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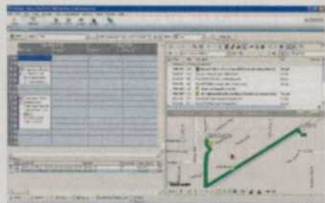
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IMMIGRATION'S WIDENING FAULT LINE

Congress' failure to fix immigration policies and extend H-2B's returning worker exemption triggers labor tremors across the Green Industry

BY **MARTY WHITFORD**
EDITOR-IN-CHIEF

NO ONE can say with absolute certainty where or when the term "Band-Aid fix" originated. However, most would agree the U.S. Government embodies the concept.

Temporary stop-gaps — creating them, constantly tweaking them, jettisoning them and often later trying to resuscitate them — is the circle of life for Congress.

We asked business owners who have participated in our nation's H-2B guest worker program if that stop-gap has "fixed" the fissure triggered by years of delaying comprehensive immigration reform. Most laughed — and quite a few almost cried.

Dual-edged sword

Mariani Landscape in Lake Bluff, IL, was one of the first landscape companies to use the H-2B guest worker program, and has done so for years with mixed results.

"The good news is H-2B enables us to meet our goal of hiring legal employees," says CEO Frank Mariani. "It guarantees them safe travel, which is much more humane than the

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CONTINUING SERIES:
IMMIGRATION & LABOR

Last month, we focused on the trend toward more worksite raids being conducted by federal immigration agents. This month, we cover the continued fall-out from the increasingly strained H-2B guest worker program. **Stay tuned:** LM will report on immigration-related labor issues as they evolve.

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We're No. 1

Landscape laborers by far are the top certified H-2B occupation — typically accounting for 1.5 to two times the number of visas that the second-ranked certified occupation, forest worker, does.

Source: U.S. Employment and Training Administration, Office of National Programs, Division of Foreign Labor Certification



H-2R blues

In the fiscal year ended Sept. 30, 2007, there were 129,547 nonagricultural visas issued — 60,227 new H-2B visas and 69,320 H-2R returning worker visas.

In fiscal 2008 and 2009, 0 returning worker (H-2R) visas were issued.

Source: U.S. Department of State

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alternative of sneaking across a raging river or walking for days in a desert. And the H-2B candidates come alone, pay taxes and, at a company like Mariani, have insurance.”

Now for what Mariani calls “the dark side of the story.”

“We never know from year to year whether the H-2B program will be available,” Mariani notes. “If it is available, we don’t know how many — if any — permits we will receive. We also don’t have anything to say regarding the H-2B workers’ pay scale. That’s decided in Washington.

“Any program that creates a partnership with the federal government is one to stay away from,” Mariani warns. “We’re looking at ways to attract legal workers without using the H-2B program. We’re spreading the good news locally that good careers are available for able-bodied, hard-working individuals who like working outdoors. The current economic downturn is making that easier, but our hiring issues will resurface when the economy improves.”

Friendly competitors

The H-2B program is capped at 66,000 visas per year, but in the mid-2000s a special exemption allowed H-2Bs from the past three years to return without counting

against the cap. Congress failed to reinstate H-2B’s returning worker exemption (H-2R visas) for fiscal 2008 and 2009. As a result, last year, Painesville, OH-based Yardmaster received zero H-2B or H-2R visas. Fortunately, a nearby friendly competitor lent a helping hand.

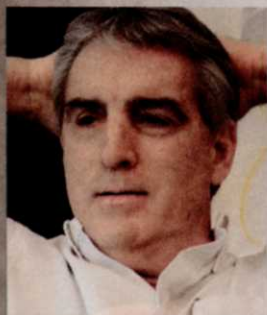
“In 2007, the last year H-2B exempted returning guest workers from its visa cap, we received 92 guest workers,” reminisces Kurt Kluznik, president of Yardmaster. “In 2008, we had about 20 H-2Bs — and all of them came compliments of Steve Pattie, president of The Pattie Group, which itself could have used the H-2Bs.”

Kluznik says he’s truly grateful for both the H-2B guest workers Pattie transferred to Yardmaster as well as the underlying lesson he learned.

“Losing the returning worker visas really hurt us. We had to put a lot more manhours into jobs because we lost experience, and we had reduced capacity to pursue new business,” Kluznik concludes. “But we came out of it all less dependent on the federal government and its increasingly convoluted H-2B program.”

