U.S. SEASONAL WORKER POLICIES: WHAT CHANGES CAN THE U.S. IMMIGRATION AUTHORITIES MAKE TO THE H-2B VISA PROGRAM TO MORE EFFECTIVELY ADDRESS EMPLOYERS' NEEDS?

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Abstract

Although international labor mobility represents one of the most effective ways of addressing worker scarcity in high-income countries, growing anti-immigration attitudes have made it difficult to advocate in favor of migration. Consequently, temporary labor mobility programs represent a promising way to at least partially overcome these political challenges, while also allowing employers to address labor shortages. This thesis examines low-skilled temporary worker programs in the United States, focusing on non-agricultural sectors through an empirical comparative analysis at three levels:

i. A macro-level 'between-country' comparison of U.S. temporary worker programs with Canada, a "most similar" comparative case study. It finds that although Canada offers more pathways for temporary workers overall, it is not more open to non-agricultural low-skilled temporary workers than the U.S.

ii. A meso-level 'within country' comparison that analyzes why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. It finds that a program created as part of a comprehensive immigration bill is more likely to have built-in caps as a political compromise to ensure the passage of the larger legislation.

iii. A micro-level 'within-program' analysis of the H-2B program that compares employers who are able to secure foreign workers to those unable to do so due to the current visa cap. It finds that the latter experience lower revenues and additional costs.

Based on my findings the thesis concludes with suggested policy modifications that could improve effectiveness of the U.S. H-2B program for non-agricultural temporary workers.

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Terms and Definitions

Foreign-born worker – A worker, who is in the U.S./Canada on temporary worker visas

Domestic worker – A worker, who permanently resides in the U.S./Canada

Low skills – High school diploma or less

Middle skills – More than a high school diploma but less than a bachelor's degree

High skills – Bachelor's degree and more

Low-skilled worker – worker with a high school diploma or less

High-skilled worker – worker with at least a bachelor's degree

Temporary worker programs – programs through which a country brings foreign-born workers on temporary basis

Seasonal worker programs - programs through which a country brings foreign-born workers to fill specific seasonal needs

Labor shortages – Difference between the demand and supply of workers in a given occupation or sector

Prevailing Wage - An average wage paid to similarly employed workers in a specific occupation in the area of intended employment.

Low-wage worker - A worker with wage that is below the provincial/territorial median wage

High-wage worker – A worker with wage that is at or above the provincial/territorial median wage

Organization for Economic Co-operation and Development (OECD)

Department of Homeland Security (DHS)

U.S. Citizenship and Immigration Services (USCIS)

U.S. Customs and Border Protection (CBP)

Department of State (DOS)

U.S. Department of Labor (DOL)

National Prevailing Wage Center (NPWC)

State Workforce Agency (SWA)

Employment and Training Administration (ETA)

Department of Labor's the National Prevailing Wage Center (NPWC)

DOL's Wage and Hour Division (WHD)

Office of Foreign Labor Certification (OFLC)

Chicago National Processing Center (CNPC)

U.S. Government Accountability Office (GAO)

Canadian Border Services Agency (CBSA)

Immigration, Refugees and Citizenship Canada (IRCC)

Employment and Social Development Canada (ESDC),

Non-Immigrant Employment Authorization Program (NIEAP)

Temporary Foreign Worker Program (TFWP)

Seasonal Agricultural Worker Program (SAWP)

Labour Market Impact Assessment (LMIA)

International Mobility Program (IMP)

Provincial Nominee Program (PNP)

1. Thesis Introduction

As the demographics of the world's richest countries undergo tectonic shifts, high-income societies will face challenges that are as difficult as they are inevitable. Estimates show that by 2050, the working-age populations of countries in the Organization for Economic Co-operation and Development (OECD) are likely to decrease by more than 92 million, while the number of people over 65 years old will grow by more than 100 million at the same time (Smith and Hani 2020). Some of the high-income countries have been already seeing these demographic shifts. For instance, Germany, Japan, Italy and Spain have been experiencing continuous declines in the number of newborn children since at least the 1970s that suppressed their fertility rates well below the 2.1 threshold necessary for a population to replenish itself. The United States has been among the countries with drops in births as well, with a fertility rate at or below 2.1 since 1973 and plummeting during the past decade to just 1.7 percent in 2018 (The World Bank n.d.).

Inevitably, these shifts will adversely impact labor markets and socioeconomic systems of high-income countries, whose social security and health care programs are heavily dependent on contributions from the working-age populations. One of the early effects of the demographic changes that many countries have been already facing is increasing labor shortages, especially in low skilled occupations.[1] For example, German employers reported about 1.6 million unfilled positions in 2018 (Nienaber 2018) and companies in France had about 200,000 to 330,000 job openings that remained vacant in 2017 (The Economist 2018). Similarly, the United States had approximately seven million job openings in September 2019, (U.S. Bureau of Labor Statistics n.d.) - a record-high level (Glassman 2020) - but only 5.8 million unemployed workers (U.S. Bureau of Labor Statistics 2019b; U.S. Bureau of Labor Statistics 2019). Moreover, estimates show the worker shortages are likely to worsen as the U.S. labor force is expected to grow at an annual rate of

[1] "Low" skills are defined as having a high school diploma or less.

0.5 percent between 2018 and 2028, which is lower than in the previous decades (Barnes 2020). With U.S. population growth slowing to the lowest rate since the Great Depression (as per the most recent Census Bureau data), and further fertility declines expected from the global pandemic of COVID-19 these long-term demographic trends are likely to continue (Tavernise 2021).

The job shortages are apparent in a variety of sectors and occupations in high-income countries. However, they are often even more dire in sectors that need to fill positions requiring less than a bachelor's degree and whose hard-working conditions and low wages make them less desirable to domestic workers. These occupations include occupations in care work, tourism, construction, manufacturing and agriculture. The coronavirus pandemic further emphasized the lack of "essential" workers in fields such as healthcare, childcare, domestic work as well as food production and processing. In 2020, annualized nursing shortages climbed to 10,000 per year in the UK, 75,000 per year in Germany and 203,700 per year in the US. Shortages in the care work sector are even more alarming, with 38,000 per year in Germany, 122,000 per year in the UK and 1.3 million per year in the U.S. (Smith and O'Donnell 2020). Still, the job shortages were apparent before the pandemic. Specifically in the U.S., demand for workers to fill low and middle skill[2] occupations has been growing (National Skills Coalition 2014), as more Americans seek 4-year degrees and professional jobs (Campbell 2019). For instance, the U.S. reported 434,000 vacant construction jobs in 2019 (Cilia 2019) and estimates suggest the shortages will grow to 747,000 by 2026 (De Lea 2019). Specifically, occupations that do not require a university degree, including home health and personal care aids, as well as fast-food counter workers and restaurant cooks, have been projected to be among the jobs with the largest absolute growth in worker demand between 2019 and 2029 (Clemens, Resstack, and Zimmer 2020). U.S government projections also expect increases in openings in occupations such as

[2] "Middle" skills are defined as achieving more than a high school diploma but less than a bachelor's degree.

landscaping and groundskeeping workers, lifeguards, ski patrol and other recreational and protective service workers are expected to rise between 2019 and 2029 (U.S. Bureau of Labor Statistics 2019a).

Overall, the lack of workers has been taking its toll. The increasing job shortages have been weighing on employers' productivity, and often even threatens the entire existence of affected businesses. For example, a recent survey showed that one out of every two questioned German companies is unable to find qualified candidates to fill openings over a long period, and six out of ten managers believe the situation threatens their business (Nienaber 2018). Additionally, a recent report found that existing residents in many large European cities are able to fill fewer than 60 percent of the projected job growth (Smit et al. 2020). The broader effect of these developments will have an adverse impact on economies of high-income countries. Estimates for the upcoming two or three years already predict slowdowns in economic growth rates among Eastern European countries, pointing to severe worker shortages as one of the main factors contributing to this development (Pandey 2019). Similarly, Japan's economic growth rate has been predicted to decline to about 0.1 percent between 2026 and 2030, unless the country finds a solution to the ongoing labor shortages (Nikkei Asia 2017). By 2050, the U.S. economy is expected to grow by a lukewarm 1.9 percent and is expected to get surpassed by India, falling in the ranking of the world's top economies to third place (Hawksworth, Clarry, and Audino 2017).

Therefore, high-income countries will inevitably have to find solutions to increasing worker scarcity.[3] Some employers have tried to address the issue by raising wages. However, this approach just "reallocates" workers creating shortages within sectors, rather than addressing the overall labor scarcity that stems from the demographic shifts. A survey from Australia showed that almost 75 percent of questioned farmers offer above-average wages, but two thirds of them still ranked labor concerns among

[3] "Labor scarcity" is defined as employers' inability to address their labor shortages by increased wages and other efforts due to lack of workers.

the top three issues they expect to face in the future (Molloy 2019). Employers have used other tools to try to mitigate worker shortages: mobilizing their native-born workforce by hiring employees' spouses or hiring prisoners, as well as incentivizing potential employees with cash rewards, longer holidays, shorter hours and flexible shifts. (Pandey 2019; McDowell and Mason 2020; Thomasson 2018).

Still, none of these tactics may solve worker scarcity issues caused by ongoing demographic changes. That is why many employers began to invest money into automation and digitalization, hoping innovation would solve the problem (Shotter 2019). Still, many employers, particularly small ones, can't rely on automation due to its requirement to hire highly skilled workers experienced in programming, maintenance and servicing of new technology that they simply cannot afford (Szakacs 2018). On top of that, for some sectors automation is not an option given the nature of the occupations they need to fill. As an example, U.S. construction companies have been looking for ways to use robotics but found that many jobs in this sector are so complex that they cannot be substituted (Cilia 2019). That applies also to other professions such as nursing, care workers or janitors. The U.S. economy was predicted to lack 1.7 million high- and 2.8 million low-skill jobs that cannot be outsourced or mechanized by 2028 (Smith and Cepla 2020).

Labor mobility represents one of the most effective ways to address worker scarcity in high-income countries (Shotter 2019). According to the International Organisation of Employers (IOE), "employers regard regular migration as a necessary and positive phenomenon (International Organisation of Employers 2018)" since it helps them to fill their job gaps by bringing workers from abroad - especially since low-income countries face the opposite demographic challenge than high-income countries with significant increases in their youth populations (Smith 2020). As a result, a number of high-income countries have opened new migration pathways. While some of them, such as Canada, started a new channel allowing essential workers – low- and high-skilled – to even apply for permanent residency

(Government of Canada 2021), others face a rise of nationalism and anti-immigration sentiments that have led to a pushback from constituencies in recent years. Countries such as Austria, Denmark, Finland and the Netherlands all saw an increase in far-right parties' vote share in their national parliamentary elections between 2002 and 2017 (L. Davis and Deole 2017). These growing anti-immigration attitudes have made it difficult to advocate in favor of migration. Temporary labor mobility programs[4] therefore represent a promising way to at least partially overcome these political challenges, while also allowing employers to fill labor shortages.

During the presidency of Donald J. Trump between 2016 and 2020, the U.S. introduced a series of immigration restrictions. The U.S. Citizenship and Immigration Services (USCIS), an agency administering the U.S. immigration system, even changed its mission statement, removing the phrase "nation of immigrants" (Gonzalez 2018). Overall, the U.S. immigration authorities under the Trump administration reduced the number of issued visas across nearly all immigration categories. Nevertheless, the temporary foreign worker programs, including seasonal worker programs, were one of the exceptions, as the number of issued visas under these programs actually increased between fiscal years 2015 and 2019 (Chart 1 in Appendix). That is likely due to the conservative nature of the Trump presidency that prevented the entry of temporary non-immigrants, such as students and business visitors, as well as permanent immigrants, such as family members of U.S. citizens and refugees, but at the same time appeared responsive to calls from businesses of all sizes in a variety of sectors that have lacked workers to fill low skill occupations during the peak season of the year.[5]

[4] Temporary labor mobility programs are defined as channels through which a host country brings foreign-born workers to temporarily fill its labor shortages. Definition of "temporary" varies in each host country and program. Seasonal programs are a type of temporary labor mobility programs.

[5] For the purpose of this thesis, "low-skilled" is defined as having completed (or requiring in case of occupations) less than a bachelor's degree. As a result, this term effectively covers both "low-" and "middle-skilled" jobs since the U.S. immigration policies do not differentiate between the two.

This thesis examines temporary worker programs allowing employers to fill low-skilled jobs in the United States. Specifically, it focuses on the H-2B program for non-agricultural workers, such as landscapers, forestry and construction workers, cooks, and maids, that is limited by an annual visa cap. There are three primary actors participating on temporary worker mobility: employers, governments and workers, each of which brings different but equally important perspective on functioning of these programs. The perspective of workers has been studied extensively over the years, as shown in the following chapter, since they are the most vulnerable labor mobility participants prone to abuse and exploitation during the hiring process as well as employment in the U.S. While parts of this thesis are dedicated to the topic of workers, it complements the existing body of literature by exploring primarily the role of employers and the government in the U.S. temporary worker programs. The thesis analyzes the program through an empirical comparative analysis at three levels:

i) A macro-level 'between-country' comparison of U.S. temporary worker programs with Canada, a "most similar" comparative case study (Seawright and Gerring 2008). It explores U.S. temporary worker programs through the lens of Canada's system, finding that although Canada offers more pathways for temporary workers overall, it is not more open to non-agricultural low-skilled temporary workers than the U.S.

ii) A meso-level 'within-country' comparison – also conducted as "most similar" comparative case study (Seawright and Gerring 2008) - analyzes why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. I find that a program created as part of a comprehensive immigration bill is more likely to have built-in caps as a political compromise to ensure the passage of the larger legislation.

iii) A micro-level 'within-program' analysis of the H-2B program compares employers who are able to secure foreign workers to those unable to do so due to the current visa cap. I find that the latter experience lower revenues and additional costs.

It is important to mention that this thesis analyzes data through 2019 before the world was struck by a global pandemic of the COVID-19 virus, which virtually froze international labor mobility for a while. This is because the full impact of the epidemic has not been fully explored at the time this thesis was completed. Nevertheless, projections show that once the pandemic is over and labor mobility around the globe fully resumes, temporary migration may well emerge as an important migration channel especially due to the demographic pressures and political constraints described above. With current president Joe Biden's administration hinting at plans to make some considerable changes in the seasonal worker programs in the U.S. (C. Davis 2021), findings and recommendations in this thesis can be helpful to the government's future policies governing the programs.

I begin in the next chapter by first identifying the key research questions and hypotheses and discuss the relevant literature related to them. Chapter 3 provides the macro-level 'between-country' analysis. It first provides a history of temporary worker programs in the U.S. and Canada, and then their principal current features, with comparisons based on a set of criteria. Chapter 4 then offers a meso-level 'within-country' comparison, with a comparison between H-2A and H-2B programs, tracking their evolution and the advocacy efforts to modify each of them, to explain the different visa program outcomes. Subsequently, Chapter 5 offers a micro-level 'within-program' analysis, examining sectors using the H-2B visa program and the challenges faced by employers. More specifically, the chapter compares employers who are able to secure foreign workers to those unable to do so due to the current visa cap, focusing particularly on the landscaping sector that is the largest user of the H-2B visa. Finally, based on the analysis of the three

main analytical chapters, the thesis concludes with suggested policy modifications that could improve effectiveness of the U.S. H-2B program for non-agricultural temporary workers.

2. Literature and Hypotheses

Researchers from all around the world consider temporary worker programs to be one of the most controversial migration-related topics. Despite the calls from U.S. businesses for more workers, it has drawn opposition from many academics, immigration reform activists, and organized labor representatives from both ends of the political spectrum (Lister 2014). Lawmakers have been bickering over the appropriate level of migration restrictions for years, fearing that an increase in immigration could disadvantage domestic workers. This fear exists despite work of authors such as Michael Kremer and Stanley Watt who argue that "immigration restrictions are arguably the largest distortion in the world economy and the most costly to the world's poor. Yet, these restrictions seem firmly in place due to fears in rich countries that immigration would exacerbate inequality among natives, fiscally drain the welfare state, and change native culture" (Kremer and Watt 2005).

Authors typically evaluate and analyze U.S. temporary worker programs either from the perspective of the foreign workers or the U.S. economy and U.S.-born workers. While the former group often points out fraud and abuse towards the migrants (Economic Policy Institute 2016), the latter claims it hurts the U.S. economy and workers as the participating businesses hire foreign seasonal workers to save money on wages (Weintraub 2019), and thus allow those immigrants to basically take jobs away from Americans (Steven A. Camarota, Richwine, and Zeigler 2018). Some authors combine arguments made by both of these groups, saying that the programs actually harm both American workers and guest workers due to

their failure to hold employers to higher standards (Costa 2016b). Relatedly, critics also commonly claim that job shortages could be addressed by increasing wages (Shierholz 2021). However, this would inevitably increase prices of the offered products and services (Bauer 2021). For example, if wages of agricultural workers increased, prices of food would increase as well (Walsh 2017). This would negatively affect especially poor families. Many employers also simply don't have the flexibility to offset the additional costs generated by higher wages (Rosenblatt 2021). This is especially true for instance for smaller farmers, landscaping companies and other businesses in need of low-skilled workers.

On the other hand, authors who are supportive of the programs say that temporary migration benefits the U.S. economy. According to them, the seasonal foreign worker program keeps "American small businesses in business", and thus "sustains American jobs." They claim that many U.S. employers with specific seasonal needs depend on the seasonal worker visas because it is impossible for them to find enough American workers. Additionally, the supporters point out that temporary migrants contribute to Social Security and help to reduce illegal immigration by giving employers an alternative to hiring undocumented workers "when Americans are not willing to take these temporary jobs" (B. Crawford, Flanagan, and Hartley 2016).

I believe the deepening job shortages in the U.S. together with growing demand for the seasonal worker programs clearly prove the need for additional workers in certain sectors – and especially occupations eligible for the H-2B non-agricultural program, such as landscaping workers and cooks. In the two consecutive fiscal years 2018 and 2019, the number of requested and government-certified H-2B workers[6] basically doubled the annual visa cap of 66,000. This prompted the U.S. government to conduct a lottery

[6] This is the number of H-2B non-agricultural workers that employers requested and proved to the U.S. Department of Labor they need these works. It symbolizes the overall demand for the programs rather than the total number of workers, who were issued visas or the number of workers who crossed the U.S. border.

to decide who will be awarded the visas, spurring even more uncertainty among the H-2B employers who have been forced by the system to invest into the application process and plan for the upcoming season without knowing how many workers they will be able to bring to the U.S. While there may be cases of certain most likely large businesses, which could potentially still save money by applying for the temporary worker program rather than hiring Americans[7], I think it is a common sense that most of the H-2B companies would avoid going through the process and investing money in a program with such uncertain outcomes, if they had another option of receiving the number of workers they need.

Therefore, contrary to authors analyzing the U.S. seasonal foreign worker programs overall rather than looking at specific individual policies of which they consist,[8] this thesis attempts to examine the impacts of specifically the inflexible annual visa cap that has been imposed on the H-2B non-agricultural temporary worker program since 1990. Particularly, it examines effect of the cap on H-2B employers, many of whom invest into the application process but are unable to bring workers despite this investment. It expands, among others, on issues explored by Hanson, Liu and McIntosh, who examined the scale and composition of low-skilled immigration in the United States over time, as well as income growth and demographic shifts in the Western Hemisphere that contributed to changes in immigration flows to the country. Their analysis found that "if, as predicted by demographic forces, low-skilled immigration continues to decline in future decades, U.S. firms—especially those located in U.S.–Mexico border states and in the immigrant-intensive industries of agriculture, construction, eating and drinking establishments, and nondurable manufacturing—are likely to face pressure to alter their production techniques" (Hanson, Liu, and McIntosh 2017). Moreover, this thesis enhances the substantial body of literature published about

[7] Assuming the businesses would have to increase wages, if they were to hire Americans as many critics claim.
[8] The one exception is the prevailing wage, which establishes the minimum wage that each foreign worker in a given area must receive in every occupation approved for H-2B (Costa 2016b). This particular piece of the H-2B program has been a subject of researchers' discussions. While all of them generally agree the prevailing wage is too low, one group claims that its low level allows for abuse of foreign workers and the other that it puts downward pressures on overall wages and thus harms American workers.

temporary worker programs in other countries by adding a comprehensive comparison of the U.S. programs with those in Canada, providing a background and assessment of policies that could inspire improvements and changes in the existing and future U.S. temporary worker programs.

Specifically, this thesis analyzes the impacts of H-2B cap through an empirical analysis at three levels - macro-level or 'between-country', meso-level or 'within-country' and micro-level or 'within-program'. The macro-level 'between-country' analysis looks at the U.S. temporary worker programs through lenses of other country's system, comparing them with those in Canada, a neighbor within the same hemisphere and similar make-up of foreign-born workers. The case study uses the "most similar" case selection method[9] (Seawright and Gerring 2008) and builds on previous work of authors such as Fudge, Chartrand and Vosko, who have analyzed temporary worker programs in Canada and their developments over time, and adds a comparison of the Canada's programs with those in the U.S. Particularly, the aim of the case study is to assess whether Canada is more open to bringing new low-skilled temporary workers, and particularly seasonal non-agricultural workers, than the United states. My analysis looks into two possible hypotheses: (1) Canada is more open to bringing new low-skill non-agricultural workers than the United States because it has more channels, through which temporary workers may come to the country; and (2) despite having more immigration programs, Canada is not more open to non-agricultural temporary workers than the U.S. since the employers and workers face similar issues with coming to Canada as do those in the United States.

The meso-level 'within-country' portion focuses on the U.S. temporary worker programs, seeking to answer the question of why one of the two U.S. temporary worker programs for seasonal workers, the H-

[9] The "most similar" case selection method is based on a chosen pair of cases that is "similar on all the measured independent variables, except the independent variable of interest." (Seawright and Gerring 2008)

2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. Using the "most similar" case selection method (Seawright and Gerring 2008), this case study builds on work of authors such as Lister, Costa and Weintraub, who have analyzed the U.S. temporary worker programs, and adds a further analysis of establishment and development of the H-2B visa cap as well as the role of lobby, advocacy and legislative efforts to modernize both of the U.S. seasonal worker programs. I specifically examine three possible explanations to the question: (1) the H-2A program has stronger historical roots that allowed for it to develop on a separate track from the H-2B program, which eventually led to implementation of the H-2B cap that has never been modified, (2) the H-2B advocacy efforts are not strong enough to persuade U.S. lawmakers to make changes to the program, and (3) modifications to the H-2B program have been truly considered on the Congressional floor only through large pieces of legislation focused on broader immigration reform, which prevented approval of specific changes to the program.

Finally, the micro-level 'within-program' analysis compares employers who are able to secure foreign workers to those unable to do so due to the current H-2B visa cap. The case study is based on existing surveys and government studies as well as interviews with U.S. employers, who use the H-2B program. My hypothesis for this case study is that the costs of H-2B companies, who were unable to secure workers through the program due to the lottery system, are higher than of those who were randomly selected to bring foreign born workers. Specifically, I expect to find that the cap has been forcing the "unlucky" companies to either refuse customers, push their employees to work overtime or use other alternative solutions to get through the season, and thus preventing their growth.

3. Macro-Level 'Between-Country' Case Study: Comparison of Temporary Worker Programs in the U.S. and Canada

Introduction

To properly modify existing or even establish new temporary workers policies, I believe it is important for the United States - among other steps – to analyze programs in other countries, which could possibly inspire and inform these changes. Even though the U.S. is unlikely to be able to simply replicate other countries' programs due to each country's unique labor market, immigration system and other characteristics that play a role in whether a foreign worker program will be successful or not, lawmakers can learn from other countries' experience - what has and has not been working in their context and why. I believe the most logical way to start such analysis is to assess policies implemented by countries that are the most similar to the United States.

Canada is likely the closest country comparable to U.S. when it comes to labor mobility. Located in the same hemisphere, Canada experiences a similar make-up of temporary migration flow as the U.S., with most workers coming to both of the countries from Mexico, Jamaica and Latin America (U.S. Department of State n.d.; Chartrand and Vosko 2020). Moreover, Canada has been experiencing job shortages in the same sectors as the U.S. Besides high-skill sectors such as nursing and engineering (Y Axis 2020; Williams 2015), both countries face job shortages also in low-skill sectors such as construction and landscaping (Kannan 2019; De Lea 2019b). For example, Canada's construction sector is expected to need 100,000 additional workers by 2029 (Canadim 2020). In the U.S., employers reported 434,000 vacant construction jobs in 2019 (Cilia 2019) and estimates suggest the shortages will grow to 747,000 by 2026 (De Lea 2019a). At the same time, Canada as well as the U.S. saw some record low unemployment levels in 2019 (Chaney

2019; Johnson 2019) before the COVID-19 pandemic hit the countries in early 2020. Moreover, both countries' temporary worker programs developed from agricultural programs established at the beginning of the 20th century, signaling strong history and foundation that helped to shape the current schemes.

And yet, the two countries have been taking quite different approaches towards accepting temporary foreign-born workers. While the U.S. has three specific categories of temporary worker programs – one for high-skilled and two for low-skilled workers, Canada has a variety of programs based on international agreements and the country's interests through which employers can hire workers. Moreover, when it comes to seasonal migration specifically, the U.S. has one program specifically for agricultural sector and another one for all the other industries with seasonal job shortages, which is however limited by an annual visa cap of 66,000. Canada, on the other hand, has one broad program specifically for temporary foreign workers, which is *not* limited to seasonal jobs, as well as other programs that allow employers to hire foreign workers that meet eligibility criteria given by a bilateral agreement or a special interest that the country has in accepting certain individuals from abroad.

Based on the paragraph above, one would say that Canada has been clearly more open to temporary workers, including those who are seasonal, than the United States because it provides them with more pathways to come to the country. Using previous work of author such as Fudge, Vosko and Chartrand as a baseline, this case study provides a comparison of the U.S. and Canada's approaches towards temporary foreign worker programs. The aim of the case study is to assess whether Canada is truly more open to bringing new low-skilled temporary workers, and particularly seasonal non-agricultural workers, than the United States. However, it does not try to answer this question by comparing the numbers of accepted foreign-born workers. That is because such comparison would not be accurate as Canada brings majority

of its non-agricultural workers[10] through its International Mobility Program, which in most cases does not track details about the worker's occupations. Instead, I look into history of temporary worker programs in the U.S. and Canada, analyze the existing ones and how they fit into the countries' respective immigration systems. Based on my readings, knowledge and experience with the U.S. and Canadian temporary worker programs and labor mobility in general, I test two possible answers:

1. Canada is more open to bringing new low-skill non-agricultural workers than the United States. Canada has had a number of channels, through which temporary workers may come to the country, because economic immigration is a bigger priority and part of the country government's overall strategy to overcome demographic trends that lead to job shortages. Additionally, Canada's system allows its government to implement additional immigration pathways more easily.
2. Despite the large number of Canada's immigration programs, the country is not more open to non-agricultural temporary workers than the U.S. These workers face similar issues with entering Canada as do those in the United States. This is because Canada's system puts priority on immigration programs for other foreign-born individuals, such as high-skilled workers, humanitarian migrants and those entering the country through international agreements established to advance its broader economic and cultural interests.

The case study begins with explanation of the U.S. and Canada's temporary worker policies, including their history and description of the current programs, as well as discussion of criticisms raised against them. Then, it provides a comparison of the temporary worker programs in the United States and Canada based on three sets of criteria – overall framework of the programs, their specific features, protections provided

[10] Low-skilled and high-skilled.

to the participating workers and criticisms. It concludes with summary of my findings and observations, as well as discussion of possible explanations for the results. The data for this case study comes from government agencies in both United States and Canada, as well as previous studies examining policies in each of these countries individually. For easier readability, the direct side-by-side comparisons of the programs and policies are included in form of tables in the Appendix. This case study also establishes the basis for the following two case studies.

The U.S. Temporary Worker Programs

Foreign workers are an important part of the U.S. labor force. Millions of individuals come to the United States every year through a variety of visas. However, there are just a few visa categories that allow them to work. These visa categories had been established more than three decades ago by the Immigration Act of 1990. Despite the fact that immigration has been one of the top policy issues for most of the administrations that followed the establishment of the programs, there were no considerable changes made to the U.S. immigration policies since then (Chishti and Yale-Loehr 2016). That is because to approve a new immigration pathway, both Congressional chambers must pass, and the President sign the new piece of legislation to make it a law – a process that has been in general difficult for a country with two-party system and even more so in case of such controversial topic as immigration. Therefore, over the years, it has proven to be difficult for U.S. lawmakers to reach compromise over possible modifications to the U.S. immigration policies and potential creation of new immigration channels. Therefore, while the U.S. economy continues to change dynamically, U.S. immigration system has remained static over the past more than 30 years.

The existing U.S. immigration policies require that all foreigners must have a "purpose" of their travel to the U.S., based on which they are divided into categories. If they meet all the requirements, they receive visas that allow them to cross the U.S. border. There are two subcategories of visas – immigrant and nonimmigrant.[11] This section provides a summary of visa types available to individuals attempting to come to the U.S., showing that there are just two visa types that allow U.S. employers experiencing seasonal worker shortages to bring low-skilled workers from abroad to fill these jobs.

U.S. Immigrant Visa Categories

Although the U.S. system does provide certain individuals with ways of staying in the country, the options are very limited. To immigrate to the U.S., the foreigners must use one of the four official channels - family reunification, long-term workers, special immigrants and refugee admissions. The family reunification channel is however only for people, who already have relatives in the U.S. Moreover, only immediate family members such as spouses and children get the first preference, which allows them to come within about a year since submission of their applications. Parents and siblings must wait for years in order to secure their visas (National Immigration Forum 2018b).[12]

Another immigrant visa category is for long-term workers, who are typically required to have finished at least a 4-year degree. Even though low-skilled workers may possibly qualify for the Third Preference or "EB-3", it requires a full-time permanent job offer for a year-round occupation and a certification from the Labor Department, confirming there are not enough U.S. workers for that particular job (U.S.

[11] Immigrant visas eventually lead to permanent residency, while non-immigrant visas do not.
[12] This category is not available to other family members such as cousins, aunts, and uncles.

Department of State Bureau of Consular Affairs n.d.). On top of that, there are only about 40,000 EB-3 visas available annually, out of which just 10,000 can go to "other workers" without university degrees (U.S. Department of State Bureau of Consular Affairs n.d.), and their issuance depends among other factors on the applicants' countries of origin.[13] As a result, in 2020, the number of employment-based visa applicants surpassed 1.2 million (Chothani 2021), creating a backlog that is predicted to double by 2030 (Herman Legal Group 2020). Therefore, the wait for foreign workers without a university degree may stretch to over a decade (Bier 2019), making them unable to fill the employers' current job shortages. And even though some workers may be able to secure this type of visas, the annual limit makes it impossible to help fill job shortages among employers from all sectors of the U.S. economy.

Then, there is the diversity visa (DV) lottery, which is a program through which the U.S. government randomly selects 55,000 immigrants from countries with low levels of immigration to the U.S. (U.S. Department of State, n.d.). To qualify for the program, an applicant has to have a high school education, or its equivalent, or two years of qualifying work experience as defined under provisions of U.S. law (U.S. Department of State Bureau of Consular Affairs n.d.). Although certain low-skilled workers may receive permanent residency through the DV lottery, employers cannot rely on this visa category as they have no control over who will be selected, where they will work or in which occupations.

Lastly, certain very specific groups of 'humanitarian' migrants can apply for a refugee status. However, the U.S. sets an annual cap on refugee admissions and the individuals apply from outside the U.S.[14] (National Immigration Forum 2020). For FY2020, the administration set the overall refugee cap to 18,000

[13] Every country of origin can account for maximum of 7 percent of green cards in each category.

[14] This compares to 'asylum', which is another humanitarian status, for which, however, individuals apply from inside of the U.S. or at the U.S. border (National Immigration Forum n.d.).

admissions, (The White House 2019) and lowered the limit even further to 15,000 for FY2021 (The White House 2020).[15]

U.S. Non-immigrant Visa Categories

Individuals, who are not eligible for the immigrant visa categories described above, can apply for one of the nonimmigrant visas. As the name suggests, these visas allow the eligible individuals to come to the United States for limited time just to fulfill certain "purpose" and then return to their countries rather than "immigrate," or stay, in the U.S. indefinitely. As Table 1 in the Appendix shows, there are over 15 categories of nonimmigrant visas. However, many of these categories are simply not achievable for vast majority of low-skilled foreign-born, and therefore cannot help U.S. employers to fill their job shortages. For example, due to their socioeconomic background, these workers can't qualify for categories of visas such as D, A, G, I, P, R, which are specifically for plane crewmembers, diplomats and foreign officers, employees of international organizations, journalists, performers and athletes, and religious workers, respectively (U.S. Department of State Bureau of Consular Affairs n.d.).

Other categories of visas, for which migrants could potentially qualify are the visitor or student visas. As the name again suggests, the visitor or "B" visas are for individuals, who plan to visit the U.S. for the purpose of tourism or business-related matters. However, the recipients are not allowed to work in the U.S. and must return to their home countries after six months of continuous stay in the United States (U.S. Department of State n.d.). Similarly, in order to qualify for student visas (F or M categories), the U.S. immigration authorities require enrollment in one of the U.S. educational institutions. Moreover, as

[15] Beginning in October 2021, President Joe Biden plans to increase the annual refugee cap to 125,000 (Barros 2021)

foreign students, the recipients are again not allowed to work in the U.S., except for very specific cases of on-campus employment (U.S. Citizenship and Immigration Services 2020e). Another option for certain students is the "J" category, or exchange visitor program, through which they can come and work in the U.S. but only for a summer through the Summer Work and Travel program or for up to two years as Au Pairs. However, both these programs are open only to young people between 18 and 26 years old. The J visas also provide opportunities for physicians, scholars and professors (U.S. Department of State n.d.) – professions with high skills.

Finally, there are certain nonimmigrant visas that would allow certain foreign-born individuals to temporarily work in the U.S. Two such programs are "H-1B" (U.S. Citizenship and Immigration Services 2020f) and "L-1" (U.S. Citizenship and Immigration Services 2020d). However, since these categories require sponsorship from a company and in case of H-1B at least a bachelor's degree, they are once again not achievable by low-skilled workers, and thus not available to employers seeking to fill low-skill job shortages.

Overall, if employers need to fill seasonal job shortages, their only choice is one of the two seasonal worker programs - the "H-2A" visa for temporary seasonal agricultural workers and "H-2B" for temporary non-agricultural workers. Still, since only employers within the agricultural sector may apply for the H-2A visas to bring their foreign workers, all other industries where employers experience seasonal job shortages rely on the non-agricultural H-2B program. The U.S. has never had a long-term temporary worker program that would bring a sufficient number of low-skilled workers in year-round occupations.

History of the U.S. H-2 category

The history of the U.S. temporary foreign worker programs dates all the way back to 1917. At first, the programs focused specifically on agricultural workers. To address labor shortages caused by the World War I and II, the U.S. government began the Bracero Program first in 1917[16] and then again in 1942. The program imported agricultural workers from Mexico to work on U.S. farms (Martin 2020; Bier 2020; Downer 2017). It wasn't until 1952, when Congress allowed for agricultural workers from other countries[17] to come to the U.S. (Downer 2017) and recognized other industries' seasonal need for foreign workers (Mathes 2012). The Immigration and Nationality Act (INA) of 1952 modified the previous version of the law from 1924 by establishing the H-2 temporary work visa and enumerating categories of "nonimmigrants", or individuals admitted to the U.S. for a temporary period of time and a specific purpose (Bruno 2018). It also established that H-2 employers in agriculture as well as other industries must conduct a labor market test, proving there are no available and qualified U.S. workers for their openings and that hiring of foreign workers would not reduce wages and worsen working conditions of U.S. employees (Mathes 2012). As a result, agricultural workers from Mexico were typically admitted through Bracero, while workers from other countries used the H-2 visas. However, the U.S. closed the Bracero program in 1964 for a variety of reasons (Bier 2020). These included the mechanization of cotton and sugar beet harvesting and constraints about reductions in U.S. farm workers' wages caused by the presence of Braceros (Martin 2020). An INA amendment in 1965 then established the first ever cap on immigrants from Western Hemisphere that could enter the U.S., as further discussed in Case study 2 (Wolgin 2015b). There were no other significant changes in the U.S. immigration policies until 1986, when the Congress introduced the Immigration Reform and Control Act (IRCA).

[16] This first Bracero program ended in 1921.
[17] Particularly from the Caribbean.

By IRCA, the legislators responded to calls for reduction of undocumented migration and increased protection of temporary agricultural workers. The new bill divided the H-2 program into two separate categories – the H-2A, which is solely for temporary agricultural workers, and the H-2B, which covers temporary workers within all other industries with seasonal need for additional workers. Even though the original purpose of the H-2 program remained unchanged - to provide additional temporary workers to U.S. employers, who struggled to find workers, granted that the native-born workers' wages and work conditions weren't adversely effected (Mathes 2012), IRCA focused solely on the H-2A program and virtually ignored H-2B (Jacquez 2020). In other words, while the bill outlined details of the H-2A program, including definitions, process and requested regular reporting to the Congress on performance of the program, it did not provide any specifications about H-2B (Simpson 1986). The fact that the H-2B program was not covered by IRCA as much as H-2A stemmed from the fact that the demand for non-agricultural workers was not great at that time with only 62 H-2B visas granted in 1987 (Fitzgerald 2012).

In contrast, the next large immigration bill, the Immigration Act of 1990, has not changed anything for H-2A but established a quota on the H-2B program (Jacquez 2020), setting the total number of individuals eligible to receive this visa to an annual maximum of 66,000 (Bruno 2018). This was, however, the only substantial statutory change that a passage of the bill made to the H-2B program, since the reform focused mostly on H-1B program for high-skilled workers as further discussed in the second case study. Nevertheless, the demand for the H-2B program began to gradually increase in early 1990's and especially later in early 2000's. At that time, worker demographics within sectors such as landscaping, forestry, hospitality, seafood and others began to change as U.S. students started to pursue colleges at higher rates, rather applying for internships than seasonal jobs (Kamenetz 2016; Kurtzleben 2014), which combined with employers' inability to provide higher wages (Campbell 2016). In 1993, U.S. authorities issued 9,691

H-2B visas, whereas in 2005, the number hit 87,492, which is an 800-percent jump from twelve years before then (Read 2007).

Therefore, Congress enacted the Save Our Small and Seasonal Businesses Act of 2005 (SOS Act), which allowed returning workers to get exempt from the cap if they had worked in the U.S. in any of the previous three fiscal years (Read 2007). The bill was adopted as a floor amendment of the FY2005 Emergency Supplemental Appropriations in April 2005. The SOS Act originally established the returning worker exception just for fiscal years 2005 and 2006. This exemption then continued being extended through an appropriations rider (Costa 2016a). In the following years, the administrations of Presidents George W. Bush and Barack Obama continued to use the exemption of "returning H2-B workers," or those who were approved for the visa in the preceding year, from the annual limit (Federal Register 2008; 2015). President Donald J. Trump later allowed for two consecutive annual expansions of 15,000 that increased the overall H-2B cap to 81,000 in fiscal years (FY) 2017 and 2018 (Federal Register 2017; 2018). For FY2019, the Trump administration decided to increase the annual H-2B visa cap through a regulation again. The government added 30,000 visas that year, which is twice as much as the previous increases, rising the overall limit to 96,000 (U.S. Citizenship and Immigration Services 2019).

Interestingly, the decision to increase the H-2B cap came despite the Trump administration's mostly restrictive immigration agenda built around preventing foreigners from entering the U.S. (The White House n.d.).[18] Therefore, I think the latest increase of the visa cap represented the administration's attempt to balance the anti-immigration sentiments among its supporters and the intensifying calls of

[18] Since President Trump took office in 2017, the U.S. government has been cutting the number of migrants and issuing restrictive visa policies and memoranda. Besides construction of a border wall between the U.S. and Mexico, the administration has implemented other changes such as metering, Migration Protection Protocols (MPP), known as the "Remain in Mexico" policy, and the Asylum Transit Ban (American Immigration Council 2019), as well as another travel ban on individuals from certain countries (American Immigration Lawyers Association n.d.). The government has also attempted to end the Deferred Action for Childhood Arrivals (DACA) program (Narea 2019b) and the Diversity Visa Lottery (Narea 2019a).

U.S. businesses that have been suffering from growing worker shortages, and thus advocating for more foreign worker visas (McGuire 2020; Spector n.d.). For example, in 2019, representatives of various industries, including tourism, landscaping, forestry, and seafood processing, from Maine, Alabama, Alaska, Colorado and West Virginia asked their Senators to call on then-Secretary of Homeland Security Kirstjen Nielsen to increase the H-2B cap to 135,320 ("Letter to The Honorable Kirstjen Nielsen" 2019).

Nevertheless, the increase in the annual numerical cap has been still done through a one-time regulation rather than a statutory change. In other words, in order to allow additional H-2B foreign workers to the U.S., the U.S. government has to issue a one-time regulation every year to increase the cap (Jacquez 2020). On top of that, despite the one-time annual increases of the H-2B cap in the last two consecutive fiscal years 2018 and 2019, the number of requested and government-certified workers basically doubled the established limits, which prompted the U.S. government to conduct a lottery to decide who will be awarded the visas. Overall, besides a short-term slowdown following the economic recession in 2009, the number of issued H-2B visas has gradually increased between 1993 and 2019 as shown in Chart 2 in the Appendix.

U.S. H-2B Visa Program

The Temporary Non-Agricultural Workers program, or "H-2B", is one of the three U.S. temporary worker programs as explained above. It allows certain U.S. businesses to bring foreign nationals to the United States to fill temporary "low-skill" nonagricultural jobs if unemployed U.S. workers are not available during the peak season. As mentioned above, the program as we know it nowadays had been established under the Immigration Act of 1990, which also set the total number of individuals eligible to receive this visa to

an annual maximum of 66,000 (Bruno 2018), a cap that has stayed basically unchanged until the present time. Currently, these visas are distributed in two semiannual allocations, with up to 33,000 H-2B visas during the first half of the fiscal year between October 1 and March 31, and the remaining 33,000 during the second half of the fiscal year between April 1 and September 30 (Barnes 2020). Due to the limitation by the visa cap, the H-2B program accounts on average for about 23 percent of the temporary worker visa category[19], and not even a one percent of all issued non-immigrant visas as the Chart 3 in the Appendix shows (U.S. Department of State n.d.). As the graph clearly shows, while the H-2A program that is not limited by a visa cap increased over time, the H-2B program remained around the same level.[20]

Additionally, the current program allows the eligible foreign workers to stay in the U.S. for no longer than three years[21] after which they must depart and remain outside of the country for at least three consecutive months before potentially re-applying for the visa. However, the classification is typically granted for up to the "season"[22], or the period of time authorized on the temporary labor certification, which is further discussed below, and may be extended as long as the employer possesses a valid temporary labor certification (U.S. Citizenship and Immigration Services 2020a). The most common H-2B occupations include landscape laborer, amusement park worker, and housekeeper (U.S. Department of Labor 2019b). Since 1997,[23] workers from Mexico account for absolute majority, or 74 percent, of the H-2B followed by Jamaica and Guatemala with 10 and 3 percent, respectively (U.S. Department of State n.d.). Chart 4 in the Appendix illustrates how the Top10 H-2B worker nationalities have changed over time between 1997 and 2019.

[19] Counted as percentage of the total of H-1B, H-2B and H-2A visa categories.
[20] Except for years when the government allowed for certain exceptions as discussed.
[21] The three years is meant as a total amount of time in terms of a summary of time spent in the U.S. rather than uninterrupted period of time.
[22] No longer that 10 months.
[23] Earlier data are not available.

