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The Case for Reforming U.S. Guest Worker Programs

By Arin Greenwood

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Executive Summary

Guest worker programs, which bring foreign workers into a country temporarily in order to fill labor shortages, exist in various forms in various countries. All over the world, workers migrate from less developed countries to more developed ones looking for work—which may or may not turn out to be temporary. Meanwhile, as the movement of guest workers increases across nations, guest workers' remittances, which support their families—and their home countries' economies—continue to grow as a source of hard currency for developing countries.

For all the talk about immigration reform, the United States still lacks a workable guest worker program. In fact, no one can agree on what such a program should look like. America's current guest worker programs may as well not exist for most workers and employers—and past attempts at reform have gone nowhere.

This paper points out some of the problems that beset America's existing guest worker programs. It also proposes ways to improve these programs in order to advance the goals of protecting U.S. borders, providing a flexible workforce for employers who cannot find qualified American applicants, and protecting the guest workers themselves against abuse. It also looks at a potential reform model now being tried in a small part of the United States that lies far away from the rest of the country—the Mariana Islands.

Introduction

Guest worker programs, which bring foreign workers into a country temporarily in order to fill labor shortages, exist in various forms in various countries. All over the world, workers migrate from less developed countries to more developed ones looking for work—which may or may not turn out to be temporary.¹ Meanwhile, as the movement of guest workers increases across nations, guest workers' remittances, which support their families—and their home countries' economies—continue to grow as a source of hard currency for developing countries.²

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In 2004, President Bush called on Congress to establish guest worker programs to allow American employers to hire foreign workers on a temporary basis to fill jobs for which they cannot find qualified American applicants. This proposal's biggest difference with the guest worker programs already in existence is that it would have provided a mechanism whereby undocumented workers in the United States could have become legal temporary workers. This provision drew most of the political fire that helped scuttle the plan—as well as 2007 immigration reform legislation.³

Guest worker programs' restrictive elements render them unworkable. Attempts to stem the flow of laborers merely deprive employers of legal workers and drive labor underground, which causes not only a flood of undocumented workers, but also leaves some workers exposed to abuse by unscrupulous employers. More open borders would best suit workers' and employers' needs—and would also improve border security by reducing the incentives for people to sneak into the country illegally. However, the idea of more open borders is politically unpopular. Guest worker programs are more likely to be accepted by wide segments of the public, and improved guest worker programs would be better than the programs now in existence.

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Existing Guest Worker Programs Are Not Working

Guest worker programs allow foreign workers to come into a country on a temporary basis. They fill the host country's labor needs without increasing its immigrant population (in the United States, guest workers are called "non-immigrants").⁴ By this broad definition, any employment visa of limited duration is part of a guest worker program. In the United States, visas for entertainers and skilled professionals are not a serious point of contention in this debate. Rather, the guest worker visas that are ordinarily talked about are the H-2A and H-2B visas, which apply to seasonal and temporary agricultural and non-specialty jobs.

The H-2A visa. The H-2A visa allows for an unlimited number of foreign workers to be employed as seasonal or temporary agricultural workers. It is valid for up to one year, and may be extended for up to three years. H-2A workers may not transfer from one employer to another.⁵

The H-2A visa application process is slow, burdensome, duplicative, and expensive, *by the U.S. Department of Labor's (DOL) own reckoning*. And even though there is no cap on the number of H-2A visas, America faces a major shortage of agricultural workers. According to the U.S. Labor Department, only 75,000 H-2A visa holders were hired in 2007—meanwhile, there are between 600,000 and 800,000 undocumented agricultural workers present in the United States.⁶

According to some critics, these undocumented agricultural workers can be subject to abuse by unscrupulous employers who exploit their illegal status by threatening them with deportation.⁷ Moreover, the difficulty in getting back in creates a tremendous disincentive for undocumented agricultural workers to leave the United States once they manage to get inside.⁸ Thus, the H-2A guest worker visa is an ineffective program, since it goes virtually unused.

Further, while H-2A workers are entitled to a number of legal protections—such as housing, at least three-fourths of the total hours promised in the employment contract, workers' compensation benefits, and travel reimbursements, to name a few—enforcement is weak.

