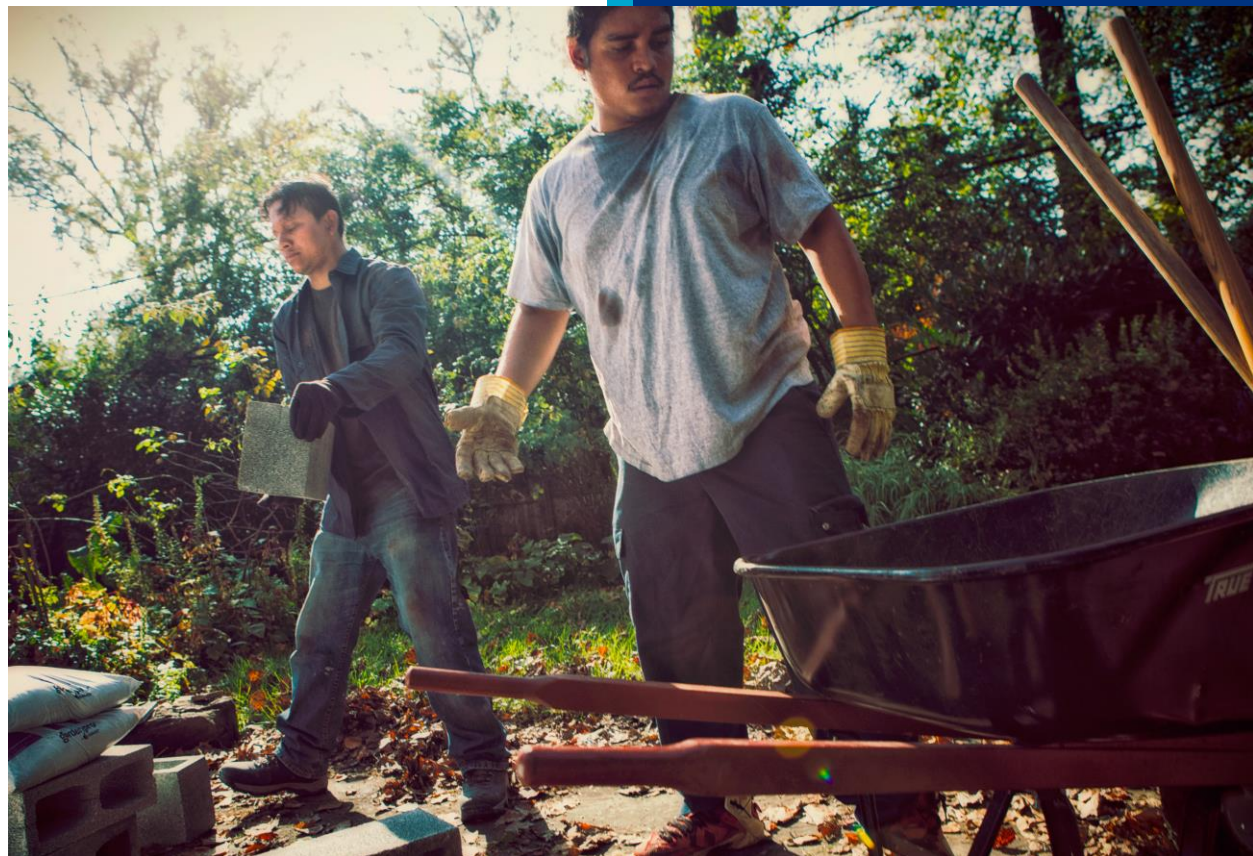


Recruitment, Human Trafficking, and Temporary Visa Workers



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Human trafficking, and specifically labor trafficking, is the recruitment, harboring, transportation, provision, or obtaining of a **person for labor or services** through the **use of force, fraud, or coercion** for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹ Labor trafficking occurs in roughly two steps: recruitment and ongoing control during employment. For temporary visa workers, such as those holding H-2A or H-2B visas, the recruitment phase occurs in their home countries and may involve fraud and coercion. Here's how it works:

UNDERSTANDING TEMPORARY VISA WORKER RECRUITMENT

- A U.S. employer applies to the U.S. government for the right to hire temporary visa workers to fill jobs that the employer claims cannot be filled by workers locally.
- The government certifies that the employer has met the criteria. With certification in hand, the employer is then allocated a certain number of visas to be granted to workers from outside the U.S.
- The employer then can either a) go overseas and find workers themselves or b) hire labor recruiters to locate workers who are interested in applying for the jobs/visas – the latter being far more common. These recruiters can be based overseas or in the United States.
- Recruitment agencies then often **subcontract** to other agencies or individuals with more direct contacts in communities of origin where workers live.
- There is little oversight of this multilayered recruitment process. During the recruitment process, workers often do not know who is technically responsible for their employment and well-being.
- Recruiters are usually financially incentivized to recruit as many workers as possible and there is little oversight into how much they tell workers about the jobs and if the information they give is accurate.
- Contracts may not be given to workers at all, may be shown in a language the worker is not fluent in, may be inaccurate or misleading, and may be different from the contract the worker receives once they are in the United States.
 - When workers are lied to about the job, such as being promised one rate and then receiving another, this is fraud and can indicate human trafficking.
 - According to the Code of Federal Regulations § 655.122 (q) *The employer must provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable.*
- It is illegal in both the United States and Mexico for potential H-2A workers to be charged for any part of the recruitment process including transportation, visa processing fees, and other expenses. Nonetheless, this law is routinely broken by recruiters at various stages in the process.
 - The result of these illegal fees – which can total thousands of dollars – is that workers often borrow money to cover the costs of getting these coveted jobs.
- This debt makes them more dependent than they would otherwise be on the money they are planning to earn in the United States.
 - Many employers and recruiters know that workers are in debt once they arrive in the United States. This knowledge can be used as coercion to keep workers in exploitative and abusive situations which leads to human trafficking.

¹ Trafficking Victims Protection Act of 2000, 22 U.S. Code § 7102 (2020): <https://www.law.cornell.edu/uscode/text/22/7102>.



The purpose of this brief is to examine the roles recruitment practices, regulations, and enforcement play in the experiences of trafficking victims who are in the United States on temporary worker visas. Data from the U.S. National Human Trafficking Hotline² (Trafficking Hotline) identified 4,816³ likely victims from January 1, 2015 – December 31, 2020⁴ who were in the United States and working under any of the visa categories listed on the right at the time of their abuse. For the purposes of this brief, Polaris analyzed data pertaining to victims of labor trafficking, as well as victims of labor trafficking whose situations also contained elements of sex trafficking. Of the 4,816 likely victims with temporary worker visas identified by the Trafficking Hotline during this period, 90 percent (N = 4,333) shared information about how they were recruited, including 848 or 20 percent of likely victims who reported being recruited by a foreign labor recruiter or contractor (the terms will be used interchangeably in this report). However, it is important to understand that workers don't always know who has recruited them – an employer, a foreign labor contractor, a subcontractor, or otherwise. Trafficking Hotline Advocates speaking to these victims found that many were unable to definitively answer whether or not their exploiter was their direct employer because of a general sense of confusion regarding the role of labor contractors and foreign labor recruiters. Therefore, while 20 percent (N = 848) of likely victims identified their recruiter as a foreign labor contractor, other likely victims may instead have described their foreign labor contractor as an employer, coworker, or friend to the Trafficking Hotline. Consequently, while only 848 likely victims with recruitment information explicitly state that they were recruited by a foreign labor contractor, the number is perhaps much higher.

Chart: Descriptions of Visa Type

Visa Types	Description
A-3/G-5	Personal attendants to diplomats and employees of international organizations
B-1	Business visitors
F-1	Students
H-1B	Specialty occupations, such as teachers and health care workers
H-2A	Agricultural workers
H-2B	Temporary non-agricultural workers
J-1	Participants of cultural and educational exchange programs

Recruitment through Fraud and False Promises

Recruitment may involve **fraud**, an indicator of human trafficking, when workers are lied to or deceived with false promises about what a job will pay, the hours they will work, the work they will do, the things they may have to pay for, and the conditions they will be working under. Unfortunately, there is little oversight into what recruiters tell workers to ensure they are not lying and deceiving workers.

When examining just those temporary visa workers who were recruited by a labor recruiter or contractor (N=848), 50 percent of temporary visa workers recruited by a labor recruiter or contractor were recruited through false promises and fraud.

² The National Human Trafficking Hotline is supported by the Administration for Children and Families (ACF) of the United States (U.S.) Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$3.5 million with 71.87% percentage funded by ACF/HHS and \$1.37 million and 28.13% percentage funded by non-government source(s). The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACF/HHS, or the U.S. Government. For more information, please visit the ACF website, Administrative and National Policy Requirements: <https://www.acf.hhs.gov/administrative-and-national-policy-requirements#chapter-8>. This brief was developed using private funds, without the use of U.S. government funding.

³ Human trafficking is notoriously underreported, meaning that the individuals whose cases were reported likely represents only a very small fraction of the number of actual victims.