Bringing H-2B workers into the United States is a multiagency process, involving various authorities under the U.S. Department of Labor (DOL), Department of Homeland Security (DHS), and the Department of State (DOS), and the program is currently subject to an annual statutory numerical limit (Bruno 2018). Therefore, the system of applying and receiving this kind of visa is very complicated. First, an employer requests a determination of the prevailing wage[24] from the Department of Labor's the National Prevailing Wage Center (NPWC)("Prevailing Wages (PERM, H-2B, H-1B, H-1B1 and E-3) | U.S. Department of Labor" n.d.). Then, the company must run at least two ads for the job in a newspaper in the area of intended employment and post it also with the State Workforce Agency (SWA), in an attempt to attract American workers.[25] At the same time, the employers submit an H-2B application to the Chicago National Processing Center (NPC), an agency under the Office of Foreign Labor Certification (OFLC) within the DOL's Labor Employment and Training Administration (The Seasonal Employment Alliance n.d.). If the employers cannot fill the advertised jobs with Americans,[26] the company may file an application with DOL for temporary labor certification for a certain number of positions (The U.S. Chamber of Commerce 2010).[27] Between FY2015 and FY2019, DOL refused to certify on average about 20 percent of these positions each year (Foreign Labor Certification 2020). Upon approval of the company's labor certifications, the employer can then petition the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) to admit a specified number of H-2B workers. The DHS accepts the visa applications only until the visa cap of 66,000 is reached, unless the government specifies otherwise (U.S. Citizenship and Immigration Services 2020c) as it did in FY2017, FY2018 and FY2019 when the authorities increased the limit by 15,000,

[24] Defined as average wage paid to similarly employed workers for the specific occupation in the area of intended employment.
[25] None of this required recruitment may begin more than 120 days before the need for the H-2B worker and the employer must advertise for at least ten days. The company must keep detailed records of the recruitment process, hire all qualified U.S. workers who apply and document the number of positions it was unable to fill. The employer must keep recruitment records for three years and may be audited by DHS or DOL at any time. (The U.S. Chamber of Commerce 2010)
[26] If American workers are hired, DOL reduces the number of H-2B workers an employer can petition for equal to the number of American workers hired.
[27] This six-page form requires employers to demonstrate that their need for foreign workers is temporary – either a "one-time occurrence" or a "seasonal" or "peak-load" or "intermittent" need. They must specify precisely what the desired workers' job duties and wages will be, detail their efforts to recruit U.S. workers and attest that similarly-employed U.S. workers will not be adversely affected by employment of H-2B workers (The U.S. Chamber of Commerce 2010).

15,000 and 30,000, respectively, through a one-time regulation (U.S. Citizenship and Immigration Services 2019). The visas are distributed semi-annually, with half, or 33,000, of the total H-2B visas issued in the first half of the Federal Government's fiscal year, and the remaining half during the second half of the fiscal year (Lahoud 2020). After the employer's petition is approved, foreign workers outside the U.S. must apply to the State Department for their H-2Bs and demonstrate they intend to return home after expiration of the visa. If approved, the workers receive the visa and can then apply to U.S. Customs and Border Protection, another DHS's agency, for admission (The U.S. Chamber of Commerce 2010).

However, with the number of requested workers being about twice as much as the visa cap between FY2015 and FY2019 (Foreign Labor Certification 2020), the program became highly competitive. In January 2019, DOL received nearly 5,300 applications for over 96,400 worker positions to start work on April 1 (Barnes 2020). That is nearly three times more that the 33,000 visas allocated for this first part of each fiscal year. Therefore, in FY2019, the U.S. Department of Labor decided to start processing applications for the second half of the year through a lottery, randomly selecting those with the earliest possible worker start date rather than the date and time of filing (Maurer 2019). Still, to secure the visas, employers then have to go through another lottery held by the DHS's U.S. Citizenship and Immigration Services (USCIS), which is responsible for allocating employers, who will be eligible for the 66,000 guest worker positions. And if the government decides to increase the cap, there is another lottery for those additional visas (Maurer 2019).

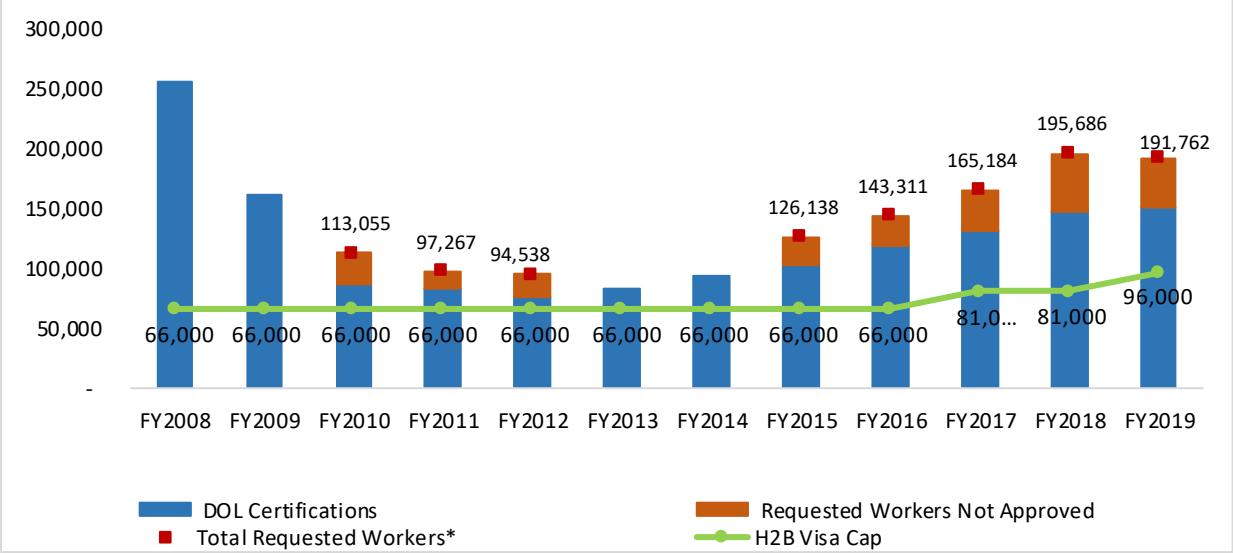
Still, despite the challenges posed on the U.S. employers by the complicated H-2B system, they have continued requesting increasing number of workers. Within the first three days of the filing period in January 2020, over 5,500 employers submitted applications requesting nearly 100,000 seasonal workers

for just the second half of FY2020[28] (Lahoud 2020). I believe the data clearly demonstrates the dire need of U.S employers for additional seasonal workers. If the job shortages they face weren't as severe, it would not be efficient for the companies to go through the H-2B process, which is on top of everything done on basis of random selection in the past couple of years. That is especially since the employers invest into the program by paying fees for USCIS applications that may or may not allow them to bring workers. The uncertainty stemming from the H-2B program is just an unnecessary risk that employers are unlikely to take unless they are forced by the inability to hire within the pool of domestic workers.

The Figure 1 below proves my point, showing the increase in number of workers requested by U.S. businesses for the seasonal temporary worker program over the past ten years. The figure shows the number of temporary workers requested by U.S. companies, including the number of openings certified by DOL as valid for the H2B program,[29] has been growing since 2012. Additionally, despite the latest three annual increases of the visa cap by the Trump administration, since FY2015 the number of requested workers has been still about twice as large as the limit (U.S. Department of State n.d.). In FY2019, employers requested 191,762 workers, out of which DOL certified 150,465, convincing the administration to implement a one-time visa increase of 30,000, raising the total cap to 96,000 (U.S. Citizenship and Immigration Services 2019), which still covered only less than 65 percent of the total demand. Further, as apparent from the Figure 2 below, the number of requested workers clearly rises with a fall of the U.S. unemployment rate, suggesting contracyclical tendency of the H-2B program. Since 2010, when the U.S. unemployment rate began to fall after the end of the economic crisis, the demand for H-2B workers began to rise as more American took different jobs.

[28] Before the COVID-19 pandemic reached global scale.
[29] DOL issued a labor certification attesting that no willing, qualified or able American workers could be found for the remaining H-2B positions.

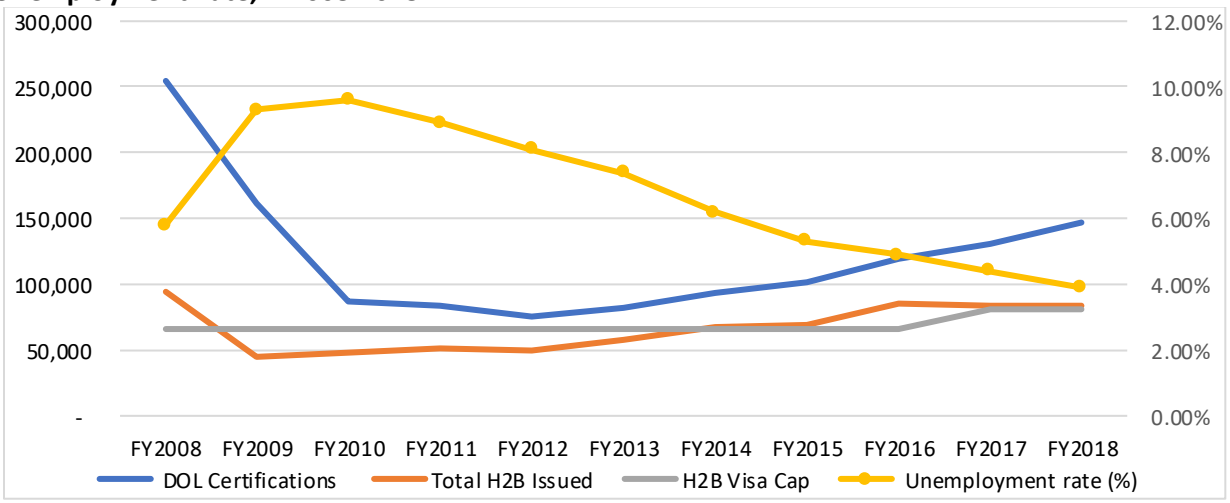
Figure 1. DOL Certifications and DHS Visa Cap, FY2008-FY2019



Sources: (Foreign Labor Certification 2020; U.S. Department of State n.d.)

* Data about requested workers for FY2008, FY2009, FY2013 and FY2014 are not available to the public.

Figure 2. Numbers of DOL Certifications, Issued H-2B Visas, H-2B Visa Cap, and U.S. Annual Unemployment Rate, FY2008-2018[30]



Sources: (Foreign Labor Certification 2020; U.S. Department of State n.d.; Statista n.d.)

[30] In 2008 through 2015, U.S. government allowed returning H2B workers to be exempted from the cap. Therefore, the number of total issued visa exceeded the limit (U.S. Citizenship and Immigration Services 2016) as showed in Figure 1.

Difference between H-2B and H-2A

As mentioned above, the 1986 IRCA split the original H-2 program into two – H-2B for non-agricultural temporary workers and H-2A for agricultural temporary workers. One of the main reasons behind dividing the H-2 program was to improve labor conditions specifically for agricultural workers through revisions of the temporary worker program's procedures, since the Congress found these regulations "[did] not fully meet the need for an efficient, workable and coherent program that protects the interests of agricultural employers and workers alike" (Mathes 2012). Moreover, the Congress was trying to reduce undocumented migration within the agricultural sector (Martin 2017). For these two reasons combined with low demand for non-agricultural temporary workers at the time (Bruno 2018; Fitzgerald 2012), the lawmakers had given considerable attention to the H-2A program, while virtually ignoring the H-2B in the legislative debate (Read 2007).[31] A House report accompanying the bill even specifically stated the statutory language governing nonagricultural H-2 will remain unchanged since the program had worked "reasonably well" for non-agricultural occupations (Mathes 2012; Mazzoli 1986).

As a result, while the H-2A program got codified in into the law as a separate category, including certain protections for the foreign workers (8 USC 1188 n.d.), the H-2B program has been codified as one of the general "nonimmigrant" categories without further specification (8 USC 1184 n.d.) . In other words, while IRCA did establish requirements for H-2A employers as well as certain protections for H-2A workers, the bill failed to do the same for the H-2B category ("Immigration Reform and Control Act of 1986., 100 Stat. 3359" n.d.). At the same time, the U.S. Department of Labor (DOL) Employment and Training Administration (ETA) that makes decisions about labor certification under the two temporary workers

[31] Some believe the H-2A program was intentionally made hard to make it difficult for employers to bring foreign workers (Martinez 2021).

programs, has also failed to develop any substantive regulations to administrate the H-2B program (Jacquez 2020). Until this day, all the H-2B worker protections have been established only through regulations and thus can be adjusted without a Congressional approval based on a preference of the given administration (Jacquez 2020).

Protections of H-2A and H-2B workers

The U.S. temporary worker programs in general require the participating employers to provide their foreign as well as U.S. workers with some protections to prevent possible disadvantage of one or the other group. Still, since the split of H-2 into two separate programs, it has been apparent that, in comparison to H-2A, the H-2B program lacks basic legal safeguards for foreign workers. Specifically, the law requires H-2A employers to provide the foreign workers with furnished housing that meets certain federal and local standards (8 USC 1188 n.d.). Moreover, additional regulations establish that the housing is provided to H-2A workers at no costs. Further, workers living in housing provided by an employer must be "offered three meals per day at no more than a DOL-specified cost[32] or provided free and convenient cooking and kitchen facilities" (U.S. Department of Labor n.d.). Also, H-2A employers of an agricultural workers, who complete 50 percent of the work contract period, are required to reimburse the employees for reasonable costs incurred in traveling to the worksite from their homes abroad. H2-A employers must also provide transportation between the worker's accommodation and the worksite, as well as in certain circumstances also transportation back home[33] (U.S. Department of Labor n.d.). Lastly, H-2A employers are supposed to cover all fees related to the workers' arrival to the U.S., including costs of their visas and

[32] In 2017, this cost was stablished as $12.07 per day (Martinez 2021).
[33] If the worker completes the contract period or is terminated without cause (Read 2007).

work permit petitions as well as those related to their travel to embassy or consulate in the country of origin to receive the visa (Martinez 2021).[34] It is also important to note that the regulations require that U.S. workers receive the same benefits as the foreign workers (La Cooperativa - Campesina de California 2017).

On the other hand, the U.S. immigration law doesn't set any specific protections of H-2B workers. There are just certain regulations governing the program. Similarly to H-2A, H-2B employers are required to pay for or reimburse their workers for all visa, border-crossing, and visa-related fees in the first workweek of employment. Another requirement for H-2B employers is to provide or reimburse their workers for reasonable costs incurred for transportation to the employment site and subsistence[35] upon completion of 50 percent of the job order period (U.S. Department of Labor n.d.). Additionally, while the H-2A employers must also guarantee to offer a total number of hours that equals to at least 75 percent of the workdays in the contract period,[36] a practice called the "three-fourths guarantee"[37] (U.S. Department of Labor n.d.), H-2B employers do not have such specific requirement although they are supposed to offer the amount of hours promised in the job offer (Department of Labor, n.d.).

Interestingly, while the H-2B program is not fully codified in the U.S. immigration law but rather govern by regulations, the H-2B workers are included in the overtime provision of the Fair Labor Standards Act, which means employers must provide them with overtime pay[38] in the same manner as they do with

[34] However, the U.S. Department of Labor set the average amount of money that can be reimbursed for transportation at about $50 per day for each foreign worker (Martinez 2021).
[35] This includes lodging incurred on the employer's behalf and meals.
[36] This applies even if the job finishes early.
[37] For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).
[38] Overtime pay is defined as paid time and one half their regular rates of pay for hours worked in excess of forty per week (U.S. Department of Labor n.d.).

domestic workers (U.S. Department of Labor n.d.). That is a contrast to the H-2A program, because agricultural employees are exempt from the overtime pay provisions (U.S. Department of Labor n.d.). Although this exception is not related specifically to the H-2A program, it impacts the foreign-born workers as it includes all workers in the agricultural sector.

Moreover, neither H-2A nor H-2B employers can demand that foreign workers pay back the fees they covered for them during the hiring process and must pay the employees at least the prevailing wage[39] established by the Labor Department. For the H-2B employers, there is no fee H-2B labor certification applications,[40] but if selected in the USCIS lottery, the employers then petition for specific workers they would like to hire. This costs $460 per application. In addition, nearly all H-2B employers pay a $1,500 premium processing fee, which is supposed to guarantee processing of their applications in 15 business days (Bier 2021).[41] There is also a $150 fraud and prevention fee (U.S. Citizenship and Immigration Services 2018). In total, the USCIS application fee amounts in $2,110 (The Seasonal Employment Alliance n.d.). On top of all that, employers must pay individual visa fee, which is $190 per worker (U.S. Department of State Bureau of Consular Affairs n.d.) as well as CBP entry fee of $6 per worker (Bier 2021).[42] The H-2A employers on the other hand must pay $100 for their temporary agricultural labor certification as well as $10 for each H-2A worker certified it, provided that the fee to an employer for each temporary agricultural labor certification cannot exceed $1,000 (Electronic Code of Federal Regulations n.d.). Further, same as the H-2B program, the employers should cover the $460 per worker petition fee as well as the $190 per

[39] Prevailing wage is defined as the average wage paid to similarly employed workers for the specific occupation in the area of intended employment.

[40] Each H-2B application is filed for a specific occupation in a geographic area. That means that one application contains the number of workers, who are requested to work in the specific occupation, for which the application is filed. Therefore, government application fees are not affected by the number of requested workers. To employ workers in multiple occupations, employers have to file separate applications and pay a fee for each job category, for example housekeepers and wait staff in the hotel industry.

[41] However, in 2019, 17 percent of applications were delayed despite the premium processing since the agency can restart the 15-day time frame by issuing a Request for Evidence (RFE).

[42] These fees are often paid by the workers at first at their consulates or embassies and ports of entry, and then reimbursed by employers within the first week of employment.

worker visa fee and $6 per worker entry fee. Nevertheless, some believe that many foreign workers (H-2A and H-2B) still cover a lot of these costs despite the regulations and laws establishing it as an employer's responsibility. That is also due to existence of third-party recruiters whose responsibilities are not fully established in any of these policies (Martinez 2021). As discussed further below, although there are laws preventing recruiters to ask workers for fees, their responsibilities are not established by a low, this abusive practice seems to continue.

When it comes to enforcement of the U.S. H-2B and H-2A programs, DOL's Wage and Hour Division (WHD) plays the primary role in possible investigation of terms and conditions of the foreign workers' employment and fulfilling the employers' obligations toward employees (Economic Policy Institute n.d.; U.S. Department of Labor n.d.). However, critics point out, as discussed further below, that the number of WHD agents is not adequate for the number of foreign workers in the U.S. (Costa, Martin, and Rutledge 2020).

Table 2 in the Appendix summarizes and compares facts about protections provided to seasonal workers under the H-2A and H-2B programs. I believe it is clear from the data that H-2A workers get slightly more protections than the H-2B workers. One of the main explanations of this is simply the fact that certain details about the H-2A program has been codified in the U.S. law, including some of the protections for the foreign-born workers[43], while the H-2B program has been governed mainly through regulations. Even the one protection that H-2A workers do not have while H-2B workers do – the overtime pay – is given by a separate labor rather than immigration law. Additionally, a number of advocacy groups lobby on behalf of agricultural workers, while the H-2B workers, who work in a variety of industries rather than just one as agricultural workers do, do not have such representation. Case study 2 in this thesis further discusses

[43] Other protections have been also governed by regulations.

how H-2 origins and advocacy efforts have impacted the H-2B program over the years. The fact that the H-2B program has not been fully codified in the U.S. immigration law, brings a lot of uncertainty to the H-2B employers, who are unable to plan for the upcoming season as further discussed in Case study 3, as well as workers, whose protections depends on decisions, and therefore a particular agenda, of the given administration.

Features and Process of H-2A and H-2B Programs

As apparent from titles of the two programs, they depend on the industry, in which the foreign workers are employed. The H-2A workers work solely in agriculture, and the H-2B workers are in other sectors with seasonal need.[44] Additionally, the programs are both designed for low-skilled workers, who receive only "closed" or employer-specific work permits, meaning they can't leave the company which hired them for the season and work elsewhere. Both programs are also governed by federal law. Table 3 in the Appendix summarizes this basic information about the two programs, creating a comparison of their general framework, which is basically the same except for the differences in eligible sectors.

However, there are considerable differences in measures that are applied for each of the seasonal worker programs to ensure they do not have a negative effect on native-born workers. Usually, lawmakers use two policies to prevent temporary worker programs from negatively effecting domestic workers - a numerical cap or labor market test. The U.S. Immigration and Nationality Act (INA) defined the cap as a statutory numerical limit on the total of certain immigrants seeking to enter the country (U.S. Citizenship and Immigration Services 2020c). The labor market test, on the other hand, doesn't include any numerical

[44] Common H-2B occupations include landscape laborer, amusement park worker, and housekeeper.

limits, but requires the government to ensure that employers of certain temporary workers conducted a thorough search for available U.S. workers, and that admitting foreign workers will not adversely affect the wages and working conditions of native-born workers employed in similar occupations (Wasem 2007).

For each of the temporary workers programs, the United States has implemented at least one of the above-mentioned measures. While for the H-1B program for high-skilled foreign workers, the government implemented only an annual cap of 65,000 visas[45] (Griswold 2020), employers seeking to employ foreign workers through H-2A and H-2B to fulfill their seasonal needs are required to conduct the labor market test. However, the labor market tests for both seasonal worker programs differ. While the H-2A program was fully defined in the U.S. law by IRCA in 1986 (Jacquez 2020), including requirements for the labor market test, conditions for the H-2B program have never passed the U.S. congress as a statue. Therefore, similarly to the H-2B worker protections, the labor market test for the H-2B program has been governed only by regulations, and thus can be changed by the appropriate government agencies without going through the entire legislative process.

When it comes to specifics of the labor tests, there are also some differences between the two seasonal worker programs. While in both cases the DOL Secretary must confirm that there is a lack of U.S. workers "able, willing, qualified, and available" (Wasem 2007) to take the jobs, and that hiring of foreign workers will not have a negative impact on wages and working conditions of the companies' U.S. employees (Mathes 2012), the particular actions the H-2A employers must take to get certified differ from H-2B. The H-2A employers must first prepare and submit an agricultural job order to a State Workforce Agency (SWA) in the state where the work will be performed. This step must be done exactly 75 to 60 days before

[45] Currently, the cap is set at 85,000 with the 20,000 additional H-1B visas being set aside for foreign workers who hold advanced degrees from a US university (Griswold 2020).

the start date of the potential foreign workers' employment, which provides for only a 15-day window. Then, no less than 45 calendar days before the start date of work, the employers must submit their H-2A applications to Chicago NPC, which conducts a review, notifies the employers of any deficiencies, and provides them with additional instructions if necessary. Once accepted by Chicago NPC, the employers may start conducting recruitment of U.S. workers. To prove their recruitment efforts, the employers submit a recruitment report to the DOL, describing where and when they advertised the jobs as well as content of the advertisements. Finally, the employers must submit additional documents if requested by the Chicago NPC not less than 30 calendar days before the workers' start date. If approved, the employers' certification is granted and they may move to USCIS to apply for their foreign workers' petitions (U.S. Department of Labor n.d.).

As discussed in a previous section, to conduct labor market test under the H-2B program, the participating employers must also submit a proof to DOL showing there is not enough qualified and available U.S. workers, and that employment of foreign non-agricultural workers will not adversely affect wages and working conditions of similarly employed native-born workers. However, the process must start with a registration[46] 150-120 calendar days before the workers are needed. Then, the H-2B employers must apply for determination of prevailing wage to the National Prevailing Wage Center (NPWC). This determination must be obtained by the employers at least 60 calendar days before the date of need. This compares to H-2A, for which the DOL does *not* determine the prevailing wage (U.S. Department of Labor n.d.).[47] Then, the H-2B employers can file a job order with the given SWA and submit their H-2B applications with supporting documents and a copy of the SWA job order to the Chicago NPC, all of which

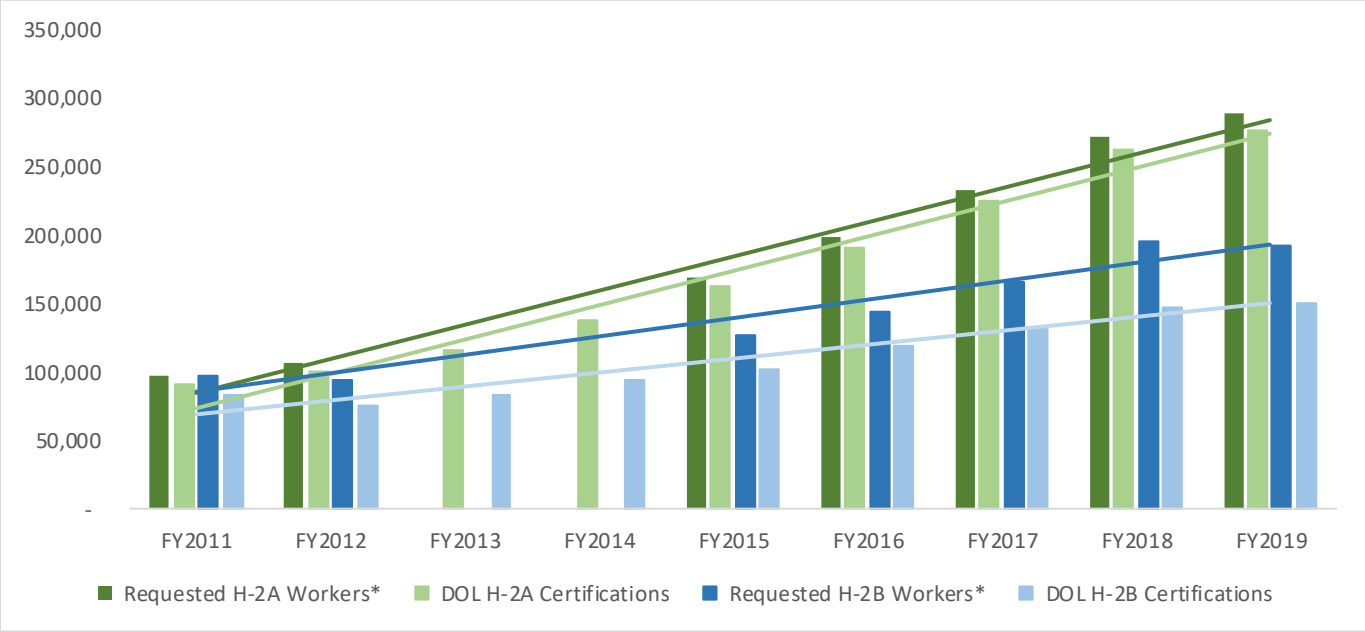
[46] The Government website on H-2B process currently states that "registration process is currently not operational - no Form ETA-9155 is needed at this time. OFLC will announce in the Federal Register a separate transition period for the registration process, and until that time, will continue to adjudicate temporary need during the processing of applications."
[47] For the H-2A Temporary Agriculture Program, prevailing wages are the highest of: the Adverse Effect Wage Rate (AEWR); the prevailing wage; the prevailing piece rate; the agreed-upon collective bargaining wage, if applicable; or the federal or state minimum wage in effect at the time the work is performed (U.S. Department of Labor n.d.).

must be done 90 to 75 days prior to the date of need. The SWA then reviews the job order and the NPC reviews the H-2B application and job order for compliance with the program requirements. Based on the results, the two agencies then issue a Notice of Acceptance or Notice of Deficiency to the employers. If accepted, the employers must place a newspaper advertisement, contact former U.S. workers, post notice of the job opportunity to their current employees or contact the bargaining representative, and conduct any additional recruitment. Then, the employers conduct a recruitment report, based on which the Chicago NPC determines whether to certify or deny the application and issue the final determination.[48] (U.S. Department of Labor n.d.).

The following Figure 3 illustrates the comparison between how many workers employers requested, going through the steps required to pass labor market test under the H-2A and H-2B programs, and how many of them got actually certified by DOL at the end of it. It has been clear from the data that while nearly all requested H-2A workers have been certified each year since FY2011, the difference between requested and certified H-2B workers has been gradually increasing over time. On average, DOL refused to certify about 20 percent of H-2B petitions, which compares to just 4 percent of denied H-2A petitions (Foreign Labor Certification 2020). The DOL does not specify reasoning behind the agency's decision on each of the application, however, when looking at the data I believe it is clear that at least some of the denied H-2B petitions asked for workers in occupations that are not strictly seasonal, such as track drivers, childcare workers, cashiers, and electricians. About third of all the denied applications was also filled without help of a law firm, which could possibly cause mistakes leading to refusal of the applications.

[48] However, the employer must continue to accept referrals of U.S. applicants until 21 days before the date of need.

Figure 3. Difference Between Requested and Certified H-2B and H-2A Workers Over Time



Source: (U.S. Department of State n.d.; Foreign Labor Certification 2020)

*Data about requested workers for FY2013 and FY2014 are not available to the public.

Once approved by NPC, the Homeland Security Department's U.S. Citizenship and Immigration Services processes the individual applications, or 'petitions', under H-2A and H-2B programs to bring the requested foreign-born workers. If approved, the State Department assesses and issues visas for the individuals, who are being hired (Bruno 2020b). Lastly, the U.S. Customs and Border Protection, another DHS's agency, determines the foreign nationals' admission at ports of entry (The U.S. Chamber of Commerce 2010). Under both programs, foreign workers are allowed to stay in the U.S. for up to three years.

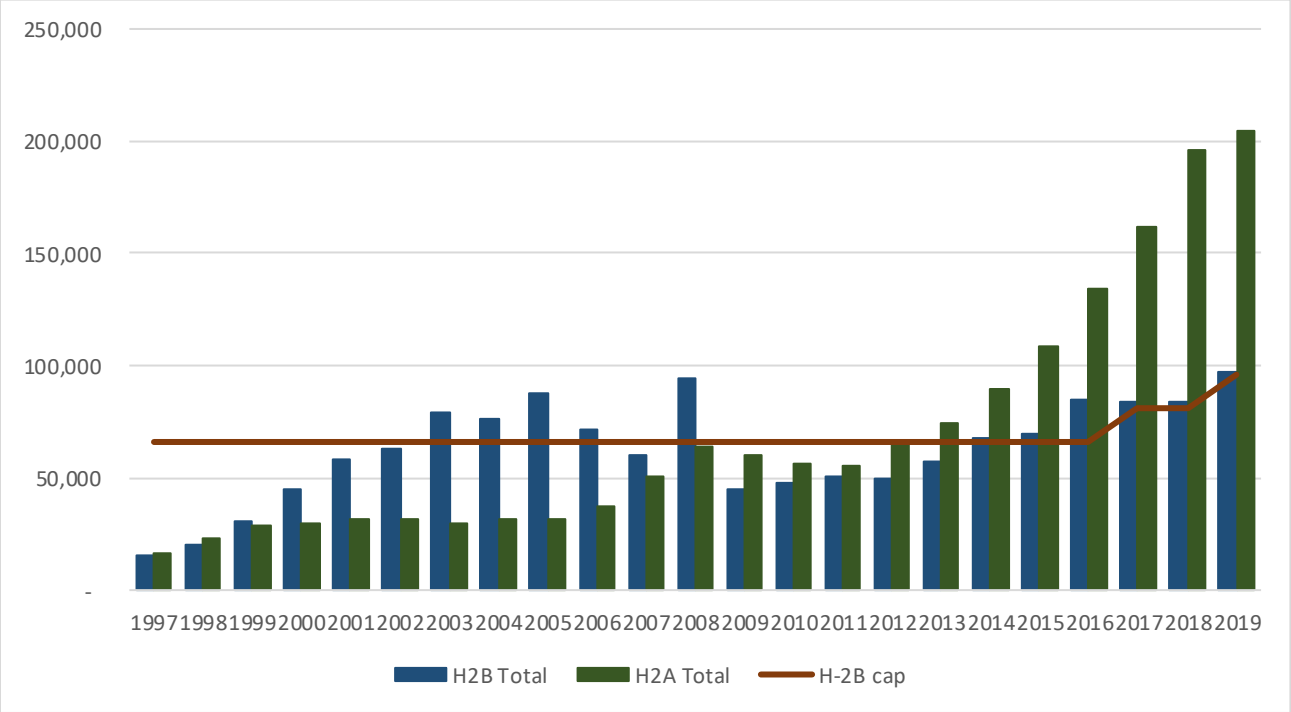
Table 4 in the Appendix then summarizes and compares labor tests and overall application processes for the H-2B and H-2A program. The main difference between processes under the two programs is that the H-2A program does not require determination of prevailing wage. Therefore, the entire H-2B process

takes about two to two and a half months longer than the H-2A process. Except for some other slight differences, especially in time frames for some of the steps under each of the programs, the processes are very similar and involve the same set of agencies. In total, seven agencies under three U.S. government departments are involved in the H-2B, which includes those that issue the prevailing wage determination – OFLC and NPWC. Since the determination is not required under H-2A, the process involves the remaining five agencies -SWA, NPC, USCIS, Consulates or Embassies and CBP - under the three Labor, State and Homeland Security Departments. I believe the information above shows there is a room for streamlining the H-2A and H-2B application processes. For example, there are H-2B cases for which the USCIS conducts labor certification reviews that are clearly duplicative of those already done by DOL earlier in the process (Bier 2021). Some even believe that the application processes under the two programs were made difficult on purpose to discourage employers from hiring foreign workers (Martinez 2021). And yet, the data in Figures 1 and 3 clearly shows the gradual increase in number of H-2B workers requested by U.S. employers each year, again proving my point from above that the fact that companies choose to go through the H-2B process despite the challenges and fees they must pay is another signal that they truly lack workers and signal that the program must be adjusted to today's labor market trends.

However, there is still another crucial difference between the two temporary workers programs. As mentioned above, the Immigration Act of 1990 established an annual cap on the H-2B program, setting it at 66,000, a number that has not been a subject of any revision since then. As the following Figure 4 indicates, the number of issued visas under both H-2A and H-2B programs had remained below 66,000 until 2012, except for years when the government allowed returnee H-2B workers to be exempt from the cap or increased the cap through a one-time annual measure as previously discussed. The H-2A program stayed below 66,000 issued visas even without the cap measure at first, signaling there simply wasn't enough demand for more foreign-born workers in agriculture at the time. Since then, however, the

number of issued H-2A visas has grown exponentially with the increased demand and lack of a visa cap, while the number of issued H-2B visas was forced to remain within the static limit.

Figure 4. Number of Total Issued H-2A and H-2B Visas and H-2B Visa Cap Over Time

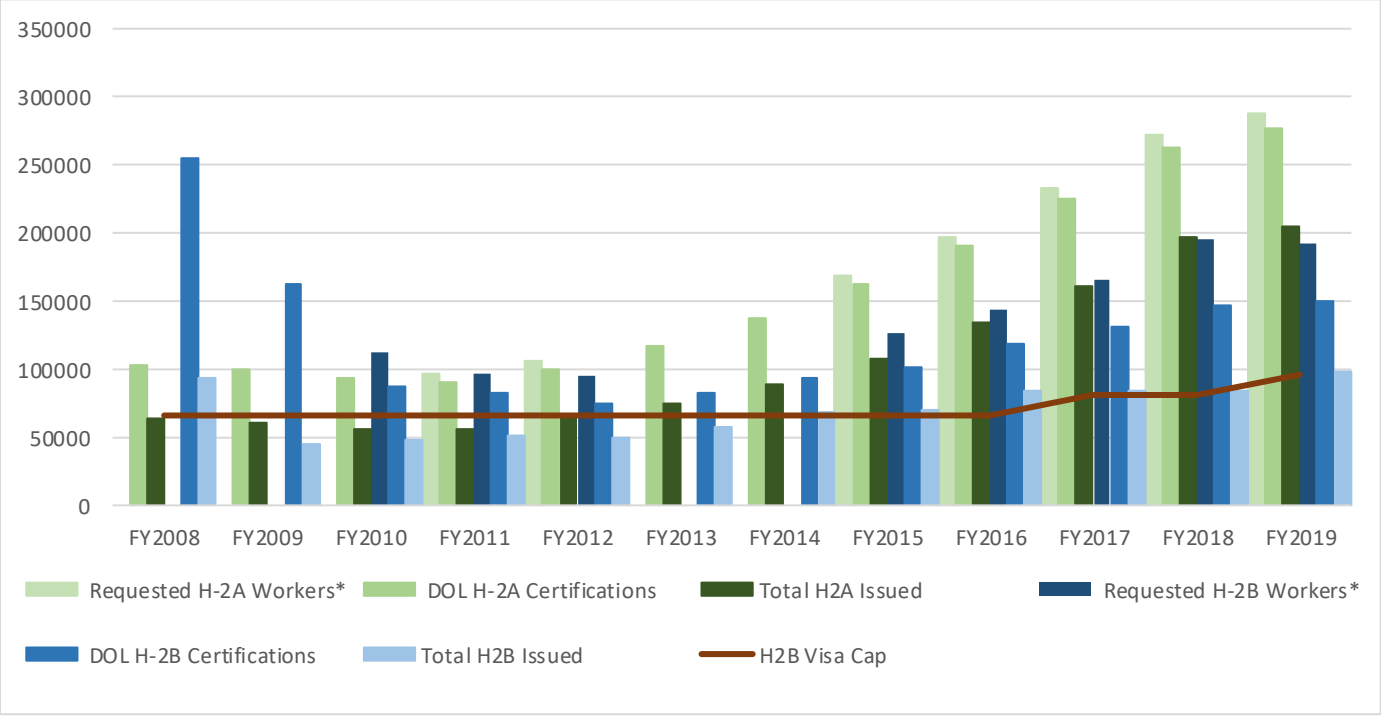


Sources: (U.S. Department of State n.d.; Foreign Labor Certification 2020)

As a result, while the H-2A program requires one protective measure in form of a labor market test, H-2B employers must conduct a labor market test and on top of that, the number of workers they can bring is limited by a cap. Table 5 in the Appendix summarizes measures taken by the U.S. government to ensure that temporary worker programs do not disadvantage or negatively impact domestic workers. For the purpose of this table, the H-1B program for high-skilled workers is also included in the comparison to demonstrate that together with H-2A, these two temporary worker programs have just one such measure, while H-2B has both – labor market test and a numerical cap.

The following Figure 5 is a combination of Figures 3 and 4, comparing numbers of issued visas, requested and DOL-certified workers under H-2A and H-2B each year between 2008 and 2019.[49] The figures clearly show the growing demand for both H-2A and H-2B. However, the combination of labor test and visa cap has kept the total of H-2B visas much below the number of issued H-2A as well as the number of H-2B workers requested and certified by DOL.

Figure 5. Requested and Certified H-2A and H-2B Workers and Total H-2A and H-2B Visa Issued



Source: (U.S. Department of State n.d.; Foreign Labor Certification 2020)

* Data about requested workers for FY2008, FY2009, FY2010, FY2013 and FY2014 are not available to the public.

[49] Data about DOL certifications from before 2008 are not available to the public.

Criticisms of H-2A and H-2B programs

Temporary worker programs in the U.S. have been heavily criticized for a variety of reasons. Particularly those that focus on bringing low-skilled or low-wage workers. First, the U.S. H-2B program requires employers to meet an annual visa cap, as discussed above. However, as the previous data clearly showed, the need of U.S. employers for this kind of visas has been overwhelmingly exceeding the supply. The lack of available visas, and thus foreign workers, cost H-2B employers millions of dollars. The micro case study in this thesis covers further details about revenue losses seen by H-2B employers due to the annual visa cap, but as an example, in 2017, the shrimping sector in Texas alone reported costs of about $5 million per day due to lack of adequate labor (Houston Chronicle 2018). In 2019, one of the largest landscaping companies in Georgia, the HighGrove Partners, reported it has lost over $1 million due to its labor shortage (De Lea 2019b).

Additionally, H-2A and H-2B both allow the foreign workers to receive only 'closed' work permits, which 'lock' them to a specific employer, meaning they cannot work for a different company even if they experience unfair and inhumane treatment. This makes it very difficult for the workers to complain or report abuse and other cases of mistreatment on the worksite, as they do not want to lose the job (United States Senate Committee on the Judiciary 2019). As a result, employers under both programs have faced criticisms for underpaying the foreign workers, who avoid any complains in fear of losing their job, which ultimately keeps wages low also for American workers (Economic Policy Institute 2016). Similarly, there are allegations that some H-2B employers fail to provide established wages as well as overtime pay (The Economic Times 2010). Overall, some authors have been claiming for decades that temporary worker programs hurt the U.S. economy and workers as the participating businesses hire foreign seasonal workers to save money on wages (Weintraub 2019). While both H-2A and H-2B program have struggled

with cases of fraud, I believe data in this case study have clearly proved that employers with seasonal peak loads lack workers to take the jobs. Therefore, contrary to what critics such as Weintraub claim, I believe the programs actually help the U.S. economy, allowing employers to sign more contracts, which generates more revenues – as showed in the "Micro" level case study below in this thesis - and thus spurs the economy overall. Moreover, the foreign-born workers themselves contribute to the economy by paying income as well as sales taxes, while not being eligible for any public benefits (Elkind Alterman Harston PC n.d.).

Also, even though agricultural H-2A workers have been provided with slightly more safeguards and protections than H-2B workers, as previously discussed, both programs have been criticized for a lack of enforcement. The problem stems from the fact that the "DOL has no mechanism for investigating and responding to employer violations" (Read 2007). The department has just a small group of officers overseeing all visa categories across all the states, which is not sufficient to ensure protections of low-skilled foreign workers (Martinez 2021). In 2019, the DOL's Wage and Hour Division had about 1,500 employees, out of which 780 were investigators, to investigate 10.2 million U.S. establishments with 148 million workers. On average, each WHD investigator was responsible for 175,000 workers (Costa, Martin, and Rutledge 2020).[50] Moreover, since all the programs are temporary in nature, they do not provide enough time for workers to possibly bring their complains to courts and the H-2B workers do not have the ability to organize in any of the U.S. states except for California (Martinez 2021). Considering how complicated the processes of applying for H-2A and H-2B programs are, I find it puzzling that the U.S. government hasn't introduced better control mechanisms to prevent the violations from happening during the more than three decades of the programs' existence.

[50] This is an increase from 69,000 workers per one investigator in 1978.

Further, another big issue in the U.S. seasonal worker programs is the use of private recruiters. Many H-2A and H-2B employers hire private recruiters, who are supposed to bring the foreign-born workers. Despite bans on recruitment fees established in the U.S. as well as other countries including Mexico, it is still a normal practice that these recruiters charge the workers a fee. Fifty eight percent of H-2 workers surveyed by a transnational migrant workers' rights organization Centro de los Derechos del Migrante, Inc. (CDM) said they paid a recruitment fee, which averaged at $590. One out of every 10 workers even said they paid a recruitment fee for a job that didn't even exist. On top of that, it was reported that recruiters often make false promises about employment conditions to attract more workers, a practice that brings them more fees (Centro de los Derechos del Migrante, Inc. 2014).[51] A separate report by Verité, a US-based nongovernmental organization, found that workers coming to the U.S. through the H-2A and H-2B seasonal paid recruiters between USD 3,000 and 27,000 to secure their visas (Verite 2010). As a result, many of these workers are forced to take loans often with high interest rates, which makes them use property deeds as collateral. In the CDM survey, nearly half of all workers said they had to borrow money to pay the recruitment fees (Centro de los Derechos del Migrante, Inc. 2014).

Overall, it seems like there is a gap in the system. Since employers pay the recruiters, they can prove they covered the costs of bringing the foreign workers. The U.S. law forbids recruiters to ask workers to pay for their services (U.S. Department of Labor n.d.), but it does not seem to be enforced in a way that would actually protect workers from such practices. As a result, the foreign-born workers still pay for recruiters' fees (Twohey, Rosenberg, and McNeill 2016), and in combination with lack of enforcement mentioned above, become subjects of abuse and exploitation. Moreover, these practices often occur in Mexico, before the workers even cross the border. And since the they are in the U.S. only for a limited amount of time and usually doesn't come from wealthy backgrounds, they lack resources and time to go through the

[51] More than half of workers surveyed did not receive a copy of their job contract.

court system (Martinez 2021). Therefore, as U.S. lawmakers consider changes to address violations within the H-2 programs and introducing more control mechanisms as suggested above, addressing unethical recruiters in the system should be one of the main priorities. The U.S. should also cooperate with Mexico to minimize such abusive practices.

