



Guest Worker Visas

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Expanding and liberalizing America's lawful immigration system is the easiest way to boost economic growth and is also the key to stopping unlawful immigration. After a century of reforms that enhanced and centralized bureaucracy, federal immigration policy is a labyrinth of restriction and dysfunction. US immigration laws are now, as Associate Justice Harry E. Hull Jr. wrote, "second only to the Internal Revenue Code in complexity."

Demand for all kinds of labor in the United States is strong, and immigrants are willing to supply it; but federal restrictions stand in the way. Almost no green cards (permanent visas) are available for low- and mid-skilled immigrants. Temporary visas are capped, restricted in scope, and regulated with paperwork hurdles. The result is many immigrants who would otherwise come legally to the United States instead work and live here illegally.

America's economic magnet for foreign labor is strong, as we can see in the huge worker productivity and wage differences across countries. A marginal Mexican worker with the same skills as an American can earn wages nearly three times higher by relocating to the United States. The marginal wage gain for immigrants from the typical developing nation is a four-fold increase.

Many opponents of unlawful immigration insist that the federal government need only deploy harsher enforcement methods. American politicians and voters may react positively to harsh enforcement rhetoric, but they have not been so keen to bear the high economic costs of following through. The costs of enforcement are concentrated on a few industries and workers (citizen and foreign alike), whereas the benefits are diffuse at best and nonexistent at worst, which the theory of public choice describes as a recipe for inaction. American history bears this out.

Immigration authorities have rarely enforced internal immigration restrictions. From the Alien and Sedition Act of 1798 to the Chinese Exclusion Act and the Alien Contract Labor Act of 1885 until today, the government is capable of only selectively enforcing immigration law internally or at the borders, with embarrassing exceptions like the Mexican "Repatriation" that was only possible during the depths of the Great Depression.

Proposed internal immigration enforcement methods are likely to be far less effective than their proponents believe. Mandatory E-Verify is the most universally supported enforcement scheme but is wildly unsuccessful when tried, barely blunting the economic magnet for unauthorized immigrants in states such as Arizona. Only some of the blame belongs with the E-Verify

program itself, designed and controlled by the government. Even if immigration enforcement was made more efficient, to be successful it would have to raise the costs borne by the illegal immigrant *above* the enormous economic gains of illegally immigrating. To raise the cost of illegal immigration that high would require draconian enforcement measures that few people would support in practice.

Border enforcement is more effective and does deter most potential immigrants, but there will always be a large number who enter unlawfully or overstay visas as long as the economic gains of coming here are great. The easiest solution is to return to the pre-1882 American system of free immigration, allowing peaceful and healthy immigrants to move to jobs here with minimum government interference. That policy outcome, however, is currently even less likely than creating a draconian immigration enforcement system that eliminates most unauthorized immigration. Fortunately, there is a solution in the middle ground: guest worker visas.

Making Visas Work

Guest worker visas are temporary work permits for foreigners that allow them to live and work inside the country for a set period of time, from a few months to a few years. America's first guest worker visa program began during World War I. From the mid-1940s until 1964, the Bracero program allowed millions of Mexican workers to work temporarily on US farms. Although that program was far from perfect, it reduced the size of the unauthorized immigrant population and illegal border crossers by more than 90 percent. When an Immigration and Naturalization Service (INS) official was asked what would happen if the Bracero visa was terminated, he responded, "We can't do the impossible, Mr. Congressman."

A modern and successful guest worker visa program requires several components to be politically, economically, and legally successful.

A new guest worker visa program must be open to peaceful and healthy migrants who do not pose a national security or criminal threat. A big problem with current guest worker visas like the H-2B and H-1B is that their numbers are capped well below the quantity demanded by employers. But if quotas must be part of a new policy, the numbers should be determined by supply and demand: a simple economic formula operating as a policy rule. The Senate's 2013 immigration reform bill attempted to create just such a formula, but it was both overly complex and subject to autocratic override by a newly appointed migration czar. The provision came at the insistence of labor unions, whose numerical recommendation would significantly affect the visas granted annually according to the formula. Such a migration czar creates even more opportunities for rent-seeking, corruption, and uncertainty after every presidential election or administrative whimsy.

