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Non-immigrant Labor Policy in the United States

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Non-Immigrant Labor Policy in the United States

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The employment of foreign workers as a supplement to the available domestic labor force has been a recurrent public policy issue throughout much of the history of the United States. Under specified circumstances, non-immigrant workers have been allowed legal access to the American labor market. They should not be confused with illegal immigrants who do not have such a privilege. The legislative and the administrative actions that have authorized or permitted non-immigrant programs have generally been shrouded in controversy. The concerns have centered both upon the economic effects that non-immigrant workers have on working conditions for citizen workers and, also, on the special restrictions that are often imposed on the non-immigrants which would be considered both unfair and often illegal if applied to citizen workers.

If examined individually at different points in history, the nation's non-immigrant labor policy would seem to be the result of ad hoc reactions to events of their time. A long term perspective, however, reveals that there are patterns to these programs and policies. Recognition of these themes and characteristics is essential to any effort to evaluate the efficacy of contemporary non-immigrant policy as well as any future proposals of a similar nature.

The Antecedent Programs: The Pre-1952 Experience

The initial effort to establish by law the right of American employers to recruit and to hire foreign labor to work in the United States was the Contract Labor Act of 1864. Enacted as a wartime measure, it was repealed in 1868 although the practice by private groups continued with little interruption for many years afterward. During this period, the nation had essentially an open immigration policy to anyone except the Chinese. Thus,

technically speaking, the contract labor era does not represent a non-immigrant program. Those persons who were recruited were encouraged to stay as permanent immigrants. It was practiced in an era that preceded the establishment of immigration ceilings and country quotas. Although contract labor was banned in 1885, it laid the conceptual foundation for subsequent non-immigrant programs.

Only months after the United States enacted the most restrictive immigration legislation in its history up until that time--the Immigration Act of 1917, the first publicly sanctioned foreign labor program was initiated.¹ In response to strong pressure from the large agricultural employers of the Southwest, Congress included in the Act a provision which would allow entry of "temporary workers" from Western hemisphere nations who were "otherwise inadmissible." The Secretary of Labor could exempt such persons from the head tax required of each immigrant and the ban on any immigrants over age 16 who could not read. In May 1917, with the nation officially at war, such an order was issued for the creation of a temporary farm worker program with Mexico. Later, some workers were permitted to be employed in non-farm work. When the program was announced, so were a number of rules and regulations. Ostensibly, these rules were designed to protect both citizen workers and Mexican workers as well as to assure that the Mexicans returned home after their work was completed. But, as has become the historic pattern with these types of programs, "these elaborate rules were unenforced."²

The temporary worker program was enacted during World War I as being in the national interest. It was subsequently extended until 1922--well after the war had ended in 1918. It was terminated because its rationale as a national defense policy could no longer be maintained. Also, organized labor contended that the program undermined the economic welfare of citizen workers. There were other critics who believed that there were no labor shortages but

only opportunistic employers who wished to tap a secure source of cheap and docile workers for their own private gain. During its lifespan, 76,862 Mexican workers were admitted to the United States of whom less than half returned to Mexico.³

The Mexican Labor Program

With the advent of World War II, the military manpower requirements of the United States and its related manufacturing labor needs led to assertions that another labor shortage existed in the agricultural sector. The growers of the Southwest foresaw these developments and they unsuccessfully requested in 1941 that a contract labor program be established by the federal government. By mid-1942, however, the U.S. government had come to favor the program, but the government of Mexico balked at the prospect of a formal inter-governmental agreement. The unregulated hiring of Mexican citizens by foreign nations is prohibited by the Mexican Constitution of 1917.⁴ Moreover, in the 1940s the Mexican economy was flourishing; Mexican workers feared that they might be drafted; there were bitter memories of the efforts to "repatriate" Mexicans during the 1930s; and there was knowledge of the discriminatory treatment accorded people of Mexican ancestry throughout the Southwest.

Negotiations between the two governments ultimately resulted in a formal agreement in August 1942 which launched the Mexican Labor Program--more popularly known as the "bracero program."⁵ Included within an omnibus appropriations act known as P.L. 45, the program was extended by subsequent enactments until food, medical needs, and wage rates. Included within an omnibus appropriations act known as P.L. 45, the program was extended by subsequent enactments until 1947. Braceros were limited exclusively to agricultural work. When the agreement ended December 31, 1947, the program was continued informally and without

regulation until 1951. In that year, under the guise of another war-related labor shortage, the bracero program was revived by P.L. 78.

Under P.L. 78, only Mexican workers could be contracted for work in the United States. The scale of the program can be seen in Table 1. Employers were required to pay the prevailing agricultural wage, to provide free housing, to provide adequate meals at a reasonable charge, and to pay all transportation costs from the work site to the government reception centers near the border. These requirements were seldom met.⁶ Braceros were exempt from both social security and income taxes which meant that they received more income than would a citizen worker employed at the identical money wage rate.