Lastly, the issues mentioned above are linked to the overall lack of communications between the involved immigration and labor departments, which leads to underutilization of the program. Since the H-2B program is based on estimated 'future' need, as the employers must apply before their season starts, employers tend to apply for more workers than they actually bring to make sure they have an option to bring more if needed. Therefore, not all the visas that are approved by USCIS are used at the end. And yet, USCIS is the agency responsible for keeping the number of H-2B visas within the 66,000 annual cap. It is the CBP that lets individuals in at the border. Therefore, I believe it is CBP that should keep track of the count of used visas. As an example, if an employer is approved by USCIS for 16 visas, but decides to bring just 10 workers, 6 visas from the 66,000 cap count remain unused. Similarly, when an individual comes to the border and the CBP officers decide to not allow the person to the country, the H-2B visa again remains unused. Due to the lack of cooperation between the agencies, there is no comparison of how many visas were approved and how many were actually used. I believe this must inevitably lead to underutilization of the program with a portion of the 66,000 visas being basically wasted. Increased cooperation between the USCIS and CBP together with changes in their practices allowing for the unused visas to be transferred to other workers either within the same or other company would help increase effectiveness of the program and better assist employers, who need to fill their seasonal needs.

Canada's Temporary Worker Programs

Canada's Migration System

Similarly to the United States, Canada has been known as a country appreciative of a variety of different cultures and backgrounds and its society and culture has been significantly shaped by immigration (Cheatham 2020). Canada has also one of the highest foreign-born to native-born population ratios among the Western countries, since one fifth of its total population was born abroad (Pison 2019).[52] The current migration regime has been based on pieces of legislation implemented throughout the 1960s and 1970s that welcomed and accepted multiculturalism. Specifically, in 1967, Canada as the first country in the world launched a points-based system to assess qualification of migrants trying to enter the country (Weber et al. 2018). In 1971, the country's government issued a policy supporting cultural diversity and in 1976 codified its commitment to accepting refugees and required officials at federal as well as provincial level to work together to identify immigration targets (Cheatham 2020).

Over the following decades, Canada established immigration as a tool to meet a broad variety of its goals, from cultural to economic and social (Cheatham 2020). Canada's immigration system focuses primarily on the country's labor needs and the country's parliamentary form of government allows for a quick response to changes in its labor market (University of Pennsylvania 2016). Additionally, one of the main responsibilities of Canada's Minister of Immigration, Refugees and Citizenship is to ensure effective implementation of the country's immigration goals, allowing the government to initiate new migration pathways (Prime Minister of Canada Justin Trudeau Office 2019). Canada's commitment to migration as

[52] The United States ranks behind Canada when it comes to the foreign-born to native-born population ratio.

a strategy to achieve the country's objectives has been apparent also from the recent numbers of admitted migrants. In 2019, Canada welcomed a record-high of about 341,000 new permanent residents (El-Assal 2020), which compares to 577,000 accepted by the United States (U.S. Citizenship and Immigration Services 2020b) that has however nearly nine times larger population.

Under the current migration system, Canada accepts permanent residents based on four categories – family sponsorship, economic migrants, protected people and refugees, and humanitarian and other. The first category eligible for permanent residency in Canada are certain family members of migrants present in Canada and citizens. More specifically, current permanent residents can sponsor their spouses, partners and children to join them in Canada as new permanent residents (Government of Canada 2019a). This category is open also to same-sex couples as well as those who are not legally married but can provide a proof of a long-term relationship (Cheatham 2020).

Second category are economic migrants, out of which most come through the country's point system, which evaluates the applicants based on their age, language skills, education and work experience (Abnihav n.d.). The system gives preference to younger highly skilled candidates with job offers, high level of education, more years of experience and proficiency in English and French. The top-ranking individuals are invited by the government every two weeks to go through a comprehensive permanent residency process, involving a language test and biometric screening. However, the applicants still have to pay a CAN$490 fee (Immigration Direct Canada n.d.) and the entire process from application to the final decision typically takes about six months (Cheatham 2020). The second-largest migration channel under the economic category is the Provincial Nominee Program, through which individuals can apply to individual provinces that then decide which candidates will be granted permanent residency based on their specific economic and demographic needs. Each province has its own criteria for eligibility for the program

(Canadim 2021). Approximately one third of economic migrants have been admitted as provincial nominees (Cheatham 2020).

Third, refugees and protected persons are also eligible for permanent residence in Canada. In 2018, Canada actually surpassed the U.S. as the top refugee resettler on the world (Cheatham 2020). Specifically, the country has two main programs for refugees – government-assisted and privately sponsored (Government of Canada 2019b). However, the refugees do not apply for neither of these programs directly. The UN High Commissioner for Refugees typically refers "government-assisted" refugees based on their location and vulnerability. These refugees are also eligible for assistance from the government during their transition to Canada. Private sponsored refugees, on the other hand, come to Canada due to a sponsorship by government-approved citizens and organizations that also undertake legal as well as financial responsibility for them. All refugees, who get approved for resettlement in Canada, must undergo rigorous screening and usually possess the permanent resident status when arriving to the country (Cheatham 2020). Lastly, there are other individuals, who could also be granted permanent residency on other humanitarian and compassionate grounds that are broadly defined and include various hardships that the applicants would face if they stayed in their countries of origin. Besides refugees and other individuals, applying for a humanitarian status from outside of Canada, the country is also open to asylum seekers, arriving at the border (Cheatham 2020).

However, Canada has also a number of temporary foreign worker programs, through which it addresses its industry-specific job shortages in high- as well as low-skilled occupations. These programs are organized into two main channels – the Temporary Foreign Worker Program and the International Mobility Program. The following sections discuss and analyze these two main temporary worker pathways to Canada, their substreams and history.

History of Temporary Worker Programs in Canada

The first program allowing employers to bring temporary workers to Canada from abroad was the Seasonal Agricultural Worker Program (SAWP), which was established in 1960s to specifically address needs of this sector (Kachulis and Perez-Leclerc 2020) through a 1966 agreement between Canada and several Caribbean countries.[53] However, it wasn't until 1973 that the Non-Immigrant Employment Authorization Program (NIEAP) was introduced as the first general temporary foreign worker program regardless of industry, placing restrictions on visitors who intended to work in Canada, and authorizing workers to legally stay in the country for the duration of their employment. Under the program, the only way to apply for work permits was from outside of Canada, which meant that the workers had to leave to adjust their immigration or employment status. Additionally, the work permits had been tied to particular employers, occupation, residence and length and conditions of employment (Fudge and MacPhail 2009).

Following the introduction of NIEAP, temporary foreign workers began to outnumber permanent immigrants in Canada, signaling a shift in the country's policy focus from permanent to temporary migration as well as employers' reliance on restrained labor to take jobs that were not attractive to workers with full liberties of the labor market. At the same time, instead of targeting specific sectors and occupations, the program focused on a variety of occupational labor shortages experienced by the Canadian employers (Fudge and MacPhail 2009). Moreover, during this time period, another low-skill stream besides SAWP had developed, originally also focusing on workers from the Caribbean although specifically on women who would work as live-in domestic workers. Similarly to its agricultural counterpart, this subprogram later expanded to other countries, especially the Philippines, but unlike the

[53] In 1973, the program was extended to include Mexico.

SAWP, it got revised in 1981 to provide for possible transition from temporary to permanent migration status, and got modified and renamed to Live-In-Caregiver Program in 1992 (Fudge and MacPhail 2009).

In 1990s, the general NIEAP also officially evolved into a two-stream program - one targeting highly skilled and the other low skilled workers with different and unequal obligations and entitlements. Additionally, in 1994, a series of bilateral and multilateral agreements allowed certain, especially high-skilled, workers to be exempted from many requirements of the program, delegating authority from the state to the private sector to select temporary workers. Passage of the Immigration and Refugee Protection Act (IRPA) and related regulations in 2002 then caused further reinforcement and polarization of temporary worker programs as it contained a variety of different mechanisms providing access to Canada to a number of foreign worker categories (Fudge and MacPhail 2009). This eventually established basis for the Temporary Foreign Worker Program (TFWP) as we know it today (Chartrand and Vosko 2020), serving as an umbrella for all the individual temporary worker programs in Canada. In the same year, Canadian government also introduced the Low-Skilled Pilot Project[54] meant to satisfy employers' demand for a much broader range of low-skilled workers to fill jobs in a variety of sectors, particularly in the oil and gas and construction sectors. Rather than modifying or replacing it, this new pilot program operated alongside the SAWP and Live-In-Caregiver Program (Fudge and MacPhail 2009).

In 2006, business advocacy groups began their efforts to make the TFWP more friendly for employers, driven by construction and hospitality sectors that were particularly vocal about their need to quickly and easily access foreign workers, which resulted in expansion of the low-skilled pilot. To better navigate TFWP, the government established Temporary Foreign Workers Units based in big cities in all regions, assisting employers with obtaining employment authorizations. More changes to the pilot as well as the

[54] Under TFWP.

low-skill stream of the general TFWP came in 2007 (Fudge and MacPhail 2009). Overall, the gradual considerable easing of restrictions on temporary foreign workers caused not only a general increase in the number of temporary foreign workers, but also a rise in the share of female workers, which increased from 33 percent in 2002 to 40.5 percent in 2007 (Chart 5 in the Appendix). Additionally, between 1983 and 2007, the total number of foreign temporary workers reminded mostly greater than the number of permanent immigrants (Chart 6 in the Appendix) (Fudge and MacPhail 2009).

However, the most significant series of reforms was announced in 2014 (Kachulis and Perez-Leclerc 2020) as a reaction to concerns about abuse of the TFWP (OECD 2019), discussed further below in this case study. As a result, Canada established two distinct programs – the Temporary Foreign Worker Program and the International Mobility Program (IMP) (OECD 2019). The reforms imposed new conditions, higher costs and more responsibilities for employers seeking to hire workers under TFWP (Fudge 2020), with the intention to reduce the total number of permits issued under the program. The Canada's government also introduced a new inspection regime for TFWP, increasing the number of conducted inspections and expanding authority of its inspectors in effort to ensure stronger enforcement (Government of Canada 2016).

The government's intention began to bear fruit, as the TFWP started to narrow its focus on its agricultural subprograms, in which more cases of exploitation were well-documented and that were used primarily by workers from Latin America and the Caribbean. IMP, on the other hand, is more general and draws individuals from Asian and European countries as well as the United States and Australia. Still, although some of the IMP subprograms target specifically workers with high skills and under quite considerably different conditions than TFWP, others include conditions with very similarly restrictive character (Chartrand and Vosko 2020).

The Current Canadian Temporary Worker Programs

A number of Canadian programs for temporary work purposes co-exist, including bilateral programs with certain countries and regions. Some of them target specific occupations or seasonal employment, while others have established explicit links with the permanent migration system (OECD 2019). However, as mentioned above there are two main programs through which Canada accepts temporary workers – the Temporary Foreign Worker Program and the International Mobility Program (Chartrand and Vosko 2020). These two programs serve as umbrellas for individual migration streams and substreams under them. On top of that, each of the Canadian provinces and territories also has a set of their own policies, which govern immigration of foreign workers within the specific areas. For example, some territories and provinces allow for certain temporary workers to become permanent residents and even citizens as discussed below (Fudge 2020).

The Temporary Foreign Worker Program

The key objective of the Temporary Foreign Worker Program is to fill seasonal and temporary labor shortages that cannot be filled domestically and are often concentrated in certain sectors and regions. TFWP is supposed to assist employers with hiring high- as well as low-skilled foreign-born workers for jobs for which qualified Canadians or permanent residents are not available (OECD 2019). When it comes to the low-skill stream, however, the 2014 reform established a 10-percent cap on the share of low-wage foreign-born workers they can employ. The determination of what qualifies as low-wage is based on median wage in each of the Canadian province (Meurrens 2018). The Canadian government implemented

the cap to ensure the employers do not build their business models around the program[55]. The policy specifically states that employers with 10 or more employees applying for a new LMIA[56] are subject to a cap of 10 percent on the proportion of their low-wage temporary foreign workforce, which is applied per worksite of an employer and based on total hours worked at that worksite (Government of Canada 2016). Still, certain employers have been exempt from the cap, including those who have a company with less than ten employees, hire foreign workers for on-farm primary agriculture jobs[57], as well as certain other seasonal positions (Meurrens 2018).[58]

In addition, the TFWP, which is administered jointly by Canadian Border Services Agency (CBSA), Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC), uses restrictive work permit that ties workers to specific employers and a labor market test as tools to ensure that hiring of foreign workers doesn't have an adversary impact on native-born workers (Chartrand and Vosko 2020). The program provides work visas for workers with a variety of skill levels. However, rather than occupational classification, based on which the original TFWP was administered, the reformed[59] TFWP focuses on the workers' wage. Specifically, the current program consists of four primary sub-programs - 1) "high-wage" positions Stream, 2) the "low-wage" positions Stream, 3) Highest-demand, highest-paid or shortest-duration and 4) the Primary Agriculture Stream (Government of Canada 2016).[60]

[55] Data showed that for instance in 2013, out of the 12,162 TFWP employers, 2,578 had a workforce of over 30 percent temporary foreign workers, and 1,123 had a workforce composed of 50 percent or more temporary foreign workers.
[56] Known as Labour Market Opinions (LMOs) before the 2014 reform.
[57] This includes the Seasonal Agricultural Worker Program.
[58] Other exceptions are positions that are truly temporary (e.g. emergency and warranty positions); positions that are highly mobile or truly temporary and no more than 120 calendar days, and applications supporting permanent residence under any Express Entry programs, such as Federal Skilled Worker Program, Federal Skilled Trades Program.
[59] After 2014.
[60] The Live-in Caregiver Program was terminated in 2019.

The 'high-wage' sub-program includes positions with wage that is at or above the provincial/territorial median wage (Table 6 in the Appendix). For example, managerial, scientific, professional and technical positions as well as the skilled trades fall under this category. The 'low-wage' subprogram, on the other hand, includes positions with wage below the provincial/territorial median wage, such as general laborers, food counter attendants, and sales and service personnel. However, it excludes hiring of workers in occupations that require little or no education, such as accommodation and food services, retail trade industries, and others, unless the employer is based in a region with unemployment at 6 percent or higher (OECD 2019). Then, there is the 'Highest-demand, highest-paid or shortest-duration' subprogram, through which employers can hire for occupations, as the title suggests, that are in high demand[61], offer a wage at or above the top 10 percent of wages in the specific province/territory, or are required for 120 days or less. After a rigorous review, these entries can be processed within a 10 business days (Government of Canada 2016).

Finally, the Primary Agriculture Stream of TFWP is currently further divided into four sub-streams - the Seasonal Agricultural Worker Program, the Agricultural sub-stream, the High-Wage sub-stream, and the Low-Wage sub-stream.[62] The SAWP is targeted specifically at temporary foreign workers from Mexico and participating Caribbean countries, and is definitely the largest sub-stream as it accounted for about three-quarters of total permits issued for TFWP agricultural workers over the last decade (OECD 2019).[63] Additionally, unlike the other TFWP substreams that are usually "temporary', the Seasonal Agricultural Worker Program, as the title suggests, is "seasonal", prohibiting workers from staying longer than eight

[61] Limited to positions with wage at or above the provincial/territorial median wage.
[62] It is important to not confuse the primary agriculture stream's "high-" and "low-wage" sub-streams with the main "high-" and "low-wage" streams under the umbrella TFW Program.
[63] In 2018, the initial permits for non-returning workers under programs other than SAWP accounted for about two-thirds of the total issued permits, suggesting that the overall growth of the agricultural programs between 2015-18 was driven by a larger intake under these other seasonal and non-seasonal programs rather than SAWP.

months (Just For Canada n.d.).[64] The overall Primary Agricultural Stream, including SAWP, is exempt from some of the new policies implemented through the 2014 reform. For example, the employers are not required to pay labor test fees and are not restricted by a cap on the number of employed foreign workers. The exempt applies as the government of Canada claims "there are proven acute labor shortages in this industry and the unfilled jobs are truly temporary" (Government of Canada 2016).

Still, all the TFWP sub-programs require a labor test, or the Labour Market Impact Assessment (LMIA) performed by ESDC, certifying that the employment of the temporary foreign-born workers will not negatively impact native-born workers (Chartrand and Vosko 2020) and confirming that the employer has first tried to hire native-born Canadians and permanent residents (OECD 2019). The LMIA process is initiated by employers, who file the initial application. Once the employers receive a positive LMIA, their foreign workers can use it to apply for a work permit to IRCC.[65] When approved, the foreign workers can work in Canada, however, only for these particular employers. If fired or seeking to switch employers[66], the foreign workers lose the authorization to work in the country (Chartrand and Vosko 2020). This system of employer-specific work permits is known as the "closed" system.[67] However, there are some exceptions. Although part of the TFWP, workers under the Seasonal Agricultural Workers Program – one sub-stream of the Primary Agriculture stream – do not need a new work permit to change employers, as discussed above, as long as the new employer has a valid LMIA to hire the foreign worker under the SAWP (OECD 2019).

[64] Must be between the January 1st and December 15th of each year.
[65] However, this process differs if the temporary worker, under the TFW Program, intends to work in Quebec, which requires several additional steps involving Quebec Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI) (OECD 2019).
[66] If foreign workers wish to switch employers, they must obtain a new work permit linked to that the new employer (OECD 2019).
[67] Also known as "employer-specific" work permits.

Over the past 6 years, the total numbers of individuals from various countries coming to Canada through TFWP have changed considerably as the agricultural portion began to dominate the program. While in 2013, most of the TFWP workers came from the Philippines,[68] in 2018, majority of them were from Mexico.[69] Overall, workers from Latin America and the Caribbean accounted for more than 50 percent of TFWP. Notably, there were also over 10,500 TFWP workers from the United States in 2013, but not even 2,000 in 2018. This downward trend has been also apparent among workers from the United Kingdom and France. The total annual numbers of TFWP has decreased as well from almost 120,000 in 2013 to just over 84,000 in 2018 (Chartrand and Vosko 2020). Chart 7 in the Appendix summarizes the recent trends in numbers of TFWP workers from the top 10 countries of citizenship.

The International Mobility Program

The changes in the numbers of workers coming to Canada through TFWP stem from the fact that since 2014, individuals can enter the country through another umbrella program – the International Mobility Program (IMP). Since the objective of IMP, which has been based partially on international reciprocal agreements rather than labor market conditions, is to advance Canada's 'broader economic and cultural interests", it serves as usually simpler and quicker option for employers in need of foreign workers than the TFWP, as it doesn't depend on specific labor market conditions (Moving2Canada 2018).

During the past ten years, two times more temporary foreign workers got their permits through IMP than the TFWP (Chartrand and Vosko 2020). The program allows employers to avoid the two measures under

[68] Likely through the Live-In Care Giver Program before Canada started to introduce new pilots for foreign-born caregivers.
[69] Due to the agricultural stream.

the TFWP (Government of Canada 2016)- LMIA, since the IMP workers are supposed to bring "broader economic, cultural to other competitive advantages for Canada" (OECD 2019) and the cap on low-wage workers. With the absence of LMIA, the IMP application process doesn't include ESDC, which normally oversees programs affecting the country's labor market. Instead, the IMP has been administered by jurisdictions of IRCC and CBSA that are more focused on cross-border mobility regulation than addressing specific labor market needs (Chartrand and Vosko 2020).

Although most of IMP workers hold "open" work permits as mentioned above, allowing them to change employers as well as occupations and granting better access to longer-term permits or permanent residency, a significant segment of the program still contains restrictions on where the workers can work, type and location of the job, as well as times and periods of employment (Chartrand and Vosko 2020). Specifically, workers under certain trade agreements, hired through reciprocal employment, co-op internship and others still obtain only employer-specific permits (OECD 2019). For example, in 2017, 33 percent of IMP workers held "closed" work permits,[70] including those who entered Canada through some large substreams, such as International Experience Canada, NAFTA, Provincial Agreements, and Intra-Company Transferees. Since IMP doesn't include LMIA that usually gathers information about occupations, wage levels as well as contract provisions, there is a considerable data gap within the IMP. Still, the available evidence seems to suggest fragmentation of the program due to the variety of permit conditions unevenly applied throughout its streams (Chartrand and Vosko 2020).

The existing data shows that the number of IMP workers more than doubled over the last ten years, driven by temporary workers entering Canada through three particular substreams - post-graduation work

[70] Under IMP, Canada usually issues "employer-specific", or "closed", work permits to foreign workers with a specific job offer. If these foreign workers meet requirements of IMP (for example, they fall under one of the country's international agreements such as NAFTA), the employers are not a subject to LMIA.

permits (PGWP), the International Experience Canada (IEC) and permits for spouses of skilled workers and international students (OECD 2019). Chart 8 in the Appendix illustrates these changes and the trend is also apparent from the next Chart 9, which shows a slight decrease of the IMP permits issued to workers coming through the overall international trade agreements stream between 2013 and 2018 (Chartrand and Vosko 2020).

Additionally, most IMP workers come to Canada from wealthier and influential countries in Europe and Asia, as well as the United States and Australia, rather than from Latin America and the Caribbean, the areas from where TFWP workers often come. Eight out of the IMP workers' top 10 nationalities - United States, France, UK, Australia, Ireland, Korea, Japan, Germany - are countries that signed a trade agreement with Canada. Between 2013 and 2018, the number of IMP workers from these countries has remained quite stable, while the number of IMP workers from India and China – the other two countries in the top10 IMP nationalities – has grown rapidly. More specifically, the number of IMP workers from India had doubled between 2013 and 2018, and by 2016, even displaced the United States as the top source of all temporary migrant workers in Canada, remaining the most populous group ever since (Chartrand and Vosko 2020). Chart 10 in the Appendix illustrate those trends. A significant jump in the number of Indian workers coming to Canada was apparent after President Trump began to restrict immigration to the United States after he took office in 2016. Especially, high-skilled workers from India, including tech workers and other occupations eligible under IMP, started to favor Canada rather than the U.S. due to challenges with obtaining permanent residency through the U.S. H-1B program (Anderson 2020).

Temporary Foreign Worker Program vs. International Mobility Program

It is apparent from the previous sections that there is a number of differences between the TFWP and IMP. I believe the previous sections made it clear that these differences stem from fact that each of these programs was established on a completely different foundation and with different objectives. While the TFWP is labor market-based, allowing employers to fill temporary labor shortages, while the IMP's objective is to advance Canada's broader economic and cultural interests (Moving2Canada 2018). Therefore, while the former requires employer-specific work permits, the latter allows for open worker permits, which are typically[71] unrestricted, or not linked to a certain employer or occupation. The open permits also don't require LMIA from ESDC, and thus employers in some cases do not have to submit their employment offers through the Employer Portal, nor pay full compliance fee (Chartrand and Vosko 2020). Table 7 in the Appendix summarizes the basic differences between TFWP and IMP.

Still, both TFWP and IMP allow certain eligible foreign workers to eventually apply for permanent residency, although in most low-skilled occupations such transitions are quite rare (OECD 2019). Under the TFWP, low-skill workers have fewer pathways to permanent residence status, however, such transition is not impossible. Certain provinces and territories, such as Alberta, Manitoba or British Columbia, allow workers with 'closed' worker permit to become permanent residents through 'provincial nomination'. However, each province has different rules (Government of Canada 2018). For example, while Ontario doesn't allow meatpackers to receive the permanent status, because the province has enough low-skilled workers in the sector, Manitoba allows meatpacking businesses to 'nominate' certain foreign workers, who worked for them for two years, to apply for residency (Fudge 2020).

[71] Not all individuals who are part of the IMP are eligible for an open work permit.

As for the IMP, the program has taken over in the number of transitions to permanent status in the recent years. In 2018, more than 90 percent of permanent resident admission with prior work permit in Canada was under the IMP - a share that has continuously increased since the introduction of IMP of the program in 2014 (OECD 2019). However, since the program doesn't gather enough data about occupations of the participating workers, as further discussed below, it is difficult to know how many of IMP transitions to permanent residency has been among low-skilled workers. Moreover, some IMP individuals entering Canada as high-skilled, such as students or refugees with degrees, may begin their careers in low-skilled position. For instance, certain students who enter Canada through IMP (Immigration 2014) work in low-skilled jobs (Kannan 2019), but may be allowed to transition through the post-graduation stream under IMP (OECD 2019).

Still, a study by Lu and Hou that analyzed data from 2001 through 2016 suggests that before transitioning to permanent residency, low-skilled workers with closed work permits, regardless of whether they were obtained under TFWP or IMP, maintained valid temporary worker status in Canada longer than high-skilled workers with closed permits as well as those with open work permits.[72] Specifically, two-thirds of low-skill closed permit holders had valid status five years after their first permit was issued compared to about one quarter of high-skilled closed permit holders. Nevertheless, although they tend to maintain the temporary worker status longer, low-skilled workers with closed permits had the highest rate of transition to permanent residency, followed by the 'open' work permit holders. The results are not too surprising because although high-skilled TFWP workers have more pathways to transition to permanent residency

[72] Open work permits are available only to IMP workers and do not recognize between low- and high-skilled since IMP do not gather sufficient occupational data.

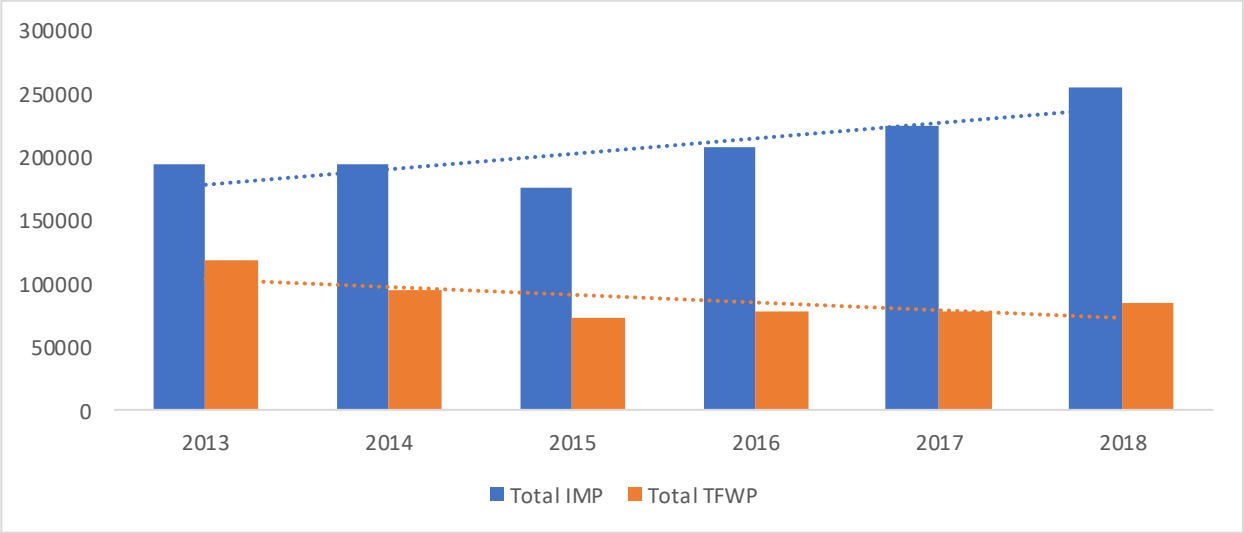
in Canada, they are also more attractive to many companies abroad that may provide them with better offers that those in Canada (Lu and Hou 2019).[73]

As mentioned above very limited data about the IMP exists. This is due to the lack of LMIA, which gathers more detailed information about workers entering through the TFWP (OECD 2019). However, the data that are available clearly suggests the establishment of IMP combined with reforms of the TFWP in 2014, has changed the composition of TFWP, which has gradually narrowed its focus primarily on its agricultural substreams, particularly workers from Latin America and the Caribbean. That is because more foreign workers choose to enter Canada via IMP that may be less challenging for many of them. Although agricultural workers have always accounted for a large share of the TFWP, between 2015 and 2018, they became the program's largest group as shown in Chart 11 in the Appendix (Chartrand and Vosko 2020). With the newly narrower focus of TFWP, some major reductions in the program's substreams took place between 2013 and 2018. The caregiver subprogram slowly phased out[74] with new applications directed to new pilot programs under permanent resident streams (Government of Canada 2021), and officially came to an end in 2019.[75] Chatrand and Vosko, who studied Canada's temporary worker programs, divided the data on TFWP to categories based on the largest occupations within program, creating the "Other Workers with LMIA" group. This category that combines subcategories previously divided by lower-skilled and higher-skilled occupations[76] saw some steep declines as well, falling from nearly 70,000 in 2013 to just over 30,000 in 2018 (Chartrand and Vosko 2020).

[73] As discussed above on the example of workers from India, in the case of the U.S., this dynamic began to shift with the Trump administration making it more challenging to apply for permanent residency. However, there are still other countries besides the U.S. that the workers may find more attractive to stay.
[74] The program phased out due to a variety of criticisms, including the "live-in requirement."
[75] However, in 2019, Canada established a pilot program for caregivers, which offers an 'occupation-open' work permit that allows the workers to change employer as long as they stay within the same occupation.
[76] This provided a basis for a division between low-wage and high-wage positions under the 2014 reforms.

Additionally, the overall low-wage subprogram dropped by 79 percent from 2013 to 2015 alone, which played a major role in the overall TFWP decline during that time (Chartrand and Vosko 2020). With the TFWP's shift towards agriculture after the 2014 reform, which was in my opinion spurred at least partially by the fact that employers in the agricultural sector were given certain exemptions from the program's new restrictions, the interest in the IMP have grown in comparison to TFWP over time as shown in Figure 6 below. In 2018, the cumulative total of TWFP workers was 527,247, compared to 1,249,651 under IMP (Chartrand and Vosko 2020).

Figure 6. Total New IMP and TFWP Workers Over Time



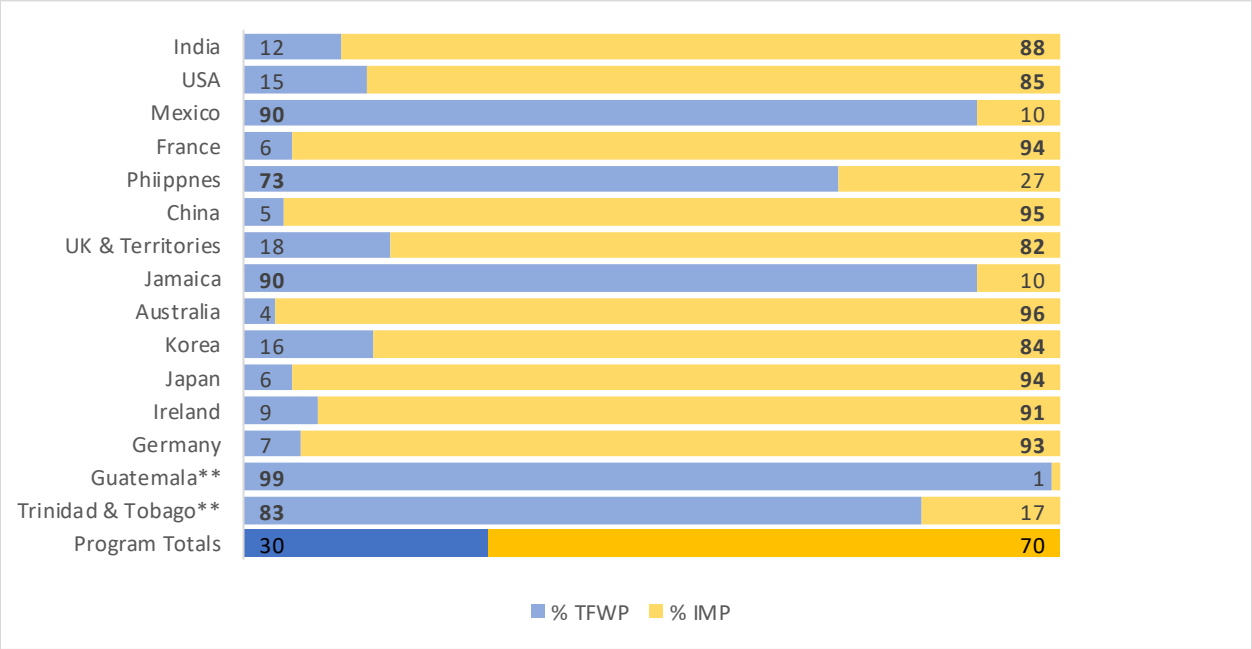
Source: (Chartrand and Vosko 2020)

At the same time, the composition of countries of origin from where the foreign workers come to Canada through TFWP and IMP has changed considerably as well. Countries in Latin America and the Caribbean has become principal sources of TFWP workers, whose numbers have reached extraordinary levels over time. On the other hand, the IMP, which is broader, generally draws workers from countries in Asia and Europe, as well as the United States and Australia. According to Chartland and Vosko, this disparity reflects partially the unique relationship between Canada and Latin America and the Caribbean. The authors

believe that while "most of the IMP source countries are either former European powers or at least part of the British Empire, the significant representation of Indian and Chinese citizens participating in the IMP points to a re-alignment among Asian source countries." However, since both of the programs have such complex range of substreams, it is impossible to make s comprehensive comparison of source countries under each of them (Chartrand and Vosko 2020). Still, data shows eight of the Top 10 source countries of the IMP are signatories to a trade agreement with Canada.[77] Between 2013 and 2018, at least 70 percent[78] of all temporary migrant workers to Canada from each of the countries came under IMP rather than the TFWP as demonstrated in Figure 7 below.

[77] United States, France, UK, Australia, Ireland, Korea, Japan, Germany
[78] In many cases even over 90 percent.

Figure 7. Percentage of Total Temporary Work Permit Holders Under the TFWP vs the IMP, by Select Country of Citizenship (Top15 Sources Including Both Programs), 2013-2018 (Cumulative Totals)*



*Bold denotes instances in which participants from a given source country engaging in one program exceed 70 per cent.

**Totals for Guatemala and Trinidad-Tobago only 4-Yr (2015–2018), 2013–2014 figures not available.

Source: (Chartrand and Vosko 2020)

Figure 7 shows the source country make-up as well as the relative percentage of each source country's representation on both programs cumulatively between 2013 and 2018. The numbers demonstrate a clear division that emerged between the key TFWP and IMP source countries, with the bold numbers indicating the source countries in top10 for the given program. Since the IMP is larger than TFWP, it has brought individuals from more diverse pool of source countries, except for Latin America and the Caribbean, which are the main source countries for the TFWP. While 90 percent of IMP workers come

from countries such as France, China, Australia, Japan, Ireland, Germany, 90 percent of TFWP workers are from Mexico, Jamaica, Guatemala (Chartrand and Vosko 2020). Foreign workers have been generally dispersed across Canada unevenly, with approximately 75 percent of them in the most populated provinces of Ontario, Quebec, and British Columbia (Dixon-Perera 2020).

Further, data on workers with 'open' and 'closed' permits suggests that low-skilled workers with employer-specific permits, which are provided through either TFWP or IMP, have been overrepresented in agriculture, forestry, fishing and hunting (Lu and Hou 2019). At the same time open work permit holders were overrepresented in sectors including "not only professional, scientific and technical services but also food and accommodation services" (Vosko 2020), a trend suggesting that IMP, the only program offering 'open' work permits, provides such permits to low-skilled workers in at least some industries (Vosko 2020).

Criticisms of the Canadian Temporary Worker Programs

The Canadian temporary worker programs have been facing criticisms since the very beginning of their existence. Just a year after its establishment, concerns arose that rather than bringing high skilled workers, the Temporary Foreign Worker Program brings low skilled workers to fill jobs that Canadians do not want to take, suggesting the government's intention is to transfer labor intensive low-skill work to foreigners, and thus creating a discourse of work that is or is not suitable to Canadians (University of Toronto n.d.). However, over the years, critics' focus shifted to work conditions and rights of the temporary foreign workers, driven by the documented cases of their widespread exploitation and abuse (Faraday 2012).

In 2012, Faraday found that 22 percent of workers under the TFWP were paid less than minimum wage; 33 percent were owed wages by their employer; 31 percent received their pay was late; 17 percent got paychecks that bounced; 25 percent were paid in cash; 25 percent did not receive pay information that showed a record of deductions or hours worked; 39 percent who worked overtime hours never received overtime pay; a further 32 percent who worked overtime only received overtime pay "rarely" or "sometimes"; 34 percent had problems receiving vacation pay; 36 percent were terminated or laid off without termination pay or notice; 37 percent did not get public holidays off with pay; 57 percent who worked on public holidays did not receive the required premium pay; and 17 percent were charged a fee for temporary work. On top of that, some reports suggested that migrant workers faced discrimination in form of lower pay for the same work as Canadian workers and being assigned the most dangerous jobs in the workplace (Faraday 2012).

In many cases, the foreign workers also experienced exploitation stemming from their housing situation, since living on their employer's property, especially in cases of farmworkers, allowed the employers to consider them to be always "available" for work and force them to work excessively. Additionally, migrant workers have raised concerns about employers' failure to provide them with proper health and safety training and equipment. Further, if foreign workers got unjustly terminated, they became especially vulnerable as they lack access to support that would help them challenge such decision (Faraday 2012).

The criticisms mentioned above stemmed largely from the TFWP's condition of 'closed', or employer-specific, work permits. Such system created an "imbalanced" situation, in which the employers possess overwhelming control over the foreign workers that stretches beyond their official employment agreement, and thus allows for the workers' greater vulnerability. By being tied to specific employer and occupation, the 'closed' work permits restricted the workers' mobility at the labor marker, and thus made

them vulnerable to abuse (Chartrand and Vosko 2020). As a reaction to concerns about abuse of the TFWP (OECD 2019), the Canadian government introduced the series of reforms in 2014 (Kachulis and Perez-Leclerc 2020) as discussed above, which resulted in establishment of the two distinct programs.

Even though many temporary workers have begun to enter Canada through the IMP rather than TFWP after 2014, the changes made to the TFWP have not addressed the abuse experienced by workers as they remained restrained by the 'close' work permit system. Rather than providing more protections, the modifications just made it more difficult for the employers, who continue to participate on TFWP, to hire the workers. As a result, just two years after introduction of the reforms, employers raised a number of concerns about the new policies of the program. Specifically, they mentioned significant administrative burden under the new LMIA, accompanied by high fees, long processing times, difficult to navigate advertising requirements, a "zero tolerance" approach to procedural mistakes, shorter-term work permits, and a number of aggressive enforcement powers and strict penalties (The Canadian Bar Association 2016).

TFWP employers also seem to struggle with the program regulations that were introduced as part of the 2014 set of reforms. This more rigorous inspection process has been aiming to inspect about one fourth of all TFWP employers each year. The inspectors' visits may be completely random, and they are allowed to interview workers and check whether the employer meets all the required 21 requirements.[79] From 2017 to 2018, inspectors conducted 2,214 visits. Since 2015, just 1 percent of the TFWP employers were found non-compliant. Nevertheless, the TFWP inspections dropped considerably in 2018 – the same time that the share of non-compliant employers rose to 5 percent. Overall, between 2015 and 2019, just 55

[79] The previous process required three.

percent of employers under the "high-" and "low-wage" streams were found fully compliant.[80] In the Primary Agriculture stream, about 32 percent employers had to make corrections to make the program's requirements (OECD 2019).

At the same time, the IMP that has seen a large inflow of workers right after its implementation has been facing its own set of issues and criticisms. First, as mentioned in the previous sections, the lack of a LMIA, and thus also the ESDC that administers it, there is not enough administrative data on occupations, wage levels and other metrics typically used for assessment and evaluation of such programs. Without the LMIA, the IMP is also not a subject to the same more rigorous inspection regime, which was implemented in 2014 in attempt to ensure the TFWP employers' adherence to the assessment. Additionally, since not all IMP work permits are open, conditions of certain IMP subprograms, such as International Experience Canada, NAFTA, Provincial Agreements, and Intra-Company Transferees, restrain foreign workers' labor market mobility in the same fashion as TFWP. The employer-specific work permits enlarge the risky nature of the workers' status and reinforce the imbalance of powers in the employer-employee relationship. As mentioned above, some 33 percent of IMP workers had 'closed' work permits in 2017 (Chartrand and Vosko 2020). For instance, an analysis of some provincial programs, such as the Provincial Nominee Programs,[81] have shown these program are "employer driven", creating an environment in which the workers feel "beholden to the employer" (Chartrand and Vosko 2020). Overall, it is clear that with the strict conditions and employer-driven selection of workers on the provincial level, some of the abusive and exploitative character of the TFWP has possibly transferred into some of the IMP subprograms.

[80] Fully satisfactory and not requiring any correction.
[81] If individuals are issued work permits that support their transition to permanent residence under the PNP, they would be issued IMP work permits.

Moreover, evidence shows that similarly to workers under TFWP, IMP work permit holders lack actual access to rights and protections, as the temporary nature of the status disqualifies many of them from claims requiring longer presence in the country, resources and social capital to challenge decisions or even go to court. Most evidently, this problem exists among IMP programs, such as intra-company transfers. This program relocates transnational corporations' employees that are usually employed in other countries, which create sort of a "blur" space between the responsibilities of parent company and the sending and receiving subsidiaries. This grey area allows for possible abuse and exploitation of the workers (Chartrand and Vosko 2020). Further, the temporary nature of the status often makes the foreign workers "less likely to be aware of, expect or claim labor protections" due to fear of possibly jeopardizing their work permits. Without access to the rights and protections afforded other workers, some IMP permit holders may face exploitative conditions present in the TFWP (Chartrand and Vosko 2020).

To address the reports of abuse and exploitation, the Canadian government issues open work permit to certain foreign workers, who can prove their vulnerability to abuse at their workplace. Only workers who are inside Canada, have a valid employer-specific permit and can submit evidence of their abuse or being in risk of abuse can be eligible for the open permit. However, this open permit for vulnerable foreign workers serves only as a temporary solution as it can't be renewed and has an expiration date. Still, it provides the workers with an opportunity to find another employer and apply for a new work permit (Immigration 2020b).

Comparison of the U.S. and Canada's Temporary Worker Programs

In this section, I compare the temporary worker programs in the United States with those in Canada. The comparison is organized into three categories – general information about the programs, specific features of the programs, and criticisms of the programs. However, it is important to mention that the general differences in the overall immigration systems in the two countries complicates this comparison. Specifically, while in the United States, foreign workers can enter the country only through particular visa programs, the Canadian system is more 'flexible' in the sense that the IMP provides pathways for a variety of individuals to come and work in the country based on a set of bilateral agreements. In other words, in the U.S., employers rely on two seasonal worker programs – H2A and H2B based on their occupational needs - to bring workers to help them fill their job shortages. In Canada, on the other hand, employers can either use the TFWP, IMP or combination of both based on what is better for them as well as the workers involved.

While the statement above is a broad generalization of the Canadian programs, since there are certain cases in which employers must follow policies of certain subprograms, the use of the two temporary worker programs seems to be more intertwined, providing broader possibilities at least for certain workers and employers. For example, the IMP provides open work permits to students, who are technically high-skilled, but often perform low-skill work during their studies. Rather than going through the LMIA and other restrictions of the TFWP, IMP provides employers with more possibilities to hire a variety of individuals, who at the same time have the opportunity to switch employers. However, not all permits provided by IMP are 'open.' Therefore, if an employer needs a certain number of low-skill workers, especially at a removed location such as a farm or a construction site, TFWP may be a better option, as it secures the temporary workforce and possibly allows for transitions to permanent residency

for some of them.[82] Generally, if employers need stable workforce at a certain location, it is likely more beneficial for them to use TWFP, while if the employer needs just one specific worker, he or she is likely to go with IMP. Still, the decision which Canadian temporary worker program is very complex and requires specifics of the given job, employer and worker. Therefore, it is difficult to compare it to the U.S., where the two programs provide very strict rules and policies on which individuals the employers may bring.

As a result, the following is to be considered a quite general comparison rather than a definite set of differences between the temporary worker programs in the U.S. and Canada.

