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# Proceedings



## OUTLOOK '88

64th Agricultural Outlook Conference  
U.S. Department of Agriculture  
Washington, D.C. Dec. 1-3, 1987

# ANNUAL AGRICULTURAL OUTLOOK CONFERENCE

United States Department of Agriculture  
Washington, D.C.



Outlook '88, Session #16

For Release: Wednesday, December 2, 1987

## IMMIGRATION REFORM: THE FIRST YEAR

Allison T. French  
Special Assistant for Labor Affairs  
to the Assistant Secretary for Economics

The Immigration Reform and Control Act of 1986--known as IRCA--has been labelled by some as the most far-reaching labor relations act ever passed by the United States Congress.

While that may be an overstatement, it certainly appears that IRCA may have a profound effect upon labor-intensive agricultural production. Congress apparently recognized the potential impact of this law because IRCA contains two programs designed to assure an adequate labor supply for agriculture. No other industry was given such consideration.

There are three major aspects of IRCA: employer sanctions, legalization, and the agricultural programs, which include the H-2A Temporary Foreign Worker Program and the Special Agricultural Worker program. In addition, certain provisions of the new law are intended to prevent discrimination in employment based upon a person's national origin or citizenship status.

For the first time, employers who continue to hire unauthorized workers will be penalized with increasing levels of fines--ranging from \$100 for a failure to verify employment eligibility to \$10,000 for each unauthorized alien after the second offense. These stiff penalties are intended to reduce illegal immigration through the elimination of attractive employment opportunities.

The legalization program recognizes that many aliens who entered this country illegally years ago have set down roots and have become productive members of American society. Legalization is available for those who have resided in the United States continuously since January 1, 1982, are healthy and law-abiding citizens, and are able to be financially self sufficient.

Regarding agriculture, IRCA was intended to streamline and facilitate the former H-2 temporary foreign worker program with a revised program to be called H-2A. Under H-2A, farm employers who experience a bonafide labor shortage may import foreign workers on a temporary basis under terms and conditions which will not have an adverse effect upon U.S. workers similarly employed.

An employer desiring to utilize this program must:



--apply to the Department of Labor for a certification of the existence of a labor shortage;

--agree to offer an enhanced minimum wage rate, approved housing at no cost to the worker, subsidized meals and free transportation;

--test the labor market by engaging in a positive recruitment effort locally and in other states to publicize the terms and conditions offered;

--employ domestic and foreign workers under similar terms and conditions; and,

--offer certain protections and guarantees as specified by law and regulations.

Recognizing that the highly structured H-2A program would not meet the needs of many growers of perishable crops who had critical and unpredictable labor demands, Congress also provided a Special Agricultural Worker (SAW) program which affords temporary legal resident status to former field workers in fruits, vegetables and other perishable commodities.

Under this program, workers formerly engaged in certain field work in specified crops for a period of at least 90 days in the year prior to May 1, 1986 may apply for adjustment of status. From temporary legal resident status, SAW workers may become permanent legal residents and ultimately naturalized citizens. Alternatively, they may continue to commute to this country for the crop season while maintaining their permanent residence in their native country. Once achieving legal status, SAW workers are free to work in any industry or occupation they choose.

Anticipating that many SAW workers, like their American counterparts, may leave farm work for less arduous year-round jobs in non-farm industries, IRCA provides for Replenishment Special Agricultural Workers (RAWs) from 1990 through 1993. To maintain their legal status, RAW workers will be required to work for at least 90 days a year in qualified crops for 3 years.

To provide a transition from dependence upon illegal alien workers to the absolute prohibition of unauthorized workers, IRCA contains a moratorium on penalties until December 1988 for those employers whose workers are eligible for the SAW program. During this period, these employers may continue to employ illegal aliens without fear of penalty although the aliens, if not applicants for adjustment of status, may be subject to deportation.

With this background, let's now look at how IRCA is working, with a look at the future.

Much has happened during IRCA's first year. Considering the enormous task this legislation gave to the government, I believe that the effort has gone remarkably well. I recall a recent tv interview with the president of a large fast food chain in which much was made of the fact that his company had opened 65 new stores during the past year. A remarkable undertaking, but a process they had been repeating over and over for many years. How does that compare to the Immigration and Naturalization Service opening 107 new offices in a period of less than 6 months? And with no prior experience, and despite several lawsuits! During this period other agencies such as USDA, the Departments of Labor, Justice, Health and Human Services, and State, the

Equal Employment Opportunity Commission, and the Social Security Administration have also promulgated new regulations and developed new programs under IRCA. This effort required a well-coordinated and integrated effort by the various agencies and much of the credit for this should go to the INS Commissioner and Deputy Commissioner, Alan Nelson and Mark Everson.

By the end of the first 6 months of operations, or 1 year from IRCA's enactment, we were approaching the level of 1 million legalization applications--800,000 for general legalization and 200,000 SAWs. Employers throughout the nation were given forms and instructions for compliance with the new law. Many thousands of employers have received compliance visits by INS and the Wage-Hour Division of the Labor Department. A number of these have resulted in warnings, and in a few instances, a subsequent visit has resulted in citations and the assessment of penalties.

