

IMMIGRATION LAW IN THE HOSPITALITY INDUSTRY

President Bush's New Immigration Proposal

Restaurant Industry is the Nation's Largest Employer of Immigrants

On Jan. 7, 2004, President George W. Bush announced a new immigration proposal that would provide temporary employment authorization to the estimated 8-12 million undocumented workers in the United States, as well as to individuals in foreign countries who seek to come to the U.S. to work.

The president's proposal is highly controversial, with some critics saying the proposal goes too far, and others claiming it does not go far enough. Public support is divided; a CNN-USA Today-Gallup poll released Monday Jan. 12 found that 55 percent of Americans oppose the proposal, while 42 percent favor it. All sides agree that the proposal, if and when it is passed into law, would pose significant logistical challenges in its administration.

This proposal has generated considerable interest in the restaurant industry, the nation's largest employer of immigrants. According to the National Restaurant Association, the industry's ability to create jobs continues to outpace its ability to fill the jobs with U.S. workers, and despite the recent economic downturn, the restaurant industry is projected to create an additional 1.5 million jobs over the next 10 years.

The president's proposal is based on four principles:

1. Enhancing border control – All participants would be issued a temporary worker card that would allow them to travel back and forth between their home and the U.S. without fear of being denied re-entry into the country. The initiative would enable the federal government to collect identifying information on undocumented workers in the U.S., allowing more efficient management of our borders. Opponents of Bush's plan claimed that the president was cleverly luring illegal aliens out into plain

sight, where they could then be rounded up and deported once their temporary status ended.

2. Meeting U.S. economic needs – The proposed system would match willing foreign workers with willing U.S. employers when no U.S. workers can be found to fill the jobs. Bush has left the proposed lifespan of such work visas up to Congress, but said they should initially last three years, plus at least one renewal. It is expected that immediate family members would also be granted legal status under the proposal.

Critics have pointed out that even if the option to sponsor workers for employment authorization is available, certain businesses may continue to rely on undocumented workers to avoid compliance with federal minimum wage laws, payroll taxes, workers compensation and liability insurance, thereby placing their competitors who comply with the measure at an economic disadvantage. However, President Bush has proposed strict employer sanction measures designed to prevent this scenario. Other employers have expressed concerns that they may be penalized if they admit that they have been employing undocumented workers.

However, overall industry response to the measure has been positive. The National Restaurant Association commended President Bush for the proposal, stating that "our nation's immigration policy should not only secure our borders, but also match willing employers with willing employees. Individuals who work hard, pay taxes and contribute to the U.S. economy deserve an opportunity to earn legal status." The American Hotel & Lodging Association also expressed support for the measure.

3. Not giving undocumented workers unfair advantage over people who have followed legal

procedures from the start – The Bush plan does not offer an automatic path to permanent residency or citizenship, causing some groups to conclude that it would create a permanent underclass of workers who could be exploited and eventually expelled from the United States when their visas expired. Tom Snyder, assistant to the president of Hotel Employees and Restaurant Employees International Union (HERE), lauds the fact that the president's proposal has kick-started the national debate on immigration reform, but adds that its failure to provide a path to permanent residency is a serious deficiency.

The president has indicated that participants in the initiative would be able to apply for legal permanent residence (a "green card") through the "usual procedures." However, current immigration laws present significant obstacles to undocumented workers who wish to apply for legal permanent residence. Most undocumented workers are not eligible to change their status in the U.S. and would be subject to re-entry bars of 3 or 10 years if they return home to apply for permanent resident status. If the Bush proposal is to provide an avenue for these individuals to apply for permanent residence it would have to address the complex legal issues involved.

Furthermore, if the workers in question decide to apply for permanent residence rather than returning home, they would have to compete with other immigrants for the limited number of immigration slots — currently, about 140,000 per year, although the president's proposal seeks to increase these numbers as well.

4. Providing workers financial incentives to return home – Undocumented workers now pay billions of dollars annually into Social Security but are unable to collect benefits; the president's pro-



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posal would give temporary workers credit when they enter their own nation's retirement system for the time they have worked in the U.S., making it easier for temporary workers to contribute a portion of their earnings to tax-preferred savings accounts, money they can collect as they return to their native countries.

It is important to understand that at this time the president's initiative is simply a policy proposal and not a law; in order for it to take effect it must be passed into law by the Congress. There have already been reports of unscrupulous notarios trying to generate business by misrepresenting the administration's proposal as law. Although it is theoretically possible that the measure could be passed into law as early as this summer, its controversial nature makes it unlikely to pass this year, and the consensus is that 2005 is the earliest the legislation could pass.

Becki L. Young has been working in the field of immigration law since February 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, providing advice on work permits and related immigration issues. Contact her to learn more or to schedule a personal consultation by calling 202-232-0983 or e-mailing to youngb@blylaw.com. To receive her bi-monthly electronic newsletter "Recent Developments in Immigration Law" send an e-mail with "subscribe" in the subject line to newsletter@blylaw.com.