

Introduction

I am Bill Zammer, owner of Cape Cod Restaurants on Cape Cod, Massachusetts for the past twenty years. We operate four high volume restaurants employing 100 year round employees and 200 seasonal employees, half of whom work under the H-2B visa program. We have utilized the H-2B visa for at least eight years, as a response to the documented lack of temporary, seasonal workers on Cape Cod. My experience is common to most Cape Cod employers and I am here today to urge you, better yet beg you, to continue the H-2B / H-2R program as it has existed for the past twenty years. While the program may need refinement, it is still the best program we have for small businesses to fill the needs of seasonal employers in this country.

On Cape Cod, our cost of living, housing prices and significantly older resident population lead to the scarcity of seasonal workers. Since colonial settlement, Cape Cod has survived by entrepreneurial pursuits. From farming and fishing we transitioned to tourism as a way to make a living nearly 100 years ago. At one time Cape Codders would take seasonal jobs and survive on unemployment insurance to carry them through the winter. This is no longer the case-the high cost of living makes it impossible. With virtually full employment on Cape Cod and in the Commonwealth of Massachusetts, our year round residents have found work in jobs that pay 12-month wages. This works against us when trying to fill the peak seasonal need generated by our 4 million visitors each year. In the highest point of the season our year round population of 230,000 swells to nearly 750,000.

We have a much-studied mismatch between jobs available for the highly educated, well-skilled resident of Massachusetts and our seasonal needs as a world class tourism destination. As a member of the Massachusetts Workforce Investment Board, I've joined in the work to improve the mix of jobs for the residents of Massachusetts. But we are here to talk about seasonal employment jobs--the types of jobs that H-2B visa workers fill that are not a match with our more skilled residents.

Conditions that have led to an inadequate workforce on Cape Cod

We began to see real evidence of a seasonal workforce shortage in 2000. Our regional planning and regulatory agency, the Cape Cod Commission, issued a report researched by The Center for Policy Analysis at University of Massachusetts, Dartmouth entitled "Help Wanted! Cape Cod's Seasonal Workforce." The conclusion was that the hospitality industry still continued to experience peaks and valleys, even in the face of aggressive means to build the shoulder seasons. What was once a two-month peak visitor cycle has now grown to an active season from Easter to Thanksgiving. Known for our beautiful coastline and beaches, it is understandable that we are highly appealing in the warm weather months. But the cold winter months continue to challenge our Cape Cod Chamber & Convention & Visitors' Bureau as a time to attract leisure travelers, business meetings or weddings to the Cape. Small businesses serving visitors, retirees and second homeowners comprise 2/3 of our economy, generating in excess of \$1.3 billion in direct spending on Cape Cod. And the bulk of this spending takes place in a nine month period-not evenly throughout the year.

Cape Cod has been experiencing a labor shortage for the peak visitor season, when our economy employs an additional 23,800 workers, for the past eight years. At a meeting in January, 2008 with the Commonwealth of Massachusetts, Division of Employment & Training's chief economist, it was confirmed that at least 23,800 additional workers are added to our year round employment base of 91,000 for a total peak summer employment of 114,800. Other

demographers estimate even higher counts. H-2B workers have typically made up an estimated 5,000 of that peak season employment number. Aside from a robust tourism economy, our shortages are being increased by population shifts. Cape Cod is the oldest county in New England.

Here are the issues we face as a region that have helped to create a shortage. The following demographic information is from Peter Francese, Director Demographic Forecasts for the New England Economic Partnership:

1. Growth in year-round Cape Cod residents (2600 from 2000-06) has virtually ceased.
2. More year-round residents are now moving away from Cape Cod than to here.
3. Cape Cod has high negative natural increase: 5,000 more deaths than births 2000-06.
4. This is a big change from when Cape towns (all but 3) grew over 1% per year.
5. Cape Cod is losing working age adults 35-44 and their children PLUS early retirees.
6. Nearly 1 in 4 residents are age 65+
7. The Cape median age is 45.7 (men: 44 women: 47) one of the highest in the nation.
8. The Cape is losing children at a faster rate than elsewhere in Massachusetts.

