

H2A

Prospects Rise for a New Farmworker "Legalization" Program

By Bruce Goldstein

The start of President George W. Bush's term and the opening of the 107th Congress have been marked by renewal of policy debates over immigration policy. The outcome will determine much about the future of farmworkers, the nature of America's immigration policy and future of this nation. This article outlines the issues and the major participants in these debates.

On February 16, 2001, President Bush went to Guanajuato, Mexico to meet with President Vicente Fox. The two leaders pledged to build a new bilateral relationship and confront migration and other issues based on mutual respect. Cabinet-level officials in each country have been assigned to these efforts. Although both Presidents acknowledged that their negotiations will be subject to power of the U.S. Congress, most observers believe that these developments should be taken seriously.

President Fox said that he would like the negotiation to result in at least four results that are relevant to this article: (1) a program to provide legal immigration status (referred to as "legalization" or "amnesty") for the many Mexican citizens who are working and living in the United States without authorized immigration status; (2) a reduction in violence and deaths at the U.S.-Mexico border; (3) an increased number of immigration visas and a reduction in the processing time for Mexicans (and Canadians) who have applied to emigrate to the United States; and (4) a "guest worker" program to legalize and regulate future flows of Mexican workers into the United States. Many occupational groups would be covered by President Fox's proposal.

President Bush, through advisers, had said that he opposed "amnesty." However, according to the New York Times, Fox was advised to stop using the controversial term "amnesty" and Bush declined to rule out any of Fox's suggestions and preliminary negotiations have begun. A legalization program for undocumented workers remains a possibility despite opposition from a vocal group of immigration restrictionists.

Senator Phil Gramm, a conservative, senior Republican from Texas, pre-empted the debate by meeting with President Fox before Bush's visit. Sen. Gramm announced that he would introduce legislation to create a new "guest worker" program that would cover several industries, including agriculture, construction, and service jobs. Although nothing had been issued in writing at the time this article was prepared, Sen. Gramm had made clear that his proposal would not permit the guest workers to gain immigration status. In addition, his proposal would only permit workers to be employed for less than one year at a time. Workers would have to return home each year and seek permission to obtain a job in the following year. Sen. Gramm did not set forth any labor protections for the guest workers, other than to say that they would be protected by U.S. labor laws and employers would contribute to a fund (in lieu of payroll taxes) that would provide health insurance. In this respect, his proposal may turn out to be far more anti-worker than any current or previous guestworker program.

Agricultural employer organizations in the United States quickly expressed skepticism about Sen. Gramm's proposal, although they said they could not officially comment until they had seen the plan in writing. Although President Fox welcomed the visit of Sen. Gramm and his interest in recognizing the need to create a legal basis for the several million Mexican citizens working in the U.S., Mexico did not endorse Gramm's concept. A coalition of over 125 national and local organizations -- including labor, farmworker, religious, immigrants, civil rights and Latino groups -- sent a letter to President Bush and members of Congress regarding migration policy and criticizing the Gramm proposal as failing to meet basic standards of fairness and reasonableness.

The potential exists for Congressional legislation that would grant immigration status for several hundred thousand undocumented migrant farmworkers. A brief summary of recent events is needed to understand how this potential came about and why it could become a reality.

During the six years of the last three Congresses (1995-2000), agricultural employers lobbied strenuously -- spending millions of dollars -- for a new agricultural guestworker program. The growers came close to success with the help of Senators Gordon Smith (R.-Ore.), Larry Craig (R.-Idaho) and Bob Graham (D.-Fla.). In 1998, the Senate hastily passed a guestworker amendment as part of an appropriations bill but, largely due to President Clinton's responsiveness to farmworker supporters, it did not become law. In September 2000, the House Judiciary Committee approved a major overhaul of the H-2A agricultural guestworker program (Rep. Richard Pombo's bill, H.R. 4548), but it did not become law either.

The growers' efforts failed in the face of strong opposition by farmworker supporters, including most Latino organizations, whose political influence has been increasing. A broad coalition criticized the Graham-Smith proposals because they would have eliminated most of the major labor protections in the H-2A guestworker program and would not have established a meaningful way for undocumented farmworkers to become immigrants and eventually citizens. President Clinton's threat to veto legislation that contained the growers' guestworker proposals was very important to preventing its enactment. However, we suspect that many members of Congress, even some conservative Republicans, were uncomfortable with the growers' demands.

Serious discussions about a possible compromise began at the end of the 106th Congress (1999-2000). For farmworkers, the negotiations were led by Rep. Howard Berman (D.-Cal.), an expert and longstanding advocate, and the United Farm Workers union. On the employers' side, the lead was taken by the National Council of Agricultural Employers and the American Farm Bureau Federation with Sen. Bob Graham (D.-Fla.), Sen. Gordon Smith (R.-Ore.) and other co-sponsors of the legislation.

The parties reached a compromise and sought to include it in appropriations bills that were being debated belatedly in December 2000. However, Sen. Trent Lott, under pressure from Sen. Phil Gramm, refused to add the compromise to the spending

legislation. Gramm opposes granting immigration status to undocumented workers in the United States, claiming that “lawbreakers” should not be rewarded. The compromise did not become law.

