

# Background

No. 2229  
January 13, 2009



Published by The Heritage Foundation

## Real Immigration Reform Needs Real Temporary Worker Program

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Temporary worker programs can be a helpful tool for improving the legal means by which a foreigner can come to the United States to work. Previously proposed temporary worker programs have been problematic. Any new temporary worker programs must help, not hinder, immigration reform and border security efforts. Temporary worker programs should be designed not as a substitute for amnesty, but to fill important niches in the national workforce, allowing employers the employees they need to help grow the economy and create more jobs for Americans.

In addition, a new temporary worker program can only be successful if there is a clear strategy for implementation. Based on past experience, the right answer is to start with a pilot program that fills the gaps in existing programs and creates incentives for lawful non-immigrant work in the U.S. instead of illegal presence. An effective pilot program should also pioneer measures to strengthen security and combat illegal immigration.

### **The Path to True Immigration Reform**

No single aspect of immigration reform, whether workplace enforcement or border security, will solve the problem of the nation's broken borders. The federal government has failed in one of its basic functions to control who enters the country, and has no accountability for those already in the U.S. A snapshot of the immigration crisis in America shows approximately 11 million illegal aliens living in the country, and con-

### **Talking Points**

- Congress and the Administration, rather than continuing with past failed strategies of "comprehensive" immigration reform, should implement a serious step-by-step strategy for immigration and border-security reform.
- This step-by-step approach should begin with improving border security, enforcing existing immigration laws, streamlining existing visa programs, and piloting a realistic temporary worker program.
- An innovative temporary worker program is a helpful tool for improving the legal means by which foreigners can fill important niches in the national workforce.
- A program is necessary that does not exacerbate illegal entry, and should include enforcement of the temporary nature of the program, a quota that meets employer needs, and a fast-track system for applications.
- Proper and effective implementation of the temporary worker program is critical for its success; lack of implementation of existing immigration laws has largely caused the downfall of the current immigration system.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/Immigration/bg2229.cfm](http://www.heritage.org/Research/Immigration/bg2229.cfm)

Produced by the Douglas and Sarah Allison  
Center for Foreign Policy Studies  
of the  
Kathryn and Shelby Cullom Davis  
Institute for International Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
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tinuing demand by some employers for an illegal, shadow workforce. Successful immigration reform will require a strategy that includes:

- **Securing the border.** A secure border alone will not solve the illegal immigration issue. Ensuring that no single individual will ever cross any inch of the U.S. border is not plausible with the government's limited resources. Securing the border will make crossing much more difficult and costly, thus reducing the incentives for people to enter illegally. Congress and the federal government should continue to invest in building infrastructure at the border, adding border patrol agents, and collaborating with local and state entities.<sup>1</sup>
- **Enforcing the immigration and workplace laws.** As long as there are no real disincentives, people will continue to break the law in order to come to the United States. Enforcing existing immigration laws, deporting illegal aliens when detected, and fining those who employ illegal workers will provide some real disincentives.<sup>2</sup> A report by the Center for Immigration Studies shows that since the government began diligently enforcing existing laws in the summer of 2008, the illegal alien population in the U.S. has shrunk by 1.3 million.<sup>3</sup>
- **Promoting economic development in Latin America.** The constant growth in illegal immigration to the U.S. is partly due to the "push-pull" effect. Slow economies in Latin America coupled with America's need for workers drives up the advantages of illegal entry. This can only be dimin-

ished when Latin American economies grow and jobs are available in the home countries.<sup>4</sup>

- **Reform immigration services.** Immigration reform is only possible if U.S. Citizenship and Immigration Services (USCIS) is effective and efficient. USCIS must be reformed to meet the needs of Americans, protect the interest of the nation, and be able to expand to adapt to surges in demand. A national trust fund should be created for USCIS programs that do not charge fees, as well as a revolving fund for infrastructure and workforce enhancements.<sup>5</sup>
- **Improving legal avenues for immigrants.** As the government makes it more difficult to enter the U.S. illegally, there must be a greater emphasis on improving legal methods of entry. The United States' visa programs have shown time and time again that they are not capable of meeting the needs of employers or employees. If we are to require that migrants come to the U.S. legally, we must ensure that the system works.

