

DOCUMENT RESUME

05864 - [B2287367]

[Certification Process for Temporary Employment of Aliens in the United States]. HRD-78-156; B-177486. August 15, 1978. 5 pp.

Report to Sen. Bob Packwood; by Gregory J. Ahart, Director, Human Resources Div.

Issue Area: Employment and Training Programs: Employability of Selected Target Groups (3201).

Contact: Human Resources Div.

Budget Function: Education, Manpower, and Social Services: Training and Employment (504).

Organization Concerned: Department of Labor; Immigration and Naturalization Service.

Congressional Relevance: Sen. Bob Packwood.

Authority: Immigration and Nationality Act of 1952.

The Department of Labor must certify that there are no domestic farmworkers available in the United States before the Immigration and Naturalization Service will permit foreign workers to enter the country temporarily. Regulations were issued effective April 10, 1978, to define more clearly the respective roles of the Department of Labor, State Employment Service agencies, and employers in the certification process. The practicality of the revised regulations cannot be assessed until the parties involved have had a chance to work under them. The primary function of the Employment Service is to provide employers with workers and workers with jobs. Growers felt that the Employment Service did not provide a sufficient number of qualified workers and that many of the workers who were referred did not last through the harvest season. The growers also believed that there is generally an insufficient number of domestic workers available. The Department of Labor's regulations require that a nationwide labor search be conducted before the entrance of temporary alien workers into the United States is permitted. However, regulations for the certification of aliens seeking permanent employment require only that a local labor market search be conducted. The difference in the search requirements reflects the language of the Immigration and Nationality Act. (RRS)

7367



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-177486

AUGUST 15, 1978

The Honorable Bob Packwood
United States Senate

Dear Senator Packwood:

In accordance with your request of January 10, 1978, as modified by discussion with your office, we inquired into the following matters

- The practicality of Department of Labor regulations implementing the labor certification program to permit the temporary employment of aliens in the United States;
- The alleged reluctance of employers and migrant farmworkers to use the Employment Service which finds people for jobs and jobs for people; and
- Why Labor regulations require that only a local labor market search be conducted prior to permitting an alien worker to enter the country permanently whereas a nationwide labor search is required to permit the entrance of temporary alien workers.

This letter summarizes a briefing given to a representative of your office on these matters.

We interviewed representatives of grower organizations and Employment Service officials in Oregon, Massachusetts, and Vermont. We also met with several individual growers and representatives of migrant farmworker organizations. In addition, we reviewed Labor's certification regulations and held discussions with Labor officials in Seattle, Washington; Boston, Massachusetts; and Washington, D.C.

HRD-78-156
(20304)

THE CERTIFICATION PROGRAM

Labor must certify that there are no domestic farm-workers available in the United States before the Immigration and Naturalization Service permits foreign workers to enter the country temporarily. This is known as the H-2 certification program which began in the mid-1960s. Until recently, Labor's regulations that prescribe procedures for administering the H-2 certification program had changed very little since 1967. Labor issued revised regulations effective April 10, 1978, to more clearly define the respective roles of Labor, State Employment Service agencies, and employers in the certification process.

The revisions include more specific regulatory requirements regarding the recruitment of U.S. workers by employers and the Employment Service system. Also included are more specific procedures for processing temporary labor certification applications. For example, the regulations

- Were clarified to require active recruitment of U.S. workers up until the time that foreign workers arrive. Thereafter, employers must offer work to qualified U.S. workers who appear for work until fifty percent of the foreign workers' contract period has elapsed;
- Were clarified to require employers to offer and pay advance transportation and subsistence costs to U.S. workers if foreign workers receive such advances directly from the employer or indirectly from any person, agency or other entity collaborating with the employer; and
- Provide for an expedited review by a Labor hearing officer of any denial of certification.

