

Justice in Motion

Justice in Motion protects migrant rights by ensuring justice across borders. Legal and practical

barriers prevent many migrants from asserting claims in a country when they are no longer

present, or from collecting evidence in other countries. To address these challenges, Justice in

Motion promotes “portable justice” to ensure that migrants can access justice across borders

when they challenge an exploitative employer, denounce an abusive government action, or seek

refuge from harm. Justice in Motion is dedicated to exposing and overcoming these injustices

through legal, educational, and policy initiatives in the United States, Canada, Mexico, and

Central America. Essential to this transnational model is our Defender Network, a unique

partnership of on-the-ground human rights organizations in Mexico and Central America. Justice

in Motion makes sure that wherever migrants go, their rights will follow.

Human Trafficking of Guestworkers

Human trafficking, the use of force, fraud, or coercion to obtain some type of labor or

commercial sex act, afflicts millions of men, women, and children around the world, including in

the United States. Traffickers often target potential victims who are vulnerable for any number of

reasons, including economic precarity, lack of a social network, and irregular immigration status.

In the US, trafficking victims are not limited to U.S. citizens, legal permanent residents, nor

undocumented migrants, but also encompass guestworkers, legally present in the US, who are

subject to extreme exploitation that often amounts to human trafficking. Inherent weakness in US

temporary foreign worker programs, such as poor program oversight, immigration status tied to a

single sponsoring employee, and a hidden workforce, expose guestworkers to the abuse of

unscrupulous employers. Trafficking occurs on every temporary work visa and temporary

foreign workers make up a disturbing portion of the identified victims of human trafficking. Many of the employers using the various visa categories specifically recruit women to fill their labor needs, leading to the exploitation and trafficking of women holding nonimmigrant work visas.

Guestworker Programs in the United States of America

Nonimmigrant work visas permit employers to hire migrant workers in a wide range of occupations, including those that require a formal education and those that do not. Some are thought of as the more traditional work visas, especially those in the “H” classification: The H-2A visa is used for seasonal agricultural occupations, mainly fruit, vegetable, and tobacco crop farming. The H-2B is used for low- and middle-skilled occupations including in landscaping, forestry, hospitality, seafood processing, and construction. The H-1B visa is used to hire university-educated workers, with most visas going to workers in computer-related occupations, but also to teachers, doctors, and engineers. The H visas either require that an employer first attest that they need to hire a migrant worker (H-1B) or certify that there are no available U.S. workers before they can hire a migrant worker (H-2A and H-2B).

Other visas, like the TN visa (for Canadian and Mexican professionals), L-1 (for intracompany transfers, specifically managers, executives, and employees with “specialized knowledge”), and O-1 (for persons with extraordinary ability) are also typical work visas, but do not require that employers attest or certify their need to hire a migrant worker. Some nonimmigrant visas—for instance the F-1 for university-level studies or the J-1, which is intended to facilitate an international exchange that is cultural or educational in nature—permit employment but may be granted initially for another purpose.

The B-1 visa for “business visitors” allows persons from abroad to attend meetings and conferences and conduct international business transactions. Nonimmigrant visitors with B-1 visas are generally not allowed to be employed by a U.S. employer or remunerated by a U.S. source, but there are certain exceptions. Categories exist for persons to be employed in the United States as supervisors of construction workers, domestic workers, and in occupations that would normally require the issuance of an H-1B visa.

Temporary work programs are growing and increasingly fill labor needs worldwide. According to the Economic Policy Institute, in 2013 there were approximately 1.4 million temporary migrant workers employed in the United States in the major nonimmigrant visa classifications, accounting for approximately one percent of the U.S. labor force at the time, with the H-1B alone accounting for nearly 500,000 workers. The size of the H-2A program for seasonal agricultural labor needs has more than doubled since the estimate was published, with over 240,000 farm labor jobs certified in 2018. Two of the major nonimmigrant work visas, the H-2B (seasonal non-agricultural work) and H-1B (high-skilled specialty occupations), have a statutorily defined annual numerical limit or “cap”. The rest have no annual cap.

Flaws in the U.S. Guestworker Scheme

There are several weaknesses in the U.S. nonimmigrant visa programs that enable worker exploitation. First, nearly all guestworkers must depart the country after their visa expires, as permanent immigrant status or citizenship are not possible under most nonimmigrant work programs. Second, the visa is tied the specific employer and job, and the validity of the visa is conditioned on the guestworkers employment with the sponsoring employer. If a guestworker gets fired from work or quits, he or she becomes instantly deportable. Therefore, when job conditions are less than ideal, or if an employer breaks the law or treats a guestworker unfairly, the employee must often choose to keep quiet and not complain to the boss or the authorities, or risk deportation by speaking out. Third, many guestworkers pay relatively large fees—often thousands of dollars—to labor recruiters in order to be connected to temporary jobs in the United States. If guestworkers get fired for complaining about unpaid wages and become deportable, they also lose the opportunity to pay back the debt incurred to pay the fees, leaving them indebted to family members, recruiters, or often organized criminals. This combination of employer control and indebtedness is one of the ways that the legal frameworks of nonimmigrant work visas can facilitate human trafficking.