The H-2B visa. The H-2B visa is for temporary and seasonal non-agricultural work, and is even less useful than the H-2A. To start, there is a yearly cap of 66,000 H-2B visas given out each fiscal year—33,000 in the first half of the fiscal year, October through March, and another 33,000 in the second half of the fiscal year, April through September.⁹

Since 2004, the yearly caps have been filled quickly.¹⁰ On January 3, 2008, U.S. Citizenship and Immigration Services (USCIS) announced that, “it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the second half of Fiscal Year 2008 (FY2008).” Employers who want to bring in guest workers on H-2B visas must file papers with three government agencies—one state and two federal—and they cannot apply for H-2B visas more than 120 days before the guest workers’ anticipated start date. As a result, January 2, 2008 was the *de facto* deadline for new H-2B worker petitions requesting employment start dates prior to October 1, 2008.¹¹

Guest workers are needed in large numbers in summer industries: lawn care, tourism, seafood, hotels, and restaurants, to name a few. The cutoff means that there will not be a way for legally documented foreign workers to fill these jobs. For many of the industries that need guest workers, there are no guest worker visas available. The H-2B visa system may as well not exist for summer seasonal industries and other employers who apply for guest workers once the cap is reached.¹²

At the same time, the 66,000 H-2B guest workers who are able to come into the United States cannot change jobs without a new H-2B application being filed—that is still subject to the cap. H-2B workers do not receive free housing and transportation, or other benefits and protections granted specifically to H-2A workers. Because so few H-2B visas are available, it is virtually impossible for H-2B workers to exercise their most effective means of escaping abusive employers—to legally move from one job to another—which makes them virtual hostages. And, of course, this applies only to the tiny numbers of employees who manage to *get* H-2B visas.¹³

H-1B visa holders, professionals allowed to come into the United States for work visas, could be considered part of the guest worker discourse. The number of H-1B visas is also capped, at 65,000 per year (plus another 20,000 for foreign graduates of American colleges and universities). The cap runs out nearly immediately every year.

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Existing U.S. guest worker programs meet no one's needs and protect no one's interests.

H1-B visa holders are generally different from H-2A and H-2B visa holders in two significant ways. First, since they have more opportunities both inside and outside the U.S. due to their general higher level of education, it is rare to read reports of H-1B visa-holders being abused by unscrupulous employers. Second, they have a clearer path to permanent residency in the United States.¹⁴ For these reasons, the H-1B visa program is beyond the scope of this paper.

Proposed Reforms

Existing U.S. guest worker programs meet no one's needs and protect no one's interests, so calls for change have grown louder in recent years. In response to this clamor, in 2007, the Bush Administration proposed creating two new guest worker visas—the Y and the H-2C. Both visas had many of the same flaws affecting the existing programs, but they also featured improvements in the form of significantly higher caps and the ability of workers to change employers.

The Y visa. The Y visa program consists of three different visas:

1. The Y-1 visa for temporary non-seasonal workers;
2. The Y-2A for seasonal agricultural workers; and
3. The Y-2B for seasonal nonagricultural workers (the Y-2A and Y-2B visas would have replaced the H-2A and H-2B visas).

The Y visa program was included into the Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007 (S.1639, a bill which incorporates aspects of other major immigration bills from the time), which appeared to have a real shot of passing.¹⁵

Y-1 workers would have been granted initial two-year work visas, which would have been renewable for two additional two-year periods so long as each period was followed by a one-year return to the worker's home country. Y-2A and Y-2B workers would have been eligible for 10-month, non-renewable visas.

When first proposed,¹⁶ the Y-1 visa cap was set at 400,000, which could be increased to up to 600,000 in some years, depending on demand; later compromises brought this number down to 200,000. There was no cap on Y-2A visas, and Y-2B visas were capped at 100,000—which could have gone up to 200,000 depending on whether the cap was reached. (The cap for H-1B visas would have gone up, too, to 115,000, and to 180,000 in

subsequent years depending on demand.) Temporary workers would have been granted more legal protections than H-2A and H-2B workers are now given, including the right to change employers. However, opposition from Republican anti-immigration activists helped defeat the bill, which died on June 28, 2007, when the Senate did not pass a cloture motion that would have brought debate on the bill to the floor.

The STRIVE Act. The other major recent guest worker program reform proposal is the STRIVE Act (H.R. 1645; the acronym stands for Security Through Regularized Immigration and a Vibrant Economy). It would have replaced the H-2B visa with a new H-2C visa and substantially reformed the H-2A visa.