Another improvement would be to lengthen the guest employment term. Existing seasonal worker visas, like the H-2A for agricultural migrants, should be replaced by visas of a year or more. The worker should also be able to renew his or her visa directly from inside the United States, though requiring a cyclic return to the home country. (There should, of course, be zero tolerance for any migrant worker who commits a felony or violates the rules of the guest worker agreement.) Such a system creates a circular migratory flow of workers that has been the norm

for migration since the late nineteenth century and only recently impeded by expansions of border enforcement. Moreover, access to a guest worker visa depends on following the law and incentivizes obedience to it.

A third improvement would be a guest worker visa that applies to all sectors of the economy rather than narrowly in categories controlled and approved by government. Current guest worker visas are divided by sectors of the economy, with each visa segment stymied by its unique regulations. This is intentional and indefensible, thanks to rent-seekers and bureaucratic economic micromanagement. Segmentation is meant to make legal migration less efficient.

Fourth, guest workers should also have portability between employers without seeking *ex ante* government permission to do so, as required for almost all current guest worker visas today. Portability would deny US employers the ability to lower wages by freeing the worker to seek a new job if his or her wages are lowered below that offered by other employers. It would also allow more competition between employers because workers would move to the jobs with the highest compensation, thus neutralizing one of the few arguments (exploitation) against guest worker visa programs.

Fifth, a new policy would establish some smart incentives. The existing bar on guest worker access to means-tested welfare and entitlement programs should be deepened and expanded to all noncitizens, a policy shift that is both politically popular and constitutional. Migrant workers should be taxed like other workers, but a large percentage of those taxes should accumulate into accounts in the migrant's name instead of being handed over to the government. The account should then be turned over to the migrant *after* he or she has left the United States and been abroad for several months. If the migrant commits a serious felony in the United States, consumes welfare, or seriously violates the legal terms of his guest worker visa, then he or she would automatically forfeit the entire account to the government. A portion of that forfeited account could then be used as a bounty to incentivize the deportation of the migrant. A quasi-bonding mechanism such as this will incentivize migrants to follow the law and the government to investigate potential unlawful behavior by migrants.

Sixth, federalism should be introduced into any new guest worker visa system. Within any newly created guest worker visa program, state governments should be able to receive more guest worker visas for employers on request, regardless of any other quota or economic regulation imposed by the federal government. Almost all the fiscal costs created by lower-skilled migrants are borne by local communities and states, so they should be able to choose to ratchet their numbers upward. States should not be able to exclude guest workers because that would further segment the interior labor market of the United States.

Pragmatic Implementation

Politics demand that we sacrifice some economic efficiency for popular opinion. A guest worker visa program would therefore need to include labor market protectionism for US workers who may compete with migrant workers. Current guest worker visas are hamstrung by complex wage regulations and controls, whereas the sponsoring firms are required to prove that the migrant worker will not adversely affect the employment opportunities and wages of Americans. Let's

flip the burden. Wage control and prior government approval of guest workers should be replaced with a veto over individual guest worker applications by the Department of Labor *only* if it can prove a migrant will have an adverse labor market impact on US workers.

As with trade, in which quotas are more harmful than tariffs, so it is with immigration. Charging fees for the employment of migrant workers would be superior to the numerical caps in place today. Singapore is a good example of a workable solution. Singapore's government charges a special fee to employers who hire migrant workers. The revenue from those fees funds immigration enforcement, raises additional revenues, and incentivizes local employers to search for native workers first. Replacing America's complex bureaucratic foreign labor regulation system with a simpler and self-funding fee mechanism achieves some of the politically popular protectionism with much greater efficiency.

Lastly, some guest workers should be able to eventually earn a green card and naturalize. Think of guest worker visas as an audition or trial period for US citizenship. This would require amending Section 214(b) of the Immigration and Naturalization Act that prohibits nonimmigrant guest workers from intending eventually to seek permanent residency, but it has many advantages over the status quo. Several barriers to guest workers earning a green card could be included, such as a mandated and lengthy period of time working in the United States, testimony of employers as to the migrant's dedication and job skills, English fluency, lawfulness, and so on. It would be a vast improvement over the randomness and family bias in the existing legal permanent resident policy.

Historically, worldwide guest worker programs and liberalized immigration policies have aided immigration enforcement efforts. A new US guest worker visa program will allow the American workforce to expand with a growing economy and contract during periods of low growth and recession. Given political and public choice constraints, a large, robust, and minimally regulated guest worker visa is the best policy avenue to allow more migrant workers into the United States and the lowest cost option to decrease the incentive to immigrate illegally.

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