Human Trafficking of U.S. Guestworkers

There are concrete examples of trafficking being facilitated through the use of temporary visas in almost every nonimmigrant work visa classification, which have been documented by government auditors, advocacy groups, and news reports. In a report published in 2015 and updated in 2017, the U.S. Government Accountability Office (GAO) described the vulnerabilities faced by guestworkers in the H-2A and H-2B visa classifications. GAO noted that between 2009 and 2013, 49 H-2A and 137 H-2B workers obtained nonimmigrant T visas, which are issued to victims of human trafficking.[[1]](#footnote-1)

Polaris, a non-profit organization with a mission of eradicating human trafficking and modern-day slavery,[[2]](#footnote-2) keeps statistics on the number of trafficking victims they encounter who held a nonimmigrant visa. According to Polaris’s latest report on nonimmigrant visas and trafficking, their National Human Trafficking Hotline

identified some 800 individual victims of human trafficking from January 1, 2015 - December 31, 2017 who were [in the United States] and working under temporary work visas. Overall, nearly half of the victims of labor trafficking reported to the National Hotline during this period whose immigration status was identified were foreign nationals holding legal visas.[[3]](#footnote-3)

The trafficking cases reported to Polaris were associated with a variety of nonimmigrant work visas, including the more commonly known H-2A, H-2B, and H-1B visas, to the lesser known A-3 and G-5 domestic worker visas, B-1 business visitor visa, F-1 student visa, and J-1 exchange visitor visa.

Data published by the Human Trafficking Legal Center indicates a significant number of federal human trafficking cases involved victims holding nonimmigrant work visas. From 2003 through 2017, 261 civil suits containing claims of human trafficking were filed in federal court. Of those, 122 alleged the trafficking of a non-immigrant visa holder. According to these data, nearly half of the civil human trafficking federal lawsuits filed counted nonimmigrant work visa holders as victims.[[4]](#footnote-4)

In 2014, the Urban Institute and Northeastern University studied 122 closed labor trafficking victim service records from service providers in four United States cities. The vast majority of trafficking survivors sampled (71 percent) entered the United States on a temporary visa. The most common temporary visas were H-2A visas for work in agriculture and H-2B visas for jobs in hospitality, construction, and restaurants. The study also identified female domestic servitude victims who had arrived in the United States on diplomatic, business, or tourist visas.[[5]](#footnote-5)

There are many examples of women guestworkers who were trafficked while present in the U.S. on a temporary guestworker visa. A few cases are listed here for reference:

A-3: Domestic Workers Employed by Diplomats

*U.S. v. Penzato et al.*

Giuseppe Penzato, an Italian Consulate official in California, and his wife, Kesia Penzato,

sponsored the entry of a domestic worker from Brazil on an A-3 visa. The couple promised

the woman free room and board, as well as $1500 per month to clean their home and care

for their children. Instead, she was kept as a virtual prisoner; according to the prosecution,

the Penzatos paid her only $500, withheld food, and abused her physically and verbally. The

woman escaped after several months and sued her employers for human trafficking and labor

law violations. The couple pleaded guilty to a misdemeanor charge of conspiring to possess

an illegal identification document and agreed to pay $13,000 to the victim.[[6]](#footnote-6)

B-1: Business Visitors

*U.S. v. Liu*

This trafficking case involved two domestic workers with B-1 visas. Hsien-Hsien Liu, a Taiwanese envoy based in Kansas City, Missouri, was indicted for fraud in foreign labor recruiting in 2011. After bringing two Filipina nationals to the United States on B-1 visas to work as her housekeepers, Liu only paid them a portion of their contracted salary and forced them to work long hours without holidays or breaks. Additionally, Liu used surveillance cameras to monitor the two trafficking victims who were unable to leave the residence. Federal prosecutors held Liu in custody for 78 days after her arrest and she was not granted diplomatic immunity. She waived her right to grand jury and pled guilty on the lesser charges. That year, she was ordered to pay $80,044 in criminal restitution to these victims and a judge ordered her deportation after she paid over $11,000 in fines. The federal government determined that the two Filipina nationals were labor trafficking victims and they received certification from Health and Human Services, which granted them eligibility to access public benefits and services to the same extent as refugees.[[7]](#footnote-7)