General Framework of Temporary Worker Programs in the U.S. and Canada

There are two U.S. temporary worker programs – the Non-agricultural Temporary Worker Program, or H-2B, and the Agricultural Temporary Worker Program, or H-2A. In Canada, there is the Temporary Foreign Worker Program and the International Mobility Program. However, while the policies under the U.S. H-2A and H-2B are final[83], the Canadian programs are further divided into subprograms based on bilateral agreements and other international cooperation programs. Moreover, while the U.S. temporary worker programs have been generally governed by the federal law applicable in all U.S. states,[84] the Canadian programs are at least partially governed by policies that differ in each territory and province (Dixon-Perera

[82] There are not many ways for low-skilled workers to get permanent residency in Canada as discussed above.
[83] The U.S. has certain bilateral agreements and/or memoranda of understanding with countries participating on the program (such as Guatemala and El Salvador) to protect the workers and/or encourage hiring of those workers. However, these documents do not change application rules and policies of the H-2B and H-2A programs.
[84] There are certain labor regulations that may vary by state such as prevailing wage, but the main pieces of legislation apply on the federal level.

2020).[85] Furthermore, while in the U.S., labor standards are governed mostly through the federal law[86], in Canada, labor standards vary from province to province (Fudge 2020).[87]

Additionally, as apparent from titles of the two U.S. and two Canadian programs, the U.S. ones depend on the industry employing the foreign-born workers, which is a considerable difference from the Canadian programs, in which the specific sector does not play as much of a role.[88] Instead, the Canadian TFWP is divided into subprograms based on median wage in the territory or province, while the IMP is based on specific international agreements and interests. At the same time, while both H-2B and H-2A employers have to prove their 'seasonal' need, which basically excludes certain industries, such as caregivers, the Canadian programs require to be just 'temporary'.[89] Therefore, employers from all industries in Canada may theoretically benefit from the programs. In the U.S., the H-2A workers work solely in agriculture, as the title of the program suggests, and the H-2B workers are in sectors with seasonal needs such as landscaping, amusement parks and housekeeping. In Canada, temporary workers under TFWP have been currently mostly in agriculture, although the program is not restricted to any particular sector, as discussed above. The IMP does not track data about occupations, in which the foreign workers work, especially, since a number of technically high-skill workers, such as international students, work in low-wage occupations. Additionally, while the U.S. has a completely separate program for high-skilled workers[90], the Canadian temporary worker programs have subprograms for both low- and high-skilled

[85] The responsibilities of the federal and provincial governments are defined in the Constitution Act, 1867.
[86] The Fair Labor Standards Act (Office of Financial Management 2019).
[87] Except for a small number of industries that fall under federal jurisdiction, jurisdiction over regulating workplaces and businesses in Canada, rests with the provinces at the sub-national level. Most employment matters, including labour standards, occupational health and safety, and the business of employment agencies and private labour recruiters are also regulated by the province in which those actors operate (Dixon-Perera 2020).
[88] Under the Canadian TFWP, there is a specific subprogram for agricultural workers. However, it is not the only way to hire the workers. In theory, if a worker secures an open work permit through IMP, he or she can be hired for an agricultural job. However, the TFWP has been providing Canadian employers with stable workforce that cannot easily leave their farms due to the 'closed' work permits.
[89] This excludes the Seasonal Agricultural Worker Program, under which the work permit cannot exceed eight months.
[90] This program is H-1B.

workers based on the wage offered for performing the job. Lastly, temporary workers under H-2B and H-2A are allowed to remain in the country for up to three years[91], which compares to the Canadian work permits under both TFWP and IMP, which allow the foreign nationals to work in Canada up to four years, including all possible extensions ("Temporary Work Permits: Conditions, Terms and Validity" 2015).[92]

In terms of the process of hiring foreign workers, the U.S. programs require involvement of three federal departments – Labor, Homeland Security and State – which are each responsible handling specific parts of the process. First, the employers must conduct pre-filing recruitment by filing a job order with the appropriate State Workforce Agency. Then, the Labor Department determines the applying employers' prevailing wage requests[93] and temporary labor certifications, once approved, the Homeland Security Department's USCIS processes the individual applications, or 'petitions', to bring foreign workers. If approved, the State Department assesses and issues visas for the individual foreign workers (Bruno 2020b). Lastly, the U.S. Customs and Border Protection, another DHS's agency, determines the foreign nationals' admission at ports of entry (The U.S. Chamber of Commerce 2010). Similarly, the administration of TFWP in Canada is also divided between three agencies - Employment and Social Development Canada, Immigration, Refugees and Citizenship Canada and Canada Border Services Agency. The ESDC leads the TFWP by assessing the possible impact of hiring foreign workers by the applying employers on the country's labor market and issuing a LMIA. The IRCC then manages and assesses admissibility of the foreign nationals and their eligibility for the work permit. Lastly, the CBSA processes applications at the Canadian ports of entry, having the final say on whether a foreign worker may enter Canada (Kachulis

[91] However, the classification is typically granted for up to the "season", or the period of time authorized on the temporary labor certification and may be extended as long as the employer possesses a valid temporary labor certification. Typically, a worker may stay in the U.S. for a continuous time if he or she is hired in a separate application process by another employer while in the U.S. For example, workers may work on one farm in Washington state during summer and then get a job for another employer in Florida for winter. The Florida employer must, however, file a new application in order for this worker to stay in the U.S.
[92] The original permit is typically issued for six months.
[93] Not required for the H-2A program.

and Perez-Leclerc 2020). In case of IMP, however, the process consists of only IRCC and CBSA as the employers do not have to secure positive LMIA (Chartrand and Vosko 2020).

Overall, when choosing a temporary worker program in the U.S., the employers have two quite straightforward, but still complicated, choices. They either need low-skilled seasonal agricultural workers, in which case they pursue the H-2A process, or they have a seasonal need for low-skilled workers in other sectors, in which case they pursue the H-2B process. In Canada, on the other hand, the employers have somewhat broader options. If Canadian employers seek agricultural workers, they are likely to go through the TFWP, which requires them to apply and receive positive LMIA, but also allows them to be exempt from a variety of the program's requirements, including paying LMIA fees and being excluded from the cap. Additionally, the TFWP doesn't limit the employers' ability to hire low- as well as high-skill workers. Since employers in other industries are not exempt from LMIA, they may rather choose to hire foreign workers, who are eligible for one of the IMP streams, which allows them to avoid the labor test and other TFWP restrictions. Moreover, if they are able to find foreign workers, who already have valid open work permits through one of the IMP subprograms, they may avoid all financial as well as administrative costs related to hiring foreign workers. Also, the decision may be made based on the province in which the company is located, as the options for employers as well as the workers[94] depend on provincial policies. In other words, while in the U.S., the employers' choice is based solely on the industry and type of work in which they have the openings, in Canada, the decision about which program to use may differ based on the specific combination of employers and workers.

For example, in the Canada's landscaping sector, records show that employers often hire international students with open work permits to work in low-wage occupations (Kannan 2019), rather than going

[94] Since some of the provincial policies allow certain low-wage foreign workers to eventually apply for residency.

through the process of LMIA under TFWP or obtaining closed work permits for the potential workers under IMP. Moreover, it is important to note that under TFWP, the landscaping companies can't even hire foreign workers for low-wage jobs unless the region's unemployment rate hits 6 percent or more (OECD 2019). In the U.S., the landscaping companies have to go through the H-2B program. As a matter of fact, landscaping is the sector that uses the H-2B program the most (Foreign Labor Certification 2020). Table 8 in the Appendix summarizes the information above, providing a comparison of the U.S. and Canadian program.

Features of Temporary Worker Programs in the U.S. and Canada

One of the main differences between temporary worker programs in the U.S. and Canada is that while the U.S. employers under both H-2B and H-2A programs must conduct the 'labor market test' by submitting a recruitment report to the Department of Labor to prove they advertised and were unable to hire domestic workers (U.S. Department of Labor n.d.), the Canadian employers may theoretically avoid LMIA by hiring workers through the IMP (Kachulis and Perez-Leclerc 2020). The IMP is exempt from LMIA and provides workers with open or closed work permits depending on the specific international agreement or Canada's interests that allow the workers to come to the country. However, employers hiring workers through TFWP still must receive a positive LMIA in order to bring workers from abroad. Even though the U.S. employers of H-2B do not have to pay for their labor certification applications, are supposed to cover fees for their workers' USCIS petitions, which account for $460 per application (U.S. Citizenship and Immigration Services n.d.), as well as their individual visa fee, which is $190 per person (U.S. Department of State Bureau of Consular Affairs n.d.) and a $150 fraud and prevention fee (U.S. Citizenship and Immigration Services 2018). The H-2A employers on the other hand must pay $100 for

their temporary agricultural labor certification as well as $10 for each H-2A worker certified it, provided that the fee to an employer for each temporary agricultural labor certification cannot exceed $1,000 (Electronic Code of Federal Regulations n.d.). Further, same as the H-2B program, the employers should cover the $460 per worker petition fee as well as the $190 per worker visa fee. In Canada, in order to submit a LMIA application, employers hiring through the TFWP should pay a CAN$1,000 fee for each position requested (Government of Canada 2017a).[95] However, the workers are then responsible for the CAN$155 per person (Government of Canada; Immigration 2020) permit processing fee (Government of Canada; Immigration 2012b). Under IMP, employers must pay a CAN$230 per job offer[96] (Immigration.ca 2017), which is however waived if the worker has a valid open work permit (Government of Canada; Immigration 2012a). To obtain an open work permit, each eligible worker must also pay a CAN$100 processing fee (Government of Canada; Immigration 2020).

Additionally, while the U.S. H-2A agricultural worker program is not limited by a quota, the H-2B non-agricultural worker program is limited by a 66,000 annual cap.[97] The Canada's IMP is also not limited by a quota since the program is based on individual international agreements and the country's interests rather than specific sectors and occupational shortages and provides closed as well as open work permits, which are difficult to track. In case of the TFWP, however, employers with 10 or more employees applying for a new LMIA are a subject to a cap that is calculated as 10 percent of the proportion of their low-wage temporary foreign workforce, applied per worksite of an employer. and based on total hours worked at that worksite. However, this cap does not apply, similarly to the U.S. H-2A, to employers hiring for on-farm agricultural positions, including the Seasonal Agricultural Worker Program (Meurrens 2018).

[95] There are certain exceptions. For example, families or individuals seeking to hire a foreign home caregiver for someone requiring medical assistance are exempt from paying the application processing fee.
[96] This applies to employers, who provide the foreign workers with a job offer, making them eligible for employer-specific work permits. Since the workers are eligible under IMP, there is no LMIA requirement.
[97] As previously discussed, there were certain one-time adjustments to the annual limits but the official statutory cap have remained the same since the 1990's.

Moreover, while the U.S. H-2A and H-2B do not offer any possibility of earning an open work permit, or in other words do not allow the foreign workers to change employers, certain workers under the Canada's IMP may receive open permit, which they can use to work also in low-wage occupations. For example, certain students in Canada work in landscaping industry during their studies (Kannan 2019). However, the ability to receive the open permit through IMP depends on the specific international agreement or Canada's interest program, which the given individual used to enter the country. In other words, not all IMP work permits are open – if a foreign worker, who qualifies under IMP, applies for a work permit with a job offer from a specific employer, the worker will be issued a "closed" work permit, allowing him or her to work only for this particular employer (who is however exempt from LMIA). Further, similarly to the U.S., the Canada's TFWP provides only 'closed' work permit due to its requirement to get approved for LMIA. Table 9 in the Appendix provides a comparison of the above-mentioned features of each of the U.S. and Canadian programs.

Protections for foreign workers under the U.S. and Canada's Temporary Worker Programs

The U.S. as well as Canadian temporary worker program provide some protections for the workers by requiring employers to take certain actions or preventing them from disadvantaging either the native or the foreign employees. Still, there are considerable differences in how each of the programs in both countries protect the participating individuals. In the U.S., the Congress hasn't managed to codify the H-2B non-agricultural program, meaning that all the protections have been established only through regulations and thus can be adjusted without a Congressional approval. As a result, the H-2B program

provides workers with less protections than H-2A. On the other hand, the H-2A program is codified in the U.S. law, and thus provides workers with access to more safeguards (Jacquez 2020). Besides covering the costs of the workers petitions and visas, as discussed above, the law requires H-2A employers to pay for their workers with housing, while additional regulations establish that agricultural workers, who complete 50 percent of the work contract period, must be reimbursed for reasonable costs incurred in traveling to the worksite from their homes abroad, which are calculated by the U.S. DOL (U.S. Department of Labor n.d.). This includes travel to obtain their visas at an embassy as well as transportation to the U.S. (Martinez 2021). Further, H-2A employers must also provide transportation between the worker's accommodation and the worksite, and in certain circumstances also return transportation to their home countries (Read 2007)[98], as well as reimbursement for food unless they provide housing with kitchen and access to a supermarket (Martinez 2021). H-2B employers, on the other hand, are supposed to provide or reimburse their workers for all visas, border-crossing, and other visa-related fees in the first workweek of employment in addition to providing or reimbursing them for reasonable costs incurred for transportation from their homes to the employment sites and subsistence upon completion of 50 percent of the job order period (Department of Labor, n.d.).

However, unlike H-2A employers, H-2B employers do not have to provide housing, transportation to worksite, and other benefits required under the H-2A program (Wasem 2007). Neither H-2A nor H-2B workers are allowed to demand that foreign workers pay back the fees they covered for them during the hiring process and must pay the employees at least the prevailing wage established by the Labor Department. The H-2A employers must also guarantee to offer a total number of hours that equals to at least 75 percent of the workdays in the contract period, a practice called the "three-fourths guarantee"

[98] If the worker completes the contract period or is terminated without cause.

(U.S. Department of Labor n.d.). H-2B employers do not have such specific requirement but must offer the amount of hours promised in the job offer (Department of Labor, n.d.).

In Canada, the TFWP employers pay for the LMIA and, similarly to the U.S., cannot ask the foreign workers to eventually cover the cost. However, they do not pay for the visa fee and are not responsible for their transportation or accommodation costs.[99] [100] One exemption from this rule is the low-wage stream of the Seasonal Agricultural Worker Program, which requires the employers to cover the costs of the foreign workers' transportation to Canada. Additionally, the SAWP employers must cover the workers' private health insurance (Government of Canada 2017b). The Canada's IMP also requires employers to cover a compliance fee, however, this cost applies only to employers who hire a new worker with a new closed work permit.[101] Still, under IMP, employers should offer same benefits and wage as they would offer to a native-born worker in the same position (Fudge 2020). Neither TFWP nor IMP require employers to provide specific amount of work hours. Moreover, under TFWP, only foreign-born workers who have experienced or been at risk of abuse during their employment in Canada may be eligible for an open work permit (Immigration 2020a).

When it comes to enforcement of the U.S. H-2B and H-2A programs, DOL's Wage and Hour Division plays the primary role in possible investigation of terms and conditions of the foreign workers' employment and fulfilling the employers' obligations toward employees (Economic Policy Institute n.d.; U.S. Department of Labor n.d.). However, critics point out, as discussed above, that the number of WHD agents is not adequate for the number of foreign workers in the U.S. (Economic Policy Institute n.d.). In Canada, the

[99] Employers must find suitable and affordable accommodation for the workers but do not have to cover the costs.
[100] There are international agreements that specify these kinds of benefits depending on sending country. Moreover, certain Canadian territories and provinces may have negotiated different conditions (Fudge 2020).
[101] If the worker already holds a valid open work permit, the employer does not have to pay the compliance fee. There are also other exceptions for worker hired through certain non-trade international and reciprocal agreements, a research-related program or for charitable or religious work.

Employment and Social Development Canada (ESDC)/Service Canada is the agency with the authority to review the activities of TFWP employers in terms of treatment of workers, as well as their LMIA or LMIA application (Government of Canada 2015). In case of IMP, the employers may be investigated by a Refugees and Citizenship Canada (IRCC) officer or an ESDC/Service Canada officer acting on behalf of IRCC (CanadaVisa 2020).

Both U.S. as well as Canadian programs also include certain protections of the native-born workers. In the U.S., the H-2A and H-2B programs require the employers to conduct a labor market test and the H-2B has also an annual numerical cap, as discussed above. Similarly, in Canada, the TFWP requires the employers to submit LMIA and some employers are a subject to a cap that, similarly to the U.S. H-2A, does not apply to employers hiring for on-farm agricultural positions (Meurrens 2018). Additionally, the U.S. H-2A and H-2B as well as Canada's TFWP requires the employers to first try hiring native-born workers. On the other hand, the Canada's IMP does not require LMIA, isn't capped and doesn't ask employers to hire native-born workers first.

Lastly, each of the countries has a different approach to possible future of the foreign workers in the U.S. and Canada. The U.S. does not provide any possible pathway to permanent residency, or even citizenship, to foreign workers coming through the H-2A and H-2B programs.[102] While there may be an option for these workers to possibly switch to different kind of visa, there are no measures or tools implemented within the program to secure further legal stay of the workers in the U.S. (Center for Global Development, n.d.; n.d.). In Canada, on the other hand, temporary work permit has been often viewed as a step towards permanent residency (Niren 2020). Even the low-wage workers can reach permanent residency through

[102] Third Preference or "EB-3" may be an option to some workers, but it requires a full-time permanent job offer for a year-round occupation. On top of that, there are only about 40,000 EB-3 visas available annually, out of which just 10,000 can go to "other workers" without university degrees.

the Provincial Nominee Program (PNP) (VisaPlace n.d.), however, only in certain provinces such as Alberta, Manitoba or British Columbia (Fudge 2020). Employers can nominate workers for PNP under both TFWP and IMP. Table 10 in the Appendix summarizes and compares workers' protections under each of the U.S. and Canadian programs.

Criticisms of the U.S. and Canada's Temporary Worker Programs

Temporary worker programs in the U.S. and Canada have been heavily criticized for a variety of reasons. Particularly those that focus on bringing low-skilled low-wage workers. First, the U.S. H-2B and Canada's TFWP, with exception of agricultural workers, require employers to meet a cap. However, it has been clear from the data above that the need of U.S. employers for H-2B visas has been exceeding the supply more than two times. In Canada, non-agricultural TFWP employers had begun to shift towards IMP after implementation of the cap in 2014, employing individuals with open work permits rather than going through the hurdles of the program.

Moreover, H-2A and H-2B in the U.S. as well as TFWP and certain subprograms of IMP in Canada allow the foreign workers to receive only 'closed' work permits, which 'lock' them to a specific employer. This makes it very difficult for the workers to complain or report abuse and other cases of mistreatment on the worksite. As a result, programs providing 'closed' work permits have faced criticisms for not paying the foreign workers the same wages as their domestic workers, and in some cases not providing even the minimum wage. Similarly, workers in both countries that have been provided on-site housing, had reported the employers made them work overtime without sufficient pay. Further, since all the programs are temporary in nature, they do not provide enough time for workers to possibly bring their complains

to courts. Still, while in Canada, workers have the ability to apply for an open worker permit for vulnerable workers, foreign workers in the U.S. do not have such option.

Moreover, while all Canadian provinces, except for Ontario and Alberta, allow farm workers to unionize through provincial labor legislation (Russo 2018), the U.S. H-2A workers are not allowed to join unions with exceptions of those in California (California Legislative Information n.d.). When it comes to other sectors, in the U.S., workers ability to join a union may vary from occupation to occupation, but there is no regulation granting this right to H-2B workers. For example, the landscaping industry in the U.S., the is the largest H-2B sector, does not even have an union, and if it did, it is not clear whether it would be open to foreign-born workers with H-2B visas (Green Industry Pros 2017). As for Canada's non-agricultural workers,[103] Live-in caregivers[104], a stream under the TFWP, are for example also not permitted to unionize. That is because their work takes place in the private domestic sphere, which is not considered a proper workplace (Vosko et al. 2013).

Also, when it comes to particular worker protections, agricultural workers have been clearly provided with more safeguards than other workers in both the U.S. and Canada. At the same time, As the Table 10 in the Appendix shows, it is apparent that non-agricultural foreign workers in the U.S. are comparable to those in Canada. Canadian TFWP employers of non-agricultural workers are even required to only pay for the cost of the workers' permits.[105] However, one of the most important differences is that Canada offers 'open' work permit that provides the workers with protections similar to domestic workers. Still, these

[103] Majority of TFWP workers are in agriculture.
[104] The program is closed to new applicants, but those who entered Canada through this program can continue to renew the visas (Immigration 2020c).
[105] Unless there is a provincial law specifying otherwise.

permits are not available to all foreign-born workers and low-skilled workers are less likely to obtain such permit depending on whether they qualify under one of the IMP streams or not.

Nevertheless, both countries have been criticized for a lack of enforcement in all their temporary worker programs. In the U.S., the DOL has just a small group of officers overseeing all visa categories across all the states, which is not sufficient to ensure protections of all the ow-skilled foreign workers (Martinez 2021). In Canada, the government introduced a new TFWP inspection regime in 2014, increasing the number of conducted inspections and expanding authority of its inspectors in effort to ensure stronger enforcement (Government of Canada 2016). Still, between 2015 and 2019, just 55 percent of employers under the "high-" and "low-wage" streams were found fully compliant.[106] Moreover, the new inspection regime applies only to programs under TFWP. The IMP is a subject to a parallel regime administered by IRCC about which "scant information is available" (Chartrand and Vosko 2020). Further, Canada faces additional barriers due to lack of evidence and complaints from the unfairly-treated foreign workers as well as lack of comprehensive information sharing across jurisdictions (Dixon-Perera 2020).

Lastly, one of the biggest issues in both the U.S. and Canada is use of private recruiters, who operate as intermediaries between employers and the foreign workers (Dixon-Perera 2020). Employers in both countries[107] have been paying recruiters, who are supposed to bring the foreign workers,[108] which creates a gap in the system due to some of these recruiters' unethical behavior. As Dixon-Perera found in her report, in Canada, "the basic business model of the recruitment industry is to actively seek out clients,

[106] Fully satisfactory and not requiring any correction.
[107] In Canada, it is mainly an issue among TFWP employers.
[108] The recruitment of migrant farm workers under the Seasonal Agricultural Worker Program (SAWP) is an exception as labour departments in the country of origin (Mexico and the Commonwealth Caribbean) and non-profit agencies in Canada like Foreign Agricultural Resource Management Services (F.A.R.M.S.) and Fondation des Entreprises en Recrutement de Main-d'oeuvre agricole Étrangère (F.E.R.M.E.) organize and administer the formal recruitment activities (Dixon-Perera 2020).

both workers and employers, establish matches, and charge one or both parties for these services. Some recruiters may provide additional services for extra fees, such as arranging transportation and loans, providing orientation for workers before departure or after arrival, filling visa, work permit or immigration forms, or supplying language or technical training" (Dixon-Perera 2020). Due to their critical role in the recruitment process, foreign workers in both U.S. and Canada often depend on their recruiters, which may can create abusive or exploitative conditions. These include but are not limited to "misrepresenting working conditions in employment contracts, or coercing migrants into illegal or illegitimate work arrangements" and "can put migrant workers at higher risk of being subjected to forced labour or human trafficking" (Dixon-Perera 2020). Although both U.S. and Canada implemented measures to such as prohibiting charging recruitment fees to workers, recruiter licensing or employer registration requirements, and yet "migrant workers are frequently charged fees by their recruiters" (Dixon-Perera 2020; Centro de los Derechos del Migrante, Inc. 2014). Due to lack of enforcement over the countries' programs, as discussed above, foreign workers often receive insufficient protections and are subject of abuse and exploitation. Even if the workers try to demand their rights through the court system, they often lack resources and time to go through the process (Martinez 2021).

Conclusion

This case study provided a macro-level 'between-country' comparison of U.S. temporary worker programs with Canada, using the "most similar" case selection method (Seawright and Gerring 2008). It focused on temporary worker programs in the United States and Canada, with a particular emphasis on low-skilled and low-wage workers, describing the evolution of those programs and how they fit within the countries' current immigration systems overall. At the end, the case study compared the Canadian temporary worker

programs with those in the U.S. Since the overall framework of immigration systems in those two countries has been very different, with Canada having most of its programs established through international agreements while the U.S. has its programs set through immigration laws that apply to all foreign workers regardless of their country of origin, it was not possible to make a completely clear side-by-side comparison of the programs.

Still, this case study attempted to make as precise comparison as possible to assess whether Canada is more open to bringing new low-skilled temporary workers, and particularly seasonal non-agricultural workers, than the United States. Based on my readings, knowledge and experience with the U.S. and Canadian temporary worker programs and migration policies in general, I established two possible answers to this research question:

1. Canada is more open to bringing new low-skill non-agricultural workers than the United States. Canada has had a number of channels, through which temporary workers may come to the country, because economic immigration is a bigger priority and part of the country government's overall strategy to overcome demographic trends that lead to job shortages. Additionally, Canada's system allows its government to more easily implement additional immigration pathways.
2. Despite the large number of Canada's immigration programs, the country is not more open to non-agricultural temporary workers than the U.S. These workers face similar issues with coming to Canada as do those in the United States. This is because Canada's system puts priority on immigration programs for other foreign-born individuals, such as high-skilled workers, humanitarian migrants and those entering the country through international agreements established to advance its broader economic and cultural interests.

The findings showed that although Canada offers more pathways for temporary workers overall, it is not more open to non-agricultural low-skilled temporary workers than the U.S. Similarly to the U.S., Canada practically offers two options to its employers to bring foreign-born workers. If they need to fill agricultural jobs, they apply for TFWP, which is technically for all sectors but provides exceptions from its strict policies only to farmers. Therefore, it may be easier for employers in non-agricultural sectors to hire workers who are already in Canada through IMP. These workers may already have an 'open' work permit through one of the IMP's streams, allowing them to work for any employer, which means their employers don't have to worry about any financial or administrative requirements.[109] If the foreign-born workers aren't in Canada yet, employers may sponsor eligible individuals for a 'closed' or employer-restricted work permit under IMP, which means they still have to pay certain fees but avoid LMIA, the labor test that is required under TFWP. However, since the IMP depends on specific international agreements, the non-agricultural employers often end up employing students, refugees, and other workers, who are not always truly low-skilled but take these jobs during their studies and other career transitions. Moreover, since IMP is not entirely demand driven, employers often have no control over how many workers will come[110] and whether they will want to take the jobs they need to fill. If a foreign worker receives a job offer from a specific employer, which may be often the case for low-skilled workers abroad,[111] regardless of whether he or she is eligible for TFWP or IMP, the worker will be issued a 'closed' work permit that will allow him or her to work only for this particular employer.

[109] Unless they start a completely new open permit. However, even then the burden is significantly smaller that under TWFP.
[110] Unless they hire directly from abroad for 'closed' work permits.
[111] Unless there are some very specific conditions under one of the IMP streams that make the worker eligible for an open work permit.

As a result, the low-skill streams under Canada's TFWP and IMP face very similar criticisms as the temporary worker programs in the U.S. Similarly to the U.S., the Canada's low-wage programs seem to provide less protections to non-agricultural workers. However, they are comparable with protections of non-agricultural H-2B workers in the U.S. With such a lack of regulations, the programs are prone to worker abuse and exploitation. Moreover, just as in the U.S., the process of employing foreign workers in Canada is a complicated multi-agency process that often forces employers to hire a recruiter. However, despite laws preventing such practice, some recruiters, who are often based abroad, in many cases still charge the foreign workers coming to the U.S. and Canada with fees and use other unethical practices due to lack of alignment of requirements for employers and recruiters in both countries. In other words, while some regulations for employers exist, regulations governing the role of recruiters, who bring the foreign-born workers through temporary worker programs in both the U.S. and Canada seem to be insufficiently developed and not aligned with the sending countries.

Still, there are a few important differences between the temporary worker programs in the U.S. and in Canada, most of which are related specifically to protections of the foreign-born workers. First, foreign workers, including low-skilled, in Canada may be under certain circumstances eligible for permanent residency that possibly leads to citizenship. Although path to residency and citizenship is not an automatic part of the temporary worker pathway, it is a possibility opened to some eligible low-wage workers in certain provinces. In the U.S., on the other hand, temporary workers are not eligible for permanent status under any circumstances, unless they qualify for another visa program that has a separate process.[112] Second, Canada offers certain workers with a possibility to obtain 'open' work permit that does not link them to specific employers, or in case of the current pilot for caregivers, an 'occupation-open' work permit that allows the workers to change employer as long as they stay within the same occupation. While it is

[112] Third Preference or "EB-3" may be an option to some workers as discussed above.

not very likely that a low-wage worker would receive an open work permit to enter Canada, it is a possibility that foreign workers striving to come to the U.S. do not have. In other words, foreign workers' permits in the U.S. are always tied to their employers. Also, low-wage temporary workers in Canada can be hired for year-round positions[113] in sectors such as caregiving and construction. The U.S. low-skilled temporary worker programs are only for employers that can prove their seasonal need. Lastly, foreign workers in Canada may apply for an 'open' work permit for vulnerable workers if they experience abuse or exploitation at their worksite. Although not all foreign workers may know about this option or may decide to not go through the process due to time constraints or worries about possible future employment, it is a possibility available to them. Since the U.S. does not have a system of 'open' work permits at all (neither for low- nor for high-skilled workers), its foreign workers do not have this option.

Despite the differences described above, I believe that while Canada has many programs to bring foreign-born individuals to the country, it is not more open to bringing new low-wage workers than the United States. Canadian employers seeking to fill low-wage occupations have been facing issues with hiring foreign workers, especially in the non-agricultural sectors that are not exempt from some of the restrictions under the TFWP, such as construction and landscaping. To avoid the restrictions, employers may use workers with open work permits issued under some of the IMP subprograms, which means that many of them employ students, refugees and other individuals, who are not actually low-skilled but perform low-wage jobs for some period of time. However, since the employers have no control over how many IMP workers are in their area and willing to take the jobs, relying on the program may possibly undermine the companies' stability and certainty. In other words, the fact that Canada has more pathways allowing workers to come does not mean the country is more open to low-skilled workers than the U.S. Canada's employers of low-wage workers also face similar challenges as those in the U.S. such the multi-

[113] Except for the SAWP.

agency nature of the application process and considerable costs of the programs. Moreover, low-skilled low-wage workers in both U.S. and Canada have similar rights and protections and face similar abusive practices.

This all is despite the fact that Canada is, in my opinion, better positioned to open new programs and pathways for low-skilled low-wage workers. First, due to the parliamentary nature of Canada's government, I think the country's system could in theory be more responsive to the needs of the labor market (University of Pennsylvania 2016), allowing for quicker introductions of new migration programs and pathways. That is contrary to the U.S. policies that have remained unchanged for over 30 years (Chishti and Yale-Loehr 2016). Second, since Canada doesn't border with a developing country, it has avoided significant streams of unauthorized immigrants. The United States, on the other hand, borders with Mexico and is directly accessible from the Caribbean, which makes it a more likely target for unauthorized workers (University of Pennsylvania 2016). While having access to many unauthorized workers, who are often willing to take low-paid jobs, may be seen as an advantage for certain employers, unauthorized migration, among other immigration-related constraints, makes many U.S. legislators hesitant and unwilling to compromise on policies related to foreign-born workers. Third, the lawmakers are likely to follow opinions of their constituencies – another area in which the U.S. differs from Canada. Even though Americans seem to be more supportive of legal immigration in the recent years, just 32 percent believe it should increase (Pew Research Center 2018). In Canada, on the other hand, about 60 percent expressed disagreement with a statement "There is too much immigration in Canada" (Environics Institute For Survey Research 2018). Overall, in 2020, Canada ranked as the most migrant accepting country on the world, while the United States ranked sixth (Esipova, Ray, and Tsabutashvili 2020).

Despite these advantages, Canada has not introduced new programs that would bring additional low-wage workers to meet employers' needs.[114] Instead, it keeps the focus largely on high-wage individuals. Although Canada claims it uses immigration as one of its main tools to help close labor market gaps, which compares to the U.S. system that is mainly family-based enabling immigrants to reunite with their relatives, worker shortages in low-skilled low-wage occupations are not on the top of the agenda for neither one of these countries. Therefore, I believe this case study showed that the second explanation for my research question is true; Canada is not more open to non-agricultural low-skilled temporary workers than the U.S. Low-wage workers in Canada face similar issues as do those in the United States, because the system prioritizes immigration streams for other foreign-born individuals, such as high-skilled workers, humanitarian migrants and those entering the country through various international agreements. That is despite the job shortages experienced by employers in those a variety of low-skill low-wage sectors.

Still, there are a few safeguards for foreign-born workers in Canada that I believe the United States could use to inspire its possible changes in existing programs and establishment of new ones. First, not all low-wage temporary worker programs in Canada are seasonal, which means they allow foreign-born workers to fill also year-round occupations. Second, Canada allows TFWP workers to apply for 'open' work permits in cases of abuse and exploitation. This measure allows workers to feel more confident and comfortable to report unethical practices by their employers and recruiters. Although there may be other factors preventing workers from standing up for themselves, such as lack of information and knowledge of the labor market as well as limited language skills, I believe it is a step in the right direction towards improving foreign-born workers' rights. Similarly, the U.S. has an opportunity to assess advantages of the general

[114] In the past few years, Canada opened a number of smaller pilots, which bring just a limited number of workers. As an example, the current federal caregiver pilots are capped at a total of 5,500 workers, far fewer than the nearly 12,000 new permits that TWFP caregivers received in 2014 before the program began to wind down.

'open' work permit under the IMP and learn from lessons that Canada has experienced in the past seven years of the program's existence. In my opinion, if done right, 'open' work permits would not only provide more rights to the workers and better protect them from exploitation, but also motivate employers to treat the workers better and create good work environment, so they do not have a reason to leave.

4. Meso-Level 'Within-Country' Case Study: Comparison of U.S. Seasonal Worker Programs

Introduction

While the previous chapter focused on the macro-level or 'between-country' comparison, analyzing the U.S. temporary worker programs through lenses of Canada's system, this meso-level or 'within-country' case study focuses specifically on temporary worker programs in the United States. The previous chapter explained that each of the U.S. temporary worker programs has its own measures, which are supposed to ensure they don't disadvantage native-born workers. While the agricultural H-2A program requires a labor test, in which employers must prove they face shortage of workers through a labor test, it has avoided being restricted by a cap. That is despite the increasing demand for agricultural foreign workers as showed in Figures 3, 4 and 5 in the previous chapter. Conversely, the H-1B program for high-skilled workers does not require employers to pass a labor test, but is capped at 65,000 visas with 20,000 additional H-1B visas set aside each year for foreign workers who hold advanced degrees from U.S. universities (Griswold 2020). The H-2B program is the only temporary worker program in the U.S. that is restricted by both – the labor test and annual visa cap that has remained unchanged since 1990.

This meso-level 'within-country' case study focuses on the U.S. temporary worker programs, seeking to answer the question of why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. Based on my readings, knowledge and experience working in the U.S. migration policy field as well as understanding of the two programs, I established three possible explanations of the H-2B cap:

1. The H-2A program has stronger historical roots that allowed for it to develop on a separate track from the H-2B program, which does not have such foundation. That led to implementation of the H-2B cap in 1990 – a policy that has never been modified as the U.S. congress struggles to find compromise on the issue of seasonal workers and immigration overall.
2. The H-2B advocacy efforts are not strong enough to persuade U.S. lawmakers to make changes to the program. Exploring this topic from the point of (1) comparison of investments that H-2B employers can make into advocacy in comparison to H-1B, which is for high-skilled workers, but also limited by an annual cap; and (2) comparison of how many businesses and workers the H-2B advocacy groups represent in comparison to H-2A – in other words, what is the size of the H-2B sectors versus agriculture.
3. Modifications to the H-2B program have been truly considered on the Congressional floor only through large pieces of legislation focused on broader immigration reform, which took the focus away from the program specifically. Due to political divide on other immigration issues, more recent broader immigration reform bills, that also included modifications to the H-2B program, have never passed the Congress.

The case study is organized around the three possible answers to my research question. The first section analyzes history and development of the H-2 visa categories building on section "U.S. H-2B Visa Program" on page 24 in the previous case study, and adding specific focus on establishment of the H-2B visa cap. The second section analyses advocacy efforts around the temporary worker programs in the U.S. and their possible impact on development of the programs. Third section then examines the legislative efforts around the H-2B program. In terms of readings and background, the basis of this case study is work of authors such as Mathes and Bruno, who examined history of the H-2 visa categories and differences between the two U.S. temporary worker programs, interviews with U.S. immigration policy experts

familiar with establishment of the H-2B visa cap as well as other materials such as archived data sets and congressional hearing testimonies.

Evolution of the H-2B Visa Cap

This section examines the first possible explanation to this case study's research questions, stating that the H-2A program has stronger historical roots that allowed for it to develop on a separate track from the H-2B program. The lack of such foundation later allowed for implementation of the H-2B cap in the 1990's. Despite the widening job gaps reported by employers in sectors with seasonal need for workers, the policy was never modified since the U.S. congress has struggled to find compromise on the issue of seasonal workers and immigration overall. The section builds on "U.S. H-2B Visa Program" in the previous case study, specifically focusing on establishment and development of the H-2B visa cap.

The annual numerical cap has not always been part of the H-2 visa category. As discussed in the previous chapter, the U.S. temporary foreign worker programs date all the way back to early 20th century, when they focused specifically on agricultural workers. In 1952, Congress recognized the seasonal need for foreign workers also in other industries (Mathes 2012) by enactment of the Immigration and Nationality Act (INA) of 1952, which established the H-2 temporary work visa (Bruno 2018). For the first time, this bill enacted an annual quota for the entire H-2 category, which was set by the U.S. State and Commerce Secretaries together with the Attorney General as about 0.2 percent of total U.S. population in each predefined "quota area" (*Immigration and Nationality Act of 1952* 1952). Besides the cap, the bill established the requirements of a labor market test under the H-2 category (Mathes 2012).

An INA amendment in 1965 then established the first ever cap on immigrants from Western Hemisphere that could enter the U.S. The Congress set the limit to 120,000 visas, which was a 40-percent decrease from the previous migration flow from the region. Together with termination of the Bracero program[115] in 1964, the change made it much harder for migrants from Mexico and Central America, including temporary workers, to get proper visas to enter the U.S. (Wolgin 2015b). The U.S. had not made any significant changes to its immigration policies until 1986, when the Congress passed the Immigration Reform and Control Act (IRCA), which included changes to the H-2 program.

IRCA resulted from calls for increased protection of temporary agricultural workers and overall reduction of unauthorized migration to the U.S. (Martin 2017).To address the issues, lawmakers divided the H-2 program into the two separate categories – H-2A and H-2B. However, the original purpose of the H-2 program remained unchanged - to provide additional temporary workers to U.S. employers, who struggled to find workers, granted that the U.S. workers' wages and work conditions weren't adversely effected (Mathes 2012). Although IRCA recognized the difference between the agricultural and non-agricultural programs, it focused solely on the H-2A program and virtually ignored H-2B (Jacquez 2020) due to low demand for non-agricultural workers at the time (Houston Chronicle 2018). As a result, while "Admissions of Temporary H-2A Workers" have been established under 8 U.S. Code 1188 (8 USC 1188 n.d.), the H-2B program has been codified as one of the general "nonimmigrant" categories without further specification (8 USC 1184 n.d.). Additionally, since the Congress believed that IRCA will help to address unauthorized migration at the U.S. farms by establishing new enforcement measures, and thus increase demand for the agricultural visa, the lawmakers did not consider capping the H-2A program

[115] An agreement allowing Mexican immigrants to the United States each year under temporary work visas to work in agriculture.

(Martin 2017).[116] Instead, they established that employers under both H-2A and H-2B will be required to conduct a labor market test (Jacquez 2020).

Nevertheless, the advancement of the tech industry at the end of 1980's led to an increased need for workers with specific 'high' skills, and thus also efforts to address bringing these individuals from abroad. At the same time, industries such as electrical and construction, which were also bringing workers with certain tech skills but at the 'low' level, got involved in those efforts as well. The U.S. Congress was concerned about eventually bringing too many foreign workers, encouraged by worker associations and other organizations within the sectors that opposed the temporary worker programs (Jacquez 2020). One of the testimonies specifically called on the lawmakers to ensure U.S. workers, regardless of their skill levels, have a first claim on U.S. jobs, and a number of union groups kept pressuring the Congress to set numerical limits on the number of admitted foreign-born individuals (Chishti and Yale-Loehr 2016). As a result, the Immigration Act of 1990 established a cap on programs allowing foreign workers – 'high' and 'low' skilled - to work in these industries, setting the limit on admissions of high-skilled H-1B and low-skilled H-2B workers at 131,000 visas per year. Specifically, 65,000 for H-1B[117] and 66,000 for H-2B (8 USC 1184 n.d.). However, there appears to be no evidence that these limits were based on empirical studies or data analyses. Rather, they seem to be a result of a political compromise (Jacquez 2020). In the meantime, advocacy groups within the agricultural industry had remained in the background, ensuring that the new changes don't impact the H-2A program, but not being involved in the actual conversations. Since the agricultural sector was addressed in 1986 when IRCA was enacted, the H-2A program was not in the legislators' spotlight in 1990, meaning that the agricultural program remained unchanged.

[116] However, IRCA did not have the anticipated effect as farmers found it easier to hire unauthorized workers than using H-2A and by mid-1990s, about half of U.S. farm workers were undocumented, which was a higher share than when the bill was enacted in 1986 (Martin 2017).
[117] Currently, the cap is set at 85,000 with the 20,000 additional H-1B visas being set aside for foreign workers who hold advanced degrees from a US university (Griswold 2020).

However, the H-2B cap has not become an actual problem until about 2003, when the advocacy efforts to increase the annual limit first emerged. At that time, landscaping, forestry, hospitality, seafood and other industries began to get impacted by demographic changes within the sectors, as U.S. students' increasing desire to pursue colleges convinced them to apply for internships rather than seasonal jobs (Kamenetz 2016; Kurtzleben 2014), while employers we unable to offer higher wages (Campbell 2016). In effort to stay in business, companies started to hire more foreign workers through H-2B. Eventually, the pressure from H-2B employers led to a series of exceptions from the cap and other adjustments established under administrations of Presidents George W. Bush, Barack Obama and Donald J. Trump. Although the employers were able to convince the government to increase the H-2B visa numbers through one-time regulations[118], all efforts to change the program and further codify it in the U.S. immigration law have failed.

I believe the historical context of the H-2B and H-2A programs clearly shows that the two programs developed on two separate tracks. While H-2A program has deep roots going into early 20th century, the H-2B program was established basically to just make the H-2A program purely agricultural. As the findings in this section suggest, the H-2B program was not even fully considered as a standalone mobility pathway for the first ten years of its existence and virtually ignored in the lawmakers' discussions until the lack of seasonal workers forced the issue in early 2000's. As a result, the lack of strong foundation and attention from the lawmakers allowed for implementation of the H-2B cap in 1990's. This policy has never been changed on a permanent basis despite the widening job gaps reported by employers in sectors with seasonal need for workers due to the inability of U.S. Congress to find compromise on the issue of seasonal workers and immigration overall as discussed further in the following sections.

[118] The language about H-2B program is included as part of annual DOL Appropriation Act (Jacquez 2020).

H-2B Advocacy Efforts

This section examines the second possible answer to this case study's research question, stating that the H-2B advocacy efforts are not strong enough to persuade U.S. lawmakers to make changes to the program. First, I explore this topic from the "investment" standpoint, looking into revenues of the Top5 H-2B employers in comparison to Top5 H-1B employers. Although this thesis focuses primarily on low-skilled workers, I bring in the H-1B program for high-skilled workers in this section, because it has been also limited by a cap, which means employers under both programs face similar challenges due to the annual visa limit. I believe such insight into revenues of the impacted companies under each of the programs can help me understand differences in their ability to invest into advocacy, and thus to convince lawmakers to increase the caps. Second, I make a comparison of how many businesses and workers the H-2B advocacy represents in comparison to H-2A, or in other words, what the overall size of the H-2B sectors versus agriculture is. I expect the agricultural sector to represent more employers than the H-2B program, which I think would ultimately help answer the research question of why the lawmakers haven't adjusted the annual H-2B visa cap.