The H-2C visa would have been capped initially at 400,000, with the possibility of the cap being raised to 600,000 depending on demand. It would have allowed guest workers into the United States for three-year periods, renewable for a second three-year period, allowing them to transfer employers easily, and it would have streamlined the visa procurement process for employers.

It sought to address the “temporariness” issue by providing a clear path toward citizenship for H-2C workers who did not violate the terms of their initial visas—though commentators have noted that this “path to citizenship” is illusory given the green card application backlog. Critics argue that the mechanisms for transferring employers were also illusory since any H-2C worker who leaves an employer, even if the employer is abusive, becomes deportable if she does not find other employment quickly.¹⁷

The STRIVE Act’s AgJobs section would have significantly shortened the H-2A visa application process, making it easier for employers to hire seasonal workers in a timely manner. The bill also changed some of the methods of calculating wages and benefits. It would have required employers to pay guest workers the “prevailing wage,” and included protections for workers, including workers who organize and who act as whistleblowers. Additionally, the bill set out a “path to citizenship” that many criticized as not good enough. In any case, on September 6, 2007, the House Judiciary Committee held hearings on the STRIVE Act, but proceeded to do nothing more with the bill, which remains stuck in committee.¹⁸

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Proposed H-2A and H-2B reforms. More recently, the Bush Administration proposed rules to “relax” the restrictions on employers hiring H-2A workers¹⁹ and to “modernize and increase protections under H-2B program.”²⁰ Most of the proposed rules concern processes, whereby employers can file some of the paperwork and forms associated with H-2B applications more quickly and easily. Given the complaints about the laborious, slow, and burdensome application process, this would be an improvement on the current system.

The proposed rules affecting H-2A workers feature one very good provision: It would allow H-2A workers to change employers. However, as the nation’s leading body of immigration lawyers points out in comments submitted to the Department of Homeland Security on the proposed rules, that provision would go unused, as “[t]he conditions placed on participation are so onerous as to render it irrelevant.”²¹

Moreover, the proposed rules fail to address the current system’s greatest flaw: failure to meet the need for workers. According to the Department of Labor, “the number of H-2B labor certification applications has increased 129 percent since FY 2000. In FY2007, the Department experienced a nearly 30 percent increase in H-2B temporary labor certifications application filings over the previous fiscal year.”²² The proposed rules cite these numbers in the context of DOL’s overloaded processing system, yet they clearly indicate that there are jobs that are not being filled because of the caps.

The proposed rules feature several mentions of the need to “protect” American workers who might want the jobs which employers claim Americans will not take. For example, regarding the rules that employers may not file H-2B visa applications more than 120 days before the projected start of employment and employers’ attempts to circumvent this rule, DOL states:

The Department of Labor recognizes a need to be flexible with regard to minor amendments of submitted and even certified applications. Such flexibility, however, must be measured against an increasing tendency by some employers to apparently artificially realign their true date of need with visa availability. The Department has noted with some consternation the apparent movement of “need” dates in recent years to correspond more closely with Congressionally-imposed visa availability dates. This apparent shift, however well-intentioned on the part of the employer, does

a substantial disservice to U.S. workers who might otherwise take positions but may not be available for what actually may be incorrect employment start dates. The Department’s mandate in the H-2B process, which is to ensure the selection and admission of the H-2B worker does not adversely affect U.S. workers, cannot permit an artificial movement of an employer’s actual date of need for workers in order to suit visa availability.²³

Thus, the proposed rules do not address the problem which causes employers to fiddle with start dates in the first place.

Guest Worker “Petri Dish” in the Pacific

There is another guest worker program in the United States that bears mentioning because it clearly illustrates many of the problems affecting guest worker programs—in a part of the United States that most Americans rarely think about.

The Commonwealth of the Northern Mariana Islands (CNMI) is a chain of 14 islands in the western Pacific with a known population of just under 70,000 people, of whom fewer than 20,000 are indigenous islanders (and an unmeasured underground population, thought to be almost 20,000 more).²⁴ More than 40,000 of the islands’ residents are foreign-born, of whom more than 39,000 are not U.S. citizens. Most of the non-U.S. citizens on the islands are guest workers on one-year work visas, which can be renewed for one year at a time, indefinitely.