In Mexico, the national government determined the actual allocation process by which the number of workers were to be chosen from among several of its states. The state governments, in turn, made similar decisions for their cities and other political subdivisions. The Mexican government sought to spread out geographically the job opportunities rather than to simply select workers from the available labor pools in the border towns. It feared that otherwise there would be a mass internal migration to the border region. There were far more applicants in every designated labor market than there were available slots. Corruption in the selection process became widespread at the local level. Potential workers were often forced to pay a "mordida" (i.e., a bribe or literally "a bite") if they wished to be chosen.

The bracero program demonstrated precisely how border labor policies can adversely affect citizen workers in the United States--especially, in this case, the Chicanos who composed the bulk of the southwestern agricultural labor force. Agricultural employment in the Southwest was removed from competition with the non-agricultural sector. At the program's peak, almost one-half

Table I Foreign Workers Admitted
for Temporary Employment in U.S.
Agriculture by Year and Nationality
1942-1978 a

Year	Total	Mexican	British West Indies (including Bahama)	Canadian	Japanese and Filipino	Spain
1942	4,203	4,203	--	--	--	--
1943	65,624	52,098	13,526	--	--	--
1944	83,206	62,170	19,622	1,414	--	--
1945	72,900	49,454	19,391	4,055	--	--
1946	51,347	32,043	13,771	5,533	--	--
1947	30,775	19,632	3,722	7,421	--	--
1948	44,916	35,345	3,671	5,900	--	--
1949	112,765	107,000	2,765	3,000	--	--
1950	76,525	67,500	6,225	2,800	--	--
1951	203,640	192,000	9,040	2,600	--	--
1952	210,210	197,100	7,910	5,200	--	--
1953	215,321	201,380	7,741	6,200	--	--
1954	320,737	309,033	4,704	7,000	--	--
1955	411,966	398,650	6,616	6,700	--	--
1956	459,850	445,197	7,563	6,700	390	--
1957	452,205	436,049	8,171	7,300	685	--
1958	447,513	432,857	7,441	6,900	315	--
1959	455,420	437,643	8,772	8,600	405	--
1960	334,729	315,846	9,820	8,200	863	--
1961	310,375	291,420	10,315	8,600	40	--
1962	217,010	194,978	12,928	8,700	404	--
1963	209,218	186,865	12,930	8,500	923	--
1964	200,022	177,736	14,361	7,900	25	--
1965	35,871	20,284	10,917	4,670	0	--
1966	24,080	8,647	11,194	3,683	0	477
1967	23,959	6,125	13,578	3,900	0	356
1968	13,704	0	10,723	2,600	0	381
1969	16,221	0	13,530	2,300	0	391
1970	17,937	0	15,470	2,004	0	463
1971	14,235	0	12,143	1,541	0	551
1972	12,847	0	11,419	1,107	0	321
1973	13,551	0	11,712	1,458	0	381
1974	14,197	0	11,625	1,250	0	322
1975	12,426	0	11,245	970	0	211
1976	12,325	0	11,568	572	0	185
1977	12,266	0	11,661	399	0	206
1978	11,581	0	10,955	312	0	274
1979	12,791	0	12,246	297	0	258

Note a: Due to carryover of workers from one year to another, the number of workers admitted each year is generally lower than the actual numbers of persons employed during peak harvest seasons.

Sources: Data for the years 1942 through 1972 are from United States Senate, Committee on the Judiciary, "The West Indies (BWI) Temporary Alien Worker Program 1943-1977," (Washington: U.S. Government Printing Office, 1973), Table 2; p. 27; Data from 1973 through 1979 are from the U.S. Department of Justice Statistical Yearbook of the Immigration and Naturalization Service, 1979, Table 18.

million braceros were annually working in the agricultural labor market of the Southwest. The availability of Mexican workers significantly depressed existing wage levels in some regions; modulated wage increases that would have occurred in their absence; and sharply compressed the duration of the employment period for which many citizens farm workers could find jobs.⁷ The thorough report on the bracero program by the President's Commission on Migratory Labor in 1952 found, with respect to wage trends for agricultural workers during the bracero era, "that wages by States were inversely related to the supply of alien labor."⁸ Citizen farmworkers in the Southwest simply could not compete with braceros. Braceros were captive workers who were totally subject to the unilateral demands of employers made them especially appealing to many employers. There were also extensive charges of abuse by employers as most of the provisions for the protection of wage rates and working conditions were either ignored or circumvented.⁹ The bracero program was also a significant factor in the rapid exodus of rural Chicanos between 1950 and 1970 to urban labor markets where they were often poorly prepared to find employment and housing.¹⁰

The drive to repeal P.L. 78 was led by the AFL-CIO, various Chicano groups, and an array of other community organizations generally concerned with the welfare of low income workers. Believing that in southwestern agriculture, "the prevailing wage was in fact set by the braceros themselves" rather than by domestic labor market factors, the Kennedy Administration promised in 1961 that much tighter administrative regulations would be imposed. Beginning in mid-1962, the Department of Labor set an "adverse-effect wage rate" for each state. These were minimum wage rates which the Department determined had to be paid to prevent braceros from adversely affecting (i.e., undercutting) what would otherwise be market-determined wages for citizen agricultural workers. In most cases, the adverse wage rates were set higher than the prevailing wages.