Cape Cod's housing prices, which are ironically stable compared to off-Cape areas even in today's falling real estate market, have been driven higher by the ability of those who earn their livings elsewhere to invest in a second home or investment property. This has placed housing out of the reach of the average Cape Cod wage earner. And just recently our newspapers reported that Cape Cod has the highest electricity rates in the continental U.S. These are part of the facts behind our population drain.

The "graying" of Cape Cod has been well documented. Frankly, many of our retirees choose not to work. However many do and they are actively recruited. Unfortunately many are not seeking the type of jobs filled by the H-2B workers, which involve physical aspects such as lifting heavy trays or spending hours on their feet.

Our hard work to expand our season beyond just the summer months, combined with the changing schedules of the nation's colleges, make dependence on college students for many of the jobs impossible. They leave at the height of our season.

While I can only speak to Cape Cod's experience, I understand that other parts of the country, where business is derived from cold skiing conditions or warm beach weather, are also experiencing shortages in the types of positions that H2B workers fill.

Our efforts to recruit and retain an adequate workforce.

Here on Cape Cod, we do not wring our hands over our labor scarcity. We roll up our sleeves and get to work. I am a board member of our active Cape & Islands Workforce Investment Board, Vice Chair of the Cape Cod Chamber of Commerce and recent chair of the Chamber's Workforce Training and Development Committee. Many small employers, including myself, have provided safe, decent housing with costs typically subsidized. Some offer daily transportation to work from urban centers. We have scoured culinary schools for employees. I personally have traveled to Florida, Pennsylvania, New Hampshire New York & Vermont seeking employees and I know many other employers have as well. We have asked the state to help promote job fairs and have participated in events held this month on Cape Cod and in neighboring counties, targeting areas of higher unemployment. We have worked with ministers

in urban poverty areas. We continually advertise in newspapers, on the internet and with employment agencies in Boston.

In 2004, I led a contingent of Cape employers along with our Congressional representative William Delahunt to investigate joint training and employment programs with the U.S. Virgin Islands & U.S. Department of Labor Region One. We were not able to generate enthusiasm in the Islands for sending employees up. We have worked to develop partnerships with opposite-season resorts in Florida and ski resorts. Our regional Chamber and local Workforce Investment Board have instituted a 55+ employment program, educating business owners on the benefits of older workers and how to accommodate their needs. This program is being heavily marketed this spring.

I have worked with local schools (including Cape Cod Community College, Johnson & Wales University, Upper Cape Cod Technical High School, and Cape Cod Technical High School) to develop training curriculum for restaurant and hospitality positions, which will have a future payoff but not fill immediate needs. College students are utilized, but again, they typically head back to school in early or mid August, when our season is at its zenith.

I have served as President of the Massachusetts Restaurant Educational Foundation raising funds to train thousands of Massachusetts high school students in Pro-Start. Some High school students are hired, but child labor laws restrict youth working in certain restaurant positions or at certain parts of the day. They also return to school before our peak season concludes.

In 2005, Hurricane Katrina refugees were housed at Massachusetts Military Reservation on Cape Cod and we worked to secure employment for these people while in transition. My wife, Linda Zammer, has served as President of the Mashpee High School Fund creating and distributing scholarships in the hospitality industry. She has volunteered in Falmouth public schools working on hospitality programs. I sit on the hospitality advisory board for Cape Cod Community College and have funded the establishment of the Hospitality Institute at Cape Cod Community College with \$250,000 in my own direct donations as well as solicited additional donors for the program. Many of these programs are targeted to putting American workers in year round supervisory positions in the industry.

