



U.S. CHAMBER OF COMMERCE

Agriculture Worker Program

Overview of House and Senate Provisions

Agricultural Guestworker Act, H.R. 1773 (Voted out of House Judiciary Committee 6/19/2013)
Title II of S. 744, Creating Temporary Worker Visas and Blue Card Status (Passed Senate 6/27/2013)

House

The bill creates a two-pronged visa program (H-2C) that allows registered employers to hire foreign workers based on a contract or at-will. The at-will option would allow workers to travel from registered employer to registered employer without a contract only after the worker completes a contract under which he/she was admitted. Both the employee and the employer would have the ability to terminate employment at any time. In order to ensure that workers under an agriculture visa do not seek nonagricultural employment, the at-will option will be contingent on the implementation of mandatory E-Verify.

For seasonal employment (contract), the visa length is 18 months with a requirement to return for the worker to return to their home country for three months. For year-round employment (contract), the initial visa term is three years with a three month touchback requirement (i.e. dairy and year-round processing). After that, the visa length is 18 months with a requirement to return to their home country for three months as with seasonal agriculture. There is no continuous period for shepherders or commuters who return to their home country daily.

The total number of aliens who may newly receive H-2C status is limited to 500,000 a year. The Secretary of USDA has the authority to lower this cap but not increase it. Current experienced undocumented agricultural workers would be eligible to transition into the new guest worker program if they had worked 100 days in the two years after enactment. The language suggests that they would not be counted against the 500,000 per year visa cap; however all of them would have to depart the U.S. for an unspecified period after working the required period two years after enactment. They could only reenter under an H-2C contract.

Dairies, food processors and other non-seasonal agricultural employers may use the H-2C program. H-2C workers shall be paid the greater of the prevailing wage or the state minimum wage and employers are not required to reimburse H-2C worker's transportation expenses or provide housing. H-2C workers cannot bring spouses and minor children unless they also qualify as guestworkers.

Senate

The Senate bill creates a Blue Card Program for experienced U.S. farm workers who are currently undocumented, allowing them to obtain legal status. Agricultural workers who can document working in U.S. agriculture for a minimum of 100 workdays or 575 hours in the two years prior to 12/31/12 are eligible for a Blue Card. To be eligible workers must have performed at least five years of agricultural employment for at least 100 work days per year during the seven year period beginning the date of enactment or performed at least three years of agricultural employment for at least 150 workdays per year during the five year period beginning the date of enactment. In order to obtain a Blue Card, worker must also show that they have paid all taxes, and have not been convicted of any felony or violent misdemeanor.

S. 744 also creates a new Agricultural Worker Program that has two work options 1) a portable, at will employment based visa and 2) a contract based program. The H-2A program would sunset one year after the regulations implementing the new program are issued. Under the new program visa terms are valid for three years and employers must register with the USDA as a Designated Agricultural Employer (DAE). For the first five years of the program there is a visa cap of 112,333 per year (which compounds) and the cap cannot exceed 337,000 during the first five years. A national annual wage is established for distinct agricultural occupations with an annual floor and inflation cap of 2.5% based on the Economic Cost Index. All DAE's must provide housing or a housing allowance during the term of employment and contract and at-will workers shall receive one inbound transportation cost reimbursement. Contract workers also get reimbursement for travel to their home country if they complete 27 months of their 36 month visa.