⁴ The data is accurate as of April 23, 2021 but is subject to change as new information emerges or data cleanup occurs.

Recruitment Fees

The use of recruitment fees for temporary visa workers applying for jobs in the United States is pervasive. Even though recruitment fees are prohibited in the United States and other countries, like Mexico,⁵ the lack of oversight and enforcement regarding the charging of recruitment fees for most temporary visa workers continues.

Recruitment fees are charges levied for anything from the ability to attend a recruitment fair to fees associated with signing contracts or paying for transportation. A recent study by Centro de los Derechos del Migrante (CDM) found that 58 percent of the workers sampled reported paying recruitment fees and 47 percent had to take a loan out to pay for the recruitment fees and expenses.⁶ On average, CDM found that workers paid \$590 USD in recruitment fees to come to the United States. This is consistent with victims who contacted the Trafficking Hotline who reported having to pay recruitment fees, typically ranging from \$1,000 to \$9,000 USD.

Having paid substantial fees – and often having gone into debt to do so – leaves workers with little choice but to try to recoup their losses, regardless of the conditions in which they are working. The fear of subsequent retaliation in the form of blacklisting or threats of violence keeps many from reporting violations.

Some victims may not have to pay lump sums, but instead have deductions taken out of their paychecks on an ongoing basis, which were explained vaguely to the workers as covering expenses related to recruitment, visas, and transportation. Because of the **general confusion regarding the visa process**, many victims who reported to the Trafficking Hotline were not sure to whom they had paid recruitment fees or why they had been required. Victims mentioned paying fees to foreign labor recruiters, their employers, or their direct supervisors at their jobs. Some specified that they were told the fees were to cover the cost of obtaining a visa, while others described the fees more vaguely as necessary “to get the job,” which may indicate a more informal and inconsistent system of exploitative practices used by some recruiters.

⁵ Ley Federal Del Trabajo Nueva Ley Publicada En El Diario Oficial De La Federación El 1º De Abril De 1970.” *Universidad Nacional Autónoma De México (UNAM)*, Estados Unidos Mexicanos, www.juridicas.unam.mx/legislacion/ordenamiento/ley-federal-del-trabajo. See 20 C.F.R. § 655.135(j); 20 C.F.R. § 655.122(h); 8 C.F.R. § 214.2(h)).

⁶ Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change. *Centro de los Derechos del Migrante, Inc.* Retrieved May 6, 2021 from http://www.cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf.

Trapped by Debt

A family acquaintance told Rita* about a recruiter looking to fill housekeeping jobs at hotels in the United States. The recruiter told Rita she had to pay certain fees to be eligible for consideration for the job, which required an H-2B visa, and kept tacking on more fees and costs during the process, including the cost of a plane ticket.

In total, Rita spent nearly \$10,000 USD on recruiter fees and transportation to come to the United States for the job. She was told she would be reimbursed for some of these expenditures. She was also promised that her housing and food would be paid for while she was employed at the hotel. None of those promises were kept.

At the end of the contract, Rita was in debt because of the money she borrowed to take the job in the first place. Because she had no other options and could not even afford to fly home, she was forced to pay additional money and take another job through the same agency.

She ended up working with law enforcement and calling the Trafficking Hotline, which was able to connect her with legal resources to work toward an immigration remedy.

**Name changed to protect victim's identity.*



Opportunity to Nightmare

Miguel* was recruited in Mexico for a job to work on a farm in the United States. His recruiter, “Juan,” would be his boss. He was told he would work for 40 hours a week and earn \$11 an hour. He was told his housing and food would be paid for so he could send the money he earned to his family.

When he started working on an H-2A visa, he was confused because now his contract was with “Maria” and he was unsure if she was the employer, owner of the farm, or another supervisor.

Instead of his initial promised pay and hours, he was earning about \$60 a week working 8 hours a day, as he was paid for each piece of food he picked. He was also having to pay for the motel where he was staying and food which was typically \$90 a week, which meant he was spending more than he earned. When food was provided, it was expired or contaminated, and he and others got sick. Miguel was threatened with deportation and blacklisting if he left the farm or kept complaining about wages or food.

When Miguel called the Trafficking Hotline, he was connected to services and able to report his situation to appropriate authorities.

**Name changed to protect the victim’s identity.*

Contract Violations

Workers are **required** to receive written disclosure of the terms and conditions of the job for which they are being hired at the time of recruitment.⁷ This disclosure is required to occur in the worker’s home country. Workers need these contracts to inform them of the work they are expected to perform so they can make an informed choice in taking the job. However, many recruiters do not show workers a contract at all. Even when they do have a contract, workers may be given misinformation about wages, schedules, associated fees, living conditions, and benefits. Without adequate and reliable information, workers are vulnerable to abuse and exploitation.