The adverse wage, however, had to be offered to citizen workers if the agricultural employer intended to seek foreign workers. Under these terms, the bracero program lost much of its attractiveness to employers. The bitter political struggle over the program came to an end when the program was terminated as of December 31, 1964. The only supporter of the program at the time was the Department of State which believed that "the program has been beneficial to Mexico" and warned that, if terminated, Mexican workers would likely continue to come anyhow--albeit illegally.¹¹ This same conclusion was drawn by the Mexican government which feared that the braceros had been exposed to the wages and working conditions of the United States and would be unlikely to be content with the poorer opportunities at home.¹² In fact, the acceleration in the rate of illegal immigration from Mexico can virtually be dated to the termination of the bracero program at the end of 1964.

The British West Indies Labor Program

Following the precedent set by the Mexican Labor Program in 1942, a similar non-immigrant program was set up to recruit workers from the British West Indies. The governments of the British West Indies (including Jamaica, St. Lucia, St. Vincent, Dominica and Barbados) and the Bahamas entered into an intergovernmental agreement with the United States government in April 1943 to supply agricultural workers which created the British West Indies Program (BWI program). It was designed as a response to concerns by employers along the entire East Coast that they too were experiencing wartime manpower shortages. As most BWI workers spoke English, they had an advantage to employers over the Mexican workers available in the bracero program.

Like the bracero program, the BWI program too was formalized on the basis of P.L. 45 from 1943 through 1947. Although the aggregate numbers was small--about 24,000 a year--when compared to the bracero program, BWI workers were

substantial in the particular agricultural labor markets in which they were employed.¹³ The BWI program, however, did permit some employment in non-agricultural work during the war years.¹⁴

From 1947 to 1952, the BWI program was re-converted into a temporary agricultural worker program as allowed under the Immigration Act of 1917. The contracts were made on a tripartite basis between U.S. employers, the foreign workers, and the governments of participating West Indian.

A review of the BWI program by the President's Commission on Migratory Labor in 1952 condemned the administration of the program. In particular it attacked the lack of "vigilance for the protection of living and working standards" of the workers.¹⁵ During the legislative debate over the continuation of the Mexican Labor Program in 1951, East Coast employers--especially those in Florida--requested specifically that the BWI workers not be included in the pending bill. They preferred to keep the BWI program under the auspices of the Immigration Act of 1917.

Policy Development: The Post-1952 Experience

In 1952, the nation's immigration law was significantly recodified and revised by the Immigration and Nationality Act of 1952. This statute did maintain the principle whereby all persons entering the nation must be classified as being either immigrants or non-immigrants. But the concept of non-immigrants became infinitely more complex. Twelve classes of non-immigrants are specified. These classes are, in turn, divided into subclasses. An unofficial convention has evolved whereby the individual classes and subclasses are identified by the letters and numbers of the section of the Act that created them. Several of the classes cannot work in the United States (e.g., visitors for pleasure or aliens in transit); others can work in the United

States but their work has little or no impact on the U.S. labor market (e.g., foreign ambassadors, or officials of international organizations, or representatives of foreign news media); and there are those who do work directly in the labor force.¹⁶ Table 2 indicates the non-immigrant categories that are permitted to work legally and the corresponding number of admissions in 1978 for each classification.

Among the non-immigrants who work among the regular labor force, there are several classifications who are free to change jobs at will. They are not contractually linked to employers. Among these, for instance, are foreign students who may legally work (F-1 workers) in any occupation if they receive permission from the INS. Most of the other non-immigrants are under some form of binding contractual obligation to their employers. Among these are H-1 workers (persons who are distinguished merits and ability--as opera singers, actors, and various professional workers); J-1 workers (persons who are exchange visitors in various international programs); and L-1 workers (persons who are intra-company transferees of multi-national corporations). Most of these workers are in white collar occupations or other highly skilled jobs.

It is the H-2 program for "other temporary workers," however, that has generated most of the controversy over the years. In quantitative terms, the largest number of H-2 workers was in 1969 when 69,288 workers were admitted. Since then, the number has declined and has leveled off at around 23,000 a year at the end of the 1970s. Table 3 indicates the occupational distribution of all H-2 workers in 1978. Within the H-2 classification, the largest single occupation has generally been farm workers.¹⁷ As the size of the overall program has declined, the proportion of the total who are agricultural workers has risen to over one-third of all H-2 workers.