Pattie warns that H-2B is only a temporary fix and that’s masking the root of the problem — the need for improved recruitment and retention industrywide.

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LOSING THE RETURNING WORKER EXEMPTION REALLY HURT US ... BUT WE CAME OUT OF IT ALL LESS DEPENDENT ON THE FEDERAL GOVERNMENT.

KURT KLUZNIK, PRESIDENT, YARDMASTER

PHOTO (TOP) BY: RON HALL; ILLUSTRATION BY: ISTOCK INTERNATIONAL INC.

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H-2B hotbeds

Following are 20 traditional hotbeds for H-2B guest worker visa awards:



Source: The Employment and Training Administration, Office of National Programs, Division of Foreign Labor Certification

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“Having the federal government as a business partner is insane,” Pattie says. “We lost 5,500 H-2Bs in Ohio alone last year.”

In 2006, The Pattie Group began working in earnest to develop its “farm system.”

“We regularly participate in career days at eight Northeast Ohio horticultural trade schools,” Pattie says. “It’s taken three years for us to cultivate it, but our farm system has helped us overcome our former dependence on getting 30 to 40 H-2Bs.”

Help wanted

The majority of the laborers at The Laurel-Rock Co. in Wilton, CT, were guest workers — at least until 2008, when H-2B pitched a shutout against the business.

“With unemployment at a 25-year high, we’ve been able to hire locally,” says Laurel-Rock President Burt



WE ENDED UP HIRING ABOUT 60 PEOPLE TOTAL TO FILL 24 POSITIONS. NOT EVERYONE IS CUT OUT FOR THIS KIND OF WORK.

BURT DEMARCHE, PRESIDENT, THE LAURELROCK CO.

DeMarche. “But we ended up hiring about 60 people total to fill 24 positions. Not everyone is cut out for this kind of work.”

It’s a good thing Josh Denison, HR manager for Denison Landscaping in Fort Washington, MD, speaks Spanish. The company employs about 400, including 300 in the field — typically half H-2Bs and the other half mostly Spanish-speaking citizens, resident aliens and other work-permitted laborers.

“We only got 37 H-2Bs this year,” Denison says. “We’re down about 110. I could hire 50 if they walked through the door today — but that ain’t happening.”

Denison scrambled to attend more than a dozen career fairs from Maine to Florida this spring, but that netted him just one field worker and five office interns.

“Most of these college kids look at a shovel like it’s a poisonous snake,” he adds.

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WEB EXTRA!

Sandy Munley, Ohio Landscape Association's executive director, tells a tale of a recent H-2B hearing in Washington that shut out the vocal majority — Green Industry employers and associations. Please visit www.landscapemanagement.net for the online scoop.

Thankfully, out-of-work construction laborers have hung a silver lining on Denison's H-2B cloud.

"Construction workers are used to making two to three times as much — \$18 to \$28 an hour — but they realize \$8 to \$9 an hour is better than nothing," Denison says. "The problem is they only have a four-month shelf life.

Top 10 senders — H-2B/H-2R visa entrances
(fiscal year ended Sept. 30, 2007)

1

Mexico
105,244



2	Jamaica	14,964
3	Guatemala	4,557
4	Romania	2,803
5	Canada	2,494
6	Philippines	2,492
7	South Africa	1,913
8	United Kingdom	1,687
9	Dominican Republic	1,420
10	Australia	1,305

Source: The Department of Homeland Security. Note: Data represents H-2B/H-2R visa entrances — not issuances; one visa can be counted multiple times as a result of more than one entry.

Just as they begin to learn our trade, they find something they think is better and are out the door."

Bob Wingfield, president of Dallas-based Amigos Labor Solutions, which assists companies in completing H-2B paperwork and obtaining guest workers, says in 2007 he had more than 325 clients — 85% landscape and lawn care companies — and received 100% of the about 4,500 H-2B visas he applied for (75% were returning workers). However, after losing the returning worker exemption, the firm's H2-B batting average dropped to under to .750, earning Amigos' clients 2,000 fewer visas in 2008. Wingfield predicts he'll bat .100 on H-2B visa applications this year.

"By law, my clients are required to advertise these jobs locally," he adds. "In 2008, they spent more than \$400,000 combined on these help wanted ads and filled just 20 of the more than 3,000 advertised jobs locally. Yet somehow people keep crying that H-2Bs are stealing jobs from out-of-work Americans. It's nothing more than a broken train of thought on our broken immigration system." LHM



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