

# **ABC NATIONAL IMMIGRATION POSITION**

## **INTRODUCTION:**

Associated Builders and Contractors (ABC) supports the modification of U.S. Immigration Policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity. The construction industry faces an ever growing problem of shortages, both of craft-professionals and legal laborers who have difficulty becoming citizens or obtaining the necessary work permits.

The overall process to obtain legal eligibility in the U.S. is slow and cumbersome. ABC supports a more streamlined expedited process to make the pathway to legalization more efficient.

## **OVERVIEW:**

### **Security Element**

Homeland Security can best succeed where individuals are truly identifiable. It is to the advantage of all security programs for the United States to provide a means to safely require non-U.S. citizens to register with their true identities and undergo a background check. Thus, any significant immigration restructuring must contain those elements. Furthermore, without significant improvements to border security and the interior enforcement of immigration laws, a guest worker program is destined to failure.

### **Impact of the Immigration Policy on the Construction Industry**

As the economy improves, the demand for workers, primarily for small businesses, grows. Elimination of an immigrant workforce is not an option - construction, like many U.S. industries, would come to a halt without it. Even more significantly, construction will be limited in growth without an increase in the number of available legal workers.

In past booming economies, there has been a shortage of specialized and educated workers in the U.S. A seamless pathway to legal status for those able to fill jobs otherwise left open by U.S. citizens will help construction companies to continue to prosper.

## **TEMPORARY GUEST WORKER PROGRAM:**

- ABC supports the establishment of a temporary guest worker program that would allow for non-U.S. citizens to apply for the right to work legally in

this country for multi-year renewable terms. The renewability stipulation is to ensure investments in worker training are not lost.

- Stricter enforcement of immigration law as well as the policing of our borders is necessary for the success of this program. Homeland security can best succeed where individuals are truly identifiable.
- ABC supports requiring applicants for the guest worker program already living in the U.S. to pay a registration fee, have a sponsoring employer, and comply with all rules and regulations necessary under law. The employer can aid the worker in paying the fee, or the worker can have his/her fee withheld from the worker's wages over a period of time.
- In the event that a relationship existed with a worker where the employer was unaware of that worker's illegal status, the employer and employee should be permitted to continue that relationship, in full compliance with the provisions of the guest worker program. If such a relationship exists, the employer should not be required to publicly advertise or make available the position but must present documentation establishing the current relationship.
- Within the guidelines of ERISA, employers must offer the same benefits to guest workers as they do to citizen employees.
- The program should provide for the possibility that the guest worker may obtain citizenship provided the worker complies with all the requirements for establishment of citizenship under law. In other words, these workers would be expected to meet the requirements that any other foreigner seeking citizenship must follow.
- Undocumented workers currently in the U.S. will be afforded a temporary window in which to apply for acceptance into the guest worker program. After that window has expired, discovered, they will be prosecuted to the full extent of the law.
- ABC is strongly opposed to Davis-Bacon prevailing wage requirements being included in any temporary guest worker program. Davis-Bacon requirements have been shown to inflate the cost of public construction projects. In addition, Davis Bacon also mandates outdated job classifications that ignore the efficient and productive work practices successfully used today by merit shop contractors, who represent over 80 percent of the construction industry.
- ABC believes that workers participating in the guest worker program should be afforded portability between employers during the term of the

program, with a grace period to find another job. If the employee leaves an employer, the employer must notify the federal government within three (3) work days. If the worker finds employment with a new employer, the new employer must notify the government within three (3) work days of the employee's employment.

- Participants in the guest worker program would have to pay all taxes and other fees required of U.S. workers. Participants in the program cannot claim as dependents anyone not currently residing in the United States.
- Under this visa, guest workers will not be permitted to bring additional family members with them into the United States. The applicant guest worker will be required to identify those family members currently residing with the guest worker.
- Any guest worker who is convicted of a felony must lose his/her guest worker status.
- A significant effort will be made by the Government to communicate this program and its elements to all potential guest workers through a variety of public relations means available to it.
- In accordance with the current requirements under Federal Law, guest workers and their resident families will not be entitled to any type of government assistance or aid during the duration of their guest worker status.

## **H-2B VISAS**

- ABC supports simplification and expansion of the H-2B visa program, which provides American businesses with the ability to bring in workers to perform skilled and low-skilled tasks in non-agricultural industries. The current H-2B visa program is tedious, time consuming, expensive and largely unsuccessful for the construction industry.
- The current cap on H-2B visas only allows for 66,000 visas in each fiscal year. Further strides to simplify this process, in conjunction with a major expansion of the cap, are necessary in order to make this program an effective tool in offsetting the growing workforce shortages in the U.S. construction industry.