Table 2 Numbers of Non-Immigrants
Admitted to the United States
in Immigration Categories
That Are Permitted to Work,
Fiscal Year 1978

<u>Category</u>	<u>Classification Group</u>	<u>Number of Persons Admitted</u>
Treaty Trader or Investor	E	50,431
Student	F-1	187,030
Temporary Worker of Distinguished Ability or Merit	H-1	16,838
Other Temporary Worker	H-2	22,832
Industrial Trainee	H-3	3,309
Exchange Visitor	J-1	53,319
Finance (ee) of U.S. Citizen	K-1	5,730
Intracompany Transfer	L-1	21,495
	Total	360,984

Source: U.S. Department of Justice Annual Report of the Immigration and Naturalization Service: 1978 (Washington, D.C., U.S. Government Printing Office, 1979 Tables 16 and 16B.

Table 3 Occupations of All Non-Immigrant
H-2 Workers Admitted to the
United States During Fiscal Year 1978

<u>Occupation</u>	<u>Number Admitted</u>
Professional and Technical	8,406
Managers and Administration	170
Sales Workers	103
Clerical Workers	135
Craft Workers	2,845
Operatives (except in Transportation)	298
Transportation Operatives	97
Non-Farm Laborers	1,585
Farmers and Farm Managers	0
Farm Laborers and Foremen	8,306
Service Workers (except private household)	511
Private Household Workers	376
Total	22,832

Source: U.S. Department of Justice, Annual Report of the Immigration and Naturalization Service: 1978, (Washington, D.C., U.S. Government Printing Office, 1979.) Table 16B.

The non-agricultural H-2 workers are occupationally dispersed. The largest group are professional and technical workers. These are generally persons "of lower status than those entering on H-1 visas" or exchange visitors.¹⁸ The largest number of these are writers, artists, and entertainers followed by athletes and musicians.

Supposedly, H-2 workers can only be admitted "if unemployed persons capable of performing such service of labor cannot be found in this country." It is up to the Department of Labor to decide whether citizen workers are available. In making its determination, the system of adverse wage rates and working conditions is applied. These conditions must be met by any employer who seeks to hire foreign workers under the H-2 program. The final entry decision, however, resides not with the Department of Labor but, rather, with the Department of Justice. Frequently, negative admission decisions by the former have been overruled by the latter.

H-2 workers do not pay social security taxes which means that the employer does not deduct the tax from the employee's wage nor does the employer have to match the tax as is the case with citizen workers. H-2 workers are also exempt from unemployment compensation taxes on employer payrolls. Hence, an employer may secure H-2 workers at wage costs that are below those needed to be paid to citizen workers even when the nominal rates are the same to both.

Although many non-agricultural workers enter under contractual terms that tie them to specific employers, their wages and working conditions are not controversial nor are they seen as any threat to citizen workers. The same cannot be said for the agricultural H-2 workers or for the use of the entire H-2 worker program in the territories of Guam and the Virgin Islands. These cases require special elaboration.

Agricultural H-2 Workers

The H-2 program in agriculture incorporates all of the undesirable features of its lineal heir--the bracero program. Workers are totally dependent upon their employers. Eligibility to be chosen for the program often depends upon one's contacts with certain officials of his home government. It is often considered a privilege to be selected. Corruption in the selection process is rampant. If chosen, the worker can only be assured of the opportunity to return again if his work and attitude please the U.S. employer. This is because the employer may "request by name" a set proportion (usually 50 percent) of this year's H-2 workers to return the next year. In effect, the workers must compete with one another on terms that are very favorable to the employer. If at any time the worker's demeanor is deemed unsatisfactory by his employer, the worker may be deported without an appeal. Given this system, "it is little wonder that H-2 aliens are 'hard working and diligent.'"¹⁹

Although there are several countries involved as sources of agricultural H-2 workers, about 90 percent of their annual numbers are from the British West Indies (predominately from Jamaica). Their involvement as H-2 workers represents a continuation of the aforementioned BWI labor program. The BWI workers were assumed into the H-2 program that began in 1952. Throughout the 1950s, the use of BWI workers increased (see Table I) but, when compared to the co-existing bracero program, the BWI was dwarfed in size. Hence, the BWI program escaped close scrutiny. When the bracero program was phased out in the early 1960s, attention turned to the BWI program. For despite differences in their legislative authorizations, the programs were so similar in their structure that the same arguments that led to the termination of the bracero program seemed logically to apply to the BWI program. The Department of Labor

did issue more restrictive regulations in the early 1960s and again in the late 1970s for all H-2 workers.