Programs with Visa Cap

H-2B employers from a variety of sectors have been actively engaging in advocacy efforts to increase the number of foreign workers allowed to enter the U.S. each year. Industry associations representing H-2B sectors even established the H-2B Workforce Coalition, a non-profit organization that claims to "focus on protecting American workers by ensuring small and seasonal employers have access to legal temporary workers during peak times" (Bloomberg n.d.). As of 2021, the H-2B Workforce Coalition has been

representing over 40 seasonal industry trade organizations and is co-chaired by representatives of the American Hotel & Lodging Association, AmericanHort[119] and National Association of Landscape Professionals and the Outdoor Amusement Business Association. However, given by the nature of the involved industries, the H-2B employers are typically much smaller in terms of revenues and number of employees than those in, for example, the tech sector that advocates for more H-1B visas for high-skilled temporary workers that are also limited by a cap.

As for the H-2B employers, BrightView Landscape Services, a landscaping company headquartered in Pennsylvania, has been among the top businesses with the most DOL certified workers over the past few years. In FY2019 alone, the company asked DOL for certification of 3,690 H-2B workers through more than 100 applications for worksites across the U.S. Out of these workers, 3,588 were actually certified by the department (Foreign Labor Certification 2020). If the company was able to secure all the visas, it would account for an equivalent of more than 5 percent from the total 66,000 visas allowed under the H-2B annual visa cap. However, it has been unclear how many petitions the company filed with USCIS, how many of these, if any, were chosen in the lottery before the USCIS filled the 66,000 cap, and how many of these H-2B visas the company used to hire workers abroad in 2019. Overall, the BrightView Landscape Services had a total of about 21,500 total employees across all of its locations and generated approximately $2.4 billion in revenues in 2019 (BrightView 2019).

However, when compared to H-1B, in which Deloitte Consulting has been consistently one of the main petitioners for the high-skilled workers, the BrightView Landscape Services had much less resources to invest in advocacy. Deloitte alone was employing about 312,000 people and generated $46.2 billion in

[119] Representing the entire horticulture industry, including breeders, greenhouse and nursery growers, retailers, distributors, interior and exterior landscapers, florists, students, educators, researchers, manufacturers, and all others who are part of the industry market chain.

revenues (Deloitte 2019). That is over 19 times more than BrightView. Other major H-1B petitioners are companies such as Apple, Cisco, Amazon but also Uber, Facebook and other large multinational businesses from across the U.S. Tables 11 and 12 in the Appendix show the Top5 companies with the most DOL certifications under H-1B and H-2B programs in 2019, illustrating the striking difference in their annual revenues.

Therefore, H-1B companies have been able to spend millions of dollars on their advocacy efforts. In 2019, the five Big Tech companies - Amazon, Apple, Facebook, Google and Microsoft – spent collectively more than $60 million on lobbying (Feiner 2021). The technology and business community even launched its own bipartisan organization Fwd.us, whose team of political campaigners advocates on their behalf specifically to reform the U.S. immigration system (FWD.us n.d.). Moreover, celebrity CEOs such as Bill Gates and Mark Zuckerberg have publicly advocated for the H-1B program, and immigration overall, delivering speeches, sponsoring news organizations' events, writing letters to shareholders, and delivering congressional testimonies in effort to influence lawmakers' views (Umoh 2017; Boak 2013; Network World 2008).

As tables 11 and 12 in the Appendix show, the H-2B employers' revenues are much smaller in comparison to H-1B, and thus their ability to invest in advocacy and lobbying are more limited. Moreover, although landscaping has been clearly the top H-2B industry, as 44 percent of all DOL-certified H-2B positions went to employers in this sector in FY2019 alone, employers from other industries such as construction and seafood processing have usually been among the Top 10 H-2B companies as well (Foreign Labor Certification 2020). On the other hand, the top H-1B companies are all technology companies, looking for software developers and other IT or engineering-related positions. Therefore, the H-1B companies are better situated to produce joint statements and advocacy messaging than the H-2B employers that cover

a variety of sectors. And yet, while the H-1B advocacy managed to convince the Congress to set the annual H-1B visa cap to 115,000 in 1999 and 2000 (Hahm 2000) and 195,000 in 2001, 2002 and 2003 (Bhattacharyya 2017), since 2005, the lawmakers have agreed to expand the original 65,000 cap by just 20,000 additional visas for foreigners with graduate degrees from U.S. universities, setting the total cap at 85,000 per year (Ruiz 2017) as shown in Chart 12 in the Appendix. The total of 85,000 corresponded to the approximate number of H-1B applications filed at the time in 2004. However, since 2014, the demand for H-1B has been increasing exponentially ("H1B Visa Cap Reach Dates History FY 2000 to 2021, Graph - USCIS Data" 2021), as illustrated in Chart 13 in the Appendix.

It has been clear that despite resources that H-1B employers invest into advocacy around the program, they have not been successful in establishment of a further permanent increase of the cap.[120] Therefore, I believe it is not surprising that the H-2B employers, with much fewer resources and messaging spread across the various industries, were not able to convince the Congress to implement legislative changes that would increase the H-2B visa cap.

Seasonal Worker Programs – Industry Size

To understand impact of advocacy efforts around seasonal worker programs, this section looks into how large the agricultural industry under H-2A program is in comparison to industries under the H-2B program. Since it is not possible to identify all industries under H-2B, as the eligibility depends on whether the employers can prove "seasonality" of their job openings, for the purpose of this thesis I use the top H-2B

[120] There are, however, certain class of employers—universities, government research organizations, and organizations affiliated with those organizations—that are exempt from the annual cap (Shusterman 2014).

occupations to identify the sectors. Based on DOL data, these are landscaping and groundskeeping workers; forest and conservation workers; maids and housekeeping cleaners; meat, poultry, and fish cutters and trimmers; amusement and recreation attendants; waiters and waitresses; construction laborers; cooks at restaurants; laborers and freight, stock, and material movers; and animal caretakers. I expect the agricultural sector to represent more employers than the H-2B program, which I think would help answer the research question of why the lawmakers haven't adjusted the annual H-2B visa cap.

The agricultural industry contributed $1.109 trillion to the U.S. economy, representing about 5.2 percent of its gross domestic product (GDP) in 2019. More specifically, U.S. farms added $136.1 billion, accounting for about 0.6 percent of the GDP (U.S. Department of Agriculture Economic Research Service 2021). In terms of specific states, in Iowa, Nebraska, South Dakota, Idaho and Arkansas agriculture accounts for the largest share of their state GDP, with 10.2 percent, 9.4 percent, 9.1 percent, 8.6 percent and 8.1 percent, respectively (University of Arkansas System Division of Agriculture Research and Extension 2018). At the same time, the sector employed 22.2 million workers in full- and part-time jobs, accounting for 10.9 percent of total U.S. employment. Out of these jobs, 2.6 million were direct on-farm positions (U.S. Department of Agriculture Economic Research Service 2021). When it comes specifically to farmworkers and other positions, for which employers can possibly hire workers from abroad through the H-2A program, calculations from data available at DOL website show there were 334,480[121] such positions filled in 2020. California is by far a leader in terms of employing farmworkers, with nearly 204,000 workers, followed by Washington, Texas, Arizona and Florida (U.S. Bureau of Labor Statistics 2021).

[121] This number was calculated as sum of workers in occupations classified by DOL as Farmworkers and Laborers, Crop, Nursery, and Greenhouse, Farmworkers, Farm, Ranch, and Aquacultural Animals, Other Agricultural Workers in each U.S. state.

Surprisingly, as Table 13 in the Appendix shows, none of the Top5 states where agriculture accounts for the largest share of GDP is among the top5 states with the largest portion of H-2A certifications. When it comes to the number of employed workers, just four states with the largest share of H-2A certifications are among the Top10 states with the largest number of H-2A eligible occupations. Overall, there were more than 9,400 employers that filed applications for DOL certifications in FY2019 (Foreign Labor Certification 2020).

When it comes to H-2B occupations, landscaping workers account for the largest portion, about 44 percent in FY2019, of all H-2B certifications (U.S. Department of Labor 2019b). Overall, landscaping as a sector generated a combined revenue of more than $99 billion in 2019 (Statista 2021a). When it comes to other H-2B occupations, Forest and Conservation Workers, Maids and Housekeeping Cleaners, Meat, Poultry, and Fish Cutters and Trimmers, and Amusement and Recreation Attendants were also among the Top5 in FY2019. Construction and hospitality, which also use the H-2B program at high rates added 4.3 percent and 3.2 percent to the U.S. GDP (Statista 2021b). Altogether, there were over 9 million[122] workers employed in H-2B eligible occupations in 2020 based on DOL data (U.S. Bureau of Labor Statistics 2021).

Same as for agriculture, California employs the largest number of workers in H-2B eligible positions. And yet, California is actually not at all among the Top10 states by share of H-2B certifications in 2019. As Table 14 in the Appendix shows, just five of the Top10 H-2B states are among the ten states employing the largest number of workers in H-2B eligible positions. In total, over 6,300 H-2B employers filed applications for additional seasonal workers in FY2019 (Foreign Labor Certification 2020).

[122] This number was calculated as sum of workers in occupations classified by DOL as Landscaping and Groundskeeping Workers, Forest and Conservation Workers, Maids and Housekeeping Cleaners, Meat, Poultry, and Fish Cutters and Trimmers, Amusement and Recreation Attendants, Waiters and Waitresses, Construction Laborers, Cooks at Restaurants, Laborers and Freight, Stock, and Material Movers, Hand, Animal Caretakers in each U.S. state.

Overall, it is clear from the data above that advocacy bodies around the H-2A program represent about 3,000 more employers that the H-2B advocacy groups, a difference which also represents about half of the total number of H-2B employers. At the same time, the number of filled H-2A eligible positions is smaller than the total number of filled H-2B eligible positions. Therefore, I think farmworkers have more leverage to advocate for changes in H-2A program than advocates for H-2B employers. Lastly, although the sum of H-2B sectors as share of the U.S. GDP could be theoretically larger than total share of agriculture, a lot of the large H-2B sectors such as construction and hospitality may be better equipped to fill their job shortages if not selected for H-2B visas than smaller sectors such as landscaping and seafood processing, as discussed below in this thesis. Therefore, these large H-2B sectors, which could possibly invest more into advocacy, may not be as interested and involved in such efforts. Overall, I believe the agricultural industry seems to be likely in better position to advocate for employers and workers using the H-2A program than the advocacy groups lobbying for the H-2B program, because lawmakers are more likely to support legislations that impact more employers in the states they represent. On top of that, it is important to note that it is likely easier for one industry to organize its advocacy efforts, as is the case of agriculture under H-2A, than for multiple industries, as is the case of H-2B.

Table 1. Size of H-2A and H-2B Sectors by Number of Employers, Filled Occupations and Share of U.S. GDP

	Agricultural Sector (H-2A)	H-2B Eligible Sectors
Employers Applying for DOL Certifications (2019)	9,400	6,300
Job filled without foreign workers (2020)	334,400	9,057,000
Share of U.S. GDP	5.2%	Construction and Hospitality alone - 4.3% and 3.2%

Source: Various. Author's analysis.

Congressional Efforts to Modernize the U.S. Temporary Workers Programs

This section explores the third possible answer to this case study's question, claiming that modifications to the H-2B program have been truly considered on the Congressional floor only through large pieces of legislation focused on broader immigration reform, which took the focus away from the program specifically. Using archived data and documents, I am analyzing votes on key pieces of legislation that established and modified the current seasonal worker programs over the years. Specifically, I examine IRCA and the Immigration Act of 1990 to understand the support the bills received from each state[123] and role that the agricultural and H-2B sectors played in those states at the time. Then, I compare my findings to some more recent legislative efforts to modify H-2A and H-2B. I expect to see certain disconnect between states that could have benefitted from the programs and yet voted against the bills, likely due to other provisions since these bills typically cover more than one area of the U.S. immigration policy.

Vote on IRCA 1986

As previous sections discussed, the H-2A and H-2B programs have been established primarily by the 1986 IRCA and the Immigration Act of 1990. The legislators finally passed IRCA during the 99th Congress, in which Republicans held the Senate and White House, while Democrats controlled the House of Representatives (Hillman 2017). The bill itself was introduced by a Republican Senator Alan Simpson of Wyoming. In summary, while IRCA granted temporary legal status to certain unauthorized individuals in the U.S., it also made it unlawful for any employer in the United States to knowingly hire or recruit any individual, who does not have an official permission to work in the country. As part of the bill, the

[123] For the purpose of this thesis, I analyze the Senate votes on the bill.

legislators also created the two temporary H-2 categories for agricultural and non-agricultural workers ("Immigration Reform and Control Act of 1986" n.d.), in effort to provide legal pathways for employers to employ temporary workers – primarily in the agricultural sector, which was the main focus of the legislation as discussed in the previous sections – instead of using irregular migration channels (Martin 2017). The bill passed Senate in 1986 in a 63-24 vote, with 29 Republicans and 34 Democrats voting in favor, 16 Republicans and 8 Democrats voting against and 8 Republicans and 5 Democrats skipping the vote ("Senate Vote #738 in 1986 (99th Congress)" n.d.). IRCA then moved to the House, which passed it before the elections to the chamber took place later in fall 1986, and President Ronald Reagan signed it into the law in November of the same year ("Immigration Reform and Control Act of 1986" n.d.)

In 1986, when the bill passed the Senate, agriculture was employing over 3.2 million people in the U.S. At the same time, predictions for the following 15 years estimated that employment rate in the sector will decrease by .8 percent (Statistical Abstract of the U.S. 1987). I believe the estimates together with advocates' voices as discussed above prompted the lawmakers to focus primarily on H-2A in terms of temporary worker program considered in IRCA. Information about all Senate votes on IRCA, together with historical as well as recent state data on workers in agriculture and the DOL certifications of H-2A workers be found in Table 15 in the Appendix. Since IRCA focused primarily on the agricultural H-2A when it comes to temporary worker programs and was introduced by Republicans, the following analysis explores Republican Senators' NAY votes on the bill, in which they went against their party stance, and what role agriculture and the H-2A program have played in these states in the recent years.

Table 16 in the Appendix shows that in Republican states that voted fully against the bill, with both Republican Senators voting NAY or one voting NAY and the second not voting - Idaho, South Dakota, Nevada, New Hampshire, Utah and North Carolina - at least 8 percent of all workers were employed in

Agriculture and their farms saw an increase in net income between 1985 and 1986. Interestingly, Maine and Mississippi, states with one Democratic and one Republican senator, saw a decline in farms' net income, and yet both Senators voted against IRCA in 1986. Similarly, a Republican Senator from Texas also voted against the bill although the states' farmers saw a decline in net income that year. When looking at the data from today's perspective, the states whose Senators voted against IRCA are still not using the H-2A program as much as other states. North Carolina is the only state that voted against IRCA and nowadays is among the Top10 H-2A beneficiaries.

As the Table 17 in the Appendix shows, all the other states (besides North Carolina) that have been among the Top10 of H-2A certification recipients in FY2019 are those, whose Republican Senators voted in favor of IRCA in 1986. The state of Washington is an exception with none of the Senators voting on the bill at all. Interestingly, two Democratic Senators – one form Michigan and one from Kentucky – voted against IRCA in 1986 even though farmers in both these states saw a decrease in net income in 1986. However, it is also important to emphasize that since the H-2A program was not the only provision of IRCA, which means the Senators may had been basing their votes on their views on other parts of the bill.

Vote on the Immigration Act of 1990

The second large immigration bill that established the cap on H-2B and H-1B categories – the Immigration Act of 1990 – passed the 101st Congress, in which Democrats controlled the U.S. Senate as well the House of Representatives (Hillman 2017). The bill was introduced by a Democratic Senator Ted Kennedy from Massachusetts in February 1989, with the main purpose of changing the level, and preference system for admissions, of immigrants to the United States, and providing for administrative naturalization. More

specifically, it increased annual limits on the total of individuals allowed to receive permanent residency, dividing the limit into distinct categories. It also established family-based and employment-based preference systems as well as the Diversity Visa Lottery, set certain new provisions guiding naturalizations of U.S. citizens, expanded the list of offenses counting as an aggravated felony that make non-citizens eligible for deportation, and revised the grounds for inadmissibility of legal immigrants. And last but certainly not least, the bill revised non-immigrant visa categories, with a particular focus on the temporary skilled workers (H-1B) and temporary nonagricultural workers (H-2B) that were modified to limit the total annual number of issued visas ("Immigration Act of 1990" n.d.) as discussed in the previous section. The 1990 Immigration Act passed U.S. Senate in fall 1990 in an 89-8 vote, with 51 Democrats and 38 Republicans voting in favor, three Democrats and 5 Republicans voting against and one Democrat and two Republicans not voting at all ("S. 358 (101st): Immigration Act of 1990" n.d.).

In 1991, just after the bill passed the Senate,[124] non-agricultural sectors were employing over Nearly 107 million people in the U.S.[125] At the same time, predictions for the following 15 years estimated that employment rate in construction, hospitality and amusement and recreation services sectors that are currently typical users of the H-2B visa program will increase (The United States Census Bureau n.d.). Therefore, I believe the predictions are one of the reasons why the H-2B program wasn't the lawmakers' main focus, and thus did not get fully codified in the law as discussed in the previous sections.

Information about all Senate votes on Immigration Act of 1990, together with historical as well as recent state data on workers in non-agricultural sectors and the DOL certifications of H-2B workers are in Table 18 in the Appendix. Since the 1990 Immigration Act focused primarily on the H-2B and H-1B when it comes

[124] Data set for 1990 is not available.
[125] The number is an estimate since non-agricultural sectors include also government, which is unlikely to hire H-2B workers.

to temporary worker programs and was introduced by Democrats, the following analysis looks into Republican Senators' YEA votes on the bill, in which they went against their party stance, and what role the H-2B eligible sectors and the program itself play in these states in the recent years.

Table 19 in the Appendix shows that Republican states that voted fully in favor of the bill, with both Republican Senators voting YEA or one voting YEA and the second not voting (Alaska, Idaho, Indiana, Kansas, Minnesota, Missouri, Oregon, Pennsylvania, Utah and Wyoming), are states in which the non-agricultural sectors employed over 84 percent[126] of their populations in 1991. Additionally, the current more detailed data show that more than 5 percent of all workers in those states worked in H-2B eligible occupations in 2020. Further, six of the Top10 states that benefit from H-2B the most were represented by Republicans who voted in favor of the bill in 1990. Notably, the overall Appendix Table 18 also shows that none of the states, in which Republicans held both Senate seats, voted entirely against the bill with both Senators voting NAY in 1990. This suggests a broad interest in implementation of the bill, including the changes in temporary worker programs such as the annual visa cap.

As Table 20 in the Appendix shows, most Republican Senators from states that have been currently among the Top10 of H-2B certification recipients in 2019 voted in favor of the Immigration Act of 1990. Republican Senators from Colorado and North Carolina are the exceptions from the statement above, however, both states ended up with a split vote since the power was divided equally between the two parties and the Democratic Senators supported the bill. Similarly to the H-2A analysis above, it is also important to emphasize that since the H-2B program was not the only provision of the Immigration Act of 1990, it is difficult to understand exactly which provision of the bill was the main basis for the Senators'

[126] The number is high because it covers entire sectors, including government, rather than specific seasonal occupations eligible for H-2B. A detailed break-down of occupational data per state is not available for 1991.

final votes. Still, it has been clear that the current Top10 H-2B states have been focused on the non-agricultural sectors when the visa cap was implemented in 1990, and since the employment projections seemed positive for these sectors, the lawmakers had no reason to oppose the annual limit.

After passing the Senate, the Immigration Act of 1990 then moved to the House, which passed it before the elections to the chamber took place later in fall 1990, and President George H. W. Bush signed it into the law in November of the same year. That was the last time that the lawmakers made a long-lasting adjustment to policies governing the H-2A and H-2B seasonal worker programs in the U.S.

Other Legislative Efforts to Make Changes to the U.S. Seasonal Worker Programs

Since the demand for the programs remained relatively low, H-2A and H-2B did not get back to the legislators' spotlight until early 2000's, when the demand for seasonal workers begin to grow exponentially, as discussed above. While the H-2A program was able to increase gradually with more workers being accepted through it as long as the employers were able to pass the labor test, the number of H-2B visas remained limited by the annual 66,000 cap, which led to increased advocacy around the program, as also discussed in the previous sections.

To answer the calls of H-2B advocates, Congress enacted the Save Our Small and Seasonal Businesses Act of 2005 (SOS Act), or S. 352/H.R. 793, which allowed returning workers to get exempt from the cap if they had worked in the U.S. in any of the previous three fiscal years (Read 2007). Among other provisions, the bill that was introduced by Democratic Senator Barbara Mikulski and Republican Representative Wayne Gilchrest who both represented Maryland also capped the number of H-2B slots available during the first

six months of a fiscal year to 33,000. While the stand-alone bill was not even considered in the U.S. Congress, Senator Mikulski offered it as a floor amendment of the FY2005 Emergency Supplemental Appropriations bill, or H.R. 1268, in April 2005 (Bruno 2005) during the 105th Congress, in which Republicans controlled the Senate, House as well as the White House. Due to the bipartisan nature of the bill, the Mikulski Amendment was adopted in a 94-6 vote, with 51 Republicans, 42 Democrats and 1 Independent voting in favor of the bill and 4 Republicans and 2 Democrats voting against it ("On the Amendment S. Amdt. 387 to H.R. 1268" 2005).

Since the Amendment focused on the H-2B program and was introduced jointly by Republicans and Democrats, the following analysis looks into both Democratic and Republican Senators' NAY votes, in which they went against their party stance, and what role the H-2B eligible sectors and the program itself play in their states in the recent years. My analysis showed that Alabama was the only fully Republican state, whose both Senators voted NAY on the amendment. All the other votes against the bill split the states' overall stance on the amendment between one NAY and one YEA vote. Additionally, all the states, whose senators voted against the amendment, have currently more than 6 percent of all workers employed in the H-2B eligible sectors. Two Senators, one from Florida and one from Louisiana, who decided to not support the bill, are from states that have been among the Top10 H-2B beneficiaries in 2019. However, absolute majority of Senators from both political parties that represented the current Top10 H-2B states at the time supported the amendment in 2005.

Still, the bill established just a one-time returning worker exception for fiscal years 2005 and 2006, which then continued being extended through an appropriations rider (Costa 2016a). In the following years, a number of legislators have tried to reform and further codify the H-2B program into the U.S immigration law. For example, in 2008, the House subcommittee on Immigration considered strengthening H-2B

workers' protections, but ultimately decided to not take any action. A year later, Representative Zoe Lofgren introduced the H-2B Program Reform Act of 2009, which would include protections of the H-2B workers similar to those provided to H-2A workers. However, the U.S. House of Representatives had never considered the proposed bill (Mathes 2012).

In 2013, a bipartisan group of eight Senators led by Senator Charles E. Schumer from New York introduced the Senate Border Security, Economic Opportunity and Immigration Modernization Act (S. 744) - the latest attempt to considerably reform the U.S. immigration law. In summary, the bill aimed at providing a pathway to citizenship for certain unauthorized immigrants in the country, updating the U.S. legal visa system, and investing into the border security (Wolgin 2015a). As part of the reform, the bill would try to address issues with both the H-2A and H-2B programs by creating new visa categories – the "W" visa and the "blue card" - that would offer seasonal workers with workplace protections that don't exist under the current programs. The "W" category, which would likely be an equivalent of the H-2B program, would be available to workers in occupations that don't require a college degree, prioritizing but not limiting to jobs that are in shortage. These visas would also allow the workers to switch employers under certain conditions and codify their rights in the U.S. law. The "blue card" visa would provide heightened protections to agricultural workers, who are currently admitted through the H-2A program (Human Rights Watch 2013).

Senators passed S.744 in 68-32 vote in June 2013 during the 113th Congress, in which Democrats controlled the Senate and Republicans held the House. Overall, 52 Democrats, 14 Republicans and 2 Independents supported the bill, while 32 Republicans voted against it ("S. 744 (113th): Border Security, Economic Opportunity, and Immigration Modernization Act" n.d.). However, the bill ultimately failed to pass the Congress after the House refused to bring the bill up for a vote (NBC News 2014). Since then,

any legislative efforts to make changes to the H-2A and H-2B visas have been made through smaller bills focused specifically on the two programs rather than broader immigration reforms (Bruno 2018).

In the years following S.744, a number of legislations were introduced in Congress that aimed at making changes to the H-2B program that would enact temporary or permanent H-2B returning worker exemptions from the annual cap (Bruno 2018). In the Senate, Republican Thom Tillis from North Carolina, a state that has been among the Top10 beneficiaries of both H-2A and H-2B programs, introduced the Save Our Small and Seasonal Businesses Act of 2017 in the 115th Congress, in which Republicans controlled both Congressional chambers as well as the Presidency ("115th United States Congress" n.d.). And yet, the bill was never even considered on the Senate floor (Tillis 2017). In the House, a number of Republican legislators introduced similar pieces of legislation. In 2017, Republican Congressman Clay Higgins of Louisiana introduced the Returning Worker Accountability Act, or H.R. 1941, that would make the exception for returning workers permanent (Higgins 2017), and then reintroduced the bill again in 2019 (Higgins 2019). Additionally, a Michigan Republican Jack Bergman introduced the Small and Seasonal Business Relief Act, or H.R. 4207, that would also reinstate the exemption for returning H-2B workers (Bergman 2017). Similar changes were also proposed by Republican Congressmen Steve Chabot of Ohio in his H.R. 2004 Strengthen Employment And Seasonal Opportunities Now (SEASON) Act (Chabot 2017) and Robert J. Wittman of Virginia in his H.R.2658 Commercial Fishing and Seafood Business Act of 2019 (Wittman 2019). All the Republican Congressmen, who introduced these H-2B related bills represent states - Louisiana, Michigan, Ohio and Virginia – that have been among the Top10 H-2B beneficiaries. However, none of these bills have been even considered in the U.S. House.

The only way in which the previously described advocacy efforts by H-2B employers materialized over the years has been a series of exceptions from the cap started with the Mikulski Amendment and other

adjustments established under administrations of Presidents George W. Bush, Barack Obama, and Donald J. Trump. The language about H-2B program continues to be included as part of annual DOL Appropriation Act (Jacquez 2020) that contains two sets of provisions concerning H-2B. One of them is related to DOL labor certification, addressing H-2B prevailing wages and other related issues.[127] The second set focuses on the H-2B cap relief, which is provided either through an H-2B returning worker exemption[128] or a one-time annual increase of the cap beyond the 66,000 limit established by the 1990 Immigration Act (Bruno 2020c).[129] However, as previously discussed, the one-time annual increases have never been anywhere close to fulfilling the need of the H-2B employers, leaving a lot uncertainty and anxiety among employers and foreign workers alike as they never know how many individuals will be able to come to the U.S. each year. That is especially a problem in seasonal industries that must plan their seasons ahead of time.

Moreover, the legislators' efforts to modify the H-2B program through appropriations have also not been always successful. For example, the U.S. House passed H.R. 2740, or the Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Water Development Appropriations Act of 2020, which proposed to replace the current semiannual allocation of H-2B visas with quarterly allocation and suggested that in quarters in which requests for H-2B workers by DOL-approved employers exceeds the cap, H-2B visas would have been allocated proportionally among these employers (Bruno 2020a). Nevertheless, the bill then failed to pass the U.S. Senate (DeLauro 2019).

[127] For example, for each year from FY2016 to FY2020, DOL appropriations required use of the DHS regulatory definition of H-2B temporary need and prohibited the use of funds to enforce the definition of corresponding employment and the three-quarters guarantee rule. The DOL appropriations acts for each year from FY2015 to F2020 also include "staggered entry" provisions providing employers in the seafood industry with approved H-2B petitions additional time (beyond the approved start date) to bring in workers (Bruno 2020c).

[128] For example, a returning H-2B worker who had been counted against the 66,000 cap in FY2013, FY2014, or FY2015 would not be counted again in FY2016 (Bruno 2020c).

[129] DHS rules implementing these provisions made 15,000 additional H-2B visas available annually for FY2017 and FY2018, and 30,000 additional H-2B visas available for FY2019. For FY2020, DHS had planned to make 35,000 additional H-2B visas available, but put the rule on hold in April 2020 (Bruno 2020c).

Legislators' efforts to modify the H-2A program have not been much more effective than those on H-2B. There were only two H-2A related bills that have been recently considered on the U.S. House floor. In 2018, Republican Bob Goodlatte of Virginia introduced the Securing America's Future Act of 2018, or H.R. 4760, which included provisions that would revise the agricultural guest worker program by replacing H-2A with a new H-2C category that would provide up to 500,000 visas and allow certain industries that need year-round labor to participate. However, the bill also included provisions mandating all employers use the federal government's national identification system to check whether an employee is authorized to work, eliminating the ability of citizens to sponsor parents, adult children, brothers and sisters to immigrate to America, criminalizing unlawful presence, and others changes that would reduce the ability of individuals abroad to come to the United States (National Immigration Forum 2018a). The bill was introduced in the 115th Congress, in which Republicans controlled both Congressional chambers as well as the Presidency, but ultimately failed in the House in a 193-231 vote, with 41 Republicans and 190 Democrats voting against and 193 Republicans voting in favor of the bill. Many of the Republican Congressmen voting NAY on the bill represented states that have been among the Top10 H-2A certification recipients, including Florida, Georgia, California, New York, Kentucky, Michigan and Washington.

Another H-2A bill that was considered by the House was the Farm Workforce Modernization Act, or H.R.5038, that was introduced by a Democratic Congresswoman from California, Zoe Lofgren. Among other changes it would make to the H-2A temporary worker program, H.R. 5038 contained provisions related to foreign-born farmworkers, including those that would establish a certified agricultural worker status eventually allowing for permanent residency of certain eligible individuals (Lofgren 2019). The bill was introduced during the 116th Congress, when the Democratic party held a majority in the House, while Republicans controlled the Senate and the White House ("116th United States Congress" n.d.). It passed

the House in a 260-165 vote with 226 Democrats and 34 Republicans supporting the bill and 3 Democrats, 161 Republicans and 1 Independent voting against it (GovTrack.us n.d.). Thirteen Republican Congressmen, who voted in favor of the bill represented states, which have been among the Top10 beneficiaries of the H-2A program -Florida, Washington, California, Michigan and New York. Other Republican Representatives, who voted YEA on H.R. 5038, represented Alaska, Colorado, Idaho, Illinois, Indiana, Nevada, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Texas and West Virginia – states, in which agriculture represents less than 5 percent of their GDP and sometimes even below 1 percent as is the case of Nevada.[130] However, after the House approval, the bill was never considered by the Senate.[131]

A number of Republican as well as Democratic Congressmen from states that are among the Top10 H-2A recipients introduced bills that would make changes to the H-2A program. These include Republican Congressman Eric A. Crawford's H.R. 3740, or the AGRI Act of 2019 (E. A. Crawford 2019), Republican Georgia Congressmen Rick W. Allen's H.R.60, or the BARN Act (Allen 2019), and Democratic New York Congressman Anthony Brindisi's H.R.1778 - Dairy and Sheep H–2A Visa Enhancement Act (Brindisi 2019), in the 116th Congress. However, similarly to H-2B, most of these bills have never reached the House floor for consideration.

Overall, I believe this section clearly showed that modifications to the H-2B program have been truly considered on the Congressional floor only through large pieces of legislation focused on broader immigration reform. As my analysis indicated, a number of votes on these pieces of legislations were not aligned with what one would expect from the Senators and Congressmen based on the constituencies they represent when judged only from perspective of the two seasonal worker programs. I think it is

[130] Idaho is an outlier in this case as agriculture accounts for about 8.6 percent of the state's economy, which is one of the biggest shares in comparison with other states.
[131] The 2021 version of the Farm Workforce Modernization Act passed the U.S. House of Representatives in March 2021 (Lofgren 2021).

possible to assume that these discrepancies in votes for or against bills containing provisions on H-2B and H-2A programs are given by the fact that the overall focus of these bills was on broader immigration reform focusing on a variety of issues. As a result, even if the lawmakers had possibly a reason to support the H-2B and H-2A provisions, they decided against due to other pieces of the bills they did not support. Still, when lawmakers introduced bills related solely to H-2B and H-2A, these bills were usually not even considered on the Congress floor. In my opinion, this 30-year-long inability to not only fully modify, but even to just slightly adjust the H-2B and H-2A programs clearly proves the deep political divide that prevents any compromise on modernization of approach towards seasonal worker programs in the United States.

Conclusion

The main objective of this case study was to address the question of why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. Based on my readings, knowledge and experience working in the U.S. migration policy field as well as understanding of the two programs, I established three possible explanations that I examined in this case study.

First, I analyzed history of the H-2B visa cap to understand whether the H-2A program has stronger historical roots that allowed for it to develop on a separate track from the H-2B program. Based on my findings, I believe the historical context of the H-2B and H-2A programs confirmed that while originally established as one, after the split into two programs, they developed on two separate tracks, which impacted implementation of the H-2B visa cap. While H-2A program has deep roots going into early 20th

century, the H-2B program was established basically to make the H-2A program purely agricultural at the end of 1980's. The analysis showed the H-2B program was not even fully considered as a standalone mobility pathway for the first ten years of its existence and virtually ignored in the lawmakers' discussions until the lack of seasonal workers forced the issue in early 2000's. As a result, the lack of strong foundation and attention from the lawmakers allowed for implementation of the H-2B cap in 1990's. Additionally, the established annual limit of 66,000 visas does not seem to be based on any data or analysis of employers' need since job shortages in the non-agricultural seasonal sectors were not too big at the time, and thus not a concern for the lawmakers. Even though the situation has begun to change and got progressively worse over the past two decades with increasing job shortages in H-2B eligible occupations, the cap has been never changed through a permanent measure.

Second, I examined advocacy efforts around the H-2B program to determine whether they are not strong enough to persuade U.S. lawmakers to make changes to the program. Exploring this topic from the "investment" standpoint, I analyzed revenues of the Top5 H-2B employers in comparison to Top5 H-1B employers. Although this thesis focuses primarily on seasonal low-skilled workers, I think it was necessary to include the H-1B program for high-skilled workers in this specific case study, because it has been also limited by a cap, which means employers under both of these programs face similar challenges due to the annual visa limit. Based on my findings, it has been clear that the H-1B employers have more resources to invest into advocacy efforts around the program than those under H-2B. Moreover, the top businesses under the H-1B program represent just one sector, which I believe is easier to organize that the H-2B employers, who represent several sectors and thus are more likely to face barriers in form of a variety of unions and other organizations that believe temporary worker programs prevent U.S. workers from getting jobs offered by those companies. Despite the considerable resources that H-1B employers, who are often - although not only - from the technology sector, invest into advocacy around the program, they

have not been successful in establishment of a further permanent increase of the cap. Therefore, I think it is not surprising that the H-2B employers, with much fewer resources and messaging spread across various industries, were not able to convince the Congress to implement legislative changes that would increase the H-2B visa cap.

When looking into a comparison of how many businesses and workers the H-2B advocacy represents in comparison to H-2A, or the overall size of the H-2B sectors versus agriculture, I found the H-2A advocacy groups represent more employers than H-2B. This is in line with my expectations. Specifically, advocacy bodies around the H-2A program represent about 3,000 more employers that the H-2B advocacy groups, a difference which also represents about half of the total number of H-2B employers. At the same time, the number of filled H-2A eligible positions in the U.S. is smaller than the total number of filled H-2B eligible positions. Therefore, I think farmworkers have more leverage to advocate for changes in H-2A program than advocates for H-2B employers. In other words, H-2A advocacy represents more businesses because there are fewer workers in H-2A eligible occupations when compared to H-2B. Lastly, although my analysis showed the sum of H-2B sectors as a share of the U.S. GDP could be theoretically[132] larger than total share of agriculture, a lot of the large H-2B sectors such as construction and hospitality may be better equipped to fill their job shortages if not selected for H-2B visas than smaller sectors such as landscaping and seafood processing, as discussed further in the following case study. Therefore, these large H-2B sectors, which could possibly invest more into advocacy, may not be as interested and involved in such efforts.

Overall, I believe the agricultural industry seems to be in better position to advocate for employers and workers using the H-2A program than the advocacy groups lobbying for the H-2B program, because

[132] Exact data not available.

lawmakers are more likely to support bills that impact more employers in states they represent. On top of that, it is important to note that it is likely easier for one industry to organize its advocacy efforts, as is the case of agriculture under H-2A, than for multiple industries, as is the case of H-2B.

Third, I analyzed proposed modifications to the H-2B program that have been considered in the U.S. Congress to understand whether the changes were made only through large pieces of legislation focused on broader immigration reform. My findings showed my expectations were correct in the fact that lawmakers agreed to modify the H-2B program only when considering large immigration reform bills. My analysis indicated that from perspective of the two seasonal worker programs, a number of votes on these pieces of legislation were not aligned with what one would expect from the Senators and Congressmen based on the constituencies they represented. I think it is possible to assume that these discrepancies in votes for or against bills containing provisions on H-2B and H-2A programs are given by the fact that the overall focus of these bills was on broader immigration reforms covering a variety of issues. As a result, even if the lawmakers had possibly a reason to support the H-2B and H-2A provisions that would benefit their constituencies, they decided to vote against the bills likely due to other issues covered in those bills that they did not support. Still, when lawmakers introduced bills related solely to H-2B and H-2A, these bills were usually not even considered on the Congressional floor. In my opinion, this 30-year-long inability to not only fully modify, but even to adjust the H-2B and H-2A programs clearly proves the deep political divide that prevents any compromise on modernization of approach towards seasonal worker programs in the United States.

When looking at combination of all findings in this case study, the results clearly showed that despite the considerable advocacy efforts around the U.S. seasonal worker programs, the U.S. has not passed a legislation that would make significant changes to these programs. Even though the H-2A advocacy groups

are hypothetically in a better position to advocate for the program due to the size of the agricultural industry and the fact that they have just one sector to organize, there were at least two bills in the past five years proposing changes to the H-2A program that were considered on the House floor (H.R. 4760 and H.R. 5038 in the 115th and 116th Congress, respectively) and neither one of them was approved by both chambers of the Congress. When it comes to H-2B, which represents fewer employers within several sectors, bills with changes to this program were not even brought up for a vote. It is important to consider, however, that some one-time changes in the program have been made through annual DOL appropriations. Historically, from the establishment of the programs in 1986, changes to H-2A and H-2B were approved as part of broader immigration bills that contained a variety of provisions. In other words, legislators' decision on how to vote on these particular bills were influenced by more factors than those related to the agricultural and non-agricultural seasonal workers. Therefore, I believe it is not possible to conclude that the role of advocacy was more significant in development of the one or the other seasonal worker program, including establishment of the H-2B annual visa cap.

Instead, it seems that the historical sequence of events has played more significant role when it comes to implementation of the H-2B cap. Each reform done to the two programs was focused on either agriculture (H-2A) or other industries with seasonal need (H-2B), which means they were never addressed at once. At the end of 1980's, the advocacy within the agricultural sector stood behind creation of the H-2A program, as the industry was the main subject of the debates associated with the 1986 reform, or IRCA. The bill did not consider capping the H-2A program because the lawmakers assumed that enforcement measures that were part of IRCA will significantly reduce the number of unauthorized agricultural workers and thus increase the demand for H-2A. At the same time, demand for non-agricultural workers was so low, that the bill did not include any restrictions on the H-2B visa either besides establishing a requirement of a labor market test for employers seeking foreign workers through both programs.

On the contrary, the following 1990 reform, has not dealt with agriculture at all. Instead, it focused on tech and related industries, and thus also primarily skilled workers coming to the U.S. through H-1B. However, since the sectors tended to bring also certain low-skilled workers, the H-2B program became subject of the reform as well. In comparison to the H-2A that was the main focus of the 1986 reform, the advocacy groups led by unions within the tech and construction sectors were against the non-agricultural foreign worker program at that time as more workers were beginning to enter the U.S. with the H-2B visas. Therefore, the groups involved in lobby around the 1990 reform called for measures preventing entry of foreign workers through the H-1B and H-2B programs.

As a result, the Immigration Act of 1990 established an overall cap of 131,000 visa on the H-1B program for high-skilled and H-2B for low skilled workers. Specifically, 65,000 for H-1B and 66,000 for H-2B. However, according to my findings, the numbers were not set based on any analyses or data, but rather established as a political compromise. Since the annual cap was sufficient at the time as the demand remained below the established level, the lawmakers did not implement any measures and instruments to adjust the cap. However, in early 2000, when more students became more interested in summer internships than seasonal jobs, employers' demand for the H-2B program began increasing exponentially in industries such as seafood, landscaping, forestry, hospitality and others. Since then, employers within these H-2B sectors have been continuously advocating for an increase of available H-2B visas.

Even though the past three administrations were able to increase the number of H-2B workers through appropriation bills and regulations, the actual annual H-2B visa cap as codified in the U.S. law has remained unchanged. Throughout the years, legislators introduced several reforms targeted at the H-2B program but were not able to pass the bills in the U.S. Congress, facing opposition from labor unions which have been fundamentally against any temporary worker programs, claiming they press down wages and

displace U.S. workers. Overall, it seems that programs such as H-2B are more likely to be created and adjusted as part of a comprehensive immigration bill and that the in-built visa cap is likely to be established as a political compromise to ensure the passage of the larger legislation.

5. Micro-Level 'Within-Program' Case Study: Impact of the H-2B Visa Cap on H-2B Employers

While the previous chapter focused the meso-level or 'within-country' comparison, analyzing the temporary worker programs in the United States, this micro-level 'within-program' case study focuses specifically on the H-2B seasonal non-agricultural worker program. As more Americans pursue at least a 4-year degree to later land in professional jobs (Campbell 2019), U.S. employers struggle to fill especially low- and middle-skilled jobs that require less education than a college degree ("Middle-Skill Job Fact Sheets" n.d.). While the agricultural sector has access to a program that is open to an unlimited number of eligible workers, employers in other sectors with seasonal need must share the H-2B program limited by an annual cap of 66,000 visas. This means that many H-2B employers are not able to hire enough workers, since the cap stays rigid in times of economic recession (for example FY009-2010) as well as recovery (after FY2010) as discussed above, which negatively impacts their businesses, and thus also the economy overall. Besides the inability to hire workers whom they consider to be the right fit for the openings, these employers are also left in limbo as they cannot plan for their season and be certain that their initial investments into the H-2B visa process will pay off as they may not be able to bring the necessary number of workers after all.

In this case study, I explore the costs of the rigid H-2B visa cap as well as other impacts it has on the participating U.S. businesses with seasonal need for workers. My hypothesis for this case study is that the costs of H-2B companies, who were unable to secure workers through the program due to the lottery system, are higher than of those who were randomly selected in the process. Specifically, I expect to find that the cap has been forcing the "unlucky" companies to either refuse customers, push their employees

to work overtime or use other alternative solutions to get through the season, and thus preventing their growth.

To assess the impact, I use four main data sources. First, official data sets from the Department of Labor, summarizing information about companies that applied for H-2B worker certifications between 2009 and 2019. Second, a 2020 U.S. Government Accountability Office (GAO) study examining the program based on interviews with 35 H-2B employers in four industries that are among the largest users of the visas. To point out more industry-specific issues with the program, I focus on H-2B employers in the landscaping sector, whose companies have been consistently the main beneficiaries of the program. Therefore, the third source I use is an Edgeworth Economics survey of landscaping businesses in Pennsylvania. This survey complements the landscaping-specific data from the overall GAO study that focused on this sector in Texas.

In FY2019, Texas and Pennsylvania - both covered in the above-mentioned studies - were among states with the largest numbers of H-2B certifications issued by DOL. However, to get a fuller picture of the landscaping companies' experience with the H-2B program, I believe it is important to also include businesses in other U.S. states. That is also because Pennsylvania is a home state of BrightView Landscaping Services, the largest H-2B user that was already mentioned in the previous case study. Therefore, I think it is valid to assume that the state's data on H-2B in the landscaping sector are likely to be at least somewhat skewed. At the same time, Texas is located in the South, which means the landscaping companies do not experience large swings in demand for their services as the weather doesn't change as drastically as in other states. Therefore, Texan landscaping companies have more leverage to mitigate impact of the 66,000 H-2B visa cap by possibly sponsoring some workers for permanent EB-3 visas and spreading the work across the year.