The islands are a U.S. protectorate, bound by many U.S. laws, but part of the deal negotiated when they joined politically with the United States was that they would be exempt from many U.S. labor and immigration laws. In 1983, the CNMI enacted its own immigration laws, including a guest worker statute, the Nonresident Workers Act (NWA), which set out the procedures by which guest workers could be hired.²⁵ The Act set out strict hiring preferences and quotas for local workers that habitually go unfilled—including certain categories of employment to be filled by resident workers and mandating that 20 percent of every employer’s workforce be made of resident workers.²⁶

The Nonresident Workers Act requires employers to give guest workers one-year contracts and to specify their job titles and duties, which may not be altered during the life of the contract. The Act allowed guest workers to change jobs, and directed the CNMI’s then-Department of

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Immigration and Labor (now two separate agencies: the Department of Labor and the Division of Immigration) to establish regulations which set out procedures and terms for those transfers.²⁷ This led to a system that was bloated, inefficient, and corruption-ridden—but that at least gave employees the option to leave abusive employers.

In 2007, the CNMI government passed a new statute governing guest workers, which enacted many new restrictions—including doing away with guest workers’ ability to change employers. The new statute’s “Legislative Findings” section tries to justify this new restriction as being necessary to protect island natives from competition from guest workers:

[W]age rates will not rise so long as cheap foreign labor is available. The incentives to foreign workers to remain in the Commonwealth are very large because the working conditions in the Commonwealth are so far superior to the working conditions in their home countries. For that reason, foreign workers will always accept lower wages than citizens and permanent residents. It was never the purpose of the legislative enactments with respect to the use of foreign labor in the Commonwealth to perpetuate jobs at the minimum wage rate. If that happens, much of the Commonwealth’s investment in secondary and post-secondary education for its citizens will be lost as those citizens migrate outside the Commonwealth to find good-paying jobs...

[T]he current economic situation in the Commonwealth requires the continued availability of foreign nationals to augment the work force in the Commonwealth but also demands that the system for regulating the employment of foreign nationals be more efficient and less costly to operate...²⁸

Guest workers in the CNMI were supposed to provide a temporary fix for labor shortages, yet for as long as there have been guest workers in the CNMI, there has been talk of gutting the guest worker programs—either by creating new categories of jobs that must be filled by resident workers, making it even harder for guest workers to transfer from one employer to another, or imposing quotas on the number of guest workers on the islands.

The debate on the effect of all these guest workers in the CNMI rages on. Some people, such as former CNMI Governor Froilan Tenorio,²⁹ speculate that a reduction of the CNMI’s guest worker population would

spell the demise of the islands' businesses.³⁰ Others say that the presence of so many guest workers keeps wages low and keeps local people unemployed. The truth is probably somewhere between these two extreme views. In fact, the presence of so many guest workers does both of these things—it allows some businesses to exist and also keeps wages low and prevents local employment. For years, many guest workers worked in the garment industry which fueled the CNMI's economy until the factories began shutting down in 2005. Guest workers also staff the islands' tourism sector, which is another major source of income.³¹

The presence of so many guest workers also has had other, more measurable effects: a backload of labor cases brought by workers who in most circumstances cannot transfer from one employer to another without filing proceedings against their previous employer; a bloated, inefficient, corruption-ridden visa system that has led to a job market fraught with instability and insecurity;³² and what many perceive as the islands' complete dependence on guest workers at the expense of the local workforce and of the local culture.

Meanwhile, many guest workers have been on the islands for five, 10, or even 20 years. These workers form the islands' Dekada Movement, which claims 3,000 members and seeks to gain the right of permanent residency—or at least the right to enter into multi-year contracts—for guest workers who have lived and worked in the CNMI for so long that they consider it their home.³³

In the early 1990s, in the wake of well-publicized labor abuses and multi-million dollar settlements, Rep. George Miller (D-Calif.) and Sen. Ted Kennedy (D-Mass.), among others, began calling for the federal government to control immigration and labor in the CNMI. In 1994, Governor Tenorio hired now-disgraced lobbyist Jack Abramoff for millions of dollars to prevent this from happening—and it did not happen.