Through the Cape Cod Chamber of Commerce and in partnership with the Massachusetts Restaurant Association, we have hosted annual workshops featuring Matthew Lee, a nationally recognized immigration lawyer and former INS prosecutor, along with enforcement officials from the U.S. Department of Labor Wage and Hour Division and Massachusetts' Attorney General's office, to keep local businesses up-to-date on compliance issues. Additionally, along with Cape Cod Healthcare, our regional health care provider, the Chamber has researched and promoted health insurance products (known as S.H.I.P.) for temporary seasonal workers which many employers have utilized. We work hard as a community to keep our seasonal workers healthy, happy, and productive. They are, in fact, the face of our businesses. They are critical to our success, and therefore we treat them with dignity.

Effects of an inadequate workforce on my business & the community:

Without strong peak season business local companies like mine cannot sustain year round employees. Only those who can do an adequate business from Easter to Thanksgiving

will make it through the winter months, with revenue to support year round jobs for our year round US residents. Many small seasonal businesses struggle to generate enough revenue to cover the mortgage, rent or utilities in the winter, let alone the wages and benefits of year round employees. Removing a viable seasonal workforce source from them will make this struggle even greater.

For my company, we need an adequate number of staff to properly host the weddings, meetings and golf outings that comprise our core business. Fewer employees mean fewer groups can be served. Just one less wedding has a trickle down effect to the hairdresser, the wedding cake baker, the photographer, the tuxedo shop, the dressmaker and tailor, the florist, the limo company, the printer, the musicians, even the news stand selling guests papers. Just one less wedding means a decline in the number of charitable events we host at heavily discounted rates for charities such as Falmouth Hospital, Boys & Girls Club, the Heart Association and scores of other groups doing good work in our community. Just one less wedding reduces the amount of cash donations. A labor shortage doesn't affect only my business; it has a domino effect on the local economy and American jobs.

Myths

Myth: The H2B program is a way for employers to pay workers less money.

--I exceed prevailing wage rates that are set by the Federal & state government for my workers.

--My average temporary seasonal worker will earn approximately \$25,000 to \$30,000 in 9 months. From these wages are paid Social Security Taxes, Federal Income Tax, State income tax, Unemployment insurance, workers' compensation insurance.

--I pay my H-2B visa workers air fare, their visa application (\$200 per person). It is expensive for me to use this program due to legal fees, government application fees, visa fees.

--I don't rely on third-party recruiters. We travel to Jamaica ourselves to interview candidates when needed. Workers are also referred by current H-2B employees, who certainly wouldn't recruit their neighbors if they were being mistreated.

--I have purchased and rehabbed housing for 125 workers and subsidize the cost of this housing for them.

--We provide travelers insurance to cover their healthcare costs while in the U.S.

Myth: The workers are mistreated.

--We treat our H-2B workers no differently than our American workers. They are our front-line ambassadors to our customers and their level of job satisfaction is reflected to our customers. When employees are happy, customers are happy.

--My H-2B workers come back because of how we care for them. Recently we paid for a worker to return home mid-season to tend to an ill family member.

--My workers have a good relationship with our country because of their experiences here and with our company.

--My workers are worried about losing their jobs here this year and that they may not find a job in another country. The money they earn supports them and their family at a middle class level in their home country.

Myth: This is an immigration issue:

--This is a jobs issue, especially for tourism destinations dependant upon seasonal characteristics like weather.

--The jobs my H-2B workers fill are only available 6 to 9 months. My workers are happy to return home to their families when the work is over.

Myth: These workers take American jobs.

- The residents here are seeking 12-month jobs.
- We advertise all year 'round for local candidates before we fill positions with any H-2B worker.
- We will and do hire any American.

Myth: These workers contribute to wage suppression for American workers.

--The Cape & Islands Workforce Investment Board and the Commonwealth of Massachusetts Workforce Investment Board commissioned a recent study on our wages in certain positions as compared to other parts of our state, and found that Cape Cod is paying higher wages than Boston - a major U.S. Metropolitan Statistical Area-due to the scarcity of labor on Cape Cod. We have to pay more to attract all our workers, Americans as well as H2B workers.

