



FARMWORKER JUSTICE BULLETIN

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Legislative Update

March 30, 2006

Summary of AgJOBS: Agricultural Job Opportunities, Benefits and Security Act of 2006

What is AgJOBS?

The Agricultural Job Opportunities, Benefits and Security Act of 2006 ("AgJOBS") represents a major compromise between farmworker advocates (including the United Farm Workers) and agricultural employers to address the agricultural immigration crisis. Senators Larry Craig (R.-Idaho) and Edward Kennedy (D.-Mass.) and Reps. Chris Cannon (R.-Utah) and Howard Berman (D.-Cal.) introduced AgJOBS in the 109th Congress, as S. 359 in the Senate and H.R. 884 in the House of Representatives. On March 27, 2006, Senator Feinstein, who previously opposed AgJOBS, announced that she had reached an agreement with the primary sponsors of AgJOBS, the UFW, and representatives of agricultural employers. The agreement revised some AgJOBS provisions, but kept the basic components. If enacted, this legislation would (1) create an "earned adjustment" program enabling some undocumented farmworkers and H-2A guestworkers to obtain a "blue card" temporary immigration status with the possibility of becoming permanent residents of the U.S. and (2) revise the existing H-2A temporary foreign agricultural worker program. At this time, AgJOBS is only a proposal; it is not law.

Who would qualify for earned adjustment and what is the process?

This compromise only applies to workers in the agricultural industry, primarily employees of farms and ranches. Undocumented farmworkers and recent H-2A guestworkers wishing to become immigrants would have to complete a two-step process.

Step One: Apply for "Blue Card" Temporary Resident Status. Under this law, a farmworker could apply for a "blue card" (temporary residency) through a government-approved organization, a licensed attorney or a recognized immigration practitioner. The application period would begin seven months after the law is enacted and would last 18 months. Eligible workers are those who satisfy the following requirements:

- worked in U.S. agriculture for at least 150 days or 863 hours, whichever is less, during the 24-month period ending December 31, 2005;
- are not excluded by certain immigration laws (for example, as to criminal convictions); and
- paid an application fee and a \$100 fine upon obtaining a blue card.

No more than 1.5 million blue cards may be issued during the 5-year period beginning on the date of enactment of the Act. The temporary status would last up to 7 years from the enactment of the Act.

Step Two: Earn Legal Permanent Resident Status: Prospective Work Requirement. After obtaining "blue card" status, participants must do the following to earn a "green card":

- perform agricultural work for at least
 - 100 work days per year or 575 hours (but not less than 575 hours) per year for each year in the 5-year period beginning on the date of enactment of the Act; OR
 - 150 work days per year or 863 hours (but not less than 863 hours) per year for 3 years during the 5-year period beginning on the date of enactment of the Act;

- pay a \$400 fine; and
- establish payment of income taxes by the date of adjustment to lawful permanent status.

Workers who don't meet these requirements, who are found to have filed a fraudulent application, or who don't apply for permanent status by the seventh year would lose their "blue card" status and would be required to leave the country. Conviction of a felony, three misdemeanors, or a single crime that involves bodily injury, threat of serious bodily injury or injury to property in excess of \$500 also would end the "blue card" temporary resident status.

Immediate Family of Farmworkers. When a worker obtains "blue card" status, his/her spouse and minor children can remain in the U.S. and the spouse can obtain a work permit. The spouse and minor children can also travel outside the U.S. Once the farmworker fulfills the requirements of the earned adjustment program and receives permanent resident status, his/her spouse and minor children also will be granted immigration status as long as they meet other requirements under immigration law. (Minor children who become adults during the process are covered, too.)

How is the H-2A Temporary Foreign Agricultural Worker Program being reformed?

The compromise would modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guestworkers to fill agricultural jobs that last no longer than ten months. Most basic H-2A requirements that protect U.S. workers from adverse effects and foreign workers from exploitation would continue, including the "50% rule" requiring the hiring of U.S. workers who apply during the first half of the season, the "¾ minimum work guarantee," workers' compensation coverage, and transportation cost reimbursement.

The bills would modify some current H-2A requirements in important ways.

- The program's application process would be streamlined to become a "labor attestation" program, rather than the current "labor certification" program, to respond to employers' demands to reduce paperwork, delay and government oversight.
- H-2A employers must provide free housing to non-local U.S. and foreign workers but, under AgJOBS, could choose to provide a monetary housing allowance if the state's Governor has certified that there is sufficient farmworker housing available in that area.
- Employers would still offer the highest of the "Adverse Effect Wage Rate" (AEWR), the prevailing wage or the federal or state minimum wage. AgJOBS would set the AEWR at the levels that were in effect on January 1, 2003 for a period of 3 years. During this 3-year period, the Congressional General Accountability Office ("GAO") and a special commission would issue studies and recommendations as to the appropriate wage rate formula. If Congress fails to enact a new formula within 3 years after enactment, the AEWRs will be adjusted by the previous years' inflation in the consumer price index, and annually thereafter, up to 4% per year.
- H-2A workers would have the right to file a federal lawsuit to enforce their wages, housing benefits, transportation cost reimbursements, minimum-work guarantee, motor vehicle safety protections, and the other terms of the written H-2A job offer.
- Workers employed as shepherders, goat herders or dairy workers would be eligible to participate in the H-2A program even when they are year-round workers. Workers would be able to work up to three consecutive years, at which time they would be eligible to apply to adjust status to lawful permanent residency subject to the availability of employment-based visas.

Further analyses and updates on AgJOBS and other immigration bills affecting farmworkers can be found on www.fwjjustice.org under Legislative News.