Abramoff brought Rep. Tom DeLay (R-TX) to the islands in 1998 for a fact-finding trip, and DeLay called the islands a “perfect petri dish of capitalism.”³⁴ In fact, the islands were at the time a perfect petri dish of state intervention in the labor market. The islands' experience shows what can go wrong when guest worker programs are administered in such a way that a huge portion of the population is made up of guest workers who can stay indefinitely, but only on contracts that can be renewed for one year at a time. It also shows the problem with calling something “temporary” when it refers not to an actual time period, but to a state of mind in which

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the guest workers do not know if or when they will have to leave—in a year, 20 years, or never. Finally, it shows that schizophrenic behavior toward guest workers results in a system that suits no one—yet is also hard to reform.

This is all about to change. On May 8, 2008, President Bush signed into law the Consolidated Natural Resources Act of 2008, which, among other things, does away with the CNMI's labor and immigration systems, and implements federal labor and immigration law in the islands. The CNMI's guest worker system was finally adjudged to be unfixable, and is being replaced with U.S. laws, with one major difference: There will be no H-2B cap. We can see what happens on this petri dish in the Pacific when it is given as many H-2B visas as it wants, renewable for up to three years.

Conclusion

The U.S. guest worker system is flawed in a way that is nearly Kantian in its categorical negations. Employers must file applications for foreign workers whom they attest they need, under penalty of perjury—yet they are often denied these workers on the grounds that failing to deny these applications would harm American workers. In reality, the guest worker programs currently in existence in the United States do not take into account the needs of either employers or workers. Policy makers ought to seriously consider the following reforms.

Reduce—or ideally, eliminate—restrictions on hiring guest workers.

The most common argument for restricting guest workers goes something like this: If foreign workers were allowed to come into the United States in as great numbers as the market could bear, American workers' salaries would go down, and American workers would lose jobs. It is a politically powerful argument, but it is not borne out by reality.³⁵ The jobs being filled by guest workers are not supposed to be permanent full-time jobs; H-2B visas may be given for jobs that are one-time, seasonal, peakload, or intermittent. H-2A visas are supposed to supply American farmers with the hundreds of thousands of workers they say they cannot find among American citizens—and there is no evidence to doubt farmers' characterization of this shortage of workers.

A better legal definition of “temporary.” It is time for policy makers to decide what is meant by “temporary” workers: Do they mean that the workers themselves must be temporary, or that the jobs themselves should be temporary? Do they mean temporary in terms of months, or years, or is the word “temporary” shorthand for a policy of not allowing guest workers to put down roots in the United States by keeping their economic and immigration status in limbo for however many months or years they remain in this country? It makes no sense to suggest that American workers are somehow better off by limiting the amount of time that a particular guest worker can work in the United States, when the job that the guest worker fills is still a job that will *only* be filled by a guest worker, while the employer can file endless numbers of H-2B visa applications for an endless string of interchangeable H-2B workers, each of whom must leave the United States after some period of time. Moreover, a better definition of temporary status would help better protect guest workers.

More legal protections for guest workers. If guest workers are going to be allowed to work in the United States, then they must be given adequate legal protections such that they are not subject to abuse. The H-2A and H-2B programs are broken nearly beyond repair, but two simple changes that would help fix many—though not all—of these problems are: 1) grant H-2A workers a genuine and usable mechanism for changing employers—which the proposed rules would do—and; 2) remove the cap for H-2B workers. Removing the cap would give the H-2B program the chance to function as an actual guest worker program by allowing *all* employers who attest, under penalty of perjury, that there are no qualified U.S. workers to do the work they need done, to hire the foreign workers they need.

Workers who can change employers would not be forced into having to choose between staying with an abusive employer and leaving the country. Allowing more workers to come into the country legally would enhance border security, as fewer people would try to sneak through the border illegally. In the meantime, it will be worthwhile to observe how an uncapped H-2B visa system plays out in the Commonwealth of the Northern Mariana Islands where a new experiment in guest worker reform is now underway. If things turn out well, Tom DeLay may have just spoken too soon in calling the islands “a petri dish of capitalism.”