To make this case study more comprehensive and relevant, I include views of more landscaping businesses in other states. Specifically, I chose North Carolina, Maryland and West Virginia to include companies that experience four-season weather and represent three different state sizes when it comes to population as well as land area. Moreover, North Carolina and Maryland are both among the Top10 states, in which landscaping employers received the most H-2B certifications in FY2019. West Virginia, on the other hand, provides perspective of employers in state that was among those with the smallest number of H-2B certifications in the landscaping sector in FY2019. Together, I believe these three states would provide enough insight into the landscaping sector's experience with H-2B, complementing the DOL data, GAO and Pennsylvania study as the fourth source.

Therefore, based on the DOL H-2B certification data, I prepared a list of companies in each of these three states that applied and were certified for the most workers in FY2019. Then, I sorted these companies based on size. Since I already had the study on Pennsylvania, where the headquarters of the BrightView corporation is located, I decided to reach out specifically to small companies with less than 50 workers for interviews to include their viewpoint in this case study. However, although I began contacting these companies in fall 2020, I was not able to connect with any of the employers via phone or email. Even after five rounds of follow-up emails and phone calls to these companies, I was unable to schedule an interview with the appropriate people. And even when I was able to reach someone or received an email response, the employers were not willing to talk to me. There are at least a couple of factors that played a role in the reaction I received. First, the research for this thesis took place during the worst part of the global Covid-19 pandemic that prevented me from being able to go to these companies in person and explain my work. Second, I learned employers are in general very hesitant to speak with researchers about the H-2B program as well as other immigration issues as they may worry about their reputation and possible accusations of improper use of the program.

As a result, I was unsuccessful in connecting with any of the landscaping companies in the three targeted states until March 2021, when I wrote a 2-pager about my thesis that I shared with an advocacy organization in Washington, D.C. focusing on the H-2B program. The organization then shared the 2-pager with one employer in each of the three states. With the introduction, I was finally able to conduct interviews with three landscaping employers from West Virginia, North Carolina and Maryland that asked to stay anonymous. All these companies are small businesses that applied for the program in fiscal years 2018 and 2019. The West Virginia company applied for six H-2B workers in 2018 and eight H-2B workers in 2019 and was able to secure them all at that time. Similarly, the North Carolina employer applied for 12 H-2B workers in 2018 and 16 H-2B workers in 2019 but ended up hiring just 10 in each of the years. The Maryland landscaping company applied for 12 workers in 2018, when it was able to secure them all, and 15 workers in 2019, when it wasn't able to bring these workers until additional H-2B visas became available later in the year.

Even though I tried to connect with other similar landscaping businesses in these three states, I was unable to do so, which prevented me from conducting more statistical data and run further analysis of the H-2B program in the landscaping sector. Still, I believe that through a combination of findings from all the four sources, this case study still provides as comprehensive insight into experience of H-2B employers, and particularly those in the landscaping sector, as possible. Together with the previous two case studies, it serves as a basis for the concluding chapter of this thesis, providing a set of policy recommendations.

Sectors and Employers Using H-2B Program

Employers with need for non-agricultural seasonal workers in a variety of sectors have been dispersed across the entire United States. However, there are no publicly available information about how many H-2B workers go to each state. The DOL data sets provides information gathered through the labor test applications process described in previous case studies. However, these are information about employers requesting certain number of workers and asking the department to certify their demand, so they can apply for specific number of visas via USCIS. The visas are then allocated through a lottery and the department does not provide a list of the "lucky" employers. At the same time, as discussed below in this case study, employers often apply for more visas than they actually need to create room for potential increased need as they have to base their applications on predictions for the upcoming season due to the timing of the H-2B application progress. Therefore, it is very likely that not all visas under the cap are actually utilized and also that there are no available specific data on where the workers who do get the H-2B visas are after they come to the U.S. Still, I believe the labor test data, which I have been using for previous analyses in this thesis, provide at least approximate information about which employers are using the program. As a result, the following analysis provides an estimate rather than exact picture of where are the workers, and therefore also employers, using the H-2B seasonal worker program.

Data show that employers who ask DOL to certify need for the largest number of H-2B workers are usually located in Texas, Florida, and Colorado. Other states, such as Louisiana, Pennsylvania, and Virginia, have been also among the Top10 beneficiaries of the H-2B program in the five years between FY2014 and FY2019. Chart 19 in the Appendix summarizes the Top10 U.S. states whose employers requested the largest numbers of H-2B workers between FY2014 and FY2019. It is clear from the data that while employers from Massachusetts are no longer among the Top10 states, other state such as Alaska joined

the group quite recently (U.S. Department of Labor 2019b). My expectation would be that these small shifts have been given by changes in sectors and occupations concentrated in states that have been newly seeing increases in labor shortages.

As discussed in the previous case studies, H-2B has been restricted by an annual cap even though it covers a broad variety of occupations in a wide range of sectors. The positions for which employers are eligible to hire H-2B workers require less than a bachelor's degree and must be of seasonal character, meaning that the need to fill these jobs peaks at certain time of a year. Similarly to above, the following analyzes data from DOL labor tests, meaning it covers information about occupations that the employers identified and the department certified as being in shortage. Nevertheless, due to the lottery, it is not fully clear which of these employers were able to secure the workers and how many. Still, I believe the labor test data provide an approximate picture of what jobs the employers fill with the H-2B workers.

Historically, the most employers have been certified by DOL to bring H-2B workers to work in Landscaping and Groundskeeping. In FY2016 through FY2019, the number of DOL-certified workers in those occupations accounted on average for about 42 percent of the total number of certified H-2B workers. Forest and Conservation workers usually represent second largest group coming through the program, but their overall share is typically around 8 percent of the total issued visas. Other common H-2B occupations include maids and housekeepers, meat, poultry and fish cutters and trimmers, amusement park workers, waiters and waitresses, construction laborers and cooks. (U.S. Department of Labor 2019b). Chart 20 in the Appendix summarizes the top10 occupations, for which H-2B employers requested and DOL certified the largest number of workers between fiscal years 2014 and 2019.

To establish whether the changes in Top10 states using the H-2B program over the years are linked to shifts in job shortages in occupations concentrated in these states, the analysis would have to be based on state-specific data on job shortages in individual occupations that are unfortunately not available.[133] However, to provide at least approximate picture, Table 21 in the Appendix offers comparison of Top10 states by the following criteria: (1) H-2B certifications (use of the H-2B program), (2) total workers in H-2B sectors[134] as a share of all employed individuals in the states, and (3) share of immigrants, who are employed in the states' H-2B sectors.[135] The data shows that states using the H-2B program for seasonal non-agricultural workers the most[136] are not the same states, in which the H-2B sectors employ the largest numbers of native and foreign-born workers. Florida and North Carolina represent an exception from this observation as both states use H-2B program at high rates, while at the same time H-2B sectors employ a large share of all workers as well as foreign workers in those states. Alaska and New York, on the other hand, are two states that are among the main beneficiaries of the program but employing some of the lowest shares of workers in H-2B eligible sectors. Similarly, Colorado and Texas, which are both also among the Top10 H-2B beneficiaries, either employ large share of its overall population – Colorado - or its foreign-born workers – Texas - in H-2B sectors.

However, it is clear from the comparison table that the share of total employed workers and foreign-born individuals in the H-2B sectors do not significantly impact whether employers in the state will use the H-2B program. In other words, the data suggests that employing more workers in the H-2B sectors doesn't necessarily mean that that states will use the H-2B program at higher rates. A regression analysis also

[133] The only available state data on job shortages are on sectors overall rather than occupations.
[134] For the purpose of this thesis, data on H-2B sectors are calculated as a sum of total employed workers in occupations for which employers typically hire H-2B workers as shown in Chart 20 in each state.
[135] A complete breakdown of data on foreign-born workers in H-2B eligible occupations by state is not available. Therefore, the numbers are based on the most recent industry data available, and thus have to be considered approximate. Also, the data include all immigrants in each state, not only H-2B visa holders.
[136] As identified by the DOL (Chart 19).

showed just a moderate positive relationship between the numbers of workers employed in the H-2B sectors and the number of requested H-2B worker certifications, with a correlation coefficient of 0.6. The full regression results can be found in the Appendix Table 22 and Chart 21. Only Texas and Florida's number of requested H-2B workers seems to increase with the number of total workers in the H-2B sectors. Some of the states that are among the Top10 states benefitting from the H-2B program, such as Colorado, North Carolina and Pennsylvania seem to file more requests when having fewer workers in H-2B eligible sectors. California represents an outlier with having a large number of workers already in the H-2B sectors and requesting a smaller number of H-2B certifications.

I think it is surprising as I would expect that states with the largest shares of workers in H-2B sectors to also be among states requesting the most H-2B seasonal foreign-born workers, assuming that there may be no more workers available to take the rest of the open positions. Therefore, I think it is clear there must be some other factors that play a role such as U.S. workers willingness to take the available H-2B eligible jobs – a problem frequently voiced by employers as discussed at the beginning of this thesis.

In FY2019, DOL certified nearly 5,340 employers to bring H-2B workers, verifying they have been experiencing worker shortages. The number of workers these employers applied for ranged from one to 900 per individual application[137], with a median of 11 approved H2B workers. Of the about 5,340 certified employers, just 167 were approved for more than 100 workers. As Chart 22 in the Appendix illustrates the grow of the number of employers, whose H-2B worker applications were certified by the DOL each year after they proved they face a shortage of workers. In FY2010, after the 2009 economic crisis, just over 3,000 employers were certified to bring H-2B workers, a number that gradually grew to the nearly 5,340 in FY2019.

[137] One employer may file more than one individual application.

More specifically, BrightView Landscape Services, a company that was already mentioned in the previous case study, and Progressive Solutions are the two landscaping companies that have been consistently among the five employers certified for the most H-2B workers between FY2014 and FY2019. Other companies with the most H-2B workers include Silver Bay Seafoods and Alpha Services, a forestry company. Chart 23 in the Appendix summarizes the Top5 employers with the largest numbers of H-2B certifications between FY2014 and FY2019.

As data and analysis in the previous case studies showed, the current H-2B visa cap doesn't respond to the needs of U.S. employers. Since early 2000's, H-2B employers have been raising their voices to increase the annual cap through a variety of advocacy efforts and lawmakers representing states with large job shortages in the non-agricultural seasonal sectors have been also actively calling on the other members of Congress and the administration to support changes to the H-2B program. However, despite these efforts, the H-2B visa cap remained unchanged since its establishment in 1990.

Employer's Challenges with the H-2B Program

The H-2B program has been helping employers from across the U.S. to bring seasonal workers to fill their shortages. If an employer is able to secure visas for his or her foreign workers, the program helps to bring more stability to the company that is then able to meet its commitments. However, due to the growing demand for the program, the 66,000 annual visa cap has been continuously insufficient since the early 2000's, as illustrated by the numbers above. Therefore, instead of helping employers to fill their seasonal needs, the program has been adversely impacting businesses in a variety of sectors across the U.S.

For example, employers in Texas shrimping, landscaping and tourism sectors have been struggling to secure enough workers to get through the peaks of their season (Houston Chronicle 2018). That is despite the fact that Texas has been consistently bringing the largest numbers of H-2B workers since 2014. In FY2019, Texan businesses brought over 16,000 H-2B workers, which was nearly 10,000 more than Colorado that ranked as the second state with the largest number of H-2B workers in the same year (U.S. Department of Labor 2019b). More specifically, the shrimping industry is one of the sectors in Texas that has been facing challenges posed by the rigidity of the H-2B visa cap. Out of the 1,000 shrimp boats in the Gulf of Mexico, about 550 is Texas-based. Even when the employers secure their workers, there is at least a month of a delay before these workers arrive to the U.S., as they must go through the lengthy process of being interviewed at the embassy and then crossing the U.S. border. This delay between the moment when an employer is approved for H-2B and the arrival of the H-2B workers causes what the businesses consider "devastating" costs. In the shrimping sector, the cost supposedly climbs to $4,000 per each night that a boat is not shrimping (Nelsen 2017). Overall, the businesses say the lack of workers costs the Texas shrimping sector approximately $5 million per day (Houston Chronicle 2018).

Similarly, seafood processing employers in Maryland, who typically hire H-2B workers for picking meat out of crabs, are heavily reliant on H-2B workers. In FY2018, about 54 percent of their workforce on average consisted of H-2B workers. Employers, who did not receive the H-2B workers reported over a 10-percent decline in revenues and some of them were even forced to reduce employment of U.S. workers, including administrative occupations and truck drivers, or even shut down their operations for a portion of the season (Barnes 2020). According to the impacted employers, there are certain factors specific to the seafood industry that aggravated impacts of the H-2B visa cap, such as nonexistence of a sufficient substitute of the manual labor and the strict seasonality of crab picking, which makes possible delays in receiving H-2B workers very problematic. When coupled with the difficult nature of the work and remote

location of the worksites, the jobs in this sector just seems to be overall unappealing to U.S. workers (Barnes 2020), as already mentioned in the previous chapters. The Texas Shrimp Association also confirms this claim, saying that about 96 percent of U.S. workers hired for work on shrimp boats quit before they even come back from their first month-long trip (Houston Chronicle 2018).

Hospitality and construction sectors have been facing challenges with the H-2B visa cap as well, although their impact seems to be less severe than in sectors such as seafood processing and landscaping. While data show some employers in these sectors have been still seeing some declines or a slowdown in revenues, there are several factors that have been helping them to mitigate the impacts of the inflexible visa cap. For instance, construction companies may be able to spread their work across the year and prebuild housing frames outside of the peak season as well as subcontract some of their work or add more overtime hours to their U.S. workers. Similarly, employers in hospitality, some of which had seen reported impact of the H-2B visa cap on quality of their work and possibly even reduction of their operations, may for instance use the J-1 program to recruit students from abroad to take jobs that could not be filled by H-2B workers (Barnes 2020).

To address the employers' calls for changes in the program, a bipartisan group of Congressmen representing numerous states across the United States [138] requested the U.S. Government Accountability Office (GAO) to examine the impact of the H-2B visa cap. As a result, the GAO published a report in 2020 based on a review of the program conducted in 2018, interviewing 35 H-2B employers in four sectors that are among the largest beneficiaries of the program – seafood processing, construction, landscaping and hospitality. Similarly to the data analysis in Figure 2 on page 29, GAO found that the number of certified H-2B applications and workers has generally increased since 2010, while the national unemployment has

[138] Michigan, Utah, Illinois, Texas, Maryland, Massachusetts, New Hampshire, Maine, Missouri, Vermont, Georgia.

declined each year since 2010. Moreover, the report that analyzed data from FY2018 showed unemployment rates in counties with H-2B employers were about 0.4 of a percentage points lower than in counties without H-2B employers. Further, average weekly wages in counties with H-2B employers were about $113 per week higher than in counties without H-2B employers[139] - a trend that remained true for every quarter from fiscal years 2015 through 2018, when the research took place. According to GAO, there are several factors that may explain the strong relationship between labor market trends and the companies' use of the H-2B program. First, places with strong labor markets may have a smaller pool of unemployed workers to fill seasonal jobs, leading employers to use the program to fill these occupations. Alternatively, GAO says that places with larger, more urban populations may have stronger labor markets and more employers, which means they are more likely to have at least one employer with H-2B workers (Barnes 2020).

Additionally, as mentioned several times throughout this thesis, the GAO study confirmed that one of the major issues with the H-2B program identified by employers is the uncertainty stemming from inflexibility of the visa cap. This uncertainty has been exaggerated even more with the recently implemented lottery system. The inability to predict whether they will be able to receive the H-2B visas for their foreign-born workers have been affecting the companies' ability to plan for possible business growth and investment. Additionally, since the employers depend on receiving H-2B workers each year, any decrease in the number of workers they are able to bring have a substantial impact on their decision, making them reject additional contracts, reduce investment in new equipment, delay or refuse to implement planned investments. In some cases, the inability to hire foreign-born workers even forces them to shut down their businesses (Barnes 2020).

[139] The average weekly wage for counties with H-2B employers was $866 and for counties without H-2B employers it was $754.

However, besides the uncertainty, the employers identified also other issues with the program. Particularly, companies that were not able to secure all requested H-2B workers reported more declines in their revenues that those who received the visas. These revenue drops have been often caused by loss of customers and contracts, although other factors may also have played role in the decreases. For instance, the seafood processing sector seems to be more likely to see declines in revenues due to absence of H-2B workers than the construction sector that may be better positioned to alleviate the lack of workers. Additionally, companies that were not able to bring H-2B workers also reported they were forced to decrease their purchases of goods and services more frequently than those who did receive the visas, delaying investments on their businesses' equipment and maintenance as well as expansion. Those employers who did not get H-2B workers or got them later in the year were also more likely to see decrease in demand for their services. Again, certain sectors, such as construction, were more able to maintain their typical level of purchased goods and services despite the inability to bring H-2B workers than hospitality. Lastly, some of the employers, who were unable to secure H-2B workers, reported having to lay off or reduce hours of their U.S. employees (Barnes 2020).

H-2B Employers in the Landscaping Sector

The landscaping sector has been continuously ranking as an industry using the H-2B program at the highest rate. In fiscal years 2016 through 2019, workers in those occupations accounted on average for about 42 percent of all H-2B workers. Chart 24 in the Appendix illustrates the share of the H-2B certification in the Top10 sectors that applied for the program in FY2019. Occupations in landscaping accounted for 44 percent of all H-2B certifications, followed by forest and conservation with just 8 percent – more than five times small portion of the total certifications.

It has been clear that the H-2B program has been an important part of the hiring process in the landscaping sector. Employers typically hire H-2B workers to perform residential and commercial landscaping, which includes tasks such as mowing lawns, planting trees, building outdoor living spaces, and performing other lawn care maintenance (Barnes 2020). However, the inflexible cap, limiting the number of visas that can be issued under the program each year has been hampering many businesses' stability. Chart 25 in the Appendix summarizes the Top10 U.S. states, whose landscaping employers had applied for certifications of H-2B employers, comparing the number to the overall Top10 states with the highest total of H-2B certifications in FY2019. Texan landscaping firms have received the most H-2B certifications in FY2019 and the landscaping sector accounted for over 60 percent of all H-2B certifications issued for companies in the state. Pennsylvania and Colorado that are also among the overall Top10 states followed Texas in the number of issued H-2B certifications in FY2019.

Overall, there were about 2,830 landscaping companies that applied for DOL certification of their H-2B workers. As previously mentioned, the BrightView Landscape services has been consistently among the Top5 companies with the most H-2B worker certifications. In FY2019 alone, this landscaping company headquartered in Pennsylvania asked for 3,485 H-2B workers, a number that would be an equivalent of more than 5 percent from the total 66,000 visas allowed under the H-2B annual visa cap. The BrightView Landscape Services had a total of about 21,500 total employees across all of its locations and generated approximately $2.4 billion in revenues in 2019 (BrightView 2019).

However, most of the landscaping companies are medium to small businesses, often family firms, that are applying for just a few foreign-born workers, which makes their chances to secure at least some of them smaller. The 2,830 landscaping firms that were certified to hire H-2B workers in FY2019 filed about 3,145 applications for DOL certification, out of which 2,261 were for just 20 or less workers. It is not clear how

many of these employers eventually secured the visas for their workers.[140] Even when the USCIS allocates all the visas, it does not mean the selected employers use every single one of them. Even if approved, the employers may decide to bring fewer H-2B workers to the U.S. than they originally planned due to changes in their need between the time of filing the DOL application and receiving the USCIS visa approval. Additionally, some employers tend to apply for more workers than they actually need when the season begins, because they have to base the number on their application on predictions for the upcoming season due to timing of the application process and they may want to create a "reserve" for unexpected situations as some of H-2B workers may leave shortly after arrival due to a variety of reasons such as illness or family issues. As a result, some of the approved visas go eventually unused. Since the USCIS and CBP do not consult how many H-2B visas were issued and how many individuals with those visas actually crossed the U.S. border, it is unclear when the number of individuals with H-2B visas that actually came to the U.S. hits the 66,000 cap. Rather than returning these unused visas to the system, making them available to other companies that were not able to obtain them earlier in the season, the system allows for these visas to be basically wasted as nobody else is able to use them for their H-2B workers instead.

Landscaping companies that were certified by DOL but unable to secure H-2B workers have been experiencing the most impacts of the inflexible visa cap. Unlike construction and hospitality mentioned above, the landscaping industry has been facing similar issues to hiring as the seafood industry as the intensive manual nature of the work, which takes place during the hottest months of a year, poses challenge to recruiting more U.S. workers. This challenge has been reported by employers in Texas (Barnes 2020), but also other U.S. states. Landscaping companies from Pennsylvania reported that 38 percent of U.S. workers they hired for the 2018 season failed to show up for their first day of work during the 2018

[140] In 2019, this has been done through a lottery.

season. Moreover, by the end of the season, 63 percent of all hired U.S. workers were no longer with these businesses (Bronars 2018).

Similar trend was reported also by an interviewed employer from North Carolina, who was able to describe the difference in the experienced turnover with and without the H-2B workers. In 2017, when the company didn't use the program, it hired and fired 12 people, while in 2018 and 2019 when they were able to secure the H-2B workers, they hired and fired only 3 people in each of the years, cutting the turnover by 75 percent. In 2020, the company wasn't able to secure the H-2B visas again and was forced to fire 14 people out of the total 20 that they hired, which means it was left with just about 30 percent of all workers it originally recruited. Besides the North Carolina company, the other two companies from West Virginia and Maryland interviewed for this thesis both confirmed issues with high turnover caused by absence of H-2B as well, citing drug abuse among the new domestic workers as a common problem that eventually leads to the increased turnover. For instance, the West Virginia employer said that without the program, the company had a turnover of 42 employees in six months. It is also important to consider the time employers invest into hiring and training the new workers. The interviewed employer from Maryland said it takes the company several weeks to train an employee and the training often includes unexpected expenses such as damage of equipment.

The reported challenges with a high turnover and unavailability of reliable U.S. workers clearly suggest that a possible decrease in the number of H-2B workers in landscaping sector cannot be easily offset by hiring domestic employees (Bronars 2018). Therefore, landscaping companies have been forced to use other ways to mitigate the impacts. As mentioned above, some Texas businesses tried to partially offset the lack of foreign-born workers by adding more overtime hours to the existing staff's work load (Barnes 2020). Similarly, just to offset a delay of arrival of H-2B workers, a D.C. employer reported the company's

employees gathered a total of 90,000 hours of overtime in 2015 (Hampshire 2015). Other employers choose to spread the work across the year and help returning H-2B workers to apply for permanent residency through EB-3 visas (Barnes 2020). However, this option is a time-consuming pathway with uncertain results that is available only to employers with foreign-born workers who are already in the U.S. as discussed in the beginning chapters of this thesis.[141] Still, if successful, having EB-3 workers help the employers to at least partially stabilize their workforce.

Nevertheless, not all landscaping companies can use this option, as many of them - depending on their location - cannot offer year-round jobs due to changing seasons in their area of operations. As an example of possible solution and related difficulties in a four-season location, a Maryland employer interviewed for this thesis decided to make a national recruiting campaign in effort to offset the lack of twelve H-2B workers after the USCIS informed the company it won't be receiving visas even though the DOL certified the full number of requested workers for FY2019. The company hired a recruiter, who was able to find workers from Puerto Rico, Georgia and Minnesota and other states. However, for the twelve needed positions, the company had to hire and fire 70 people and spent additional $40,000 to pay the recruiter. Still, the company chose this approach because without the workers, it was expected to lose 75 percent of its revenue that year.

In general, if unable to hire H-2B workers, landscaping businesses anticipate substantial declines in revenue. Texas businesses, who did not receive H-2B workers reported revenue declines as well as decrease in supply purchases (Barnes 2020). Similarly, 80 percent of surveyed landscaping companies in Pennsylvania said that without the H-2B workers, they would have to reduce the amount of provided

[141] There are only about 40,000 EB-3 visas available annually, out of which just 10,000 can go to "other workers" without university degrees.

services and experience revenues declines. More specifically, their annual revenues would be estimated to fall by an average of 36 percent or about $658,000 per employer. This drop would equal a direct revenue loss of approximately $26.1 million to the analyzed businesses. However, about 27 percent the companies would anticipate even a 50- to 60-percent decline in annual revenue without the H-2B workers. In general, landscaping businesses with less than 20 employees would predict larger revenue declines than employers with more workers (Bronars 2018). Even a possible delay of H-2B workers causes declines of employers' revenues. A D.C.-based company reported a revenue loss of $70,000 per week, which amounted to $665,000 for the season when their H-2B workers arrived late 9 and a half weeks late in 2015. Together with an opportunity loss, the figure spiked even more to about $120,000 per week (Hampshire 2015). Even the USCIS ombudsman has confirmed that delays in the H-2B process can have " severe economic consequences" for the impacted businesses (Bier 2021). [142]

However, inability to hire H-2B workers impacts also U.S. workers in the landscaping sector. For example, in Pennsylvania, each H-2B seasonal landscaping job supports about 2.3 other jobs in the industry. Overall, more than 7,700 Pennsylvania jobs in the landscaping sector and 3,000 jobs outside the sector have been supported by seasonal landscaping workers arriving through the H-2B program. An analysis by economic multipliers found that without seasonal H-2B landscaping workers, employment in Pennsylvania alone would decrease by about 3,440 jobs (Bronars 2018). Moreover, the interviewed companies from North Carolina, West Virginia and Maryland confirmed that hiring H-2B workers, leads to an increase of their year-round supervisory jobs who are usually taken by U.S. workers, signaling the program increases opportunities for domestic workers for whom seasonal jobs aren't very appealing as noted above.

[142] Unfortunately, the federal government does not track how often guest workers arrive after the start date.

Overall, the experience of landscaping employers with H-2B has been clearly confirming their dependence and positive economic impact of the program on their businesses, including financial revenues as well as staff. However, that is the case only if the companies are able to secure the number of workers they need. Since the overall demand for H-2B visas has been more than double the 66,000 annual visa cap, many landscaping companies are not able to secure the visas, as previously discussed. Still, besides the inflexible visa cap, which seems to be the main issue with the program the employers see, the interviewed landscaping companies highlighted also other issues and challenges with the H-2B program related to the nature of the industry. For example, the businesses reported they secure their contracts well ahead of the season, which means they have to estimate how many workers they will need while applying for the program in early January. Nevertheless, they do not learn whether they will receive the workers until February and since the landscaping season in many states begins as early as March, the system leaves the employers, who were not selected for the program, with a very short window to make up for the gaps in employment. This leads to tremendous uncertainty, forcing the businesses to cut their contract or reduce services.

Lastly, it is important to mention the costs the employers invest into the program even if they are not able to secure workers at the end of the process. An employer from North Carolina reported the company spend about $400 per application just to get the initial DOL certification. In 2019, the company applied for 17 certifications, bringing the initial cost to $5,600. To then bring the workers upon selection, employers must pay another over $2,100 per USCIS application[143,144] and $190 per worker to the Department of State. On top of that, many employers choose to use legal help to file the applications. This fees generally ranges from $2,500-$4,500 per application. Further, worker travel reimbursement and

[143] Multiple workers can be included on one application.
[144] This consists of $1,500 fee for premium processing that vast majority of employers use, base petition fee of $460 and $150 fraud and prevention fee

border crossing reimbursement then range from $350 per worker, if the workers come from contiguous countries such as Mexico, to more than $1,000 per worker for workers from other countries (The Seasonal Employment Alliance n.d.). The North Carolina company said it ended up bringing 10 H-2B workers in 2019, paying additional approximately $700 for each of them, or $7,000 in total. However, this is just one example our of many. The overall costs are hard to generalize given the ranges for fees for lawyers and agents as well as the transportation costs, but the overall cost of the H-2B program is believed to be on average between $1,500 and $3,000 per worker plus expenses for employer-paid housing subsidies.

Still, the interviewed employers indicated the H-2B program is worth the investment since the alternative is much more costly.[145] As mentioned earlier in this chapter, domestic recruitment efforts of the interviewed Maryland employer for example costed the company additional about $40,000. Similarly, an Ohio-based company calculated it spent $19,500 for an HR firm, $2,450 on advertising and $18,522 for online training assessments and orientations when they were not able to secure H-2B workers in 2015 (Hampshire 2015). It is also necessary to consider the time spent on training of the workers, especially considering the high worker turnover often seen in the landscaping industry as mentioned above.

Conclusion

I believe findings in this case study clearly indicate that H-2B workers are a necessary part of employers' seasonal workforce. Especially, employers in industries such as landscaping and seafood processing have been struggling to fill occupations that are not appealing to U.S. workers due to their difficult nature or

[145] This depends on individual factors such as size of the company and the number of H-2B workers they need, which vary from employer to employer.

conditions, in which they are performed. The H-2B program helps these sectors to at least partially fill their job gaps. However, due to the annual 66,000 visa cap, the program has been failing to fulfil employers' need that has grown over time to be more than two times larger than the limit. Therefore, this case study explored costs of the rigid H-2B visa cap as well as other impacts it has on U.S. businesses with seasonal need for workers.

Since the employers must prove their inability to recruit U.S. workforce to the DOL to be certified for the program, it is clear that the companies have difficulties with finding workers, which in many cases leads to partial or even complete shutdown of their operations. And yet, despite ongoing advocacy efforts described in the previous case study, the U.S. government was not able to make permanent changes to the program that would meet for employers' need and provide sufficient protections of the foreign-born as well U.S. workers. Instead, it makes annual adjustments to the program and its regulations, leaving employers in a permanent limbo. This uncertainty that stems from inability to know whether and how many foreign-born workers the employers will be able to bring makes it hard for employers to plan as they sign their contracts months before the season begins.

The current lottery system adds to this uncertainty even more with its random selection process that gives certain advantage to larger companies that can afford to file more applications. For example, the BrightView Landscape Services sponsored 3,523 workers who were certified by DOL through 100 separate applications in 2019.[146] In comparison, two of the three companies interviewed for this thesis filed one application and the third employer filed two in 2019. The GAO study showed certain H-2B employers see the lottery as exacerbating the uncertainty already stemming from the program. Moreover, some of these companies see the lottery system as unfair towards those who have been using the H-2B for some time

[146] It is unclear how many of these workers actually secured the H-2B visas in the lottery, since these data are not available.

(Barnes 2020), and thus proved they have the need for workers and follow rules of the program. For instance, the interviewed North Carolina landscaping employer said the company cannot be sure whether it will be able to secure H-2B workers despite a random unannounced visit from the DHS, which did a review of the company's use of the H-2B program, talking to the H-2B workers as well as other employees in 2017, not finding any issues. In other words, the program currently fails to award companies that follow the rules and treat their employees well – a factor that the employer believes should be factored in the application process.

Additionally, employers pointed out the continuous issue with overall timing of the H-2B application process. That applies even to the time before the lottery system,[147] when the applications were processed on a rolling basis based on day and time of their receipt.[148] In January 2019, DOL received nearly 5,300 applications for over 96,400 worker positions to start work on April 1. That is nearly three times more than the 33,000 visas allocated for this first part of each fiscal year. Moreover, on January 1, 2019, when the online portal opened, the electronic filing systems experienced almost 23,000 log-in attempts, which compares to 721 attempts made during the same time in 2018, causing the filing system to become unresponsive. As a result, nearly all employers couldn't submit applications until the system reopened on January 7, 2019 (Barnes 2020). The current lottery system may have addressed the backlog of applications in the electronic filing system; however, it did not help to ease employers' anxiety and instability. Especially in sectors such as landscaping that has very specific seasons.[149] For example, a landscaping employer from North Carolina pointed out that since the application process starts in January and the companies learn whether they can bring H-2B workers in February, it leaves them with just a few weeks to address their situation – having or not having H-2B workers – before the season starts in March.

[147] As mentioned in the previous chapters, the lottery was established in the second half of FY2019.
[148] The time was specific to the millisecond.
[149] This also depends on specific location of each employer.

Still, the total amount of visas allowed under the annual cap was the main concern of H-2B employers. Especially in sectors such as landscaping and seafood processing, which find it more difficult to mitigate the impacts of inflexible visa cap due to the nature of the work required in occupations they need to fill each season. This case study summarized the impact of the cap, showing it has been negatively affecting employers' revenues, their ability to grow their businesses, hire more domestic workers and plan for the future of their companies. Employers within the landscaping industry, which have been consistently the main users of the H-2B program have been particularly hit by inflexibility of the cap. Since the limit was established in early 1990's, the policy has failed to keep up with trends within the industry, which has grown over the past more than three decades as an increasing number of people and establishments rely on services of the landscaping companies (Gibson 2018).

Overall, data in this case study confirmed my hypothesis, showing that the costs of H-2B companies unable to secure workers through the program are higher than of those who were randomly selected in the lottery. Specifically, the inflexible visa cap results in decreases in revenues, increased overtime and implementation of other alternative solutions allowing employers to get through the season. Therefore, the data shows the inflexible H-2B visa cap harms many of employers participating on the program, since many of them are unable to secure sufficient number of workers and thus expand their businesses, which ultimately negatively impacts the U.S. economy overall.

6. Thesis Conclusion, Comments and Recommendations

This thesis examined temporary worker programs allowing employers to fill low-skilled jobs in the United States. There are three primary actors participating on these programs: employers, governments and workers, and each of them brings different but equally important perspective on their functioning. Since workers are more prone to abuse and exploitation during the hiring process and employment in the U.S., there has been a considerable body of literature focusing the workers' perspective as discussed in chapter 2. This thesis built on this research and complemented it by exploring primarily the role of employers and the government in the U.S. temporary worker programs. Even more specifically, it focused on the H-2B program for non-agricultural sectors such as landscaping, forestry, construction and hospitality that is limited by an annual visa cap. The thesis analyzed the program through an empirical analysis at three levels: macro-level or 'between-country', meso-level or 'within-country' and micro-level or 'within-program'.

i) A macro-level 'between-country' comparison of U.S. temporary worker programs with Canada, a "most similar" comparative case study (Seawright and Gerring 2008). It explored U.S. temporary worker programs through the lens of Canada's system, finding that although Canada offers more pathways for temporary workers overall, it is not more open to non-agricultural low-skilled temporary workers than the U.S.

ii) A meso-level 'within-country' comparison – also conducted as "most similar" comparative case study (Seawright and Gerring 2008) - analyzed why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. I found

that a program created as part of a comprehensive immigration bill is more likely to have built-in caps as a political compromise to ensure the passage of the larger legislation.

iii) A micro-level 'within-program' analysis of the H-2B program compared employers who are able to secure foreign workers to those unable to do so due to the current visa cap. I found that the latter experience lowers revenues and additional costs.

The macro-level 'between-country' analysis compared U.S. temporary worker programs with those in Canada, a neighbor within the same hemisphere and levels of development and one that has a similar make-up of foreign-born workers. The findings showed that even though Canada has a variety of migration channels, it has not introduced new programs that would bring enough additional low-wage workers to meet employers' needs.[150] Although Canada claims it uses immigration as one of its main tools to help close its labor market gaps, which compares to a U.S. system that is mainly family-based enabling immigrants to reunite with their relatives - worker shortages in low-skilled low-wage occupations are not on the top of the agenda for either of these countries. Overall, the macro-level 'between-country' case study showed that Canada is not more open to non-agricultural low-skilled temporary workers than the U.S. Low-wage workers in Canada face similar issues as do those in the United States, because the system prioritizes immigration streams for other foreign-born individuals, such as high-skilled workers, humanitarian migrants and those entering the country through various international agreements, rather than low-wage workers. That occurs despite job shortages experienced by employers who struggle to fill these occupations.

[150] In the past few years, Canada opened a number of smaller pilots, which bring just a limited number of workers. As an example, the current federal caregiver pilots are capped at a total of 5,500 workers, far fewer than the nearly 12,000 new permits that TWFP caregivers received in 2014 before the program began to wind down.

The meso-level 'within-country' case study focused on the temporary worker programs within the United States, seeking to determine why one of the two U.S. temporary worker programs for seasonal workers, the H-2B program for non-agricultural seasonal workers, is bounded by a quota while the other, the H-2A program for agricultural workers, is not. The analysis showed that despite the considerable advocacy efforts around the U.S. seasonal worker programs, the U.S. has not passed a legislation that would make significant changes to these programs. It seems that the historical sequence of events has played a more significant role when it comes to implementation of the H-2B cap. Changes to the two programs have focused on either agriculture (H-2A) or other industries with seasonal needs (H-2B), which means they were never addressed simultaneously. Overall, this study showed that programs such as H-2B are more likely to be created and adjusted as part of a comprehensive immigration bill and that the built-in visa cap is likely to be established as a political compromise to ensure passage of the larger legislation.

The third micro-level 'within-program' analysis compared H-2B employers who are able to secure foreign workers to those unable to do so due to the current visa cap. Despite difficulties I had connecting with the employers, I believe the findings support my hypothesis, showing that the costs of H-2B companies unable to secure workers through the program are higher than for those who were randomly selected in the visa lottery. Specifically, the inflexible visa cap results in decreases in revenues, increased overtime and implementation of ad hoc solutions allowing the employers to get through the season. Overall, the analysis showed the inflexible quota on the H-2B visa program harms many of the employers, as many of them are unable to secure sufficient numbers of H-2B workers to expand their businesses, which ultimately negatively impacts the U.S. economy as a whole.

Given these findings, what policies could improve the effectiveness of the U.S. H-2B program for non-agricultural temporary workers?

First, the total number of visas allowed. The annual cap was the main concern of H-2B employers, especially in sectors such as landscaping and seafood processing that find it more difficult to mitigate the impacts of the inflexible cap due to the nature of the work required in occupations they need to fill each season. The inability to hire more foreign workers has been negatively affecting employers' revenues, their ability to grow their businesses, hire more domestic workers and plan for the future of their companies. Since the limit was established in the early 1990's, the policy failed to keep up with trends in the industry, which has grown over the past more than three decades as an increasing number of people and establishments rely on services of landscaping companies. Additionally, the established annual limit of 66,000 visas does not seem to be based on any particular data or analysis of employers' need since job shortages in the non-agricultural seasonal sectors were not too large at the time, and thus not a concern for lawmakers. Therefore, I believe it is crucial for the United States to increase the cap to the level of the employers' demand. In FY2019, employers requested 150,465 H-2B workers that the DOL certified based on the companies' labor tests. It would be much better if the H-2B visa cap were adjustable each year – perhaps by an adjustable upper bound that was a percentage of the cap – based on employers' predicted demand for the upcoming season. This would bring more certainty and stability to companies using the program.

Second, to bring further certainty to the H-2B program, U.S. lawmakers should further codify it in U.S. immigration law. The program has been governed mostly through regulations and one-time measures approved via appropriation bills, which means it may change every year. This represents a concern that also spurs a lot of uncertainty among H-2B employers, who are unable to plan for the upcoming season, as well as workers whose protections depend on decisions, and therefore a particular agenda, of the given administration. Similarly, the current lottery system brings even more uncertainty as filing the application early no longer ensures employers will secure requested workers. Further, the program currently fails to

"reward" companies that follow the rules and treat their employees well. Even if a company receives a positive DOL review, it does not mean it will receive any advantage in the H-2B process the following year. Incentivizing positive motivation – perhaps a reward system that allocates additional points – could encourage more employers to treat their H-2B workers well if they knew it would allow them to bring those workers back the following year, for example, as an exemption from the cap or in any other form of advantage in the application process.

Third, the U.S. should find a way to return "unused" H-2B visas to the system. Since the companies often ask for certifications of more workers than they actually need, as they strive to bring at least some certainty to planning of the upcoming seasons, some of the visas selected for under the 66,000 cap remain unused. These visas should be made available to other companies that were not able to obtain them earlier in the season. Such transfer would help increase effectiveness of the program and better assist employers, who need to fill their seasonal needs. Additionally, the timing of the H-2B application process is tricky for many employers, providing just a small time frame to companies that were not selected in the lottery to address their situation before the season starts in March. Therefore, the U.S. should consider starting the H-2B process earlier to avoid this situation.

Fourth, there is room to streamline the H-2B application process. The H-2B process involves six government agencies under three separate Departments and research shows that there are clearly cases for which the USCIS conducts labor certification reviews that are duplicative of those already done by DOL earlier in the process (Bier 2021). Indeed, there is some reason to believe that the application processes under the two programs were made difficult deliberately to discourage employers from hiring foreign workers (Martinez 2021).

Fifth, considering how complicated the processes of applying for the H-2B is for both employers and workers, it is puzzling that the U.S. government hasn't introduced better control mechanisms to prevent violations within the program. In particular, the U.S. needs to establish responsibilities of third-party recruiters and try to better align them with sending countries. Better monitoring and control mechanisms and enhanced cooperation with Mexico and other sending countries to minimize abusive practices during the H-2B process would also improve the program.

Sixth, although this analysis showed Canada's programs for low-wage non-agricultural workers are not too different from those in the U.S., the United States could learn from some of Canada's policies to inspire changes in existing programs and to establish new ones. For example, Canada allows TFWP workers to apply for an open work permit in cases of abuse and exploitation. This measure allows workers to feel more confident and comfortable to report unethical practices by their employers. Although there may be other factors preventing workers from standing up for themselves, such as lack of information and knowledge of the labor market as well as limited language skills, I believe it is a step in the right direction toward improving foreign workers' rights. In general, I believe the U.S. should consider adopting open work permit policies, learning lessons from Canada's experience. If done right, 'open' or at least 'occupation-open' work permits would not only give more rights to workers and protect them from exploitation, but they would also motivate employers to treat workers better and create good work environment, so workers do not have a reason to leave. Such policy could also provide more flexibility for employers who may not have full time work needs for a whole season, allowing them to "share" workers with other employers as has been currently done under the Australian Seasonal Worker Program's Portability Pilot (Australian Government 2021).

Finally, the U.S. should consider opening new pathways for low-wage temporary workers in year-round occupations. Currently, the U.S. does not have any program to assist employers with filling job shortages in sectors such as caregiving, which disadvantages many companies that struggle to fill these gaps. This is another area in which the U.S. could learn from mobility pathways in Canada as well as other high-income countries.

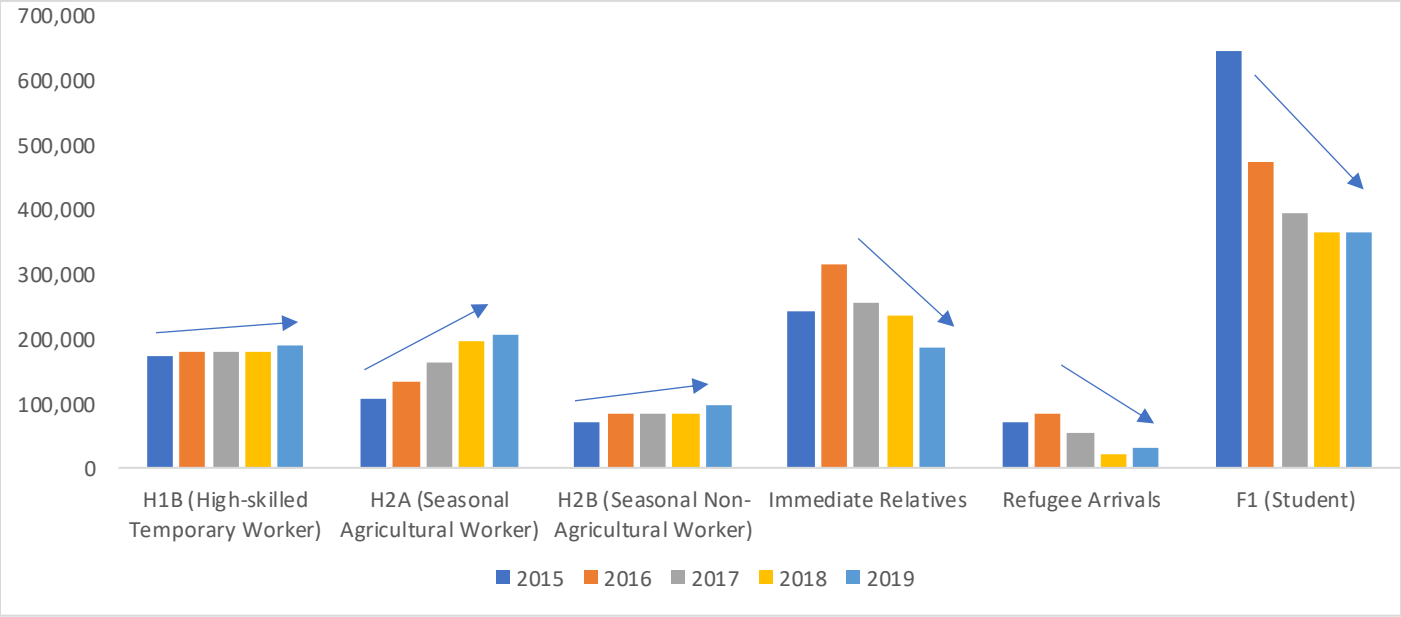
Besides providing more stability and certainty to employers, these modifications of the H-2B program would also increase quality of the program for the most vulnerable actors in the process – the workers. By increasing the cap, returning unused visas to the system and introducing a pathway for year-round occupations, the proposed changes would allow more individuals to come to the United States, which would have positive impact on welfare of not only the foreign-born workers themselves, but also their families as many of them send money to their home countries in form of remittances.