In my view, the 2007 Southern Poverty Law Center report on foreign workers in the US seriously misrepresents worker protection and wage protections contained in the H-2B temporary seasonal nonimmigrant worker program.

- Good Actor/Bad Actor - The report cites some anecdotal accounts, ironically mostly from Forest Service employees, but does not present any evidence that there is "chronic" abuse within the system aside from a few examples. This report ignores that most of the small employers using the H-2B program are good actor employers that follow the rules and are trying their best to comply with immigration laws and hire legal workers.
- Enforce Current Law - Clear violations such as those in the report need to be addressed through existing enforcement authority. Under current law, the Secretary of Homeland Security may impose fines and penalties and US Department of Labor, Wage and Hour, investigates wage abuses for H2B workers as they do for US workers.
- Excessive Regulation Renders Program Worthless – We welcome any new regulation that makes the program more user friendly for small business as well as those that protect both the US and H2-B worker.
- Legal Recourse - While SPLC claims there is no legal recourse for workers, there is actually extensive legal recourse-as exemplified by the court cases in which SPLC were involved. Some of their cases were settled or won, proving that there is some mechanism in place for redress against abuse. In any event, enforcement by DOL of its authority in this area will provide redress for the great majority of issues related to worker protection.
- Rate of Return to Employer - An estimated 80% of H-2B workers willingly returned to work for their previous employer during 2006. This incredibly high rate of return indicates that most workers do not experience chronic abuses, and in fact like using the program. I can't speak to the workers who might be unhappy returning to their farm that the report talks about. I can say that an unhappy worker in the tourism industry directly

impacts on business. I keep my workers happy, and they come back year after year.

- Dependent Spouses and Children - Spouses and dependents are permitted to come with H-2 workers under an H-4 visa, despite SPLC claims that H-2B workers are forced to be separated from their families while they come to the US to work. Further, the choice to work in the US is voluntary, and presents clear economic advantages. The fact that many of these workers have families in their home countries is often a motivating factor in them returning home after the completion of their seasonal work. Again, this is not an immigration issue.
- Portability - All nonimmigrant worker programs admit workers for very specific job opportunities. H-2B workers are currently able to transfer to work for another employer under the H-2B program so long as the second employer's petition has been approved by the Department of Homeland Security (DHS). This step is important in assuring that the new employer has met the dual test of offering wages and working conditions approved by DOL and has preferentially hired US workers who want the job first. H-2B workers have substantially the same rights as any US worker: if they are unhappy with their current position, they can transfer to another approved H-2B employer, or they can return home.
- Workers' Compensation - US workers and H-2B workers already have the same access to workers' compensation, and this is how it should remain. The SPLC report says that guest workers do not have access to workers' compensation, but virtually every state requires employers to provide workers' compensation for all of their employees, including H-2B temporary non-agricultural workers.
- Reporting and Retention Requirements - Congress should not impose extra burdens on an employer using the H-2B program, such as reporting requirements, retaining paperwork for long periods of time, etc. The program is currently a big success. It provides significant safeguards to ensure that H-2B temporary workers do not displace American workers. The more regulatory hurdles that are placed on the program, the more small US employers will go out of business, and small business is the backbone of our economy.
- Withholding Documents - The SPLC report claims that some employers unlawfully seize H-2B workers' documents. This is already illegal under current law. Current law provides for enforcement against these types of violations. Remember, the report talks about some employers. Should all employers be cast in the same light? I don't do this, my colleagues in Massachusetts don't do this, again, we are looking at some bad actors.

Conclusion:

The H-2B program works for the hospitality industry on Cape Cod and in this country. The anecdotal information from the Southern Poverty Law Center does not apply on Cape Cod. We would be fools to abuse these employees who have become the mainstay of our business and our communities. We support the need for comprehensive immigration reform, but in the process, do not want to destroy the H-2B program which has successfully filled the needs of seasonal businesses across the country for decades.