### Elements of a Temporary Work Visa

Improving the legal options for immigrants is a crucial part of immigration reform and includes reforming programs for existing visas, such as the H-2A, as well as creating new and innovative temporary worker programs.<sup>6</sup> Ideally, any temporary worker program should accomplish the following: meet the needs of the users, ensure the security of the American public, and respect the rule of law and sovereignty of the United States. Any new program

1. James Jay Carafano, Brian W. Walsh, David B. Muhlhausen, Laura P. Keith, and David D. Gentilli, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Background* No. 1967, September 6, 2006, at <http://www.heritage.org/Research/HomelandSecurity/bg1967.cfm>.
2. Robert Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection," Heritage Foundation *Background* No. 2192, October 7, 2008, at <http://www.heritage.org/Research/Immigration/bg2192.cfm>.
3. Steven A. Camarota and Karen Jensenius, "Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population," Center for Immigration Studies, July 2008, at [http://www.cis.org/trends\\_and\\_enforcement](http://www.cis.org/trends_and_enforcement) (January 7, 2009).
4. Israel Ortega and James M. Roberts, "Mexico Needs Reforms," *Latin Business Chronicle*, June 3, 2008, at <http://www.latinbusinesschronicle.com/app/article.aspx?id=2468> (January 7, 2009).
5. James Jay Carafano, "Naturalization, Citizenship, and Presidential Elections: Lessons for 2008," Heritage Foundation *Background* No. 2147, June 23, 2008, at <http://www.heritage.org/Research/HomelandDefense/bg2147.cfm>.
6. James Sherk and Diem Nguyen, "Next Steps for Immigration and Border Security Reform: Restructuring the Work Visa," Heritage Foundation *Background* No. 2190, September 30, 2008, at <http://www.heritage.org/Research/immigration/bg2190.cfm>.

must not exacerbate the illegal immigration problem, and thus should include these basic elements:

- **A temporary worker program should be for workers who are still in their home countries, waiting to come to the U.S.** New programs cannot grant amnesty to illegal aliens in the U.S., as this would clearly undermine any attempt at immigration reform. This program cannot facilitate illegal entry. Those who are here illegally must return to their home countries in order to qualify for the program.<sup>7</sup>
  - **Ensure respect for American citizenship by protecting the temporary nature of the program.** The program should be temporary in nature. After working in the U.S. for the time allowed under the program, for example, four years, participants should be required to spend a specified amount of time in their home country before participating in the program again. There should be a limited number of times a participant can renew membership in the program. In addition, the immigration status of participants should not be changed during the program. The temporary worker program should not become a path to citizenship. Of course, temporary worker status should not be an impediment to applying for U.S. citizenship.
  - **Children of participants.** It should be made clear that the children of program participants born in the United States during program participation will not be guaranteed U.S. citizenship. This should be confirmed as part of the bilateral agreement.
  - **Numerical limit.** There must be a yearly quota on the number of visas allotted each year that is sufficient to meet the need—no more, no less. The number of temporary workers should be contingent on whether past temporary workers did, in fact, return home.
  - **Create a fast-track system.** Getting workers into the U.S. in a timely manner is equally
- important. Having a faster application process for proven participants is a great benefit to employers who frequently use seasonal workers. It also maintains the consistency of the program by acting as an incentive for participants to abide by program rules. The fast track can also be used for visa holders who have been personally sponsored by employers.
- **No prevailing wages.** Temporary worker programs should not have prevailing-wage requirements, which result in a reduction of labor market flexibility and increases regulatory burdens.<sup>8</sup>
  - **Security and health checks first.** The U.S. government is responsible for keeping dangerous people out of our country. It is, therefore, necessary to complete security and health checks before the visa holders enter the country.
  - **Create a biometric registry.** The temporary worker program should have a registry of all participants. A single registration card should be administered that could be used at border checkpoints for registration, entry, and exit. The card and registry database should contain biometric information.
  - **Performance bonds.** Employers should post bonds that are redeemable if the worker has followed certain program rules, such as leaving the country after the program has ended.
  - **Security bonds.** Employers should post security bonds for each temporary worker. The bonds would cover potential costs, such as emergency medical costs.
  - **Establishing an exit system.** Overstays comprise a majority of those living in this country illegally. Developing an exit system is crucial. Employees should be encouraged to exit with incentives, such as having their application fast-tracked the next time they apply for the program. Exits of visa holders should be tracked with a biometric registry.<sup>9</sup>

7. Edwin Meese III, "An Amnesty by Any Other Name...", *The New York Times*, May 25, 2006, at <http://www.heritage.org/Press/Commentary/ed052406a.cfm>.