H-1B: Specialty Occupations

*U.S. v. Kalu*

Kizzy Kalu of Highlands Ranch, Colorado and Philip Langerman of McDonough, Georgia owned and operated Foreign Healthcare Professional Group (FHPG), which recruited foreign nationals to be employed as teaching professionals with high paying salaries at the unaccredited Adam University. The victims paid $6500 up front in order to secure their H-1B guestworker visas, and once they arrived in the U.S., they were forced to work in nursing homes and long-term care facilities rather than as nurse instructor supervisors. Additionally, they were paid considerably less than what they had been promised and in some instances, Kalu terminated the contract of these victims while forcing them to seek employment elsewhere, while requiring them to continue paying a monthly fee to FHPG. When the nurses refused, Kalu threatened them with deportation and said he would notify U.S. Citizenship and Immigration Services (USCIS) of his withdrawal of their visas. Langerman pled guilty to conspiracy charges and cooperated with the government to receive three years’ probation. Kalu was convicted on 89 counts including mail fraud, visa fraud, human trafficking, and money laundering and was sentenced to 13 years in federal prison. Both defendants are responsible for $3.8 million in restitution owed to the victims involved in this case.[[8]](#footnote-8)

J-1: Exchange Visitors

*U.S. v. Cooper*

Jeffrey Jason Cooper, 46, recruited a group of female university students from Kazakhstan on J-1 Summer Work Travel visas by promising them work at a yoga studio in Miami, Florida. The young women were told that they would work as receptionists, setting up appointments and answering phone calls while enjoying cultural immersion in Miami. When they arrived, however, they found that the yoga studio did not exist; instead, they were forced to run an erotic massage parlor from Cooper’s condo and perform sex acts for customers. Cooper, who was operating under a false name, advertised the women as “gorgeous” and “drama free” on Backpage.com. He told them that if they did not obey his orders, their visas would be revoked and they would not be paid. The students were rescued by law enforcement after several months, and Cooper was convicted of 11 sex trafficking-related charges and sentenced to 30 years in prison.[[9]](#footnote-9)

J-1: Exchange Visitors

*U.S. v. Aleksandr Maksimenko*

Aleksandr Maksimenko and his co-defendants were ringleaders in a conspiracy to bring women from Eastern Europe to work as exotic dancers in strip clubs in Detroit, Michigan. Posing as a legitimate business, Beauty Search Inc., the defendants promised participants through the J-1 Cultural Exchange Program an opportunity to learn English and work at local restaurants. These young women were forced to dance at strip clubs by threats of physical violence and deportation, document confiscation, debt bondage, and confinement. In particular, one woman was forced to dance for 12 hours a day, six days a week, and forced to meet a daily quota of $1,000 a day, or face physical and sexual abuse. Similarly, the victims were made to believe that they incurred significant debt for travel and entry into the U.S. The defendants pleaded guilty to involuntary servitude, money laundering, and immigration conspiracies. Maksimenko was sentenced to 14.5 years in prison and ordered to pay $1.5 million in restitution and his co-defendants received similar sentences.[[10]](#footnote-10)

Need for Transparency in Guestworker Programs

The dearth of publicly available information on nonimmigrant work visas contributes to workers’ vulnerability to trafficking for two major reasons. First, workers in destination countries seeking to temporarily work in the United States have very few ways to verify if job offers advertised to them by recruiters are legitimate. Before agreeing to become a guestworker, migrants usually have no reliable source of information they can turn to that can verify if a job offer is authentic, if an employer listed on a job offer actually exists, and whether the employer obeys the law and pays the salary promised on the job offer. Guestworkers who have been trafficked and exploited often report that the reality of their job did not match what was promised before they left their home country. Guestworkers are often placed in a different occupation than the one they were promised, and in a different location, with a different employer, and paid much less than they were promised.

Second, the lack of transparency about the employers that apply for nonimmigrant visas leaves guestworkers more vulnerable to trafficking because the prevention efforts of anti-trafficking organizations and advocates are hindered if they are unable to know the names of the employers and businesses that are hiring guestworkers and the occupations guestworkers are employed in, as well as the gender and origin countries of guestworkers, and the salaries that employers are promising to pay guestworkers. If this information were available, then anti-trafficking organizations could identify where traffickers are operating abroad, develop targeted outreach campaigns to prevent human trafficking, and warn vulnerable workers and U.S. embassies in origin countries. Non-governmental organizations in the United States could identify U.S.-based traffickers, inform law enforcement about patterns and examples, and educate workers about their rights. Researchers and policymakers could also use the information to identify systemic failures in U.S. work visa programs and correct them, thus protecting both migrant and U.S. workers

While human trafficking is a global problem that will require multiple innovative efforts to combat, making more information about nonimmigrant work visas available is an important tool that can make a major impact at a nominal cost, considering that U.S. government already collects significant amounts of valuable information that it does not publish. The U.S. government also already possesses the infrastructure to begin making the information widely available and easily accessible to law enforcement, advocacy groups, researchers, and policymakers.[[11]](#footnote-11)

A uniform system for reporting data and information that the government already collects on nonimmigrant work visa programs and making that information publicly available, through annual reports and a database would be an important first step in combatting the trafficking of guestworkers. In the U.S., the government already possesses a vast amount of data on nonimmigrant work visas that it does not currently release publicly. Requiring increased access to existing nonimmigrant visa data that is already collected as part of the application process for work visas would bring a much higher level of transparency to the U.S. immigration system, drastically improving the ability of anti-trafficking advocates to protect vulnerable migrants before and after they arrive in the United States. Increased transparency and data would also improve the quality of public policy debates surrounding nonimmigrant work visas and human trafficking.

