

Changes to improve the protections of H-2 workers in the recruitment process.

Global Workers Justice Alliance – October 2010

1. Tracking Recruiters to improve DOL enforcement.

The Department of Labor (DOL) does not know, because it does not ask, U.S. employers any information on the recruiters they hire to recruit H-2 workers overseas. Without this information, DOL is hard-pressed to enforce the H-2 regulations that ban recruitment fees. DOL should request during the certification process the names of the recruiters and their agents/sub-recruiters. Copies should be presented to all potential H-2 workers, in writing.

2. Publishing Recruiter Names to Reduce Trafficking and Fraud.

Currently, the Department of States (DOS) is the only entity that asks for the names of the recruiters the US employers hire overseas. The DOS refuses to reveal those names. Workers overseas have no way of verifying if a recruiter is a human trafficker, charlatan, or a legitimate H-2 recruiter. This perpetuates enormous fraud and trafficking. Additionally, foreign governments are unable to enforce their own recruitment laws (MX, and many Central American countries have similar laws) because they do not against whom they should enforce the laws. DOS and/or DOL must publicly reveal the recruiter names in a timely basis so workers being recruited can check the legitimacy of the recruiter to prevent human trafficking.

3. End H-2 Over-recruitment by Verifying True Labor Necessity.

Evidence suggests that US employers request the DOL to certify many more workers than necessary so they can fire H-2 worker and have more visas on hand to bring in more workers on demand. DOL has no idea of how many workers actually end up at an H-2 employer work site. DOL only knows the number of H-2 workers it certifies the employer to bring but there is no verification of how many workers those employers actually brought into the USA. This results in a distortion of labor demand. If employer “x” asks for 100 workers but only needs 50 there seems to be a much higher labor demand than actually exists. This hurts US, and foreign workers, alike. DOS knows how many visas were issued to each employer. DOL should utilize this information to engage in a robust evaluation of true labor demand.

4. End U.S. Worker under-recruitment.

Under the new H-2A regulations an “e-registry” has been promulgated to allow workers greater access to available jobs. This should be applied to H-2B workers as well so that US workers, and their advocates, can more readily access those jobs.

5. Complaining About Abuses from Abroad

Not all workers are able to file complaints about abuses suffered while they are still in the United States. In fact, many cases are initiated by workers who have returned to the country of origin. It is critical for the DOS to have point people who can field complaints from workers in the sending countries. Equally important is the creation

of a mechanism between DOS and DOL to ensure that these cases are referred and followed up.

Additional Considerations

6. Gender and State Statistics

Problem: Currently there are no available statistics on the gender of H-2 workers or where within the sending country they hail. This is a problem because women migrants may have particular issues that should be addressed (such as sexual violence in the workplace) but without baseline data it is difficult, if not impossible, to provide those services.

Solution: The consulates input gender and state data, however, they are not “searchable fields” and therefore impossible to pull from the database. This information should be collected in a searchable format and made public.

7. Prohibit the Practice of H-2 Workers Paying the Fees and Costs of the Program

Problem: H-2 workers are often charged excessive fees and inflated costs to acquire H-2 employment. In order to pay these sums, which can be as high as \$20,000 for Asian workers or \$2,000 for Mexican workers, the H-2 applicants mortgage their futures. Sometimes paying up to 20% per month of interest, these workers are highly vulnerable to exploitation because they are hostage to their debt.

Solution: H-2 employers must be responsible upfront for paying all costs and fees associated with recruiting and transporting the H-2 workers to the US. Prohibiting H-2 workers from paying these costs and fees is an important anti-trafficking measure. Prohibiting recruitment fees is a step in the right direction but these fees are easily masked among other costs and fees.

8. Compliance with Sending Country Laws

Problem: Many sending countries have laws that regulate the recruitment of their citizens to work abroad. The US employers and local recruiting agents routinely violate these laws, often knowingly. The flagrant violation of substantive protections for sending country workers makes them vulnerable to human trafficking and negatively affects diplomatic relations.

Solution: H-2 regulations must expressly state that H-2 Petitioners must comply with the laws of the sending countries where they recruit H-2 workers. To ensure compliance, U.S. employers should be held accountable in US courts for violating foreign laws while recruiting workers.

9. Pre-departure Education

Problem: Currently, H-2 guestworkers receive little information as to their rights under their contracts or other US laws or where to seek assistance in the US before they depart their home countries. This results in vulnerable workers who are easily exploited.

Solution: Now the DOS hands out the TVPA pamphlet to all non-immigrant visa applicants, which is an important step forward. However, sometimes written materials are confiscated by recruiters and/or difficult to understand if a worker has limited education. Mandatory

pre-departure education programs coordinated between the U.S. consulates, appropriate home country government entities, and/or local human rights organizations will empower H-2 workers.

10. False Recruiter Promises: Copies of H-2 Contract

Problem: More often than not, the verbal promises of the recruiting agents do not match the H-2 petitioner's promises to the US government. This has resulted in workers being defrauded and sometimes even trafficked through the H-2 program.

Solution: Require the US government to provide each H-2 worker a copy of the I-129 (or something equivalent) before departing for the U.S. so they will know the real terms and conditions of employment. The employer already provides this form to the U.S. Consulates. If the terms are different than the verbal or written promises of the local recruiter, than the H-2 petitioner employer should liable for the recruiters' promises. Liability will encourage H-2 petitioners to hire reliable and honest recruiters.

11. Portable Justice

Problem: When a worker cannot return to the U.S. to pursue a claim against an abusive H-2 employer it usually results in claims being abandoned and unlawful employers being rewarded for bad behavior. Unfortunately, courts often are not amenable to allowing alternative testimony to ensure that an absentee plaintiff can pursue the claim without returning to the US.

Solution: The H-2 program should strongly encourage courts and administrative bodies to allow for alternative participation such as video or telephonic testimonies. Since the H-2 program is premised on the fact that the workers are in the U.S. for temporary contracts, it is only just to ensure portable justice, that is the right and ability to access justice even after they have left the US.

12. Other Substantive Changes Which Affect Workers while in the USA:

Only allow end-user beneficiaries to petition for foreign workers (i.e no staffing agencies or intermediaries allowed), Visa Portability, Visas to Remain in the U.S. While Challenging Labor Abuses, Exempt H-2 Workers from Federal, State, and Local Taxes, and Federal-funded Legal Services Must be Available to all foreign workers H-2B Workers.

Global Workers Justice Alliance ("Global Workers") combats worker exploitation by promoting portable justice for transnational migrants through a cross-border network of advocates and resources. Global Workers believes that the concept of portable justice, the right and ability of transnational migrants to access justice in the host country even after they have departed, is a key, under addressed element to achieving justice for today's global migrants. To realize this goal, Global Workers trains and supports a Defender Network, comprised of trained human rights advocates in the migrant sending countries, to facilitate employment law cases for migrant workers in partnership with advocates in the countries of employment. Through this network, returned migrants who have suffered exploitation in the host countries must no longer abandon their legal rights simply because they want to go home. Education and advocacy campaigns are also important components of the work. ***For more information go to the website www.globalworkers.org***