The employers of H-2 agricultural workers have contended that the major alternative to H-2 workers is illegal immigrants. There have been illegal immigrants involved in East Coast agriculture but the incidence is believed to be much less than has been the case in agriculture in the Southwest. The East Coast employers claim that it was the termination of the bracero program in the Southwest in 1964 that has led to the widespread use of illegal immigrants in that region.²⁰ They also contend that it is difficult to attract citizen workers to these seasonal occupations.²¹

The H-2 Program on the Virgin Islands

The series of 50 islands that comprise the Virgin Islands have belonged to the United States since their purchase from Denmark in 1917. They are an unincorporated territory whose native born are U.S. citizens. Prior to 1917, a practice of free travel to find employment was permitted among the Caribbean Islands. When the United States purchased the islands, this practice continued until 1938 when the U.S. government ruled that the prevailing immigration statutes applied to the islands. All aliens who resided in the islands as of 1938 were ruled to be legal resident aliens. During World War II, there was a need for unskilled workers to build up the defense forces on the island of St. Thomas to protect the Panama Canal. The word spread throughout the nearby French and British islands and large numbers of people sailed to St. Thomas in the illegal search for jobs. For various reasons of expediency, they were permitted to stay. Later efforts to force these people to leave proved unsuccessful.

With the enactment of the H-2 provisions in 1952, the groundwork was laid for the ratification of the process that had already begun. Beginning in 1956, a temporary worker agreement was reached between the United States and the nearby British Virgin Islands. In 1959, the agreement was geographically extended to include the many other islands of the British, French, and Dutch West Indies. These H-2 workers were supposed to be employed only in the agricultural and tourist industries. There were nominal efforts made to see if citizen workers were available but, in fact, by the early 1960s, admission was permitted "for any job."²² By the end of the 1960s, "alien labor constituted roughly half of the Virgin Islands labor force."²³ Before long, problems of housing, education, and social conditions for H-2 workers had become so "terrible" that the H-2 workers had become "the biggest single problem" on the islands.²⁴ It was even feared that if there was a change in status from H-2 workers to resident aliens that the native-born population could lose political control of the islands.

By the 1970s, it was obvious to the Department of Labor that "the non-immigrant aliens virtually determined the prevailing wage in many occupations."²⁵ The Department, therefore, issued indefinite labor certifications to these H-2 workers and allowed them to change jobs freely. There would no longer be any effort made to see if citizen workers were available. All pretense of the existence of a temporary work program was abandoned.

The Guam Labor Program

The island of Guam was ceded to the United States in 1898 as part of the treaty ending the Spanish-American War. Citizenship to residents of Guam was extended in 1950. Because of its strategic location in the mid-Pacific, it has remained a key military installation for the United States. The Immigration and Nationality Act of 1952 was the first immigration statute to apply to Guam.

During World War II, Guam was devastated. When the rebuilding process

began, many residents of Guam sought jobs with the federal government because the private economy had been virtually destroyed. It was against this backdrop that efforts to import non-immigrant labor for a wide variety of jobs began. The largest number of these foreign workers were admitted to do construction work. In May, 1947, workers from the Philippines and other islands were hired under short term contracts. The authority for the contracts was merely an exchange of intergovernmental notes.²⁶ No attempt was made to reconcile this program with existing immigration laws until 1952 when the status of the contract workers came into immediate conflict with the newly enacted H-2 provisions. Not only were these workers in a variety of occupations but many had been in Guam for a number of years. Clearly, they were not "temporary workers." Nonetheless, accepting the contention of the U.S. Navy that they were needed for defense purposes, the INS approved the granting of blanket H-2 status to all of these foreign workers in 1953.

On the island, a "triple wage system" developed: a high wage for "statesiders"; a medium wage for native residents of Guam; and a low wage for H-2 workers evolved.²⁷ Criticism mounted that H-2 workers on Guam were receiving "slave wages". There were also charges of extensive racketeering among the labor recruiters in the Philippines involving wage kickbacks and bribery in the selection process. Consequently, the INS announced in 1958 that the program for non-defense employers--who were working in every occupation from doctors and accountants to cooks and mechanics--would be phased-out.

In 1960, INS also decided to end the H-2 defense worker program. It feared that the H-2 arrangement was becoming a permanent part of the Guam economy and that few efforts were being made to train citizen workers for the jobs that H-2 workers held. In its place, however, non-immigrant workers continued to be admitted under the separate parole authority given to the Attorney General under the Immigration and Nationality Act to admit persons

temporarily for "emergent reasons" or to be in the "public interest."²⁸ Thus, to meet the requests of defense contractors and the military on the island, non-immigrants from the Philippines were again admitted. The practice continued until 1975. A second parole program was also instituted in 1962 for temporary workers to do reconstruction work after the island was hit by a severe typhoon. This program was terminated in May 1970 when it was decided that the H-2 program was more appropriate for construction workers than the parole procedures.²⁹