## **EMPLOYEE VERIFICATION REQUIREMENTS**

If employers are mandated to use an electronic verification system—such as E-Verify—as well as comply with Form I-9 requirements—the following items should be considered for both I-9 and E-Verify systems:

### **A. Safe Harbor Provisions for Employers Who Use or are Mandated to Use E-Verify and I-9 Compliance**

- ABC believes the government should not target or prosecute employers that enroll in and properly use E-Verify, or properly comply with Form I-9 requirements. Good faith compliance should be an affirmative defense that the employer did not knowingly hire an undocumented worker. Before imposing any civil or criminal penalties, the government should be required to prove beyond a reasonable doubt that the employer had actual knowledge that the employee circumvented the electronic verification system/Form I-9 documentation.
- No employer who participates in the E-Verify system or uses Form I-9 to verify new hires should be liable to an applicant, an employee or any representative of an applicant or employee, under any law for any employment-related action taken with respect to an applicant or employee in good-faith reliance on information provided by the system/Form.
- Neither an E-Verify mandate nor I-9 requirements should open the door to new causes of action unrelated to the hiring or firing of employees based on their work authorization status. Any new immigration legislation should include language prohibiting private rights of action against employers.
- Because neither the E-Verify system nor the Form I-9 can fully detect identity theft, even employers who use either of these in good faith and act correctly face the prospect of worksite raids causing business disruption and adverse media attention. Employers who correctly use E-Verify or I-9 requirements should not be subject to DHS arrests of workers at the place of employment – and they should have an opportunity to dispute the government’s conclusion that a worker is unauthorized.

### **B. Preemption of State and Local Laws**

- Allowing each state and locality to promulgate its own employment verification laws creates an unworkable legal patchwork and poses an undue burden on businesses. Employers need a uniform legal framework to alleviate confusion about their responsibilities under the law.

### **C. No Reverification of Existing Employees**

- Requiring employers to re-verify the eligibility of their current workforce is not only unduly burdensome for business, it is unnecessary. The U.S. labor force is extremely mobile—within five to ten years virtually every employee in the civilian sector will change jobs, guaranteeing that most employees will be verified in due time. Employees using false Social Security numbers will be discovered and removed from the legal workforce as employers comply with their obligation to follow up on Social Security number mismatches.
- Employers who want to re-verify their existing workforce should have that option. Any new legislation must deal with employers already enrolled in E-Verify as well as federal contractors covered by the Federal Acquisition Regulation, who are already implementing E-Verify for many or all existing employees.

### **D. No Liability for Subcontractors or Franchisees**

- Every U.S. employer should be held liable for the work authorization of its own employees. ABC opposes “cross-liability” provisions that hold employers accountable for the workers of other employers with whom they have contracts, subcontracts or other form of exchange. Small employers are particularly ill-equipped to manage and keep track of the hiring and firing practices of other entities with which they have business relationships. Employers do not have the authority to hire or fire the employees of other companies; they have no legal right to access the personnel files of those other companies and in many instances will never even meet most of the other entity’s workers.
- The government is responsible for establishing a reliable system for employers to use for all new hires. However, absent actual knowledge and evidence of collusion, businesses should not be liable for the actions of others outside their control, including independent contractors.

### **E. One Verification Obligation**

- Employers should not have to comply with two, duplicative verification obligations. Should a reliable E-Verify system be implemented for a given class of employers, those employers should no longer be required to complete and retain paper I-9 forms.
- Business owners who wish to retain paper copies of the electronic system’s confirmation of employment eligibility should be permitted to do so, and those paper copies should be sufficient evidence that employment eligibility was verified—but no business should be required to continue with two different methods of processing new employees.

## **F. Verifying Earlier in the Employment Process**

- If an E-Verify system for a certain group of employers is implemented, they should be allowed to begin the E-Verify process sooner—for example, when a job has been offered and accepted (currently acceptable under I-9 process), rather than the date the employee starts to work. This would make the system more efficient and make it possible to identify problems earlier in the process.
- Many other employment-related background checks begin when a worker accepts a position. Starting the E-verify process at the same time as these other background checks would be more efficient for employers. It would also alert employers and employees to problems earlier in the process, enabling more workers to resolve outstanding issues prior to starting work.

## **G. Administrative and Technical Violations**

- Employers who participate in and comply with the E-Verify system and/or Form I-9 requirements should not be subject to excessive penalties or prosecution for minor violations of law, regulation and policy. The government should distinguish between substantive violations (intentionally hiring unauthorized workers) and technical violations (missing a filing date or an inadvertent error or omission on a form).
- Employers should be presumed to be acting in good faith, and the government should be required to demonstrate the employer intended to commit fraud in order to impose more than a minimal penalty for an administrative violation.

## **H. Documentation**

- ABC is strongly opposed to any policy that shifts the burden of policing citizenship documentation, such as social security cards and drivers' licenses, to employers. The majority of ABC's 21,000 member firms are small businesses, which lack the time, resources and expertise to effectively and conclusively determine whether they are being presented with fraudulent documents.