At the same time, the recommendations would strengthen oversight and control mechanisms within the H-2B program and provide additional safeguards for workers experiencing abuse and exploitation during the hiring process and employment in the United States. Codification of the program in the U.S. law would ensure workers' protections cannot be changed by a simple regulation. Additionally, further clarification of third-party recruiters' responsibilities in the H-2B process and their alignment with sending countries together with implementation of stronger monitoring and control mechanisms would allow for reduction of abusive practices that foreign-born workers often face during the H-2B process as discussed in Chapter 3. Similarly, 'open' or 'occupation-open' work permits could serve as a safeguard to workers experiencing abuse at their worksite, allowing them to change employers and possibly empower them to report exploitative practices.

Appendix

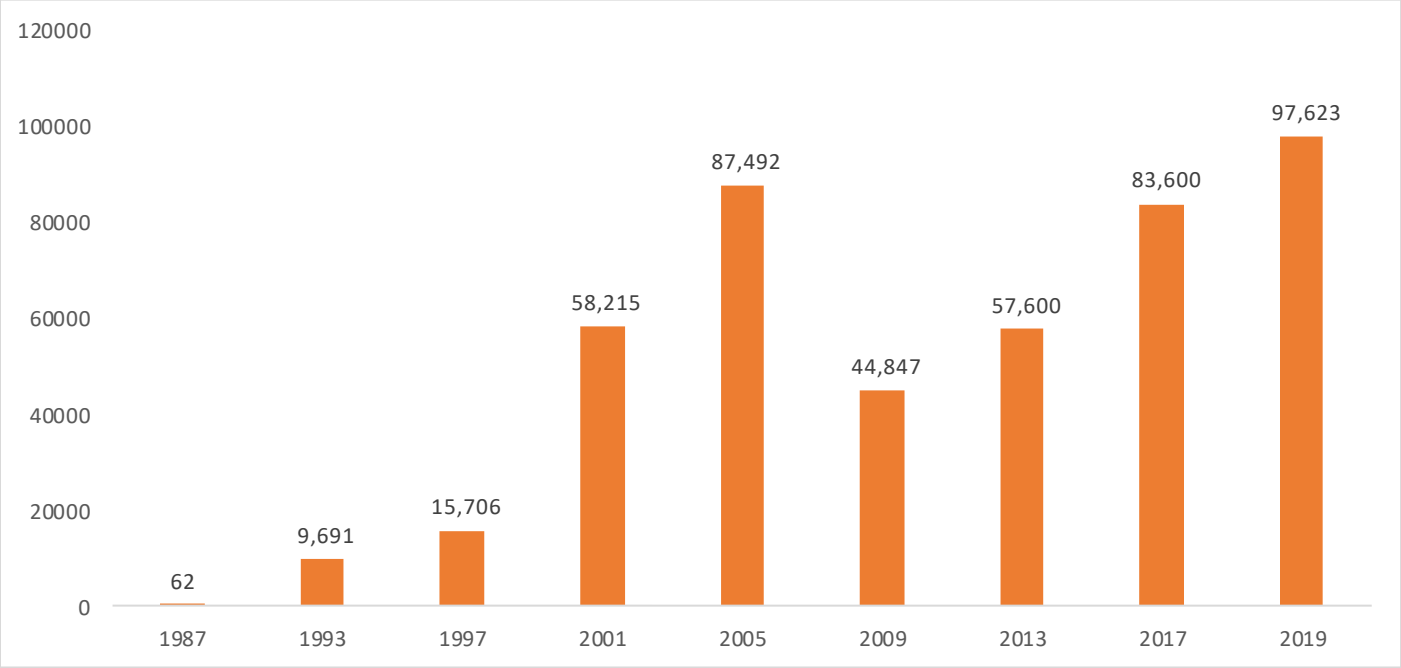
Charts

Chart 1. Increase/Decrease in Selected U.S. Visa Categories, FY2015-2019



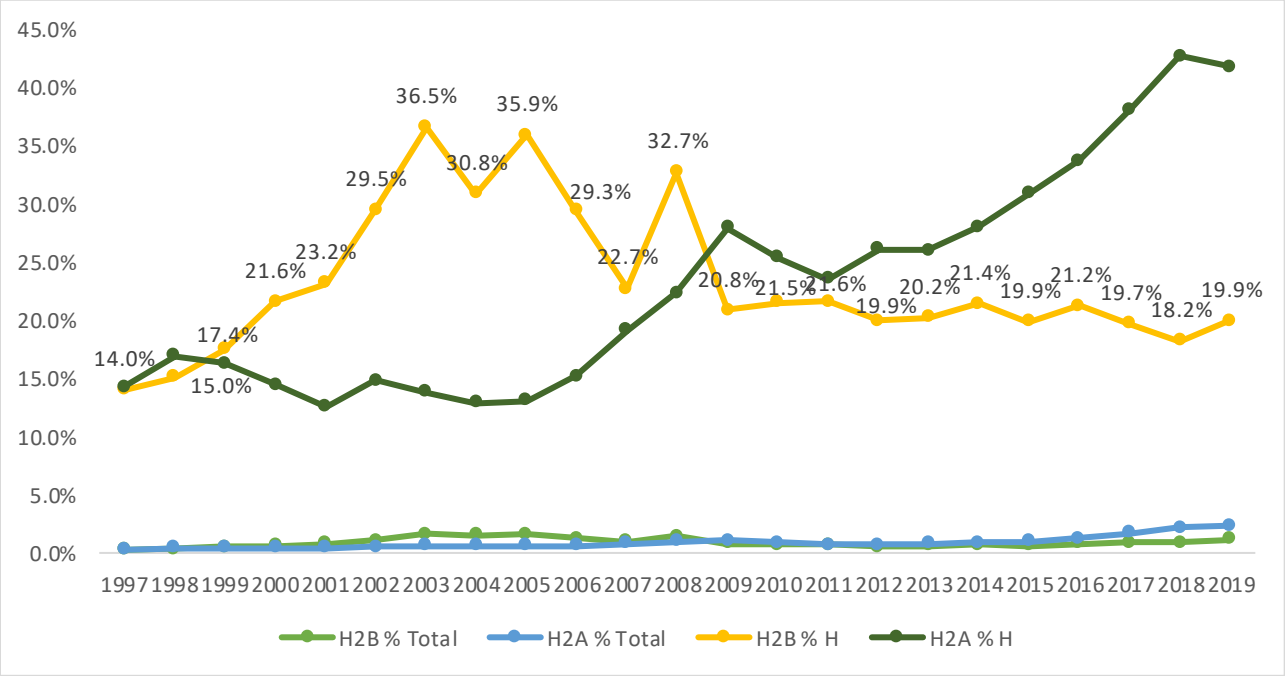
Source: (U.S. Department of State n.d.)

Chart 2. Increase in Number of Issued H-2B Visas Over Time



Source: (U.S. Department of State n.d.; Fitzgerald 2012; Bruno 2018)

Chart 3. H-2B and H-2A Visas as Percentage of Total H Visas and Overall Total Nonimmigrant Visas



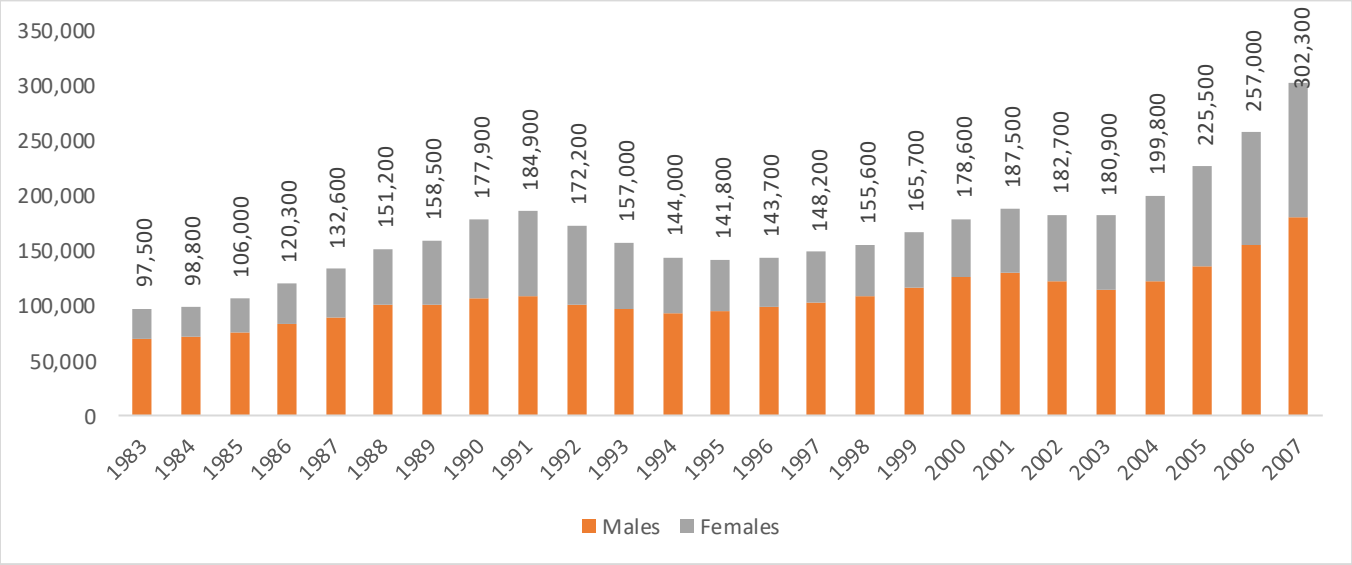
Source: (U.S. Department of State n.d.)

Chart 4. Top 10 Nationalities of H-2B workers, 1997-2019

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico	Mexico
2	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica	Jamaica
3	Philippines	China - mainland	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Romania	Philippines	Philippines	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala	Guatemala
4	China - mainland	Philippines	Honduras	Honduras	Honduras	Great Britain and Northern Ireland	Great Britain and Northern Ireland	South Africa	South Africa	Guatemala	Guatemala	Guatemala	Philippines	Philippines	South Africa	South Africa	South Africa	South Africa	Philippines	South Africa	South Africa	South Africa	South Africa
5	Japan	Japan	Dominican Republic	Dominican Republic	Great Britain and Northern Ireland	Honduras	South Africa	Great Britain and Northern Ireland	Great Britain and Northern Ireland	South Africa	Romania	Romania	South Africa	South Africa	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Honduras	Philippines	Serbia
6	Dominican Republic	Dominican Republic	Philippines	Great Britain and Northern Ireland	Australia	Australia	Australia	Australia	Australia	Philippines	Great Britain and Northern Ireland	South Africa	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Philippines	Philippines	Philippines	v	South Africa	Philippines	Philippines	Ukraine	Ukraine
7	India	Guatemala	Great Britain and Northern Ireland	Australia	New Zealand	South Africa	Brazil	Brazil	Brazil	Great Britain and Northern Ireland	South Africa	Israel	Honduras	El Salvador	El Salvador	El Salvador	El Salvador	Honduras	Honduras	Honduras	Great Britain and Northern Ireland	Honduras	Philippines
8	Great Britain and Northern Ireland	Great Britain and Northern Ireland	Australia	Brazil	Dominican Republic	Dominican Republic	Poland	Dominican Republic	Romania	Brazil	Australia	Great Britain and Northern Ireland	Israel	Indonesia	Costa Rica	Romania	Honduras	El Salvador	El Salvador	Romania	El Salvador	Serbia	Honduras
9	Guatemala	Australia	Japan	Japan	South Africa	Brazil	Dominican Republic	Bulgaria	Dominican Republic	Bulgaria	Israel	Australia	Indonesia	Honduras	Japan	Honduras	Romania	Romania	Romania	Ukraine	Romania	El Salvador	Romania
10	Venezuela	Venezuela	Venezuela	New Zealand	Philippines	New Zealand	Bulgaria	Philippines	Costa Rica	Australia	Bulgaria	Brazil	Romania	Costa Rica	Romania	Japan	Japan	Japan	Japan	El Salvador	Ukraine	Great Britain and Northern Ireland	El Salvador

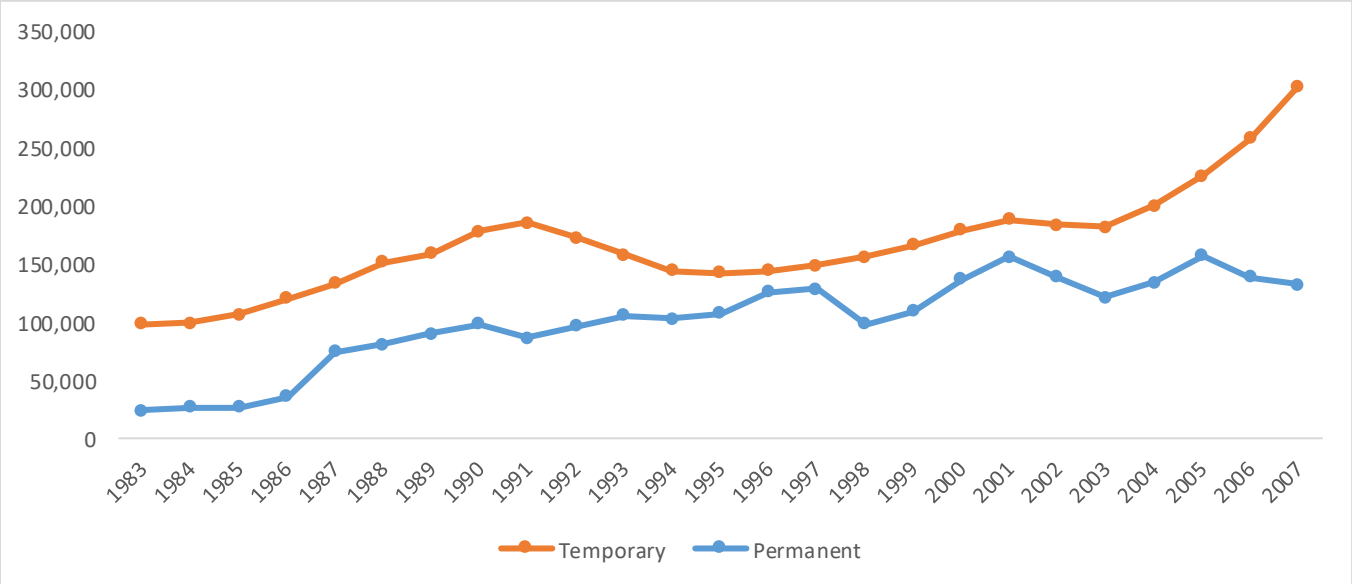
Source: (U.S. Department of State n.d.)

Chart 5. Number of Female and Male Temporary Foreign Workers in Canada (initial entry, reentry, still present) 1983–2007



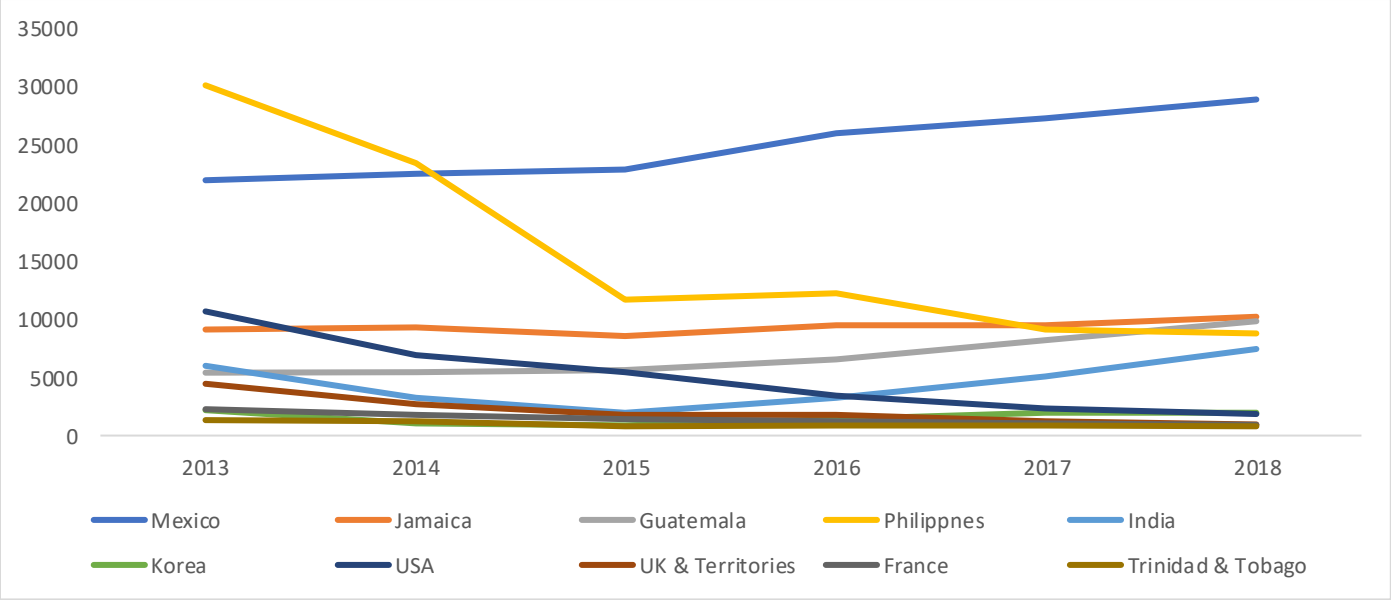
Source: (Fudge and MacPhail 2009)

Chart 6. Number of Temporary Foreign Workers (initial entry, reentry, still present) and Permanent Residents in Canada (Economic class), 1983–2007



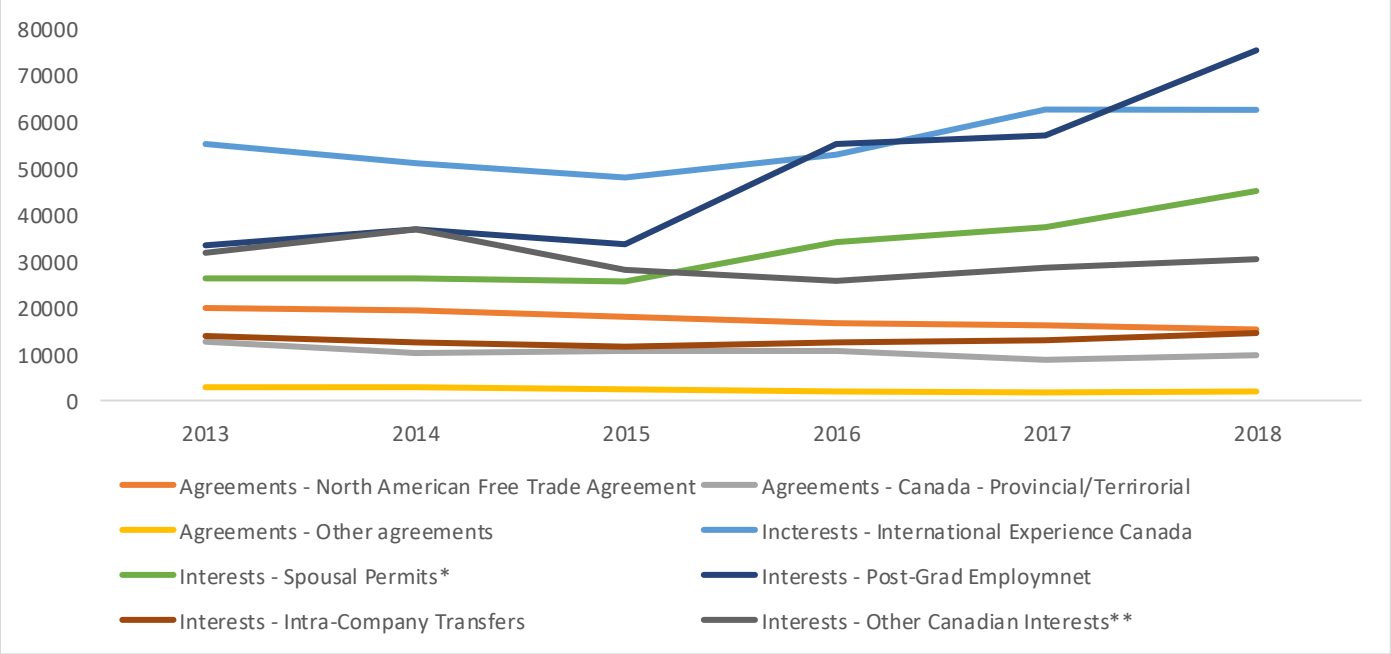
Source: (Fudge and MacPhail 2009)

Chart 7. New Temporary Work Permits Under the Temporary Foreign Worker Program in Canada, By Permit Holders' Top10 Countries of Citizenship, 2013-2018



Source: (Chartrand and Vosko 2020)

Chart 8. New Temporary Work Permits Under the International Mobility Program in Canada, by Selected program Subcategory, Annually, 2013-2018

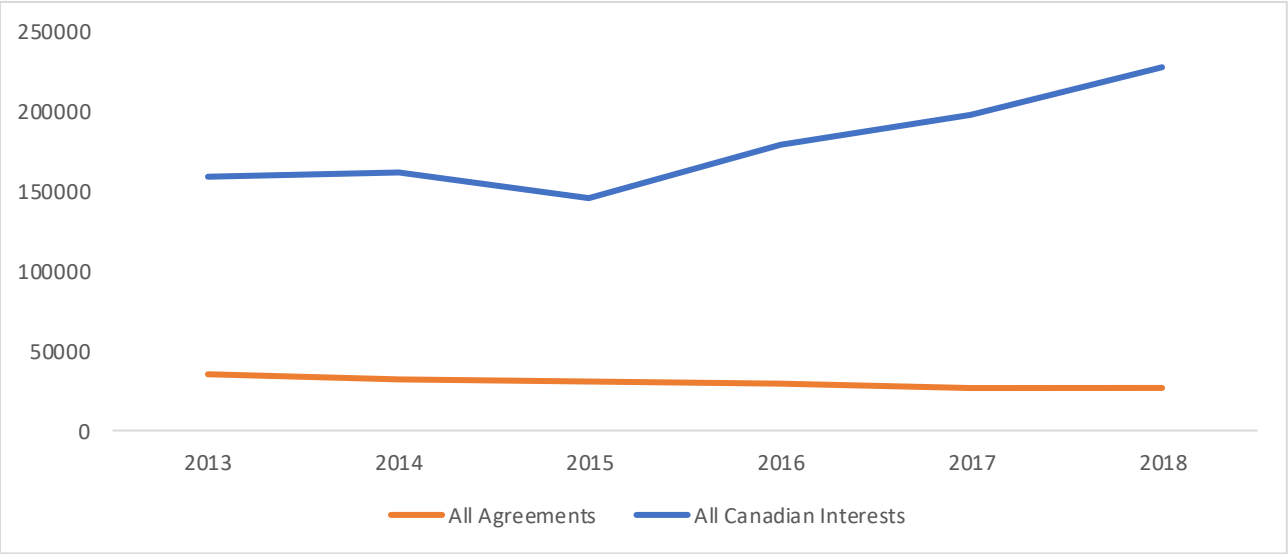


*Includes both Spouses of skilled workers and Spouses of students subprogrammes

**Includes "Significant Benefit - General." "Reciprocal employment - other," exchange professor, entepreneur/self-employed; emergency repairs; charitables or religious work; research, educational or training programmes; medical residents and fellows; and post-doctoral PhD fellows and award recipients.

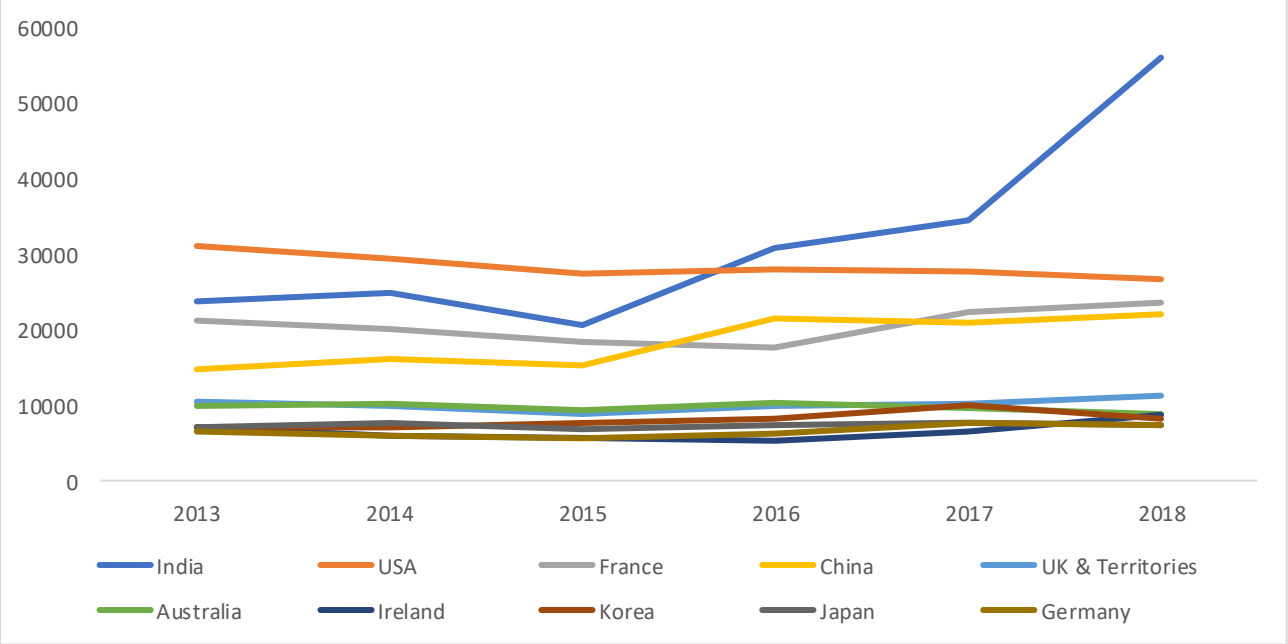
Source: (Chartrand and Vosko 2020)

Chart 9. New Temporary Work Permits Under the International Mobility Program in Canada (All under the Agreements and Canadian Interests Categories), Annually, 2013-2018



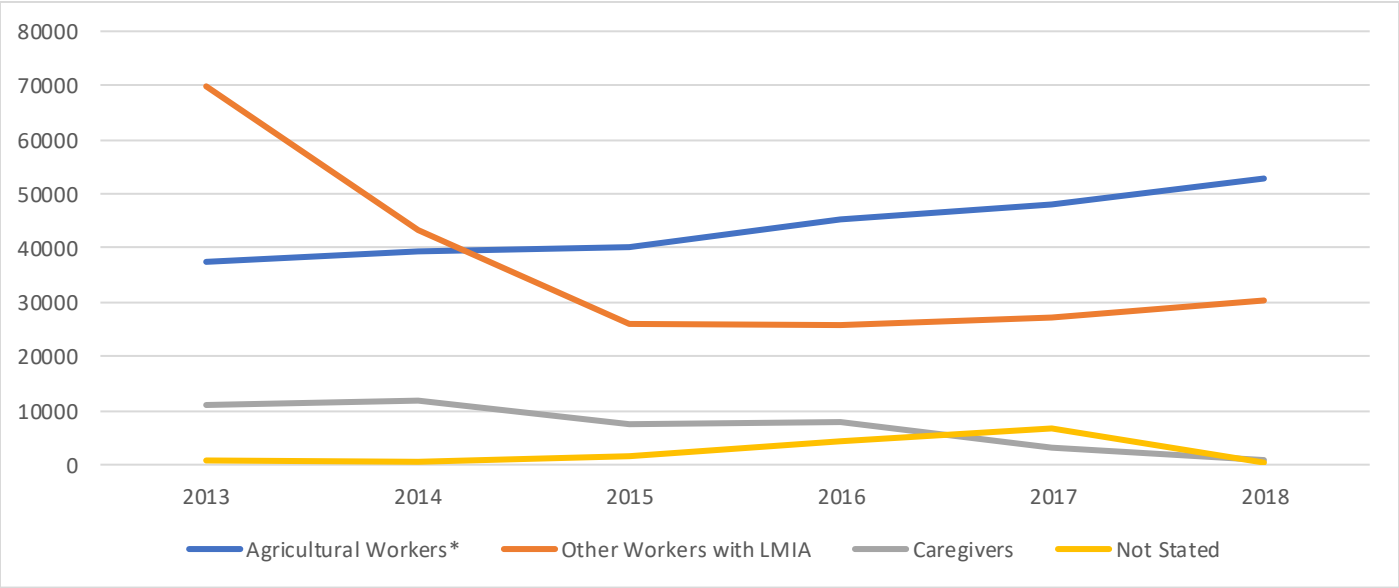
Source: (Chartrand and Vosko 2020)

Chart 10. New Temporary Work Permits Under the International Mobility Program in Canada, By Permit Holders' Top 10 Countries of Citizenship, Annually, 2013-2018



Source: (Chartrand and Vosko 2020)

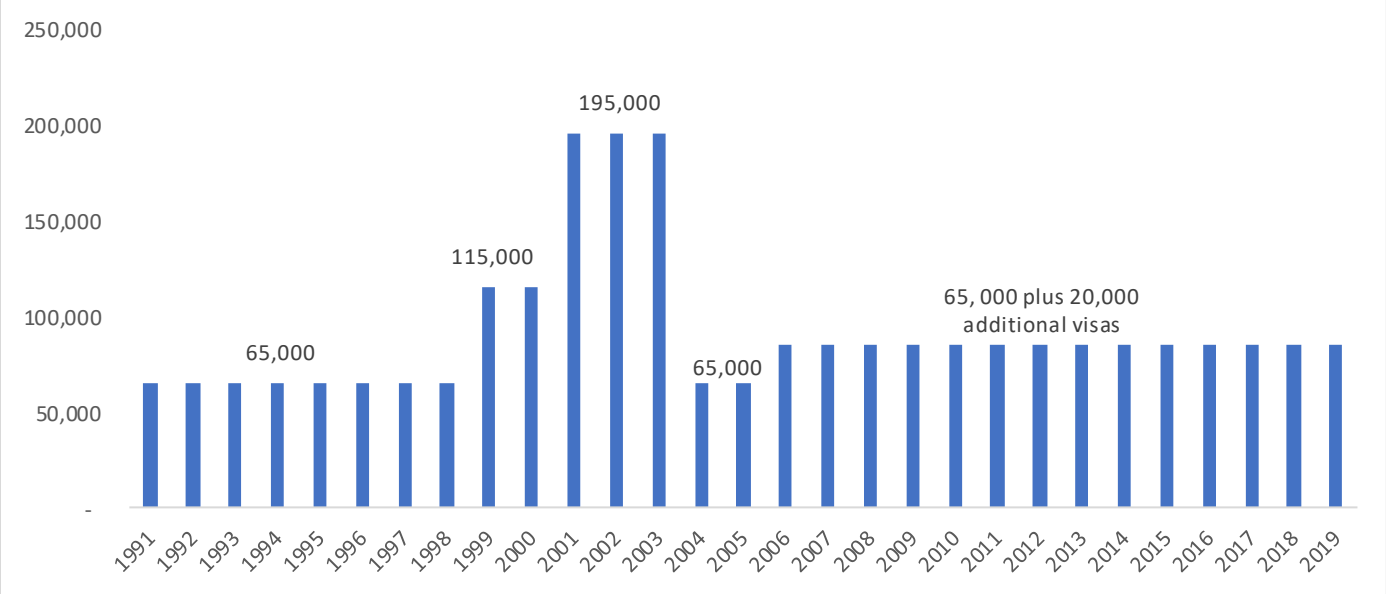
Chart 11. New Temporary Work Permits Under the Temporary Foreign Worker Program in Canada, By Subprogram, Annually, 2013-2018



*Data on Agricultural Workers and Agricultural subcategories from 2013 to 30 November 2018.

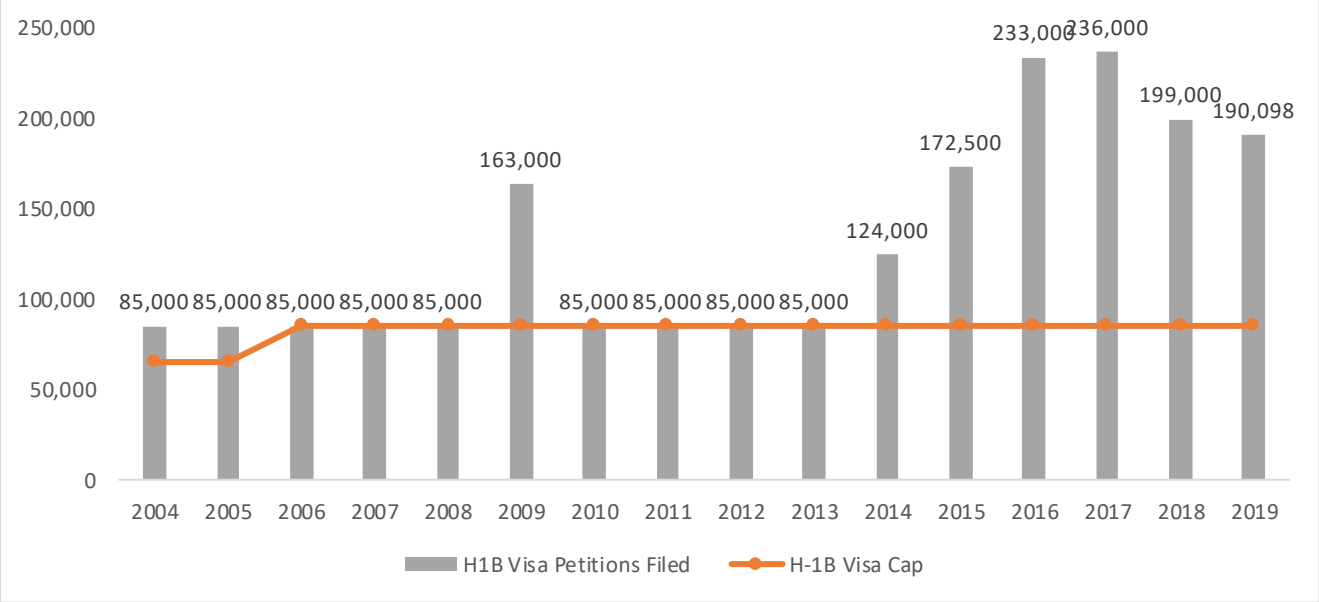
Source: (Chartrand and Vosko 2020)

Chart 12. Annual H-1B Visa Cap, FY1990-FY2019



Source: (American Immigration Council 2020)

Chart 13. Annual H-1B Visa Cap and H1B Visa Petitions Filed, FY2004-FY2019



Source: ("H1B Visa Cap Reach Dates History FY 2000 to 2021, Graph - USCIS Data" 2021)

Chart 14. Top 10 U.S. States with Employers Receiving Most H-2B Workers, FY2014-2019

2019	2018	2017	2016	2015	2014
Texas	Texas	Texas	Texas	Texas	Texas
Colorado	Florida	Florida	Florida	Florida	Florida
Florida	Colorado	Colorado	Colorado	Colorado	Louisiana
North Carolina	Louisiana	Louisiana	Massachusetts	Louisiana	Virginia
Pennsylvania	Pennsylvania	North Carolina	Louisiana	Virginia	Colorado
Louisiana	Virginia	Virginia	Pennsylvania	New York	Pennsylvania
Alaska	North Carolina	Massachusetts	Virginia	Pennsylvania	New York
New York	South Carolina	Pennsylvania	North Carolina	Massachusetts	Maryland
Virginia	New York	South Carolina	Arizona	Maryland	Massachusetts
Maryland	Maryland	Arizona	South Carolina	North Carolina	North Carolina

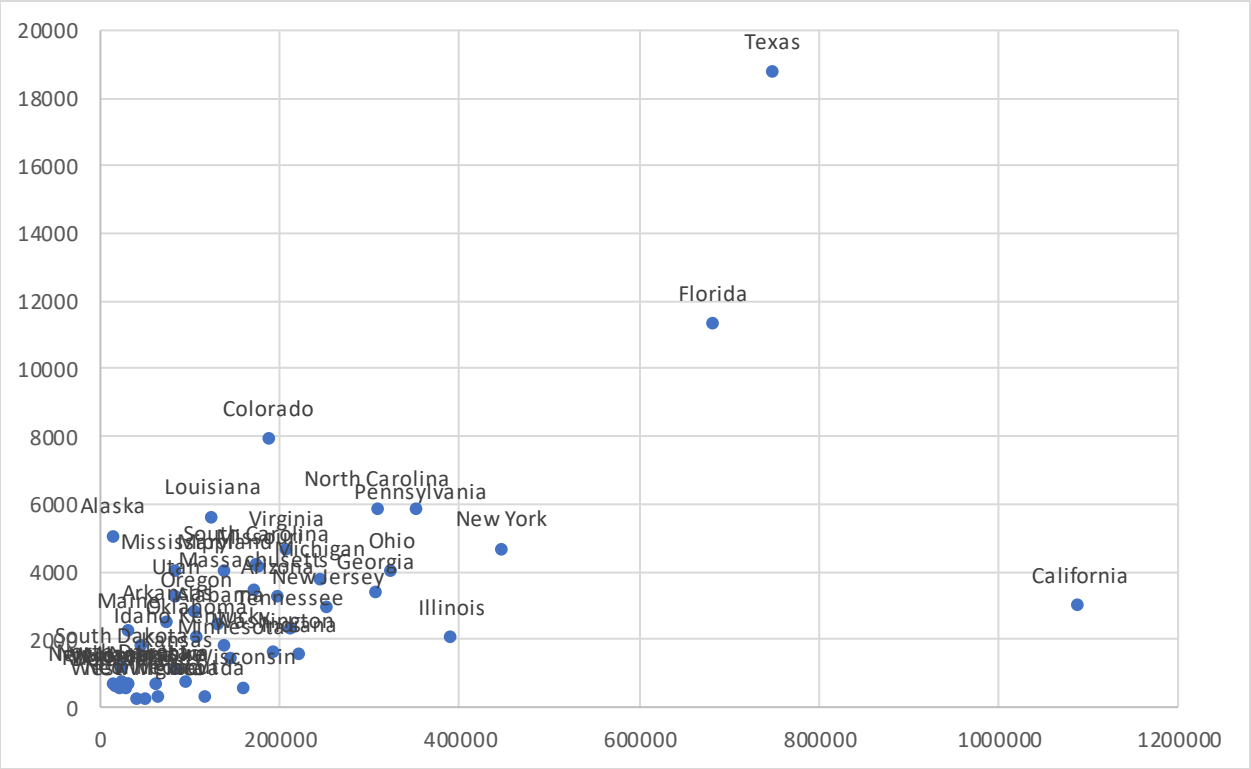
Resource: (U.S. Department of Labor 2019b).

Chart 15. Top10 Occupations for which Employers Receive H-2B Workers, FY2014-2019

2019	2018	2017	2016	2015	2014
Landscaping & Groundskeeping Workers	Landscaping and Groundskeeping Workers	Landscaping & Groundskeeping Workers	Landscaping & Groundskeeping Workers	Landscaping & Groundskeeping Workers	Landscaping and Groundskeeping Workers
Forest and Conservation Workers	Forest and Conservation Workers	Forest & Conservation Workers	Forest & Conservation Workers	Forest & Conservation Workers	Forest and Conservation Workers
Maids & Housekeeping Cleaners	Maids and Housekeeping Cleaners	Maids and Housekeeping Cleaners	Maids and Housekeeping Cleaners	Amusement and Recreation Attendants	Maids and Housekeeping Cleaners
Meat, Poultry, & Fish Cutters and Trimmers	Amusement and Recreation Attendants	Amusement and Recreation Attendants	Amusement and Recreation Attendants	Maids and Housekeeping Cleaners	Amusement and Recreation Attendants
Amusement & Recreation Attendants	Meat, Poultry, and Fish Cutters and Trimmers	Meat, Poultry, and Fish Cutters and Trimmers	Meat, Poultry, and Fish Cutters and Trimmers	Construction Laborers	Meat, Poultry, and Fish Cutters and Trimmers
Waiters and Waitresses	Waiters and Waitresses	Construction Laborers	Construction Laborers	Meat, Poultry, and Fish Cutters and Trimmers	Construction Laborers
Construction Laborers	Construction Laborers	Waiters and Waitresses	Waiters and Waitresses	Waiters and Waitresses	Coaches and Scouts
Cooks, Restaurant	Cooks, Restaurant	Cooks, Restaurant	Cooks, Restaurant	Packers and Packagers, Hand	Waiters and Waitresses
Laborers & Material Movers	Counter Attendants, Cafeteria, Food Concession	Counter Attendants, Cafeteria, Food Concession	Helpers--Production Workers	Cooks, Restaurant	Nonfarm Animal Caretakers
Nonfarm Animal Caretaker	Nonfarm Animal Caretakers	Nonfarm Animal Caretakers	Nonfarm Animal Caretakers	Nonfarm Animal Caretakers	Helpers--Production Workers

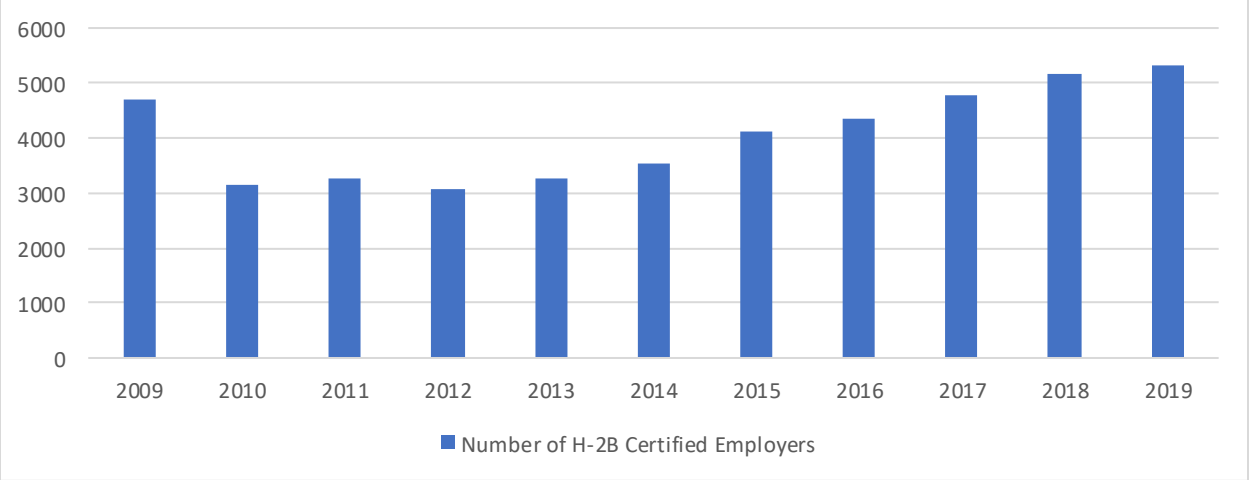
Resource: (U.S. Department of Labor 2019b).