The revival of the H-2 program came in response to employer claims of labor shortages in the expanding tourist industry in particular and the growth in the island's population in general. The government of Guam also sought H-2 workers as a means of developing new industries--especially in agriculture and fishing. Many fewer H-2 workers were admitted than were requested in these years. It was during the 1970s that recognition of the long existing problem that many H-2 workers were not complying with the terms of their admission surfaced. In other words, H-2 workers were becoming illegal immigrants.³⁰

By 1977 a Department of Labor report on labor market conditions on Guam described them as being "abysmal."³¹ The report noted that by 1976 one-sixth of the island's civilian labor force were H-2 workers. Moreover, H-2 workers composed 82 percent of persons employed in construction, 47 percent in agriculture and 15 percent in manufacturing.³² With reference to the working conditions, the report cited numerous examples of worker abuse by employers and labor recruiters. It also detailed the inability of the Department to enforce existing labor standards in an environment in which many workers were completely beholden to their employers. The H-2 workers, in these circumstances, had become preferred workers for employers. Citizen workers could not compete with them on their terms. Hence, citizens often became unemployed. As the report noted, "alien workers constitute such a large proportion of the work

force that the wages at which they are certified are the prevailing wage rates."³³ It noted that the wages and working conditions were not being set by a free market but rather were the result of government policies.

A New Role For Non Immigrant Workers

Beginning in the 1970s and continuing into the early 1980s, a new role has been suggested for non-immigrant labor policy. As the illegal immigration surfaced as a national issue, it was suggested by many persons that a non-immigrant program should be included among the policy options to overcome this problem. In a sense, of course, illegal immigrants constitute a form of non-immigrant labor--albeit totally unregulated. It was suggested, therefore, by an array of scholars that either a new non-immigrant labor program be created or that the existing H-2 program be greatly expanded in an effort to absorb and to legalize the work done by many illegal immigrants.³⁴

Implicit in all of the proposals was the assumption that most illegal immigrants do work that citizen workers shun. Therefore, implicitly, it was argued that the non-immigrant workers would not affect the wages and working conditions of citizen workers since they would--by virtual definition--not compete for the same jobs. None of these proposals contained any historical review of the past experiences with such proposals. As a result, they are all merely conceptual programmatic sketches. None scratched the surface of such critical issues as how the workers are to be recruited; what are their job entitlements; what are the limitations to be placed on employer prerogatives to limit exploitation; what means are to be used to test for job certification; and what protections are to be included for citizen workers and for unions to assure that prevailing standards are not undermined. Moreover, none of them touched the critical question of who would administer the program.

In August 1977, the Carter Administration included among its comprehensive immigration reform package an explicit charge that the H-2 program would be given a comprehensive review.³⁵ Although explicitly denying any interest in a bracero program, the implication was that an expanded temporary work program might meet the needs of some employers while not adversely affecting citizen workers. In response, the Commission for Manpower Policy advised the President that it was "strongly against" any expanded H-2 program.³⁶

Rather than act directly upon the Carter Administration's immigration proposals, Congress established the Select Commission on Immigration and Refugee Policy to study all dimensions of the nation's immigration policy. In its subsequent report, the Commission acknowledged that the H-2 program has been the source of significant criticism. Nevertheless, the Select Commission concluded that "a continuation of the program is necessary and preferable to the institution of a new one."³⁷ Several suggestions were made to "streamline" the administration of the program. It recommended that employers be required to pay both social security and unemployment compensation payroll taxes on all H-2 workers in order to remove "inducements to hire H-2 workers over U.S. workers."³⁸ The Commission specifically concluded that there should not be any new temporary worker program established as part of any strategy to combat illegal immigration.³⁹

By the time the Select Commission issued its report in 1981, the Reagan Administration had taken office. It formed a task force chaired by the Attorney General to study the Commission's recommendations. When the task force released its response on July 1981, no mention was made of the H-2 program but it did propose that a new "experimental temporary worker program for Mexican nationals" be established.⁴⁰ The "pilot program" would be for a two year trial period and would be limited to 50,000 workers each year. It was understood at the

time that the Reagan Administration hoped that pilot programs would prove the viability of the concept and that the program could be expanded to a million or so workers in subsequent years.⁴¹

In response to the Select Commission's Report and as the Reagan Administration's proposals, extensive congressional hearings were held in the Fall 1982 on all facets of the nation's immigration policy. As a result a bipartisan bill called the Immigration Reform and Control Act of 1982 was introduced. With regard to non-immigrant policy, the bill omitted any reference for a new foreign worker program.⁴² A number of administrative changes were recommended for the H-2 program. No H-2 worker could be in the country more than 11 months in any calendar year. The Attorney General could not approve a petition for H-2 workers without a certification by the Secretary of Labor that citizen workers are unavailable at the time and place they are needed and no citizen workers will be adversely effected. An expedited review procedure is also outlined.

