conditions, visa terms and conditions, and other protections.
- **Prohibits:**
 - Foreign labor contractors from providing materially false or misleading information to any worker.
 - Discrimination in recruitment on the basis of a protected status, including sex and age discrimination.
 - Prohibits foreign labor contractors from charging workers recruitment fees of any kind, including visa, visa processing, transportation, legal expenses, placement fees and other costs.

A Mechanism for Oversight and Transparency

- Requires foreign labor contractors to register with the Department of Homeland Security, pay a registration fee, and post a bond in an amount sufficient to ensure the ability of the foreign labor contractor to discharge its responsibilities under program.
- Creates a national registry of registered foreign labor recruiters and debarred recruiters that is publically available in the U.S. and abroad that workers and employers can access.

Enforcement Provisions

- Administrative process for complaints and independent enforcement authority.
- Private right of action for aggrieved individuals with safe harbor for employers using registered foreign labor recruiters.
- Access to legal services for workers who are victims of violations of this act.

- Protections against retaliation.

Improved protections and increased transparency combined with meaningful enforcement provisions such as those in Subtitle F would help to curb the rampant abuse in international labor recruitment. The recruiter registration scheme and disclosure requirements would not only help the government and workers to combat fraudulent and unscrupulous recruiters, but it would also assist above-board employers with navigating the worker visa system and find legitimate companies to recruit their workers.

Broad Coalition Calls for Reform

Farmworker Justice and the United Farm Workers join with a broad coalition of other labor unions, worker rights, religious, and anti-trafficking organizations to ensure that provisions regulating international labor recruitment are included in comprehensive immigration reform. We urge support for the bipartisan immigration bill's protections for internationally recruited workers and for efforts to ensure that those provisions remain strong and meaningful. These protections offer a needed step in the right direction on an extremely important issue facing workers in many industries, including the agricultural sector.

Farmworker Justice

<http://farmworkerjustice.org/>

United Farm Workers

<http://www.ufw.org/>