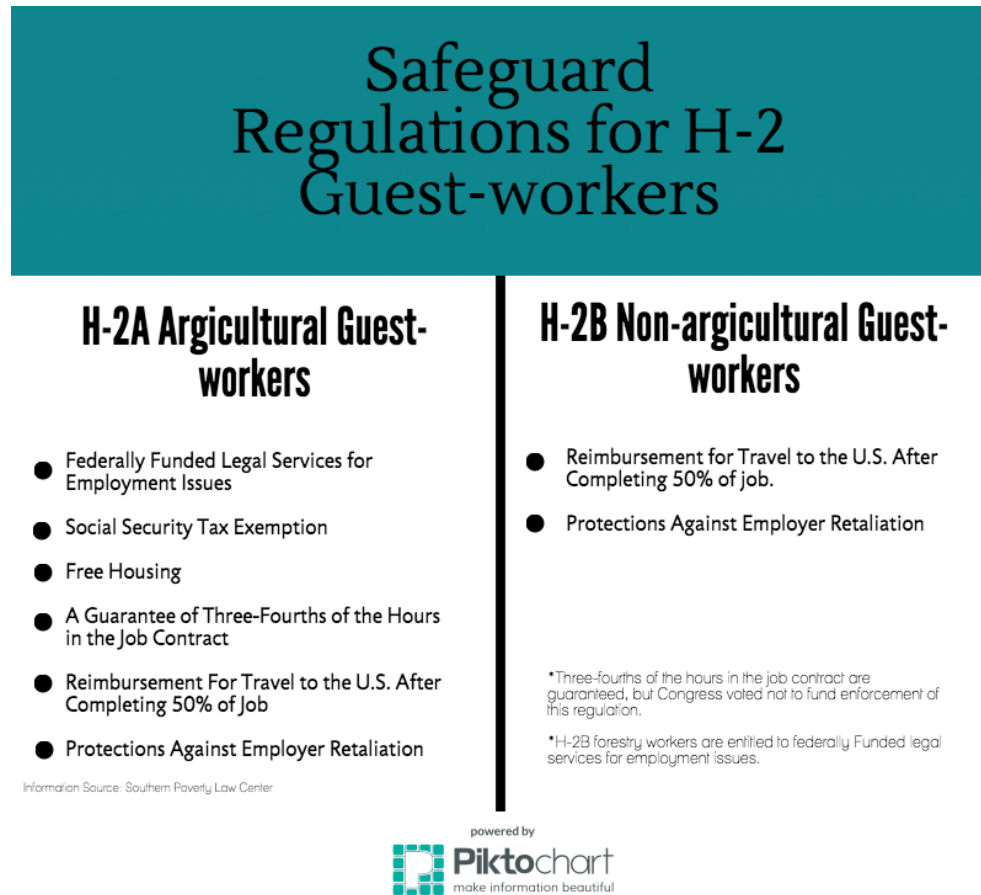


<http://arizonasonoranewsservice.com/guest-worker-program-used-as-gateway-for-labor-abuse-trafficking/>

Guest worker program used as gateway for labor abuse, trafficking

By [Alex Devoid/Arizona Sonora News](#) on May 12, 2016 | Comments Off on Guest worker program used as gateway for labor abuse, trafficking



A comparison between H-2A and H-2B regulatory safeguards after the Department of Labor and Department of Homeland Security jointly issued additional regulations in 2015 for the H-2B program. Infographic by Alex Devoid/ Arizona Sonora News

Structural flaws place one of the nation's visa programs at risk of abuse and trafficking, according to the [Southern Poverty Law Center](#) and the [American Civil Liberties Union](#).

This is apparent to the [Filipino Migrant Center](#), a Long Beach, California, non-profit organization. Since 2009 it has assisted more than two dozen Filipino labor trafficking survivors brought to the U.S. through the H-2B visa program.

“Once you share stories, there will always be guaranteed newer stories, emerging survivors,” says Joanna Concepcion, the organization’s executive director.

U.S. businesses of all sizes depend on the H-2B program, according to the U.S. Chamber of Commerce. In 2012 the Department of Labor issued new H-2B regulations to prevent forms of abuse and trafficking. Industry groups, including the chamber, stopped the 2012 regulations in court. They call for deregulation of the program and say it’s already costly and cumbersome for employers to participate. Then in 2015 the DOL and the Department of Homeland Security jointly issued a new set of regulations, but Congress decided against funding certain aspects.

This contention is nothing new. Guest-worker programs have been heavily debated since the Bracero program, which filled U.S. agriculture positions left vacant during World War II. Ever since, industry groups, labor rights advocates and unions have argued over the need for foreign workers, workers rights and maintaining job market conditions.

The H-2B non-agricultural visa program is one of three main guest-worker programs created after decades of reform. Employers may hire agricultural workers through the H-2A program and highly skilled guest-workers through the H-1B program.