By and large, the nationwide supply of agricultural labor this year has been less plentiful but adequate. A notable exception was in the Northwest in June, the first month of the SAW program. With record production and reduced illegal immigration, millions of pounds of strawberries and cherries were lost in Washington and Oregon due to an inadequate labor supply. This condition was resolved, and by the time of the record fall apple harvest, the labor supply was adequate. Indeed, due to unseasonably warm weather, the apple harvest was delayed and a brief labor surplus occurred in that area.

With a year to go in the transition period, it is still too early to predict whether sufficient workers will be adjusted under the SAW program to meet the labor needs of producers of perishable crops. There is general consensus that the industry was still dependent upon illegal workers during the 1987 season. However, with almost 200,000 SAW applications made during the the first 5 months of the 18-month program, it could be argued that we are on schedule to meet anticipated labor needs. But I don't hear any farmers making that argument!

Of the first 200,000 SAW applications, less than 4,000 were made by workers outside the United States. This number is far less than anticipated and for reasons which are less than clear.

Contributing factors include the difficulty of publicizing the program abroad and the natural resistance of foreign leaders to emigration of their citizens. Some interesting rumors and anecdotes have surfaced in this regard. One of the first stories we heard was that the program was merely a deception to lure aliens to reveal themselves so they could be jailed or deported. Another was that it was a trick to get employment information to aid in collection of back taxes. Still another was that the program was a ruse to get aliens to come into the United States, be drafted into the Army, and sent to Nicaragua. One INS legalization official found it necessary to bring a group of community leaders for a tour of the office in order to dispel the rumor that the back room was a jail cell from which aliens were loaded into trucks each night.

On the other hand, not all illegal aliens are paralyzed with fear of government officials. One group of illegal aliens calmly came to our office to explain to Assistant Secretary Ewen Wilson how they wished the SAW program to be operated and to express their concern that their commodity would not qualify for the program. At that



time they were at risk of deportation; however, upon leaving they gave me their names and addresses in case I wanted to contact them later.

Even though the season is over in most farming areas, domestic SAW applications continue unabated. It is anticipated that increased activity will occur toward the end of the application period as many aliens may hold off and then come in prior to the final deadline. Many observers feel that with the transition period without employer penalties still in effect for qualified employers through next year, labor supplies will likely be adequate during the 1988 season. Many employers are concerned about 1989 because sanctions will then be in effect and the first year of the replenishment program will still be a year away. The major concerns are whether the number of eligible SAW applicants will match the industry's level of dependence upon foreign workers and, if so, whether these workers will remain attached to the agricultural labor force. An unknown factor is whether non-agricultural industries, presently utilizing illegal workers, will attempt to "raid" the agricultural work force and to what degree will they be successful. There are scattered reports indicating that this may already be evolving.

To date, there has been no significant increase in the use of the H-2A temporary foreign worker program. Several reasons can be cited. It normally takes months to prepare for and submit an H-2A application and the new regulations did not become effective until June when the season was well underway. The new Adverse Effect Wage Rates were immediately challenged by AFL-CIO v. Brock, creating temporary uncertainty as to what the required wage rates would be. For the most part, the requisite work shortage did not occur due to the transition from the use of illegal aliens. The lack of interest in new H-2A applications this past season demonstrated once again that, contrary to criticism from some quarters, farm employers consider the temporary foreign worker program to be quite expensive and useful only as a last resort.

Concern about the sufficiency of SAW applications and the degree of attachment of the newly legalized workers to the agricultural work force has stimulated some long range interest in the H-2A program. Employers are seeking information regarding the operation of the program, the requirements for housing approval, and are reported to be joining H-2A employer associations. At this time, however, we are aware of only one substantial group of employers actually preparing a new H-2A application. It is probably significant that these employers are engaged in commodities not eligible for the SAW program and operate in an area which has had very few SAW applicants.

I hope I've been able to give you some understanding of this far-reaching legislation and perhaps some insight to its potential effect upon the agricultural industry. In closing, I offer some personal observations about the future of labor-intensive agriculture in the post-IRCA era.

Various studies indicate that with fewer young workers entering the workforce and with the projected growth of industry, we may expect greater competition for low-skilled workers in the future. This may mean that domestic workers may continue to leave the agricultural work force, and that the agricultural industry may be less able to compete for workers than at present. The trend toward fewer new workers, combined with the effects of immigration reform suggest four possible alternatives:

1. The Special Agricultural Worker program may generate sufficient numbers of legal workers to meet the labor demands of the perishable crop segment of the industry, and employers may develop mechanisms to retain this labor force and use it more efficiently
2. The industry may become more dependent upon seasonal supplemental foreign labor.
3. New developments in mechanization may reduce the demand for labor.
4. American producers may have to give up market share of labor intensive crops to less developed countries with lower labor costs.

An additional alternative is, of course, that some combination of these four will be the real result. At any rate, it will be very interesting to watch future developments regarding agricultural labor, and it will be of vital importance to a large segment of the American agricultural industry.