An example of an initiative requiring transparency is the Visa Transparency Anti-Trafficking Act, last proposed in the U.S. in 2018.[[12]](#footnote-12) The Act would require that the American immigration system be modernized and transparent, and ultimately, lend integrity and credibility. Without transparency and information, anti-trafficking advocates, policymakers, and the public lack the evidence they need to devise victim outreach and prevention plans, or to improve public policies relating to trafficking. Outreach and prevention efforts will continue being hindered if advocates don’t know which employers use nonimmigrant work visa programs and where guestworkers are located. But with a standardized and public reporting system across nonimmigrant visa categories that authorize work, anti-human trafficking organizations could then identify where traffickers are operating abroad, develop targeted outreach campaigns to prevent human trafficking, and warn vulnerable workers and partners in source countries. U.S. non-governmental organizations could identify U.S.-based traffickers, inform law enforcement, and educate workers about their rights. Researchers and policymakers could use the data to identify systemic failures in U.S. worker visa programs and correct them, thus protecting both foreign and U.S. workers. Robust data reporting on and transparency in non-immigrant visa programs are important tools for combatting human trafficking.

1. U.S. Government Accountability Office, *H-2A and H-2B Programs: Increased Protections Needed for Foreign Workers*, March 2015 (revised on May 30, 2017), <https://www.gao.gov/assets/690/684985.pdf>. [↑](#footnote-ref-1)
2. Polaris website, <https://polarisproject.org/>. [↑](#footnote-ref-2)
3. Polaris, *Human Trafficking on Temporary Work Visas: A Data Analysis 2015-2017*, <https://polarisproject.org/human-trafficking-temporary-work-visas-data-analysis-2015-2017>. [↑](#footnote-ref-3)
4. Human Trafficking Legal Center, cited in JiM factsheet [↑](#footnote-ref-4)
5. Colleen Owens et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Urban Institute (October 21, 2014), <https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>. [↑](#footnote-ref-5)
6. Egelko, B. (2013, April 18). Plea deal for ex-Italian consular worker, wife. *San Francisco Gate.* Retrieved from https://www.sfgate.com/crime/article/Plea-deal-for-ex-Italian-consular-worker-wife-4446446.php [↑](#footnote-ref-6)
7. Morris, M. (2011, November 18). Taiwanese envoy admits guilt in labor fraud case. *Kansas City Star.* Retrieved from https://www.kansascity.com/news/local/article299750/Taiwanese-envoy-admits-guilt-in-labor-fraud-case.html [↑](#footnote-ref-7)
8. McGhee, T. (2013, June 4). Kizzy Kalu lured nurses to U.S. with promises of high pay, prosecutors say. *Denver Post.* Retrieved from https://www.denverpost.com/2013/06/04/kizzy-kalu-lured-nurses-to-u-s-with-promises-of-high-pay-prosecutors-say/ [↑](#footnote-ref-8)
9. U.S. Attorney’s Office, Southern District of Florida, U.S. Department of Justice. (2016, November 18). Florida Man Convicted of Sex Trafficking in Connection with Human Trafficking Scheme Targeting Foreign University Students. *United States Department of Justice*. Retrieved from https://www.justice.gov/usao-sdfl/pr/florida-man-convicted-sex-trafficking-connection-human-trafficking-scheme-targeting [↑](#footnote-ref-9)
10. U.S. Attorney’s Office, Eastern District of Michigan, U.S. Department of Justice. (2007, June 25). Livonia Man Sentenced To 14 Years In Prison And $1.5 Million In Restitution For Forcing Eastern European Women To Work At Detroit Area Strip Clubs. *United States Department of Justice*. Retrieved from https://www.legislationline.org/documents/id/6765 [↑](#footnote-ref-10)
11. See for example, the data and reports posted on the for the Department of Homeland Security’s Office of Immigration Statistics webpage, <https://www.dhs.gov/office-immigration-statistics>, the USCIS’s Buy American Hire American page, <https://www.uscis.gov/legal-resources/buy-american-hire-american-putting-american-workers-first>. [↑](#footnote-ref-11)
12. H.R.4777 - Visa Transparency Anti-Trafficking Act of 2018, 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/4777>. [↑](#footnote-ref-12)