Notes

- 1 Philip Martin, "Managing Labour Migration: Professionals, Guest Workers And Recruiters," United Nations Expert Group Meeting on International Migration And Development, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, New York, July 6-8 2005, www.un.org/esa/population/meetings/ittmigdev2005/P01_PhilMartin.pdf.
- 2 Bjorn Jensen, "Should The World Trade Organization Set Migration Policy?" American Friends Service Committee, <http://www.afsc.org/trade-matters/issues/gues-worker-programs.htm>.
- 3 CNN.com, "Measure to remove guest worker program from bill fails," <http://www.cnn.com/2007/POLITICS/05/22/congress.immigration/index.html>.
- 4 According to the State Department, "A nonimmigrant visa is most frequently a tourist, business, student, or work visa that will permit the applicant to stay for a particular period of time in the United States to accomplish a specific purpose, such as visiting, studying, or working." U.S. Consulate General, Chennai, India, website, <http://chennai.usconsulate.gov/nivwhat.html>.
- 5 See the U.S. Department of Labor Employment & Training Administration's worksheet on H-2A visas, <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>.
- 6 Remarks by U.S. Secretary of Labor Elaine L. Chao, H2A Roll Out Press Conference, Washington, D.C., February 6, 2008, http://www.dol.gov/_sec/media/speeches/20080206_h2a.htm.
- 7 Southern Poverty Law Center, "Close to Slavery," <http://www.splcenter.org/news/item.jsp?aid=309>.
- 8 Bryn Siegel, "NOTE: The Political Discourse of Amnesty in Immigration Policy," *Akron Law Review*, 41 *Akron L. Rev.* 291 (2008).
- 9 Under the Save Our Small and Seasonal Businesses Act of 2005 (S. 352/H.R. 793, introduced but never voted on) Congress exempted "returning workers" from the H-2B cap—previous H-2B visa-holders who returned to the United States on new H-2B visas did not count toward the 66,000 visas issued, which gave some amount of relief to businesses that rely on guest workers. For example, an extra 51,000 returning workers were granted H-2B visas in FY 2006. Emily Bazar, "Visa rule spells out 'help wanted' for some businesses," http://www.usatoday.com/news/nation/2008-02-04-visas_N.htm. However, that statute expired in September, 2007, and has not been renewed—thus the cap applies again to all H-2B guest workers.
- 10 Sarah Shemkus, "Visa reforms mired in debate," *Cape Cod Times*, September 30, 2008, <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20080930/NEWS/809300323>.
- 11 However, the same USCIS memo said that the agency would still process applications for current H-2B workers whose services were still required, or who wished to change or add employers. This day is known as the "final receipt date," the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the second half of the fiscal year.
- 12 Several news stories have described the effect that this dearth of H-2B visas is likely to have on summer industries. See, e.g., David Holthouse, "Visa fight leaves businesses short summer workers," *CNNMoney.com*, http://money.cnn.com/2008/04/16/smbusiness/h2b_visas.fsb/index.htm. Shelley Christiansen, "From Jamaica to the Vineyard," *Martha's Vineyard Magazine*, <http://www.mvmagazine.com/article.php?17057>. There has not been follow-up, however, to find out what has happened to these businesses since.
- 13 In addition to the H-2A and H-2B, there are number of other guest worker visas that do not ordinarily make it into the guest worker debate either because they are very specialized or are issued in small numbers. For example, the U.S. has a temporary visa, the Q-2, for Irish peace process cultural and training program visitors.
- 14 Ironically, the latest criticism of H-1B visas is that the H-1B workers are not staying in the United States *long enough*—that they come to the United States in order to be trained, and then take their newfound skills and education back to their home countries, where they may work for outsourcing companies. Ron Hira and Robert Hoffman, "Does Silicon Valley Need More Visas for Foreigners?" *The Wall Street Journal*, March 19, 2007, <http://online.wsj.com/article/SB117388283731536825.html>.
- 15 This statute also proposed the Z visa, which would have given undocumented workers a mechanism for becoming legal permanent workers in the United States.
- 16 In S. 1348, an earlier statute with a lot of similarities to S. 1639.
- 17 See, for example, Lillian Galedo's criticisms on the website Truthout: <http://www.truthout.org/article/lillian-galedo-the-strive-act-is-a-false-promise>.
- 18 H.R. 1645, Bill Summary & Status, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR01645:@@@X>
- 19 "Changes to Requirements Affecting H-2A Nonimmigrants [73 FR 8230] [FR 13-08]," <http://edocket.access.gpo.gov/2008/E8-19306.htm>.
- 20 U.S. Department of Labor, Employment and Training Administration news release, "U.S. Department of Labor proposes rules to modernize and increase protections under H-2B program," <http://www.dol.gov/opa/media/press/eta/eta20080709.htm>. The proposed rules can be read here: <http://edocket.access.gpo.gov/2008/pdf/E8-11214.pdf>.