8. James Sherk, "Senate Immigration Bill Marred by Prevailing Wage Provision," Heritage Foundation *WebMemo* No. 1475, May 29, 2007, at <http://www.heritage.org/Research/Immigration/wm1475.cfm>.

9. James Jay Carafano, "Checking Out! A Proposal for Land Border Exit Checks to Improve Visa Management," Heritage Foundation *WebMemo* No. 1909, April 30, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1909.cfm>.

- **No entitlements for visa holders.** Since the participants of the program are citizens of another country, they do not qualify for entitlement privileges. The temporary worker program should not create entitlements for participants, nor should participants qualify for Social Security, Medicare, welfare, or free education services.
- **Bilateral agreements.** Participation in the program requires a bilateral agreement between the United States and the potential employee's home country. In order to enter into an agreement, the home country must meet certain requirements. The agreements should clarify the citizenship status of participants and their children as well as facilitate their return to their home country at the end of the program. In addition, the agreement should establish a counterterrorism and information-sharing relationship.<sup>10</sup> No bilateral agreement should be made with countries whose citizens may pose serious national security threats as determined by the Departments of State and Homeland Security, such as nations that are designated state sponsors of terrorism.

### Creating New Methods

Having the right elements does not guarantee success. The downfall of our immigration system has largely been due to lack of implementation of immigration laws in the workplace. Proper implementation is vital to a successful temporary worker program. Implementation strategy will determine whether or not a temporary worker program will succeed.

In order to establish new temporary worker programs, the federal government must demonstrate that it is already successfully implementing measures for internal law enforcement and border security. Identity documents should be made secure by provisions, such as REAL ID, and a workplace enforcement system, such as E-Verify, should be fully funded. New infrastructure and security provi-

sions for the temporary worker program should be implemented *before* granting visas. This includes the biometric registry database and biometric card, an exit system, and the sharing of criminal information with participating countries.

Temporary worker programs should not replace existing visa programs. Existing programs cater to a significant-sized population, and there is an established process. These programs should be improved and streamlined.

Reforms to existing programs alone will not be enough. As these reforms are implemented, remaining shortfalls will become more apparent. A temporary worker program should be created to employ new methods and to fill the gaps that reformed visa programs still cannot address. A temporary worker program should start as a pilot test.

Benchmarks for expansion should be set for the pilot test. For example, there should be a maximum rate of overstays in the program, which the pilot program cannot exceed.

The American people know that current immigration policy falls short. A temporary worker program is a small piece of immigration policy's complicated puzzle, and needs to help, not hinder, the ability of the American government to keep its citizens safe. Above all, a successful temporary worker program should protect national security, ensure the rule of law, and protect American sovereignty. Congress and the Obama Administration would do well to follow the components outlined here.

### Next Steps

Rather than repeat Congress's failed strategy of "comprehensive" immigration reform—a self-serving attempt to pass an ineffective bill bloated with appeasements for every special-interest group—Congress and the Administration should implement a serious step-by-step strategy to immigration and border-security reform that begins with:

10. The Visa Waiver Program is a good model of such bilateral agreements. In order for countries to become members of the visa waiver program, they must first meet a number of criteria and sign agreements with the United States that include security cooperation, such as sharing lost and stolen passport information. See James Jay Carafano, "Visa-Waiver Reform Can Make America More Secure," *The Examiner*, May 24, 2007, at [http://www.examiner.com/a-745367-James\\_Jay\\_Carafano\\_Visa\\_waiver\\_reform\\_can\\_make\\_America\\_more\\_secure.html](http://www.examiner.com/a-745367-James_Jay_Carafano_Visa_waiver_reform_can_make_America_more_secure.html) (January 7, 2009).

- Continuing to improve border security and enforcement of existing immigration laws;
- Streamlining and expanding immigration services and existing visa programs; and
- Piloting a practical, realistic temporary worker program that enhances security, promotes economic growth, and respects citizenship and sovereignty.

These are the right steps for serious immigration and border security reform.

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