

**Testimony of Representative George Miller,
Chairman of the Education and Labor Committee
before the
Judiciary Committee's Subcommittee on Immigration, Citizenship,
Refugees, Border Security, and International Law**

April 16, 2008

Good afternoon. Thank you, Madam Chairwoman, for inviting me to testify today at this hearing examining the H-2B guest worker program.

Hundreds of thousands of guest workers come to the United States each year under various existing guest worker programs. For years, these programs have been allowed to operate with little oversight. I am proud to say that this Congress has begun the work of examining these programs with a critical eye. The recent calls from various industries to expand the H-2B program in particular have presented an opportunity to carefully assess that program, including its impact on both U.S. and foreign workers, and to press for a number of reforms.

I believe Congress should not pass any new guest worker legislation, including expansions of existing programs, unless it is combined with strong, common-sense labor protections.

I would like to cover three broad areas of H-2B labor reform today – (1) strengthening the recruitment of U.S. workers, (2) protecting U.S. workers' wages and working conditions, and (3) stopping abusive foreign labor recruiting practices.

First, recruiting U.S. workers.

We need to strengthen the requirement that employers recruit U.S. workers before turning to guest workers. Employers should only be permitted to use H-2B workers when they have established that qualified U.S. workers are truly unavailable.

This reform is particularly timely given the state of the U.S. economy. As we know, in recent months, more and more Americans are looking for work.

- The unemployment rate rose from 4.8 to 5.1 percent in March of this year.
- Among the weakest spots in the March jobs report was the construction industry – which is hemorrhaging jobs – and yet construction employers are increasingly relying on the H-2B program.
- While H-2B workers are often used for summer seasonal work, a recent report by the Center for Labor Market Studies at Northeastern University found: “The summer 2008 job outlook for teens looks particularly bleak.” Indeed, summer

2008 is projected to be an historical low point for teen employment in this country, due to fewer job opportunities.

- A recent survey by an hourly job website found that nearly half of managers of hourly establishments like restaurants and retail say they have no plans to hire seasonal workers this summer. Thirty-one percent of those managers said they simply did not have the budget to add summer workers. While half do not expect to hire at all, 93% of the surveyed managers said they expected to receive more or the same number of applications for jobs as last year.

At the same time that unemployment is rising, many businesses claim they cannot find workers. Within any guest worker program, including H-2B, we need to ensure that the employers, the Department of Labor, and state workforce agencies are making every effort to match able and willing American workers with available jobs before turning elsewhere.

Second, protecting U.S. workers' wages and working conditions.

The H-2B program needs to be reformed to protect U.S. workers from a race to the bottom. In recent years, for example, the Bush Administration weakened prevailing wage requirements in the H-2B program. Weakened prevailing wage requirements mean that U.S. workers have less access to these jobs. It also means the wages of U.S. workers are driven downward. We need a real and clear prevailing wage requirement in the H-2B program that ensures the employment of guest workers will not adversely affect U.S. workers' wages and working conditions.

Additionally, when it comes to protecting wages and working conditions, guest worker programs suffer an inherent structural problem. These workers are not free to quit and take a job just anywhere else. It is not exactly a free labor market. They are tied to their sponsoring employer. Consequently, these guest workers are susceptible to exploitation. We need to improve these workers' ability to challenge unlawful employment practices as well as their access to legal representation.

Once guest workers have arrived in this country, we must ensure that they receive basic labor protections and adequate legal safeguards. Yet, to my disappointment, the U.S. Department of Labor maintains that it does not currently have the legal authority to enforce the labor contracts between H-2B guest workers and their employers. Therefore, Congress must make clear the Secretary's authority to investigate and enforce the terms of H-2B contracts where an H-2B employer refuses to abide by the legal promises it made to its guest workers. The Department of Labor must also have the authority to impose fines as part of a strong system of enforcement.

We should also be mindful – especially after our experience in the past seven years – that the U.S. Department of Labor will not always have the political will to enforce basic rights for U.S. workers or foreign guest workers. In those cases, guest workers must have access to our court system to enforce their rights. However, most guest workers do not

speaking English well and are extremely isolated, and therefore we cannot realistically expect that they would be able to take action on their own to enforce their legal rights. Congress has made this situation even worse by making H-2B guest workers ineligible for assistance from all nonprofit lawyers receiving funding from the federal Legal Services Corporation. This must change. We took a small step in the right direction last December when we made H-2B forestry workers eligible for legal services through a provision attached to the omnibus appropriations bill. We must now take the next logical step and grant the same legal protections to the H-2B workers in all industries.

Third, stopping abusive foreign labor recruiting practices.

We must ensure that foreign workers are not recruited into the H-2B program under false promises or coercive conditions. Too often, unscrupulous foreign labor recruiters lure workers to the United States by making false promises about pay and working conditions. But in far too many cases, the workers arrive here only to find out they were cruelly deceived. These recruiters will charge 5,000, 10,000, and even 20,000 dollars per worker, many of whom live in poverty in their home countries and have to sell their land or take out high interest loans so that they can afford the recruiters' fees. These fees have trapped many guest workers into a cycle of debt, afraid to speak up for fear of losing their jobs.

To address the issue of unscrupulous foreign recruiters, last year I introduced the Indentured Servitude Abolition Act (H.R. 1763), which would require clear and accurate disclosure of terms of employment to recruited workers. It would also outlaw charging workers recruitment fees. And it includes effective enforcement provisions. I believe the major provisions of my recruiter bill should be attached, along with other H-2B labor reforms, to any legislative action Congress takes with respect to the H-2B program.

Let me conclude by noting the growing support for adding labor protections to the H-2B program. The calls for reform began years ago by human rights and labor advocates. But recently, U.S. businesses that use the H-2B program have also begun to understand the need for change. The Small Business Workforce Alliance, composed of H-2B employers, has offered its support for a number of reasonable labor reforms, such as prevailing wage requirements and stronger DOL enforcement. Another large H-2B employer, the Signal International shipyard in Mississippi, confronted with revelations of outrageous recruitment abuses, has recently called on Congress to stop foreign labor recruiter abuses.

Any guest worker legislation should include these common-sense reforms. They are needed to protect U.S. workers' wages, working conditions, and employment opportunities, as well as to ensure guest workers are only utilized to satisfy real and legitimate labor shortages and not treated simply as a cheap, easily-exploited source of labor.

Thank you very much for the opportunity to testify today.