- 21 American Immigration Lawyers Association, Comment to Proposed Rule “Changes to Requirements Affecting H-2A Nonimmigrants” 73 Fed. Reg. 8230 (February 13, 2008), submitted to the Department of Homeland Security, <http://www.aila.org/content/default.aspx?docid=25196>.
- 22 “Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes,” U.S. Department of Labor, May 22, 2008, <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=20774&AgencyId=15&DocumentType=1>.
- 23 Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes [5/22/2008], Section II(H), <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=20774&AgencyId=15&DocumentType=1>.
- 24 U.S. Census Bureau, Population and Housing Profile, 2000 Census of Population and Housing, Issue May 2003, www.census.gov/prod/cen2000/island/CNMIprofile.pdf.
- 25 Jobs Study Committee Report, issued by the Office of the Public Auditor on May 30, 2007, www.opacnmi.com/reports/053007%20Jobs%20Study%20Committee%20Final%20Report.pdf.
- 26 House Resolution No. 15-87, www.cnmileg.gov/mp/documents/15th/House/HSE_RES/HR15-087e.pdf.
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- 29 See the then-governor’s testimony during 1994 senate subcommittee hearings on Northern Mariana Islands immigration, loc.gov/law/find/hearings/pdf/00173325368.pdf.
- 30 Agnes Donato, “Businesses Want Say In Federalization Of Northern Marianas,” *Pacific Magazine*, April 12, 2008, <http://www.pacificmagazine.net/news/2008/04/12/businesses-want-say-in-federalization-of-northern-marianas>.
- 31 Department of Labor, Office of the Assistant Secretary for Policy, “Impact of Increased Minimum Wages on the Economies of American Samoa and the Commonwealth of the Northern Mariana Islands,” <http://www.dol.gov/asp/media/reports/asnmi/section3.htm>.
- 32 Federal Ombudsman’s Report on the Status of Nonresident Workers in the Commonwealth of the Northern Mariana Islands: Current Conditions, Issues and Trends in the CNMI March 29, 2006 by Federal Ombudsman Jim Benedetto.
- 33 Samuel Mphetres, “Micronesia in Review: Issues and Events, 1 July 2006 to 30 June 2007,” *Pacific Islands Report*, http://archives.pireport.org/archive/2008/March/tcp_cnmi.htm.
- 34 Zach Coleman, “Sweating it out in Saipan,” *Weekend Standard*, <http://www.thestandard.com.hk/stdn/std/Weekend/GH13Jp0.html>.
- 35 Daniel Altman, “Shattering Stereotypes About Immigrant Workers,” *The New York Times*, June 3, 2007, <http://www.nytimes.com/2007/06/03/business/yourmoney/03view.html?ei=5090&en=7b147fa3515add47&ex=1338523200&partner=rssuserland&emc=rss&pagewanted=print>. For all the talk about the United States’ declining economy, unemployment remains pretty steady: In September, 2008, the national unemployment rate was 6.1 percent. For comparison, note that in June, 2007, the unemployment rate stood at 4.6 percent; in June, 2004, it was 5.6 percent; in June 2003, 6.3 percent; in June, 2000, 4.0 percent; and in June, 1998 4.5 percent. In other words, while unemployment is higher now than it was a year ago, it has been this high before a number of times over the past decade—sometimes higher, even. While there are indications that immigration rates—legal and illegal—are down, it is unclear whether or how unemployment rates and immigration rates are affecting one another.

About the Author

Arin Greenwood is a writer and lawyer living in Washington, D.C. She received her B.A. in philosophy from Oberlin College, and her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar. Prior to her move to Washington, Greenwood lived in the Commonwealth of the Northern Mariana Islands (CNMI), where she worked at the islands' Office of the Attorney General arguing appeals before the CNMI Supreme Court, advising government agencies, and helping to start and work as an administrative judge for the islands' first ever refugee protection program. Her articles have appeared in publications such as Slate, *Washington City Paper*, *American Bar Association Journal*, Preservation Online, *Providence Phoenix*, and many others.

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