An Assessment of the "New"
Role for Non-Immigrant
Labor Programs

As should be apparent from the review of the evolution of non-immigrant labor policy, proposals to use it as a means of combatting illegal immigration (a labor supply problem) is a departure from its historic role (as a labor demand policy). Such interest in non-immigrant worker programs is not based on the existence of a demonstrated need for such workers. The proposals for new or expanded non-immigrant labor programs are designed to supply more workers for unskilled and semi-skilled occupations in primarily low wage industries. These are precisely the same labor markets in which those subgroups of the labor force with the highest unemployment rates in the nation are already disproportionately found. No one is suggesting that there be a foreign worker program to supply more workers for white collar occupations. Not only would

such proposals lead to charges of a "brain drain" from source nations, but also the domestic opposition of the privileged and protected workers in these labor markets could be counted upon to kill any such idea at the moment of its conception.

As is also the case the job-holding patterns of illegal immigrants, there is no evidence at all that citizen workers will not do the work that non-immigrants do. This fundamental point is asserted without a modicum of empirical evidence by those advocates who support new or expanded non-immigrant work programs.⁴³ For the contentions of the advocates of new or expanded non-immigrant worker programs to be valid, they must be willing to argue that there will be too few citizen workers available no matter what are the wages or benefits associated with certain occupations in the American economy. No one can seriously argue this point when it is refuted in everyday practice by millions of low wage citizen workers who are already working in all of the same industries for which non-immigrant workers would be sought. The U.S. Department of Labor estimated that in 1981 there were 29 million workers (or 30 percent of the employed labor force) who were employed in "the kinds of low-skilled industrial, service, and agricultural jobs in which illegal aliens typically seek employment."⁴⁴ It was also estimated that 10.5 million workers were receiving the federal minimum wage (\$3.35 an hour) and that an additional 10 million workers were receiving only 30-40 cents per hour more than the minimum wage.⁴⁵

The presence of non-immigrant workers not only affects job opportunities but also wage levels in any given labor market. It is these wage effects that are part of the attractiveness of both non-immigrant workers and illegal immigrants to American employers. Employers are able to obtain workers in selected labor markets at less cost than would be the case in their absence. It is

also probable that foreign workers in low wage American industries are less likely to make demands for job rights or to join unions.

Another flaw in these proposals is their intended magnitude. A foreign worker program cannot do anything to reduce illegal immigration unless the program is significant in size (at least in the 500,000 to 750,000 person range each year). But the larger the program, the greater the likelihood of adverse impact on citizen workers in selected labor markets. On the other hand, if the scale of the program is small, where will the deterrence to illegal entry be? Politically if not economically speaking, there must be some limitations on the size of the program. If there is, what will stop others who are not selected from coming or others whose period of work has expired but who wish to remain from staying? A new or expanded non-immigrant labor program does not resolve any of the prevailing problems with the nation's immigration policies while it adds a host of new ones.

Moreover, most of the proponents of new non-immigrant programs assume either implicitly--or explicitly in the case of the Reagan plan--that the program would be a bilateral arrangement with Mexico. This was feasible during the bracero program era. But times have changed in both Mexico and the United States. Illegal immigrants are streaming into the United States from many countries other than Mexico. If the program was open only to Mexicans, it would do nothing to reduce other problems from these other nations who, collectively, represent about one-half of all illegal immigrants. As many of these other illegal immigrants are blacks and Asians, it is very unlikely that any foreign worker program could be restricted to workers only from Mexico. If it was, it would appear to be a racist proposal design to favor the people of only one nation.

One specific study has sought to examine the alleged need for foreign workers from the viewpoint of United States employers.⁴⁶ Conducted in San Diego, California, in 1981, it sought to discover if employers could not pay competitive wages for citizen workers in industries in which illegal immigrants were widely used. Employers in agriculture, restaurants, and electronic manufacturing in San Diego were interviewed. Consistently, the employers expressed admiration of illegal immigrant workers over citizen workers. Many agricultural employers lauded the former braceros that they once were able to employ. But rather than rely simply on the attitudes of employers, the study also sought to investigate whether it was true that employers would be forced to go out of business (or, in the case of electronic manufacturing, would they relocate south of the border) if they had to compete actively for citizen workers. Employers were not asked if they were willing to pay a prevailing wage, but, rather, "at what wage would you go out of business if you had to raise wages in order to attract U.S. workers?" The conclusion of the study was that the ceiling wage as indicated by employers was high enough to attract citizen workers but that the employers preferred foreign workers and that displacement was occurring in the San Diego labor market.⁴⁷ Hence, the study concluded that "a foreign-worker program would simply legitimize this strategy."⁴⁸

There is also other pernicious long run effects of non-immigrant labor programs in low wage industries. Namely, when workers come from economically less developed countries to the United States, they are made aware of opportunities that for many were beyond their previous imagination. The relatively higher wages and the broader array of job opportunities will cause many to find ways to remain. Rather than being an alternative to illegal immigration, these policies can become a method that fosters the phenomenon.