Chart 16. Relationship Between Number of Workers in H-2B Sectors and H-2B Certification Requests by U.S. State



Source: (Foreign Labor Certification 2020; U.S. Bureau of Labor Statistics 2021)

Chart 17. Number of Certified H-2B Employers, FY2009-2019



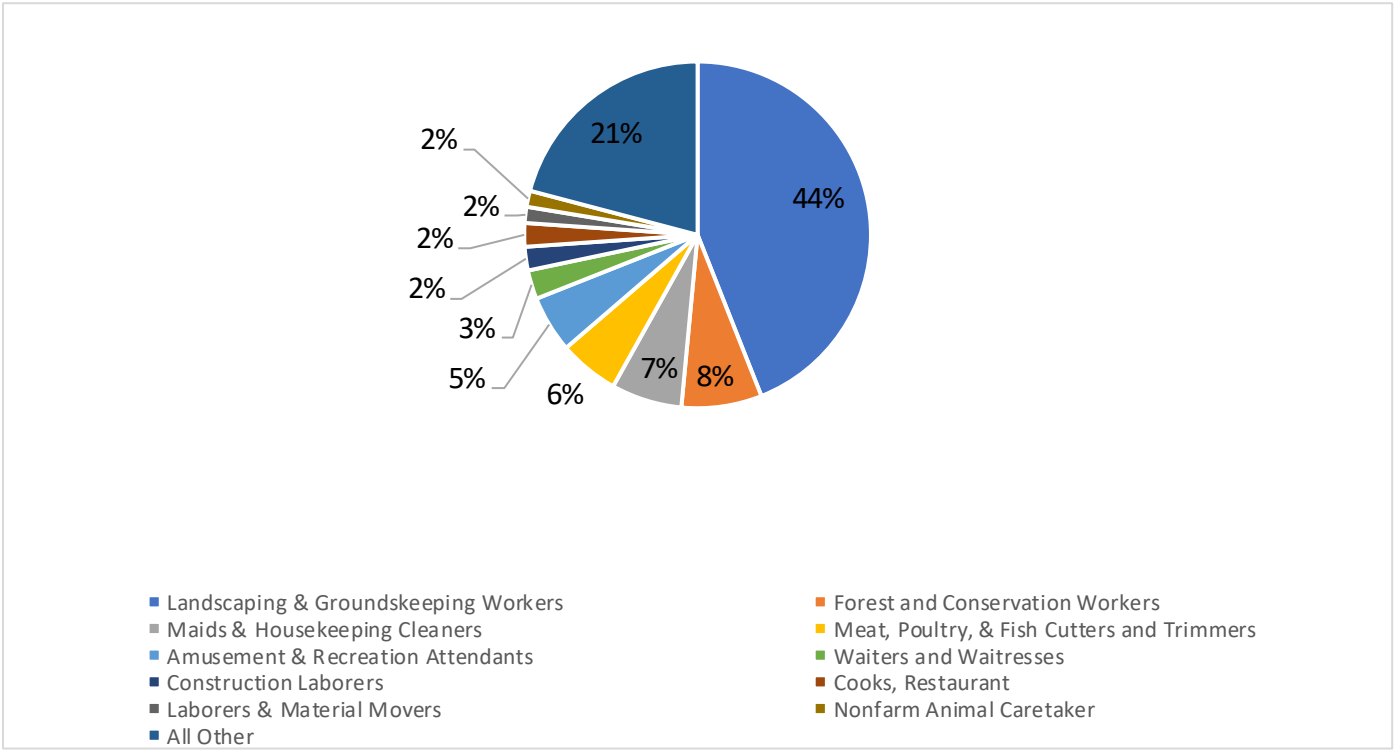
Sources: (Foreign Labor Certification 2020; U.S. Department of State n.d.)

Chart 18. Top5 H-2B Employers, FY2014-FY2019

2019		2018		2017		2016		2015		2014	
Company	**H-2B Industry**	**Company**	**H-2B Industry**	**Company**	**H-2B Industry**	**Company**	**H-2B Industry**	**Company**	**H-2B Industry**	**Company**	**H-2B Industry**
BrightView Landscape Services	**Landscaping**	Brightview Landscapes	**Landscaping**	Progressive Solutions, LLC	**Landscaping**	Genuine Builders, Inc.	**Construction**	TruGreen LandCare	**Landscaping**	Alpha Services, LLC	**Forestry**
Imperial Pacific International, LLC	**Construction**	Progressive Solutions, LLC	**Landscaping**	Trident Seafoods, Inc.	**Seafood Processing**	Silver Bay Seafoods, LLC	**Seafood Processing**	Silver Bay Seafood, LLC	**Seafood Processing**	Faith Forestry Services, Inc.	**Forestry**
Silver Bay Seafoods	**Seafood Processing**	Imperial Pacific International	**Construction**	Faith Forestry Services, Inc.	**Forestry**	The Brickman Group LTD LLC (now BirightView)	**Landscaping**	Superior Forestry Service, Inc.	**Forestry**	Landscapes Management Company, LLC	**Landscaping**
Progressive Solutions, LLC	**Landscaping**	Alpha Services, LLC	**Forestry**	Brightview Landscapes, LLC	**Landscaping**	Faith Forestry Services, Inc	**Forestry**	Alpha Services, LLC	**Forestry**	Valley Crest Companies	**Landscaping**
Triple H Services, LLC	**Landscaping**	Faith Forestry Services, Inc.	**Forestry**	Alpha Services, LLC	**Forestry**	ValleyCrest Companies	**Landscaping**	The Brickman Group LTD LLC (now BirightView)	**Landscaping**	Progressive Solutions, LLC	**Landscaping**

Resource: (U.S. Department of Labor 2019b).

Chart 19. Sectors Share of the H-2B Program in FY2019



Source: (U.S. Department of Labor 2019b)

Chart 25. Top10 States with the Most H-2B Certifications in Landscaping Sector vs. Top10 States with Most H-2B Certifications Overall, FY2019

Landscaping Sector		All Sectors	
State	H-2B Certifications	State	H-2B Certifications
Texas	10,024	Texas	16,106
Pennsylvania	7,303	Colorado	6,943
Colorado	4,470	Florida	5,768
Ohio	3,162	North Carolina	5,074
Missouri	3,110	Pennsylvania	5,006
North Carolina	2,871	Louisiana	4,924
Maryland	2,145	Alaska	4,892
Virginia	2,093	New York	4,590
Louisiana	1,998	Virginia	4,165
Utah	1,987	Maryland	4,022

Source: (U.S. Department of Labor 2019b; Foreign Labor Certification 2020)

Tables

Table 1. U.S. Non-Immigrant Visa Categories

Purpose of Travel	Visa Category
Athlete, amateur or professional (competing for prize money only)	B-1
Au pair (exchange visitor)	J
Australian professional specialty	E-3
Border Crossing Card: Mexico	BCC
Business visitor	B-1
CNMI-only transitional worker	CW-1
Crewmember	D
Diplomat or foreign government official	A
Domestic employee or nanny - must be accompanying a foreign national employer	B-1
Employee of a designated international organization or NATO	G1-G5, NATO
Exchange visitor	J
Foreign military personnel stationed in the United States	A-2 NATO1-6
Foreign national with extraordinary ability in Sciences, Arts, Education, Business or Athletics	O
Free Trade Agreement (FTA) Professional: Chile, Singapore	H-1B1 - Chile H-1B1 - Singapore
International cultural exchange visitor	Q
Intra-company transferee	L
Medical treatment, visitor for	B-2
Media, journalist	I
NAFTA professional worker: Mexico, Canada	TN/TD
Performing athlete, artist, entertainer	P
Physician	J , H-1B
Professor, scholar, teacher (exchange visitor)	J
Religious worker	R
Specialty occupations in fields requiring highly specialized knowledge	H-1B
Student: academic, vocational	F, M
Temporary agricultural worker	H-2A
Temporary worker performing other services or labor of a temporary or seasonal nature.	H-2B
Tourism, vacation, pleasure visitor	B-2
Training in a program not primarily for employment	H-3
Treaty trader/treaty investor	E
Transiting the United States	C
Victim of Criminal Activity	U
Victim of Human Trafficking	T
Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR)	V
Renewals in the U.S. - A, G, and NATO Visas	
U.S. citizen fiancé(e) and spouse for immigration related purposes	K

Source: (U.S. Department of State Bureau of Consular Affairs n.d.)

Table 2. Selected Foreign Temporary Worker Protections under the U.S. H-2A and H-2B Programs

	H-2B Non-Agricultural	H-2A Agricultural
Ability to change employers	no	no
Work permit costs covered	yes	yes
Visa costs covered/reimbursed	yes	yes
Transportation costs from abroad covered	yes	yes
Required Fees	- No Labor certification fee - $460 per person application - a $150 fraud and prevention fee - $190 per person visa fee	- $100 temporary agricultural labor certification fee and $10 for each H-2A certified worker (can't exceed $1,000) - $460 per application - $190 per person visa fee
Guaranteed Hours	no	yes (75 percent)
Health Insurance covered*	no	no
Housing cost covered	no	yes
Transportation to worksite	no	yes
Food or provide kitchen	no	yes
Overtime	yes	no**
Return trip costs provided	yes	yes
Ability to create unions	no***	no***
Pathway to Permanent Residency	no	no
Enforcement by	DOL's Wage and Hour Division (WHD)	DOL's Wage and Hour Division (WHD)

* H-2A and H-2B workers are eligible for health insurance under the Affordable Care Act

** Except for the state of California and newly also Washington.

*** Some industries may be more open foreign workers than others but there is no law governing bargaining rights of H-2B workers.

**** Except for California.

Sources: (Martinez 2021; Costa 2016; Bier 2021; Wasem 2007; "ACA Guide for Lawfully Present Farmworkers and Their Families" 2015; "Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)" n.d.; "Fact Sheet #78: General Requirements for Employers Participating in the H-2B Program" n.d.)

Table 3. Comparison of General Framework of the U.S. Temporary Worker Programs

	H-2B Non-Agricultural	H-2A Agricultural
Type of law	Federal	Federal
Basis of the programs	Sectors/Occupations	Sectors/Occupations
Sectors	Agriculture	All with seasonal need
Type of need	Seasonal	Seasonal
Skill Level	Low-Skill only	Low-Skill only
Sectors	With seasonal need (landscaping, amusement parks, housekeeping)	Agriculture
Work Permit Type	Closed	Closed

Sources: (U.S. Citizenship and Immigration Services 2020a; 2020g)

Table 4. Comparison of Application Processes for U.S. H-2B and H-2A Programs

	H-2B			H-2A		
	Action	**Timeframe**	**Agency**	**Action**	**Timeframe**	**Agency**
Pre-Filing	Registration	150-120 calendar days before the date of need	DOL's Office of Foreign Labor Certification (OFLC)	N/A		
	Prevailing Wage Determination	Must obtain at least 60 calendar days before the date of need	DOL's NPWC	N/A		
	H-2B job order	90-75 days prior to the date of need	DOL's Local SWA	agricultural job order	75-60 days before date of need	DOL's Local SWA
Certification	H-2B Application	90-75 days prior to the date of need	DOL's Chicago National Processing Center (NPC)	H-2A Application	45 days before the date of need	DOL's Chicago National Processing Center (NPC)
	Recruitment of U.S. Workers	N/A	H-2B Employers	Recruitment of U.S. Workers	N/A	H-2A Employers
	Completion of Temporary Labor Certification Process	N/A	DOL's Chicago National Processing Center (NPC)	Completing the Temporary Labor Certification Process	No less than 30 calendar days before the start date of work	DOL's Chicago National Processing Center (NPC)
Post-Certification	Filing the H-2A Nonimmigrant Petition	N/A	DHS's USCIS	Filing the H-2A Nonimmigrant Petition	N/A	DHS's USCIS

	Workers' Appointments at embassies and Consulates abroad	N/A	State Department	Workers' Appointments at embassies and Consulates abroad	N/A	State Departmen t
	Crossing the Border and Issuance of the I-94 Arrival-Departure Record	N/A	DHS's CBP	Crossing the Border and Issuance of the I-94 Arrival-Departure Record	N/A	DHS's CBP

Sources: (U.S. Department of Labor n.d.; n.d.; Martinez 2021; The Seasonal Employment Alliance n.d.)

Table 5. Labor Market Test and Visa Cap in the U.S. Temporary Worker Programs

	H-2B	**H-2A**	**H-1B**
Labor Market Test	Required	Required	N/A
Cap	66,000 workers annually	N/A	65,000 + 20,000 for foreign workers who hold advanced degrees from a US university.

Sources: (U.S. Citizenship and Immigration Services 2020a; 2021; 2020g)

Table 6. Prevailing Wages Set For Canada's Provinces/Territories

Province/Territory	Wage (CAN$/hour)
Alberta	$27.28
British Columbia	$25.00
Manitoba	$21.60
New Brunswick	$20.12
Newfoundland and Labrador	$23.00
Northwest Territories	$34.36
Nova Scotia	$20.00
Nunavut	$32.00
Ontario	$24.04
Prince Edward Island	$20.00
Quebec	$23.08
Saskatchewan	$24.55
Yukon	$30.00

Source: (Moving2Canada 2020)

Table 7. Overview of Canada's TFWP and IMP

	TFWP	**IMP**
Labor Market Test	LMIA required	No LMIA required
Cap	A cap of 10 percent on the proportion of their low-wage temporary foreign workforce	No cap
Work Permits	Closed (employer-specific)	Open or closed
Goals	Labour market-based (to fill shortages on a temporary basis)	To advance Canada's broader economic and cultural interests
Prevailing Wage	Prevailing wage requirement	No wage requirement
Basis	Based on specific labour needs based on occupation and region	Based partially on international reciprocal agreements (e.g. IEC, NAFTA, CETA)
Application screening	Screens applications based on the wage of the position offered	Screens applications based on the wage offered, but certain streams take occupation skill level into account
Hiring Practices	Typically requires employers to search for Canadian workers before being able to hire a foreign worker	Employers may hire without first offering the position to Canadians
Transition Plan Requirement	Employers hiring for high-wage positions usually must provide a transition plan*	Employers do not have to provide a transition plan
Fees	Employer pays fee for LMIA application (CAN$1,000)	Employer pays compliance fee (CAN$230) unless job applicant holds an open work permit (in which case, no fee is required)
Two-Week Processing	Two-week processing standard is only available for certain occupations and top 10 percent wage earners, otherwise the process can run to many months	Many IMP streams have a two-week work permit processing standard
Oversight	Overseen by Employment and Social Development Canada (ESDC)	Overseen by Immigration, Refugees and Citizenship Canada (IRCC)

* Transition Plans are statements by TFWP employers to Service Canada that make clear, relevant, and measurable commitments to participate in activities that will help employers transition into a Canadian workforce during the validity of your LMIA (Munera 2020).

Source: (Moving2Canada 2020; Meurrens 2018; Chartrand and Vosko 2020)

Table 8. Comparison of General Framework of the U.S. and Canadian Temporary Worker Programs

	U.S.		Canada	
	H-2B	**H-2A**	**TFWP**	**IMP**
Programs	For low-skilled workers from sectors other than agriculture	For low-skilled agricultural Workers only	6 subprograms, including agricultural stream	at least 6 subprograms based on the country's international agreements and interests)
Type of law	Federal	Federal	Combination of federal and provincial	Combination of federal and provincial
Basis of the programs	Sectors/Occupations	Sectors/Occupations	Median wage International	Agreements/Canada's interests
Type of need	Seasonal	Seasonal	Temporary	Temporary
Skill Level	Low-Skill only	Low-Skill only	All skill levels	All skill levels
Sectors	With seasonal need (landscaping, amusement parks, housekeeping)	Agriculture	Open to all, but currently primary agriculture	All
Period of Stay	Up to 3 years	Up to 3 years	Up to 4 years	Up to 4 years
Involved Government Agencies	State Workforce Agency U.S. Department of Labor U.S. Department of Homeland Security U.S. State Department	State Workforce Agency U.S. Department of Labor U.S. Department of Homeland Security U.S. State Department	- Employment and Social Development Canada (ESDC) - Immigration, Refugees and Citizenship Canada (IRCC) - Canada Border Services Agency (CBSA)	- Immigration, Refugees and Citizenship Canada (IRCC) Canada Border Services Agency (CBSA)

Sources: Various. Author's analysis.

Table 9. Comparison of Features of the U.S. and Canadian Temporary Worker Programs

	U.S.		Canada	
	H-2B	**H-2A**	**TFWP**	**IMP**
Labor Market Test	Required	Required	Required	Not Required
Work Permit Type	Closed	Closed	Closed	Open or Closed
Required Fees	- No Labor certification fee - $460 per person application - a $150 fraud and prevention fee - $190 per person visa fee	- $100 temporary agricultural labor certification fee and $10 for each H-2A certified worker (can't exceed $1,000) - $460 per person petition - $190 per person visa fee	- CAN$1,000 per worker for LMIA* - CAN$155 per person permit processing fee - CAN$100 temporary resident visa (TRV) fee**	- CAN$230 per worker compliance fee (waived if the worker has a valid open work permit) - CAN$100 per person open permit processing fee or CAN$155 per person for closed permit processing - CAN$100 temporary resident visa (TRV) fee**
Fees Paid by	Employers	Employers	Employers (LMIA***) and workers (processing and TRV)	Employers (compliance fee if required) and workers (processing and TRV)
Cap	66,000 workers annually	No cap	10% of the proportion of low-wage temporary foreign workforce per worksite (for employers with 10 or more employees)****	No cap

* Companies in agriculture excluded

** Some foreign nationals are exempt from paying the CAN$100 TRV per section 296(2) of the *IRPR*. **Visa-exempt** foreign nationals (i.e., from visa-exempt countries such as U.S.) are generally required to obtain an **Electronic Travel Authorization** (ETA), which is CAN$7.

*** Companies in agriculture excluded

****Companies in agriculture excluded

Sources: Various. Author's analysis.

Table 10. Selected Foreign Temporary and Native-Born Worker Protections in the U.S. and Canada

	Type	U.S.		Canada	
		H-2B Non-Agricultural	H-2A Agricultural	TFWP (low-skilled)	IMP (low-skilled)
Protections of Native-Born Workers	Labor Test	yes	yes	yes	no
	Cap	yes	no	Yes*	no
	Efforts to recruit native-born workers	yes	yes	yes	no
	Offering comparable or prevailing wages	yes	yes	yes	yes
	Offering comparable benefits	no	no	no	yes
	Native-born workers' conditions not adversely affected	yes	yes	yes	no
	Enforcement by	DOL's Wage and Hour Division (WHD)	DOL's Wage and Hour Division (WHD)	ESDC/Service Canada	IRCC or ESDC/Service Canada on behalf of IRCC
	Must be offered the same "benefits" as foreign workers	yes	yes	yes	yes
Protections for Foreign Workers	Pathway to Permanent Residency	no	no	Yes**	yes
	Ability to change employers	no	no	No (unless new LMIA issued or abuse at workplace)	yes (with open permit)
	Work permit costs covered	yes	yes	yes	yes (if new permit needed)
	Visa costs covered	yes	yes	no	no
	Transportation costs from abroad covered	yes	yes	No (with exception of SAWP)	no

	Guaranteed Hours	no	Yes (75 percent)	no	no
	Health Insurance covered	no	no	No (with exception of SAWP)	Same as native-born workers
	Housing cost covered	no	yes	No (with exception of SAWP)	no
	Transportation to worksite	no	yes	No (with exception of SAWP)	no
	Food or provide kitchen	no	yes	no	no
	Overtime	yes	No***	yes	Same as domestic workers
	Return trip costs provided	yes	yes	Yes	no
	Ability to create unions	No****	No*****	Yes in case of agricultural workers******	Same as domestic workers

*Companies in agriculture excluded

** Not for all TFWP workers, especially low-wage, but there are some options, especially on the provincial level.

***Except for the state of California and newly also Washington (Martinez 2021).

**** Some industries may be more open foreign workers than others but there is no law governing bargaining rights of H-2B workers.

***** Except for California (Martinez 2021).

****** Except for Ontario and Alberta (Russo 2018)

Source: (Wasem 2007) Various. Author's analysis.

Table 11. Top 5 U.S. H-2B Employers in FY2019

Company	Industry	% of All DOL Certifications	DOL Certifications	Number of Employees (2019)	Annual Revenues (2019)
BrightView Landscape Services	**Landscaping**	2.30%	3,485	21,500	$2.4 billion
Imperial Pacific International, LLC	**Construction**	1.80%	2,648	1086	$69.5 million
Silver Bay Seafoods	**Seafood Processing**	1.20%	1,793	1,700	$728.84 million*
Progressive Solutions, LLC	**Landscaping**	1.00%	1,567	25	$5.01 million*
Triple H Services, LLC	**Landscaping**	0.60%	939	N/A	N/A

*Value is an estimate for 2021, earlier value N/A

Source: Various. Author's analysis.

Table 12. Top 5 U.S. H-1B Employers in FY2019

Company	Industry	% of All DOL Certifications	DOL Certifications	Number of Employees (2019)	Annual Revenues (FY2019)
Deloitte Consulting, LLP	**Software developer**	8.40%	84,649	312,030	$46.2 billion
Cognizant Technology Solutions, US Corp	**Software developer**	2.80%	28,229	292,500	$16.7 billion
Apple, Inc.	**Software developer**	2.60%	26,236	137,000	$260.17 billion
Infosys Limited	**Software developer**	2.10%	21,434	228,123	$11.8 billion
Qualcomm Technologies	**Software developer**	2.10%	21,238	37,000	$24.3 billion

Source: Various. Author's analysis.

Table 13. Top10 U.S. States by Share of H-2A Certifications, Agriculture as Share of GDP and H-2A Eligible Occupations

State	Top10 H-2A Certifications (%) 2019	State	Agriculture as % of GDP 2018	State	H-2A Eligible Occupations 2020
Florida	13	Iowa	10.2	California	203,810
Georgia	11.4	Nebraska	9.4	Washington	16,500
Washington	10.2	South Dakota	9.1	Texas	11,840
California	9.1	Idaho	8.6	Arizona	10,600
North Carolina	8.4	Arkansas	8.1	Florida	10,450
Louisiana	4.2	North Dakota	7.6	Oregon	7,840
Michigan	3.5	Mississippi	6.6	Pennsylvania	3,950
Kentucky	3.2	Kentucky	6.4	New Jersey	3,930
New York	3.1	Wisconsin	6.4	Colorado	3,880
South Carolina	2.4	North Carolina	6.2	Georgia	3,630

Source: Various. Author's analysis.

Table 14. Top10 U.S. States by Share of H-2B Certifications and H-2B Eligible Occupations

State	Top10 H-2B Certifications (%) 2019	State	H-2B Eligible Occupations 2020
Texas	10.7	California	1,089,560
Colorado	4.6	Texas	748610
Florida	3.8	Florida	682530
North Carolina	3.4	New York	446500
Louisiana	3.3	Illinois	390960
Pennsylvania	3.3	Pennsylvania	351840
Alaska	3.3	Ohio	323930
New York	3.1	North Carolina	308910
Virginia	2.8	Georgia	307250
Maryland	2.7	New Jersey	253850

Source: Various. Author's analysis.

Table 15. Summary of IRCA Votes and Selected U.S. State Data on Agriculture and H-2A

State	Estimate Ag Workers as % of all employed (1986)*	Ag Workers as % of all employed (2020)	All Foreign Workers as % of population (2018)	% of Foreign Workers in Ag (2018)**	Certifications FY2019			IRCA 1986	
					H-2A Top10 (%)	H-2A Req	H-2A Cert	Party	Vote
Alabama	14%	0.35%	3%	5%		1,474	1,424	R D	NAY NAY
Alaska	13%	0.19%	8%	n/a		38	38	R R	YEA NV
Arizona	9%	0.42%	13%	40%		5,805	5,665	D R	NV NV
Arkansas	17%	0.47%	5%	n/a		4,076	4,002	D D	NAY YEA
California	6%	1.40%	27%	74%	9.1	23,712	23,372	D R	YEA YEA
Colorado	11%	0.24%	10%	21%		3,568	3,440	R D	NAY YEA
Connecticut	4%	0.07%	15%	n/a				D	YEA

						876	876	R	YEA
Delaware	3%	0.22%	9%	19%		666	663	D R	YEA YEA
Florida	13%	0.19%	21%	41%	13	35,037	33,594	D R	YEA YEA
Georgia	6%	0.24%	10%	25%	11.4	32,466	29,447	R D	YEA YEA
Hawaii	6%	0.26%	19%	38%		178	157	D D	NAY YEA
Idaho	22%	0.80%	6%	46%		4,628	4,609	R R	NAY NV
Illinois	9%	0.11%	14%	n/a		2,750	2,573	D D	YEA YEA
Indiana	13%	0.11%	5%	n/a		3,779	3,698	R R	YEA YEA
Iowa	19%	0.41%	6%	13%		4,109	3,916	R D	YEA YEA
Kansas	15%	0.28%	7%	n/a		1,198	1,153	R R	YEA YEA
Kentucky	17%	0.21%	4%	17%	3.2	8,295	8,206	D R	NAY YEA
Louisiana	12%	0.27%	4%	13%	4.2	11,565	11,184	D D	YEA YEA
Maine	10%	0.29%	4%	n/a		992	986	R D	NAY NAY
Maryland	13%	0.13%	15%	n/a		844	842	R D	NV YEA
Massachusetts	0%	0.06%	17%	n/a		471	466	D D	NAY YEA
Michigan	9%	0.12%	7%	19%	3.5	9,554	9,058	D D	YEA NAY
Minnesota	10%	0.16%	9%	n/a		2,035	1,996	R R	YEA YEA
Mississippi	17%	0.37%	2%	n/a		4,587	4,547	R D	NAY NV
Missouri	10%	0.21%	4%	n/a		1,483	1,408	R D	YEA YEA
Montana	26%	0.07%	2%	5%		1,075	984	D D	YEA YEA
Nebraska	14%	0.36%	7%	15%				D	YEA

						2,700	2,488	D	NAY
Nevada	8%	0.10%	19%	35%		2,810	2,787	R R	NAY NV
New Hampshire	10%	0.12%	6%	n/a		217	217	R R	NAY NAY
New Jersey	6%	0.13%	23%	41%		2,158	2,150	D D	YEA YEA
New Mexico	13%	0.32%	9%	40%		664	623	D R	YEA NAY
New York	0%	0.04%	23%	n/a	3.1	8,284	8,097	R D	YEA YEA
North Carolina	10%	0.18%	8%	34%	8.4	34,178	32,863	R R	NV NAY
North Dakota	20%	0.20%	5%	n/a		1,954	1,868	R D	YEA YEA
Ohio	7%	0.10%	5%	11%		3,009	2,985	D D	NV YEA
Oklahoma	22%	0.21%	6%	18%		803	718	D R	NV NAY
Oregon	14%	0.79%	10%	43%		2,634	2,605	R R	YEA YEA
Pennsylvania	9%	0.13%	7%	18%		1,888	1,855	R R	YEA YEA
Rhode Island	10%	0.03%	13%	n/a		5	5	R D	YEA YEA
South Carolina	11%	0.20%	5%	20%	2.4	6,518	6,082	D R	YEA YEA
South Dakota	23%	0.39%	4%	7%		1,748	1,618	R R	NAY NAY
Tennessee	9%	0.16%	5%	9%		4,592	4,521	D D	YEA YEA
Texas	11%	0.19%	17%	39%		5,323	5,047	D R	YEA NAY
Utah	11%	0.06%	9%	21%		1,563	1,503	R R	NAY NAY
Vermont	16%	0.27%	5%	10%		507	499	D R	NV YEA
Virginia	7%	0.15%	13%	22%		5,330	5,282	R R	YEA YEA
Washington	12%	0.76%	15%	53%	10.2			R	NV

						31,516	30,650	R	NV
West Virginia	9%	0.20%	2%	18%		257	255	D D	YEA YEA
Wisconsin	10%	0.16%	5%	15%		2,052	1,963	R D	YEA YEA
Wyoming	12%	0.24%	3%	n/a		479	472	R R	YEA YEA
									PASSED

* Since direct state data on agricultural workers in 1986 are not available, these estimates are calculated as difference bet ween total number of workers and non-agricultural workers.

** Data not available for all states.

Sources: Sources: (The United States Census Bureau n.d.; "Senate Vote #738 in 1986 (99th Congress)" n.d.; American Immigration Council n.d.; U.S. Department of Labor 2019a)

Table 16. U.S. States with Republican NAY Votes on IRCA 1986

State	Change in Net Farm Income 1985-1986 (mil. USD)	Estimate Ag Workers as % of all employed (1986)*	Ag Workers as % of all employed (2020)	All Foreign Workers as % of population (2018)	% of Foreign Workers in Ag (2018)*	Agriculture as % of GDP (2018)	Certifications FY2019			IRCA 1986		NAY Vote Count
							H-2A Top10 (%)	H-2A Req	H-2A Cert	Party	Vote	
Alabama	72.8	14%	0.35%	3%	5%	4.9		1,474	1,424	R	NAY	1
										D	NAY	-
Colorado	87.8	11%	0.24%	10%	21%	2.1		3,568	3,440	R	NAY	1
										D	YEA	0
Idaho	39.1	22%	0.80%	6%	46%	8.6		4,628	4,609	R	NAY	1
										R	NV	0
Maine	-13.4	10%	0.29%	4%	n/a	4.8		992	986	R	NAY	1
										D	NAY	-
Mississippi	-135.6	17%	0.37%	2%	n/a	6.6		4,587	4,547	R	NAY	1
										D	NV	0
Nevada	13.6	8%	0.10%	19%	19%	0.8		2,810	2,787	R	NAY	1
										R	NV	0
New Hampshire	6	10%	0.12%	6%	6%	1.7		217	217	R	NAY	1
										R	NAY	1
New Mexico	5.2	13%	0.32%	9%	9%	2.4		664	623	D	YEA	0
										R	NAY	1
North Carolina	117.9	10%	0.18%	8%	8%	6.2	8.4	34,178	32,863	R	NV	0
										R	NAY	1
Oklahoma	258.8	22%	0.21%	6%	18%	3.2		803	718	D	NV	0
										R	NAY	1
South Dakota	146.2	23%	0.39%	4%	7%	9.1		1,748	1,618	R	NAY	1
										R	NAY	1
Texas	-26.7	11%	0.19%	17%	39%	1.8				D	YEA	0

								5,323	5,047	R	NAY	1
Utah	52.6	11%	0.06%	9%	21%	2.3		1,563	1,503	R R	NAY NAY	1 1
										Total Republican NAYs		16

* Since direct state data on agricultural workers in 1986 are not available, these estimates are calculated as difference between total number of workers and non-agricultural workers.

** Data not available for all states.

Sources: (The United States Census Bureau n.d.; "Senate Vote #738 in 1986 (99th Congress)" n.d.; American Immigration Council n.d.; U.S. Department of Labor 2019a)

Table 17. Top10 U.S. States by Share of H-2A Certifications in 2019 and Their Votes on IRCA 1986

State	Change in Net Farm Income 1985-1986 (mil. USD)	Estimate Ag Workers as % of all employed (1986)*	Ag Workers as % of all employed (2020)	All Foreign Workers as % of population (2018)	% of Foreign Workers in Ag (2018)	Agriculture as % of GDP (2018)	Certifications FY2019			IRCA 1986	
							H-2A Top10 (%)	H-2A Req	H-2A Cert	Party	Vote
Florida	146.6	13%	0.19%	21%	41%	1.7	13	35,037	33,594	D R	YEA YEA
Georgia	178.9	6%	0.24%	10%	25%	5.1	11.4	32,466	29,447	R D	YEA YEA
Washington	433.7	12%	0.76%	15%	53%	3	10.2	31,516	30,650	R R	NV NV
California	135.5	6%	1.40%	27%	74%	2.8	9.1	23,712	23,372	D	YEA

										R	YEA
North Carolina	117.9	10%	0.18%	8%	8%	6.2	8.4	34,178	32,863	R	NV
										R	NAY
Louisiana	-30.9	12%	0.27%	4%	13%	2.9	4.2	11,565	11,184	D	YEA
										D	YEA
Michigan	-91.3	9%	0.12%	7%	19%	2.7	3.5	9,554	9,058	D	YEA
										D	NAY
Kentucky	-80.4	17%	0.21%	4%	17%	6.4	3.2	8,295	8,206	D	NAY
										R	YEA
New York	148.7	0%	0.04%	23%	n/a	1.2	3.1	8,284	8,097	R	YEA
										D	YEA
South Carolina	-59.5	11%	0.20%	5%	20%	3.9	2.4	6,518	6,082	D	YEA
										R	YEA

* Since direct state data on agricultural workers in 1986 are not available, these estimates are calculated as difference bet ween total number of workers and non-agricultural workers.

Sources: ("Statistical Abstract of the United States: 1988" n.d.; "Senate Vote #738 in 1986 (99th Congress)" n.d.; "State by State" n. d.; "H-2A Temporary Non-Agricultural Labor Certification Program - Selected Statistics, FY 2019 EOY" 2019)

Table 18. Summary of Votes on Immigration Act of 1990 and Selected U.S. State Data on H-2B Eligible Sectors and H-2B Certifications

State	Employees in Nonfarm Establishments as % of Total Employment (1991)	All workers in H-2B Top10 Sectors as % of all employed (2020)	Certifications FY2019			INA 1990	
			H-2B Top10 (%)	H-2B Req	H-2B Cert	Party	Vote
Alabama	93%	7.0%		3121	2413	D	YEA
						D	YEA
Alaska	103%	5.1%	3.3	8411	5039	R	YEA
						R	YEA
Arizona	93%	7.0%		3986	3225	D	YEA
						R	YEA
Arkansas	90%	6.4%		2766	2468	D	NAY
						D	NV
California	91%	6.6%		3712	2978	D	YEA
						R	YEA
Colorado	93%	7.3%	4.6	9156	7896	R	NAY
						D	YEA
Connecticut	92%	4.3%		310	273	D	YEA
						D	YEA
Delaware	100%	5.2%		631	531	D	YEA
						R	NAY
Florida	89%	8.1%	3.8	13287	11301	D	YEA
						R	YEA
Georgia	98%	7.1%		6530	3382	D	YEA
						D	YEA
Hawaii	99%	9.2%		N/A	N/A	D	YEA
						D	YEA
Idaho	84%	6.6%		1891	1803	R	YEA

						R	YEA
Illinois	93%	6.9%		2580	2026	D	YEA
						D	YEA
Indiana	95%	7.6%		1951	1535	R	YEA
						R	YEA
Iowa	85%	6.5%		891	712	R	YEA
						D	YEA
Kansas	88%	6.4%		1253	1092	R	YEA
						R	YEA
Kentucky	91%	7.8%		2350	1783	D	YEA
						R	YEA
Louisiana	90%	7.0%	3.3	7695	5593	D	YEA
						D	YEA
Maine	86%	5.4%		2562	2237	R	YEA
						D	YEA
Maryland	87%	5.5%	2.7	4514	3985	D	YEA
						D	YEA
Massachusetts	99%	5.1%		4225	3449	D	YEA
						D	YEA
Michigan	94%	6.2%		4264	3764	D	YEA
						D	YEA
Minnesota	93%	5.4%		1811	1454	R	NV
						R	YEA
Mississippi	87%	7.8%		4145	3979	R	YEA
						R	NAY
Missouri	91%	6.6%		4754	4131	R	YEA
						R	YEA
Montana	81%	1.2%		680	644	D	YEA
						R	YEA
Nebraska	88%	6.7%		790	681	D	NAY
						D	YEA
Nevada	103%	9.5%		658	262	D	YEA

						D	YEA
New Hampshire	76%	5.1%		723	660	R	YEA
						R	NAY
New Jersey	93%	6.7%		3631	2937	D	YEA
						D	YEA
New Mexico	88%	6.5%		476	250	D	YEA
						R	YEA
New York	99%	5.1%	3.1	5285	4645	R	YEA
						D	YEA
North Carolina	95%	7.2%	3.4	6767	5840	R	NAY
						D	YEA
North Dakota	89%	6.5%		815	733	D	YEA
						D	YEA
Ohio	94%	6.3%		4396	4002	D	YEA
						D	YEA
Oklahoma	85%	6.8%		2544	2059	D	YEA
						R	YEA
Oregon	88%	5.9%		3215	2840	R	NV
						R	YEA
Pennsylvania	92%	6.4%	3.3	6814	5827	R	YEA
						R	YEA
Rhode Island	90%	6.8%		570	558	R	YEA
						D	YEA
South Carolina	93%	8.7%		5126	4215	D	YEA
						R	YEA
South Dakota	85%	6.0%		1384	1195	D	YEA
						R	YEA
Tennessee	96%	7.3%		3122	2331	D	YEA
						D	YEA
Texas	90%	6.2%	10.7	28426	18741	D	YEA
						R	YEA
Utah	97%	5.7%		4173	3251	R	YEA

						R	YEA
Vermont	85%	5.1%		750	644	R	YEA
						D	YEA
Virginia	91%	5.6%	2.8	5130	4653	D	YEA
						R	YEA
Washington	93%	6.1%		1881	1630	D	YEA
						R	YEA
West Virginia	90%	6.4%		284	247	D	NAY
						D	YEA
Wisconsin	93%	5.9%		1276	567	R	YEA
						D	YEA
Wyoming	89%	6.9%		713	621	R	YEA
						R	YEA
						PASSED	

Sources: (The United States Census Bureau n.d.; American Immigration Council n.d.; U.S. Bureau of Labor Statistics 2021, 2; U.S. Department of Labor 2019b; "S. 358 (101st): Immigration Act of 1990" n.d.)

Table 19.U.S. States with Republican YEA Votes on the Immigration Act of 1990

State	Employees in Nonfarm Establishments as % of Total Employment (1991)	All workers in H-2B Top10 Sectors as % of all employed (2020)	Certifications FY2019			INA 1990		YEA Vote Count
			H-2B Top10 (%)	H-2B Req	H-2B Cert	Party	Vote	
Alaska	100%	5.1%	3.3	8411	5039	R	YEA	1
						R	YEA	1
Arizona	93%	7.0%		3986	3225	D	YEA	-
						R	YEA	1
California	91%	6.6%		3712	2978	D	YEA	-
						R	YEA	1
Florida	89%	8.1%	3.8	13287	11301	D	YEA	-
						R	YEA	1
Idaho	84%	6.6%		1891	1803	R	YEA	1
						R	YEA	1
Indiana	95%	7.6%		1951	1535	R	YEA	1
						R	YEA	1
Iowa	85%	6.5%		891	712	R	YEA	1
						D	YEA	-
Kansas	88%	6.4%		1253	1092	R	YEA	1
						R	YEA	1
Kentucky	91%	7.8%		2350	1783	D	YEA	-
						R	YEA	1
Maine	86%	5.4%		2562	2237	R	YEA	1
						D	YEA	-
Minnesota	93%	5.4%		1811	1454	R	NV	0
						R	YEA	1
Mississippi	87%	7.8%		4145	3979	R	YEA	1

						R	NAY	0
Missouri	91%	6.6%		4754	4131	R	YEA	1
						R	YEA	1
Montana	81%	1.2%		680	644	D	YEA	-
						R	YEA	1
New Hampshire	76%	5.1%		723	660	R	YEA	1
						R	NAY	0
New Mexico	88%	6.5%		476	250	D	YEA	-
						R	YEA	1
New York	99.0%	5.1%	3.1	5285	4645	R	YEA	1
						D	YEA	-
Oklahoma	85%	6.8%		2544	2059	D	YEA	-
						R	YEA	1
Oregon	88%	5.9%		3215	2840	R	NV	0
						R	YEA	1
Pennsylvania	92%	6.4%	3.3	6814	5827	R	YEA	1
						R	YEA	1
Rhode Island	90%	6.8%		570	558	R	YEA	1
						D	YEA	-
South Carolina	93%	8.7%		5126	4215	D	YEA	-
						R	YEA	1
South Dakota	85%	6.0%		1384	1195	D	YEA	-
						R	YEA	1
Texas	90%	6.2%	10.7	28426	18741	D	YEA	-
						R	YEA	1
Utah	97%	5.7%		4173	3251	R	YEA	1
						R	YEA	1
Vermont	85%	5.1%		750	644	R	YEA	1
						D	YEA	-
Virginia	91%	5.6%	2.8	5130	4653	D	YEA	-
						R	YEA	1
Washington	93%	6.1%		1881	1630	D	YEA	-

						R	YEA	1
Wisconsin	93%	5.9%		1276	567	R	YEA	1
						D	YEA	-
Wyoming	89%	6.9%		713	621	R	YEA	1
						R	YEA	1
							Republican YEAs	**38**

Sources: (The United States Census Bureau n.d.; American Immigration Council n.d.; U.S. Bureau of Labor Statistics 2021, 2; U.S. Department of Labor 2019b; "S. 358 (101st): Immigration Act of 1990" n.d.)

Table 20. Top10 U.S. States by Share of H-2B Certifications in 2019 and Their Vote on the Immigration Act of 1990

State	Employees in Nonfarm Establishments as % of Total Employment (1991)	All workers in H-2B Top10 Sectors as % of all employed (2020)	Certifications FY2019			INA 1990	
			H-2B Top10 (%)	H-2B Req	H-2B Cert	Party	Vote
Texas	90%	6.2%	10.7	28426	18741	D	YEA
						R	YEA
Colorado	93%	7.3%	4.6	9156	7896	R	NAY
						D	YEA
Florida	89%	8.1%	3.8	13287	11301	D	YEA
						R	YEA
North Carolina	95%	7.2%	3.4	6767	5840	R	NAY
						D	YEA
Louisiana	90%	7.0%	3.3	7695	5593	D	YEA
						D	YEA
Pennsylvania	92%	6.4%	3.3	6814	5827	R	YEA
						R	YEA
Alaska	103%	5.1%	3.3	8411	5039	R	YEA
						R	YEA
New York	99.0%	5.1%	3.1	5285	4645	R	YEA
						D	YEA
Virginia	91%	5.6%	2.8	5130	4653	D	YEA
						R	YEA
Maryland	87%	5.5%	2.7	4514	3985	D	YEA
						D	YEA

Sources: (The United States Census Bureau n.d.; American Immigration Council n.d.; U.S. Bureau of Labor Statistics 2021, 2; U.S. Department of Labor 2019b; "S. 358 (101st): Immigration Act of 1990" n.d.)

Table 21. Comparison of Top10 U.S. States (H-2B Sectors)

State	Certifications H-2B Top10 (%)	State	All workers in H-2B Top10 Sectors as % of all employed (2020)	State	Foreign Individuals in H-2B Sectors (2018)
Texas	10.7	Nevada	9.5%	Texas	1,322,338
Colorado	4.6	Hawaii	9.2%	California	1,222,983
Florida	3.8	South Carolina	8.7%	Florida	513,728
North Carolina	3.4	Florida	8.1%	New York	280,354
Louisiana	3.3	Mississippi	7.8%	Illinois	279,198
Pennsylvania	3.3	Kentucky	7.8%	Arizona	255,076
Alaska	3.3	Indiana	7.6%	New Jersey	245,079
New York	3.1	Tennessee	7.3%	North Carolina	223,707
Virginia	2.8	Colorado	7.3%	Georgia	209,344
Maryland	2.7	North Carolina	7.2%	Massachusetts	199,489

Resource: (U.S. Department of Labor 2019a; U.S. Bureau of Labor Statistics 2021; American Immigration Council n.d.)

Table 22. Regression of the number of workers employed in H-2B eligible sectors (X) and the number of foreign-born workers requested workers for H-2B certifications (Y)

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.6106957
R Square	0.37294923
Adjusted R Square	0.35960773
Standard Error	2545.20037
Observations	49

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	1	181087648	181087648	27.9540587	3.16614E-06
Residual	47	304468112	6478044.94		
Total	48	485555761			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	1256.06019	491.132567	2.55747689	0.01382979	268.0289099	2244.09148	268.02891	2244.09148
X Variable 1	0.00949852	0.00179653	5.28715979	3.1661E-06	0.005884377	0.01311267	0.00588438	0.01311267

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