

# Ag Visa Program Agreement in Principle

*Disclaimer: This is a summary document based on best understanding.*

## Title I: Blue Card Program for Experienced Farm Workers

- Current undocumented farm workers would be eligible to obtain legal status through a Blue Card Program.
  - Agricultural workers who can document working in U.S. agriculture for a minimum of 100 workdays or 575 hours in the two years prior to December 31, 2012, are eligible to adjust.
  - Agricultural workers who fulfill future Blue Card work requirements in U.S. agriculture, show that they have paid all taxes, have not been convicted of any felony or violent misdemeanor, and pay a \$400 fine are eligible for a Green card.
    - To be eligible for a green card the workers must have:
      - Performed at least five years of agricultural employment for at least 100 work days per year during the eight-year period beginning from the date of enactment; or
      - Performed at least three years of agricultural employment for at least 150 workdays per year during the five-year period beginning from the date of enactment.
- Definition of Agriculture: includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm (FLSA definition). The definition also includes the handling, planting, drying packing, packaging, processing, freezing or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state (MSPA definition).

## Title II: Agricultural Worker Program

- Basic Elements:
  - Establishes a new program with two work options 1) a portable, at will employment based visa, and 2) a contract based visa program;
  - H-2A program would sunset one year after the new visa program is enacted;
  - Three year visa term; renewable once. After 6 years, visa holder would have to return home for 3 months before reapplying;
  - New visa program is administered by USDA;
  - Employers must register with the USDA as a Designated Agricultural Employer (DAE);
  - Worker would lose status and must depart the U.S. if they were unemployed for more than 60 consecutive days; and
  - Contract worker who breaches employment contract must depart the U.S. before accepting another job with a U.S. employer.
- Cap:
  - For the first five years, there is a visa cap of 112,333 per year.

- The cap is compounding. Therefore, in year one there will be 112,333 visas, in year two 224,666, and in year three 337,000. The cap cannot exceed 337,000 in the five year period.
      - The cap will be divided evenly by quarter in year one and based on quarterly historical need thereafter.
      - The cap will carry over each quarter, but not over a fiscal year.
    - After five years, Secretary of Agriculture will determine the cap on an annual basis using established criterion.
- Wage:
  - 2016 Established wage rates for 6 occupational categories:
    - Farmworkers and Laborers – Crop, Nursery, and Greenhouse
      - \$9.64/hour
    - Graders and Sorters
      - \$9.84/hour
    - Dairy and Livestock
      - \$11.37/hour
    - Agricultural Equipment Operators
      - \$11.87/hour
    - Other occupational categories
      - Upon petition by an employer, the Secretary of Agriculture may determine the appropriate wage for First Line Supervisors and Animal Breeders.
  - Each base wage will increase annually by at least 1.5 percent but no more than 2.5 percent as established by the Employment Cost Index (ECI).
  - H-2A wages: The AEWG will be frozen for 3 years after enactment (or one year after the new program is operational).
- Housing:
  - All DAEs must provide housing or a housing allowance during the term of employment.
  - Housing allowance is based on HUD fair market rental rates for a two bedroom dwelling occupied for four individuals.
  - For an at-will employer, an employer will always be able to pay a housing allowance instead of providing housing.
  - For a contract worker, an employer will only be able to provide a housing allowance if the Governor certifies that there is available housing in the geographical area.
- Transportation:
  - Contract and at-will workers shall receive inbound transportation from their home country to the first initial place of employment. Contract workers will receive outbound transportation if they work for the same employer 3/4 of the three-year visa term.
- Three-Quarters Guarantee:
  - A contract employer is required to guarantee work for 3/4 of the contract period with exception for natural disasters such as freeze, flood and other weather related destruction of crops.

- Domestic Referrals:
  - An employer will be able to give preference to an H-2A worker over a domestic worker if the H-2A worker has worked for the employer three out of the past four years. The employer will be required to pay the H-2A worker the frozen AEW, which shall be indexed for inflation.
- Recruitment:
  - DAs shall be required to post notice with the state workforce agency 60 days before the date of the need and shall advertise the position for 45 days.
  - DAs shall hire qualified, ready, willing and able U.S. workers up to 15 days before the date of need.
  - Job description is required to include basic information about the job.
  - Employer must hire eligible and qualified U.S. worker before filling any shortage of workers through the visa program up to 15 days before date of need.
- Attestation:
  - DAs shall attest that they will follow all rules of the program.
  - DAs shall not be subject to any additional penalties beyond those found for violating the underlying labor law.
- Commuter Program:
  - Employer is not required to provide housing or a housing allowance to a worker when the job site is within 50 miles to the border.
- Dispute Resolution:
  - Workers are covered under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Mediation of complaint is required, if any party requests it, before a lawsuit may proceed.
  - If a worker elects to file an administrative claim, which is resolved either through settlement or adjudication, they shall not maintain a civil action under MSPA for the same violation.
- Shepherders, Goat Herders, Custom Harvesters and Beekeepers:
  - Current special procedures for shepherders, goat herders, custom harvesters and beekeepers are applicable under the new program.
- Equal Treatment:
  - Employers must provide U.S. workers equal wages, working conditions and benefits as guest workers in an occupational category. Benefits do not include housing or housing allowance.
  - Similarly situated is defined as spending 75 percent of work time performing tasks defined under the applicable occupational category on a semi-annual basis.