

UFW ANNOUNCES HISTORIC COMPROMISE

After three years of tough negotiations, the United Farm Workers of America, AFL-CIO (UFW) and a coalition of the nation's major agricultural employers have reached a historic bipartisan compromise on immigration and labor reforms. Several members of Congress worked with the parties to achieve this compromise including, Representatives Howard Berman (D-Ca) and Chris Cannon (R-UT), and Senators Larry Craig (R-ID) and Edward Kennedy (D-MA).

The compromise, if enacted, will (1) create an "earned legalization" program enabling undocumented farm workers to earn legal permanent status if they have been working in the U.S. and continue to work in agriculture for a period of time; and (2) reform the existing agricultural guest worker program, the H-2A temporary foreign agricultural worker program.

This compromise only applies to workers in the agricultural industry and does not address the needs of other undocumented workers. While this is a historic compromise, it is only the first step to broader reform of our current immigration system.

Like any compromise, each of the parties made significant concessions. Most notably, farm worker advocates were able to achieve industry support for a program that will enable an estimated 500,000 undocumented workers to become legal permanent residents... If enacted, this concept of "earned legalization" will become law for the first time ever. These workers, who have been laboring in one of our country's most dangerous and lowest paying occupations, will no longer need to live in fear of deportation for demanding better wages and working conditions or challenging illegal employment practices. Moreover, the immediate families of these workers, if living in the United States, will not be subject to deportation.

The growers, in turn, obtained a freeze of the adverse effect wage rate ("AEWR") for three years, and if Congress fails to enact a new wage rate, the AEWR will thereafter be increased annually by the change in the consumer price index, capped at 4% per year. The compromise also streamlines the process for employers who seek to bring in foreign workers, while providing additional protections for those workers.

Attached is summary of the compromise.

AGRICULTURE FARMWORKER COMPROMISE SUMMARY

Earned Legalization Program for Farm Workers. The legalization program will offer many undocumented farm workers and H-2A guest workers the opportunity to become legal immigrants. To become part of the program, a worker must demonstrate that he or she performed agricultural work for 575 hours or 100 work days, whichever is less, during any 12 consecutive months between March 1, 2002 and August 31, 2003. Agricultural employment includes field and livestock employment but generally excludes work performed in meat and poultry processing plants (as defined in the Fair Labor Standards Act and the Internal Revenue Code).

Application Process. The application period would begin in the middle of 2004 and last 18 months. To reduce fraud, applications would have to be filed through a government-approved organization ("qualified designated entity" or QDE) or a licensed attorney. QDEs could be a farm labor organization, employer association or organization with substantial immigration experience. Legal assistance programs funded by the federal Legal Services Corporation would be permitted to assist

applicants. The Department of Homeland Security and State Department also would establish a procedure for applying from outside the United States. The application procedure is designed to ensure applicants have actually performed agricultural work while recognizing the difficulty applicants will have in securing evidence of their employment, which ordinarily would have been performed without authorization under the immigration laws and frequently “off the books.”

Once the farm worker proves he or she performed the work and otherwise meets the standards of U.S. immigration laws, he or she would be granted a temporary resident immigration status. Such temporary residents would be treated as immigrants and will be able to work in any employment, when not working in agriculture, and to cross the border. During the period of temporary resident status, the spouse and minor children of the worker, who are living in the United States will be protected from deportation if they too are undocumented, but will not qualify for employment authorization. All applicable federal and state labor laws would apply.

Requirements to Become a Legal Permanent Resident. To become a permanent resident immigrant, the worker would have to meet the following additional requirements:

- Work in agriculture for at least 360 days in the six-year period beginning September 1, 2003; and
- At least 240 of those work days in agriculture must occur during the three-year period beginning September 1, 2003 through August 31, 2006; and
- Of those work days, in at least three years, the person must have worked at least 75 days in agriculture.

Credit for this future-work-requirement will be given for employment lost because the worker has been fired without just cause or has lost work due to occupational injury or illness.

H-2A Guest Worker Program. The current H2A program (which replaced the infamous “bracero” program of the 1940’s and 50’s) allows agricultural employers to hire approximately 42,000 foreign farm workers annually on temporary work visas. The compromise will streamline the H-2A guest worker program by reducing employers’ paperwork requirements and government oversight. Instead of a “labor certification” program, the H-2A program will rely on “labor attestation,” similar to the H-1B program.

Adverse Effect Wage Rates. The H-2A program’s adverse effect wage rates, which are issued annually on a state-by-state basis and operate as a minimum wage for H-2A employers, would be frozen for three years at the levels in effect in January 2003. Presently, the wage rates are based on regional wage surveys performed by the U.S. Department of Agriculture. During this three-year period, two studies would be performed regarding appropriate measures for the H-2A wage rates. If Congress does not act within the three years, then the H-2A wage rates would be increased annually beginning in 2006 based on the previous one year’s change in consumer price index. H-2A employers would still be required to pay the highest of the frozen adverse effect wage rate, the local “prevailing wage” for the particular job, and the state or federal minimum wage.

Additional Rights for H-2A Workers. For the first time, H-2A guest workers would have the right to enforce the terms of their employment contracts in federal courts. While citizens and immigrant farm workers are covered by the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”), the principal federal employment law for farm workers, AWPA excludes H-2A guest workers. Although H-2A guest workers would not be covered by AWPA, they would have better remedies available to them than before, without losing any other rights under state or federal labor laws.

Failure to meet these requirements and apply for permanent status would result in a termination of temporary resident status. Workers must apply for permanent resident status no later than August 31, 2010. Conviction of a felony or three misdemeanors also would terminate the temporary resident status.

Immediate Family of Farm Workers. Special procedures exist for family members of participating farm workers. Once the farm worker is granted temporary resident status, the immediate family members who lack authorized immigration status may not be deported during this legalization process. However, the family members who lack authorized immigration status may not be employed (unless they qualify in their own right to participate in the “earned legalization” program. Once the farm worker fulfills the requirements of the “earned legalization” program and receives permanent resident status, the immediate family members also will be granted immigration status as long as they meet other requirements under immigration law.