

# AFL-CIO's Model for Future Flow: Foreign Workers Must Have Full Rights

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**A** REAL SOLUTION TO THE CURRENT IMMIGRATION CRISIS requires that we address the “future flow” issue, that is, the conditions under which workers and families will be coming into the United States in the future. The jobs foreign workers will be filling are permanent jobs. There are two choices for these workers to come into our economy: a path that allows workers to come in with full rights and as full members of society, or one that invites workers in for a limited period of time, with limited rights, as temporary workers.

So far, business and many pro-immigration advocates have focused only on a temporary worker program, without recognizing that a viable alternative exists. The choice is **not** between the status quo and a new guest worker program, as they purport, but between a path that already exists and has been the bedrock of our immigration policy—one based on permanent status—and a path that, by definition, brings in temporary workers to do permanent jobs—that is, a new guest worker program.

## **Our solution for future flow is simple: Fix the existing permanent employment system.**

Scholars have long recognized that the genius of U.S. immigration policy throughout our history has been the opportunity afforded to immigrants for full membership in society. The multi-year study conducted by the bipartisan U.S. Commission on Immigration Reform (better known as the “Jordan Commission”) concluded that “a properly regulated system of **permanent** admissions serves the national interest” and warned that a temporary worker program would be a “grievous mistake.”

We recognize that the permanent employment system isn’t working, mainly because it is based on a system of arbitrary caps that are the result of political compromise that have no relation to economic realities. The current number of visas available for permanent jobs was set by Congress more than a decade ago and has not changed. Yet the fundamental policy behind the permanent system remains valid: Employers that demonstrate they cannot find workers in the United States to do jobs that are permanent (that is, not seasonal or temporary in nature) should be able to bring in foreign workers under conditions that guarantee there will be no negative impact on the wages and working conditions of other workers in that industry. The key to protecting U.S. labor standards is that the new foreign workers should come in with full rights.

Our solution is based on the following principles:

- The number of employment-based visas available should be set each year by the U.S. Department of Labor based on macro-economic indicators and the needs of particular industries.

- There should be no country caps or arbitrary caps on particular occupational classifications.
- If the Labor Department determines a particular industry is experiencing a long-term labor shortage and is in need of 10,000 workers in the year 2008, for example, that industry would be allocated 10,000 visas for that year.
- If the Labor Department determines there is no labor shortage in that same industry the following year, no visas would be allocated to the industry for that year.
- Employers in the industries designated by the Labor Department as experiencing a long-term labor shortage would be required to prove they have attempted to recruit workers already in the United States to fill those jobs at the prevailing wage and other conditions that will not cause a depression in wages or working conditions in that industry.
- The prevailing wage would be determined by the appropriate state workforce agency with data based on geographical regions of the United States.
- Once an employer's petition to hire a foreign worker is approved, the job would be listed on a computerized job bank available at U.S. consulates around the world.
- Workers would apply for jobs listed in the job bank from their home countries and employers would hire workers from those applications.
- The foreign workers would be paid the prevailing wage and would have the full protections of U.S. labor and employment laws.
- No employer or labor contractor would be allowed to recruit abroad.
- The hired foreign worker would enter the United States with a conditional "green card," which would ripen into a standard "green card" as soon as the government processes the foreign worker's petition to remain in the United States.
- The family reunification system should continue to be an important part of U.S. immigration policy, with the highest priority going to the spouses and minor children of U.S. citizens and legal permanent residents.
- Congress must appropriate adequate funds to ensure no backlogs exist and all visas that can be distributed each year are actually distributed, under both employment and family classifications.

Scholars agree that temporary worker programs are bad public policy. We know from experience that those programs have created an exploitable and exploited cheap labor force while denying workers the legal rights and obligations of lawful permanent residents and U.S. citizens. If those programs are to exist at all, they should be limited in size and scope and continue to apply only to seasonal labor shortages. They should not be the model for how future foreign workers join the U.S. economy.

Reform of existing temporary worker programs is an essential component of immigration reform. Otherwise, those programs will continue to be vehicles by which employers exploit workers for economic gain, causing depression in wages and other working conditions in the industries in which they operate. At a minimum:

- Labor contractors should not be able to participate in the system. Only the entity actually employing the worker may participate in the program.
- The Labor Department must promulgate regulations requiring employers to bear the costs of recruitment fees, hiring, subsistence and travel so workers are not exposed to large debts that hinder their ability to enforce their rights.

- Meaningful and enforceable whistle-blower protections must be added, including the right of workers to file complaints for violations of the programs.
- The prevailing wage must be set at the adverse wage level by the Department of Labor and the appropriate state workforce agency.
- The Labor Department must remain the “gatekeeper” to better monitor employers and prevent employers from gaming the system.
- Workers’ compensation must be provided to guest workers—regardless of whether they are still in the United States—on the same terms as other workers.
- Guest workers should be protected from discrimination in hiring and on the job on the same terms as workers hired in the United States. Congress should clearly and effectively provide recourse for workers to oppose discrimination.
- Congress should require all employers to certify to the Labor Department, at the conclusion of a guest worker’s term of employment and under penalty of perjury, that they have complied with the terms of the contract and the law.
- Employers using guest workers should be required to post a bond that is at least sufficient in value to cover the workers’ legal wages. A system should be created to permit workers to make claims against the bonds.
- There should be a massive increase in funding for enforcement of guest workers’ rights by the Labor Department, the Occupational Safety and Health Administration and other government agencies with authority over aspects of the guest worker program.
- The Department of Labor should create a streamlined process for denial of guest worker applications from employers that have violated the rights of guest workers.
- The Labor Department should be authorized to enforce all terms—including contractual terms—of the guest worker agreement.
- Congress should make all guest workers eligible for federally funded legal services on the same terms as lawful permanent residents or citizens.
- Congress should provide both a civil cause of action and criminal grounds for arrest against employers or agents who confiscate or hold documents.
- Congress should provide a federal cause of action allowing guest workers to enforce their contracts.

The United States is the largest migrant-receiving nation in the world and has the best record of integrating immigrants into our national fiber. We’ve accomplished that because we have always welcomed immigrants as full members of society. We should continue in that strong tradition.