The employers and the United Farm Workers have expressed a strong interest in passing the compromise in the new Congress. Because the compromise represents a hard-fought resolution of long-standing disputes and is consistent with the interests expressed by President Vicente Fox, it has a significant chance of become law.

The compromise has two components. First, undocumented farmworkers could apply to become immigrants upon proving that they had been employed in U.S. agriculture for at least 100 days during one of the two seasons prior to passage of the law. The successful applicants would be treated as temporary immigrants, and not as non-immigrant “guest workers.” These temporary immigrants would be permitted to work in any occupation and cross the border. They would be converted to permanent resident immigration status – that is, issued a “green card” – upon completing an extensive amount of agricultural work within six years. If they failed to secure (and prove) the necessary agricultural work within the time limits, their immigration status would be terminated. Upon gaining permanent resident status, the worker’s spouse and minor children could also receive green cards. In short, this would be a legalization program with both past-work and future-work requirements. More than 500,000 farmworkers would be eligible.

Second, the compromise would revise the H-2A agricultural guestworker program. The H-2A program began during World War II and was substantially revised in the Immigration Reform and Control Act of 1986. It allows employers to apply for permission to hire foreign workers on short-term work visas to fill seasonal jobs. An employer must show that there is a shortage of U.S. workers available for the job by recruiting in the United States and by accepting qualified U.S. job applicants. The program also prohibits employers from offering job terms that would displace or “adversely affect” the wages and working conditions of similarly employed U.S. workers. This goal is carried out by several modest protections regarding wages, housing, recruitment, transportation benefits, workers’ compensation and limitations on discriminating against U.S. workers in favor of vulnerable guest workers. Agribusiness groups had been lobbying to eliminate or substantially weaken most of the H-2A program’s modest protections against undermining U.S. farmworkers’ labor standards. For example, the growers had wanted to change the formula for the “adverse effect wage rate” to effectively lower the H-2A program wage rates. Some of the major components of the proposed compromise would:

- streamline the H-2A program by reducing paperwork and some of the government oversight that occurs prior to approval of employers’ applications for temporary work visas

- modify the obligation to provide workers with free housing, by allowing employers to offer a housing allowance if their state's governor certified that there was adequate housing for farmworkers in the area of employment
- freeze the H-2A "adverse effect wage rate" (which is issued annually and varies by state) for three years while studies are performed about the proper wage levels; after that time, the wage rates would revert to the current formula unless Congress acts sooner
- extend to the H-2A guestworkers, for the first time, coverage under the Migrant and Seasonal Agricultural Worker Protection Act, the principal federal employment law for farmworkers.

The compromise represents difficult choices made by both the farmworker advocates and the employer representatives. However, the proposal deserves support because it is focused on providing agriculture with a labor force primarily composed of immigrants and citizens, rather than exploitable guestworkers. This emphasis on a true immigration status is critically important because guestworker programs, by their very nature, deny workers the economic opportunities and democratic rights on which this country was founded.

As "non-immigrants" on temporary work visas, guestworkers must depend on the employers for their ability to stay in the country and their opportunity to obtain a visa in the following year. That status effectively prevents workers from demanding better wages or working conditions, forming a labor union, challenging illegal conduct, or using the political system. Employers often prefer guestworkers to U.S. workers. The fact that the guestworker is legally authorized and the undocumented worker lacks legal status has not made a significant difference in the way the two groups are treated on the job. Neither status should be acceptable in this country. This is a nation of immigrants, not indentured servants.

It is difficult to say what will happen or when something will happen. The farmworker-employer compromise is part of the discussion between Mexican and U.S. officials following the Fox-Bush meeting. Political support in Congress for the compromise would require support from President Bush. His candidate platform called for expansion of the H-2A guestworker program, not for a new legalization program. His position on the farmworker compromise is unclear.

It would make sense for Congress to move forward with the farmworker compromise quickly and separately because the disputes that gave rise to it have been festering for six years. However, the compromise could become intertwined with the U.S.-Mexico negotiations over migration issues. These negotiations involve much more than farmworkers. Several million undocumented (and documented) workers from Mexico are employed in construction, tourism, meat and poultry processing, building services and many other sectors. Many of the employers in these industries claim that they could not survive without undocumented Mexican workers who now hold many of these jobs. While some employers make false or exaggerated claims of "labor shortages," the truth is that unemployment rates in many areas currently are relatively low (though they remain

extraordinarily high in agricultural areas). Many employers in those industries recognize that a guest worker program based on temporary, non-immigrant visas does not answer their demand for a stable labor force of permanent employees. Thus, many Republican-oriented employers may begin pressing the Republican Administration and Republican-controlled Congress to support providing several million undocumented workers with immigration status.

Note: For more information about these issues, visit the website of the Farmworker Justice Fund, Inc. (www.fwjjustice.org, see "legislative updates/guestworker legislation").