

AgJOBS: The Key to Achieving a Stable and Legal Agricultural Work Force

THE ISSUE: Our immigration laws fail to account for the economic and social realities confronting the United States. Nowhere is this fact more evident than in agriculture, where the shortage of legal, documented workers in the U.S. has reached crisis proportions. According to a conservative estimate by the Department of Labor (DOL), over 50 percent of the United States' 1.6 million agricultural workers are undocumented foreign nationals. Private estimates run to 75 percent or higher. These individuals work grueling jobs to put food on our tables, yet they remain unable to assert the most basic rights and protections.

Bipartisan legislation reintroduced during the 110th Congress, the Agricultural Job Opportunities, Benefits, and Security (AgJOBS) Act of 2007 (S. 340/H.R. 371) takes a two-pronged approach to achieving a stable and legal agricultural work force. The legislation's long-term focus is on streamlining the H-2A temporary worker program to make it more practical, secure, and fair, while short-term relief is provided through an earned adjustment program. The AgJOBS provisions thus accommodate the need to create both a legal means by which employers can hire foreign workers in the absence of available U.S. workers and a means to legitimize the status of those immigrants already present in the U.S. who have been supporting our economy with their labor.

AILA'S POSITION: AILA strongly supports the passage during the 110th Congress of the bipartisan AgJOBS bill. Such provisions would constitute a positive gain for both workers and employers by creating a stable labor force and a useable program through which future workers can legally enter.

Why this bipartisan legislation is good for America: It is in the national security interest of the U.S. to know who is working in food production and to have an effective means of monitoring these essential workers. This legislation would provide that capability. With the enactment of AgJOBS, agricultural workers would be brought out of the underground economy and scrutinized by our government as they begin the process toward legal status. Moreover, future guest workers under the H-2A program would be screened and monitored to address security concerns. Encouraging people to come out of the shadows and be reviewed by our government will enhance our security by allowing our government to focus on the people who mean to do us harm rather than on those who cross our borders to fill our labor market needs.

Earned adjustment does not equal "amnesty": Critics of AgJOBS have misleadingly dubbed its earned adjustment program an "amnesty program." This is not the case. Under the bill, all workers, including agricultural workers, would not only have to demonstrate past work contributions to the U.S. economy, but also make a substantial future work commitment to earn the right to remain in this country.

CURRENT LEGISLATION:

AgJOBS 2007: The AgJOBS Act of 2007 (S. 340/H.R. 371) was introduced in the 110th Congress on January 10, 2007, by Senators Larry Craig (R-ID), Dianne Feinstein (D-CA), and Edward Kennedy (D-MA), and by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA). The legislation proposes reforms of the H-2A process so that agricultural employers unable to find American workers would be able to hire needed foreign workers. Furthermore, the legislation

provides a reasonable mechanism for undocumented agricultural workers to earn legal status, as more fully discussed below.

Long-term relief via a streamlined H-2A program: The legislation would streamline the outdated and unworkable H-2A foreign agricultural worker program while preserving and enhancing key labor protections. Currently, agricultural employers who cannot hire a sufficient number of domestic workers are required to undergo a complicated, lengthy, uncertain, and expensive process to demonstrate such shortage to the government. Only then are they permitted to arrange for the hiring of temporary nonimmigrant guest workers. Indeed, the current H-2A program is so difficult to navigate and expensive that it places only about 40,000-50,000 guest workers per year—a mere 2 to 3 percent of the estimated total agricultural workforce. In fact, a General Accounting Office study found that the DOL missed statutory deadlines for processing employer applications to participate in the H-2A program more than 40 percent of the time. Moreover, workers without the proper documentation must live in the shadows and are vulnerable to severe exploitation.

The bipartisan AgJOBS Act would replace the current bureaucratic nightmare for both employers and prospective workers with a “win-win” solution. A streamlined “attestation” process similar to the one used in connection with the H-1B program would speed up the certification of H-2A employers and the hiring of needed workers. H-2A workers would have new rights to seek redress through mediation and federal court enforcement of specific rights. American consumers also would benefit from a safe, stable, American-grown food supply rather than having to rely increasingly on foreign imports. The AgJOBS Act would bring about the comprehensive reforms needed to stabilize the current agricultural labor crisis and would ensure a future workforce for the labor-intensive U.S. agricultural sector.

Short-term relief via an earned adjustment program: The bipartisan AgJOBS Act, in the short-term, would provide relief through its earned adjustment program, under which undocumented agricultural workers would be eligible to apply first for temporary resident status based on their past work experience, and then to become permanent residents upon satisfying prospective work requirements. To be eligible for the program, individuals would have to demonstrate that they performed agricultural work in the U.S. for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006. Eligible applicants would be granted temporary resident status while they work toward the permanent residence requirements.

Workers would be eligible to apply for permanent residence status if they meet one of the following requirements: performed at least five years of agricultural employment in the U.S. for at least 100 work days per year during the five-year period beginning after the date of enactment; performed three years of agricultural employment in the U.S. for at least 150 work days per year during the three-year period beginning after the date of enactment; or performed four years of agricultural employment in the U.S. for at least 150 work days for three of those years and at least 100 work days in the remaining year during the four-year period beginning after the date of enactment. Eligible individuals would have to apply for adjustment to permanent resident status no later than seven years after the date of enactment.