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A New Kind of Worker Program

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The Senate “Gang of 8” requested that the AFL-CIO and Chamber of Commerce reach a consensus on a new, additional employer-sponsored visa program for lesser-skilled, non-seasonal and non-agricultural workers. This program would not be a “guest” or “temporary” worker program but instead a “new kind of visa program.”

Here are some details from the agreement in principle that resulted from those talks:

A New Future Flow Mechanism for Lesser-Skilled Non-Seasonal Workers

The new future flow mechanism has two equally important components: a new bureau called the Bureau of Immigration and Labor Market Research, and a new visa program, called the W-Visa Program.

The bureau will be a separate and independent component within U.S. Citizenship and Immigration Services (USCIS). The director of the bureau will be appointed by the president and confirmed by the Senate.

The bureau will be staffed by experts in economics, labor markets, demographics and other specialties needed to identify labor shortages and make recommendations, among other things, on the impact of immigration on labor markets as well as the methods of recruitment of U.S. workers into lesser-skilled non-seasonal jobs. The bureau will publish shortage lists by occupation and make annual recommendations and reports to Congress on how to improve employment-based immigration. The bureau also will have a role in setting the annual W-Visa cap.

USCIS will fund the bureau through registered employer and registered openings fees for employers.

The W-Visa Program

A new W-Visa will be created for employers to petition for foreign workers in lesser-skilled, non-seasonal non-agricultural occupations, which include occupations in hospitality, janitorial, retail and others.

Worker Protections

- The W-Visa is not a temporary visa. Workers will have the ability to self-petition for a green card.
- Workers will not be tied to a single employer.
- Wages will not adversely affect the wages or working conditions of U.S. workers (see below).
- W-Visas will not be available to employers who have laid off workers within 90 days.
- W-Visas will not be available to employers during a strike or lock-out.
- The Labor Department will establish a complaint process regarding an employer’s non-compliance with any condition in the program.
- W-Visa workers will be covered by state and federal employment laws to the same extent that other U.S. workers are covered.
- Foreign Labor Recruiters will be pre-certified by the secretary of Labor.
- Employers are required to pay for all fees under the program and will not be permitted to transfer any fees to workers.

Timing and Numbers

The W-Visa program would begin on April 1, 2015, unless the secretary of Homeland Security extends the start date by six months.

The program starts at 20,000 visas; in Year 2, 35,000 visas will be available, in Year 3, 55,000 visas and in Year 4, 75,000. In Year 5, the program will grow or shrink based on a statistical formula that takes into account the unemployment rate, the ratio of job openings to workers looking for work, the bureau's recommendations as to the size of the annual cap and the percentage difference between the number of W-Visa slots requested in the prior fiscal year compared with the cap in the prior fiscal year.

The cap can never be below 20,000 or above 200,000 in any year. One-third of all visas available in any give year will go only to businesses with fewer than 25 employees. When the bureau publishes a shortage list, those shortage occupations will have priority for W-Visas.

The Wage

Employers will be required to offer W-Visa holders wages and working conditions that will not adversely affect the wages and working conditions of U.S. workers. Wages will be the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. An employer also will be required to certify that it will provide working conditions for W-Visa holders that will not adversely affect the working conditions of workers similarly employed.

Extensive recruitment of U.S. workers will be required.