It should not be surprising, that among the strongest voices in opposition to proposals to expand temporary worker programs have been those from groups

most closely associated with the protection of opportunities for low wage workers. For example, a 1979 conference on "Jobs for Hispanics"--sponsored by the Labor Council for Latin American Advancement and attended by both Hispanic trade unionists and Hispanic community groups from across the country--took a strong and unanimous stand against a foreign worker program. In their conference manifesto, called the "Declaration of Albuquerque," they emphatically stated:

The federal government should not include any type of 'Bracero' program or foreign labor importation, as a solution to the current problem of undocumented workers.⁴⁹

Similar strong statements of opposition to any type of new or expanded temporary foreign worker program were made to the Select Commission by the National Hispanic Task Force (a group representing eight of the nation's largest Hispanic organizations), and by such groups as California Rural Legal Assistance, Texas Rural Legal Aid, Inc., and the National Center for Immigrant's Rights.⁵⁰ All of these organizations have had a long and dedicated history of support for the low income workers who would bear the brunt of the competition for jobs from foreign temporary workers.

When the Reagan Administration announced in 1981 its support for a new foreign worker program, it was met by a chorus of opposition. It could have been anticipated that the AFL-CIO would attack the proposal as being a mechanism for employers to find "a docile and controllable work force."⁵¹ It was unexpected, however, that the Mexican labor movement, the Confederacion de Trabajadores de Mexico (CTM) would also strongly condemn the idea. In a "Manifesto to the People", the president of CTM, Fidel Velasquez, said that the Reagan proposal would convert Mexican workers into "the biggest strategic labor reserve in contemporary history, subject to super-exploitation and servitude."⁵² The fact that CTM is an intergal part of the Party of Revolutionary

Institutions (PRI) that has singularly controlled Mexican political affairs since the time of the Mexican revolution meant implicitly that it was speaking for the Mexican government. Officially, the Mexican government did not comment on the Reagan proposal but it is inconceivable that CTM would speak out publicly in opposition to the plan if it did not represent the consensus view of PRI.

Concluding Observations

There are features of the nation's non-immigrant labor policies that are both logical and beneficial to the economy and the quality of life of the nation. Yet within the broad dimensions of non-immigrant labor policy there has also been a programmatic history that is not so easy to rationalize. It has usually involved the employment of less skilled and less talented workers than are generally available within the American labor force but who are, nonetheless, similar in their employment capabilities to certain large segments of the American labor force. In these instances, the sanguine attitude surrounding non-immigrant labor policy is challenged. For as the history of these endeavors reveals, there has been a persistent theme of misuse and abuse of these programs. Because these non-immigrant workers are unskilled and from relatively impoverished backgrounds, they are often easy prey for corrupt selection processes in foreign nations over which the United States has little control. Once in the United States, these workers are often subject to working conditions that they may perceive to be desirable (relative to the alternatives in their homelands) but which affect the attractiveness of the jobs to citizen workers. To the degree that the prevailing working standards begin to reflect the presence of the non-immigrant workers in these specific labor markets rather than those of the general labor market, citizen workers gravitate elsewhere and become less available. Employers soon become not only dependant on non-immigrant workers but, also, come to prefer non-immigrants.

As a predictable consequence, non-immigrant programs for less skilled and less talented workers are consistently implemented under the guise of being temporary worker programs. But, as past experience in the United States and in Europe have demonstrated, these programs for low wage workers become long term sources of labor supply.⁵³ They become an institutionalized phenomena that exerts a narcotic influence on all parties involved in the employment process. Employers, foreign workers, and source countries become addicted. The rationale for their existence becomes lost in the reasoning process that justifies their continuation over time. Originally, non-immigrant programs were created only during war emergency periods but they traditionally continued long after the wars were over. With the advent of the H-2 program, they have become a feature of peace time too and there have been persistent proposals to expand their size and scope.

Non-immigrant worker programs in low wage industries have been of interest to employers primarily as a means of reducing their costs of production and enhancing their control over their workers. Non-immigrant low-wage workers are attractive largely because of their dependency upon their employers. Citizen workers who compete with these non-immigrant workers find that their existing work conditions usually either become frozen or decline. Under few circumstances will they improve. Efforts to establish unions are made more difficult.

Thus, non-immigrant labor policy can be seen to be a topic that has played a long and often controversial role in American immigration policy. It is likely that it will continue to do so. It is to be hoped, however, that their usage will be limited and constantly monitored. Certainly there is nothing in the programmatic history of such endeavors that would warrant their expansion under the pretext of being an alternative to illegal immigration.

Footnotes

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