The image shows the top portion of Form I-129, 'Petition for a Nonimmigrant Worker'. It includes the Department of Homeland Security logo, the title 'Petition for a Nonimmigrant Worker', and the form number 'USCIS Form I-129'. Below this, there are three main sections: 'Receipt', 'Partial Approval (updates)', and 'Action Block'. A 'For USCIS Use Only' box contains fields for 'Class', 'No. of Workers', 'Job Code', 'Validity Dates', 'From', and 'To'. To the right of these fields are checkboxes for 'Classification Approved', 'Consulate/POE/PTI Not Used', 'Extension Granted', and 'COS/Extension Granted'. A note at the bottom of the form reads: '▶ START HERE - Type or print in black ink.'

Employers specify what kind of guest-worker they want to employ. Form I-129 of the U.S. Citizenship and Immigration Services.

It works like this: Employers petition the DOL for guest workers. Employers demonstrate that they can’t find U.S. workers to fill the positions and that hiring guest-workers won’t affect the wages or conditions of similar U.S. workers. Once positions are approved, recruitment agencies in foreign countries often connect workers with positions. The Department of State screens workers in U.S. Embassies throughout the world. And the Department of Homeland security oversees the program’s immigration aspects.

H-2B workers are historically the least protected, according to the Southern Poverty Law Center, or SPLC. On paper, H-2A workers are entitled to a list of protective regulations that H-2B workers aren’t. These regulations included access to federally funded legal services for employment issues, Social Security tax exemption and free housing. The new 2015 regulations issued by DOL and DHS provide protections against employer retaliation, reimbursement for

travel to the U.S. and a guarantee of three-fourths of the hours in the job contract. **Congress decided against funding enforcement of the three-fourths rule.**

These regulations specifically ban recruitment fees and employer retaliation to protect H-2B workers from labor trafficking scenarios such as debt bondage. In the past, H-2B workers were in danger before they even **leave** home, the SPLC says. Workers would be subjected to debt bondage after paying recruitment fees and transportation costs. But other structural faults still place H-2B workers at risk. Workers are unauthorized to seek employment other than what's printed on their visa, regardless of abuse or working conditions. Additionally, employers double as immigration sponsors and may easily retaliate against workers if they protest wages or working conditions, according to the ACLU.

In the Philippines, [governing agencies](#) are supposed to protect guest workers from illegal practices by recruitment agencies. But overseas employment is a large industry. Hundreds of employment agencies exist to assist millions of Filipino workers. And Filipino Migrant Center's Concepcion has seen enforcement fail against illegal practices such contract fraud that add to abuse and trafficking.

It's possible for U.S. law enforcement to work against traffickers by coordinating with international attachés and host governments, but "it's tough to hold people accountable. We are dealing with a different set of laws," says Special Agent Erik Breitzke of the U.S. Immigration and Customs Enforcement agency.

Trafficking in the Philippines is a result of much larger issues, such as poverty and the lack of opportunities, according to Alex Montances, a Community Organizer at the Filipino Migrant Center.

"Some of these human traffickers are also, because of the same root problems, turning to human trafficking," he says, "so they can support themselves and support their families."

Back in the U.S., effective governmental oversight of the H-2B program is extremely lacking, according to the ACLU. Once workers are on the job, the Department of Labor is responsible for checking up on workplace conditions, but it only has 1,000 inspectors responsible for all 135 million U.S. workers nationwide, the DOL noted in a statement to BuzzFeed News. H-2B visas alone are capped at 66,000 per year. Additionally, while the DOL identifies certain H-2B jobs as high risk, its workplace [enforcement efforts](#) are concentrated elsewhere, according the **U.S. Government Accountability Office, or GAO.**

Over the past decade employers have systematically violated H-2B regulations because "it's just too easy," according to SPLC Staff Attorney Meredith Stewart. Employers often confiscate and withhold immigration documentation, the SPLC finds. Visa petitioners engage in pervasive [visa fraud](#), as documented by the GAO. **And Eighty-two percent of the DOL's H-2B investigations uncovered violations in 2014.** Employers owed \$2.6 million in back wages to H-2B workers, the DOL reported to BuzzFeed News.

Enforcement is too low and the consequences are too weak to deter violations, Stewart says. Delinquent employers may be suspended from the H-2B program by the DOL for up to three years. Suspension is uncommon and doesn't always result after abuses and law violations are documented, according to the SPLC. Twenty-five H-2B employers were [suspended](#) between 2009 and 2014. **And In March 2015**, the DOL had let the [statute of limitations lapse](#) on more than half its H-2A and H-2B investigations, according to the GAO.

The lobby against more H-2B regulations is strong. Congressional members have pushed to continue defunding parts of the 2015 H-2B regulations. And a new H-2C guest-worker program is proposed with even less labor regulations, Stewart says.

[The Chamber of Commerce](#) states that employer violation concerns can be managed with existing regulations. On the other hand, the H-2B program needs a complete overhaul to address abuse and trafficking, according to the SPLC and ACLU. Their recommendations include the ability for workers to change employers, a pathway to residency and citizenship, oversight of recruitment agencies, increased enforcement of labor conditions and increased access to the courts for guest workers.

Montances also advocates to increase protective regulations.

“But then, above all, to educate the community,” he says, “so they can look out for [abuse] and help identify other Filipino-tracked workers, or any other type of victim of trafficking, so they can get help.”