REVISED REGULATIONS HAVE NOT BEEN USED

Under the H-2 certification program an employer's petition for foreign workers must be accompanied by the Secretary of Labor's certification that qualified persons in the United States are not available and that reasonable efforts have been made to attract and retain domestic workers. Before certification, the Employment Service must submit a detailed report to Labor concerning labor availability and employer/Employment Service recruiting efforts.

We interviewed representatives of five grower associations and also met with several individual growers to obtain their views on the practicality of the certification regulations. Although Oregon growers had not used the certification program in the past, they expressed the belief that there would be many problems in meeting revisions to various program requirements that were being proposed at the time of our field work. For example, growers said that the proposed 90-day lead time for listing job opportunities with the Employment Service is too long because accurate estimates of the number of workers needed cannot be made that far in advance. Also, the growers felt that if persons were recruited that far in advance many would not report to work at the start of the harvest.

Oregon growers also objected to the requirement that they provide advance travel and subsistence funds to persons hired at distant locations because of a concern that many would never report to work. The growers also expressed concern about meal and housing provisions required by the regulations. Some growers did not have the facilities to prepare meals and believed it would be too costly to meet housing requirements.

Growers in Vermont and Massachusetts have used the H-2 certification program in the past and, according to their representatives have encountered various problems. Grower representatives told us that one significant problem involved domestic workers who were hired from out-of-State through the Employment Service. These workers sometimes did not arrive at the start of the harvest and those that did arrive on time normally did not complete the harvest season. Grower representatives also alleged that Labor arbitrarily reduced the number of foreign workers requested by growers and there were instances when Labor did not approve the growers' requests for foreign workers until a few days before the start of the harvest season.

Since Labor and the growers have just started to operate under the revised regulations, we do not believe that the practicality of the revised regulations should be assessed until the parties involved have had an opportunity to work under them.

APPARENT RELUCTANCE TO USE THE EMPLOYMENT SERVICE

The primary function of the Employment Service is to provide employers with workers and workers with jobs. However, growers and/or their representatives told us that the

Service generally did not provide a sufficient number of qualified workers. In addition, those persons who were referred often turned out to be poor workers and did not last through the harvest season. The growers and/or their representatives also expressed the belief that there is generally an insufficient number of domestic workers available.

Concerning the apparent reluctance of migrant farmworkers to use the Employment Service, an official of an organization which provides social services to migrant workers in Oregon told us that experienced migrant workers sometimes work for the same growers year after year. Accordingly, these persons do not need the assistance of the Employment Service in finding jobs. Local Employment Service officials in Oregon expressed a similar view concerning this matter. The migrant services official also told us that Mexican-American farmworkers do not use the Employment Service because they are uncomfortable in dealing with Service employees and in some cases there is a language barrier.

REQUIREMENT FOR NATIONWIDE LABOR MARKET SEARCH


Labor's regulations require that a nationwide labor search be conducted prior to permitting the entrance of temporary alien workers into the United States. However, regulations for certification of aliens seeking permanent employment in the United States require only that a local labor market search be conducted.

The difference in the search requirements prescribed by the regulations reflects the language of the Immigration and Nationality Act. Section 101(a)(15)(H)(ii) of the act which pertains to temporary admittance defines a non-immigrant alien as an individual who is coming temporarily to the United States to perform temporary services or labor, only if unemployed persons capable of performing such services or labor cannot be found in this country. According to a Labor official, Labor has interpreted this definition to require that a nationwide labor market search be conducted before temporary foreign workers are permitted into the country. Labor considers the migrant farmworker a mobile individual capable of moving from one location to another and who should be given an opportunity to obtain such temporary employment.

Section 212(a)(14) of the act, which pertains to permanent admittance, states that the Secretary of Labor must certify to the Secretary of State and the Attorney General that there are no domestic workers who are available, willing and qualified at the place where the alien is to perform work. Labor's regulations are written to reflect this requirement.

We trust this information will be of assistance to you.

Sincerely yours,



Gregory J. Ahart
Director