In CDM’s “Recruitment Revealed” report, 52 percent of workers were not shown contracts with the responsibilities for the job for which they were being recruited.⁸ Victims have reported to the Trafficking Hotline that they never received contracts, were given contracts in a language they could not read, or signed a contract but then were not given a copy of that contract to reference later. One study found that of all Mexican H-2A workers interviewed,

77 percent received a written work offer, but only 21 percent could understand what the contract said and 66 percent of workers felt pressured to sign a contract that was not in Spanish.⁹

Many of the victims who reported their abuse to the Trafficking Hotline had contracts with explicit stipulations that were later violated. Contract violations varied by visa type. For example, in many H-2A cases, victims reported their contracts for agricultural work explicitly stipulated an hourly wage. However, upon arrival at their job, victims later learned they would be paid on a piece-rate basis, making their earnings almost entirely dependent on weather and other agricultural conditions beyond their control. In cases involving J-1 visas, some victims’ contracts specified they would be placed in positions where they could gain vocational experience, such as hospitality management, only to find themselves working in housekeeping at a hotel. Contract violations that spanned across visa categories included false promises of transportation between work and living sites as well as promises of reimbursement or provision of food, living expenses, travel to the United States, and the supply of uniforms or protective safety gear.

⁷ 20 CFR § 655.122. Retrieved from <https://www.law.cornell.edu/cfr/text/20/655.122>.

⁸ Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change. *Centro de los Derechos del Migrante, Inc.* Retrieved May 6, 2021 from http://www.cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf.

⁹ Centro Independiente de Trabajadores Agrícolas et al., *Jornaleros Mexicanos en EU Con Visa: Los Modernos Olvidados* 29 (2012), www.globalworkers.org/our-work/publications/jornaleros-safe.



Methods of Control: Force, Fraud, and Coercion

Recruitment fees and contract violations are connected to various types of force, fraud, and coercion that temporary visa workers experience and report to the Trafficking Hotline. When workers are recruited and are lied to about what job they will do, how much they will earn, and the working and living conditions to which they will be subject, this is a type of fraud or false promise and is an indicator of human trafficking. **For temporary visa workers who were recruited by a labor recruiter or contractor (N=848), 41 percent reported that misrepresentation of the job or fraud was used as a method of control.**

Real or perceived debt, often attributed to initial recruitment and transportation costs, is used as a way of controlling victims in a variety of industries. The use of quotas in agriculture is also common, where victims are mandated to produce or complete an often unattainable amount of work-related products or tasks, or face often serious repercussions. Recruitment fees typically ensure that workers will have a debt when they arrive in the United States to work and this debt can be weaponized as a means of control to force or coerce the victim into an abusive and exploitative trafficking situation. **Twenty two percent of visa workers recruited by a labor recruiter or contractor reported that debt or quotas were used as a method of control.**

Another way to control victims is through manipulation of a language barrier. This can include having contracts and agreements that workers have to sign in languages that recruiters and employers know they will not understand. Language can also be used as a means to isolate victims as they are not able to report abuse and exploitative situations due to the communication barrier. **For temporary visa workers recruited by a labor contractor, 12 percent said that manipulation of a language barrier was used against them.**

Chart: Differences in Specific Methods of Control for Visa Workers Recruited by a Labor Recruiter

Methods of Control ¹⁰	Visa Workers Recruited by Labor Recruiter (N=848)
Debt or Quota Related	22 percent
Misrepresentation of Job or Fraud	41 percent
Manipulation of Language Barrier	12 percent

Caveats for Data from U.S. National Human Trafficking Hotline

- The goal of the Trafficking Hotline is to connect victims and survivors of human trafficking to the services that they need.
- While doing this, we gain information about the type and nature of their trafficking experience, including how they were recruited, who they were recruited by, and the methods of force, fraud, and/or coercion used to recruit and keep them in a trafficking situation.
- This data is gathered for the purpose of providing assistance and is dependent on what a victim or survivor shares willingly during their request for services.
- Every caller is not asked the exact same questions and there may be missing information on certain topics pertaining to victims and survivors.
- The Trafficking Hotline did not have direct contact with all victims represented through this data set.
- Since awareness of both human trafficking and the existence of a victim service hotline is still limited, this data set should be interpreted as a biased sample of actual victim data, rather than a representation of all existent victims.

¹⁰ These statistics are non-cumulative. Survivors may experience multiple methods of control or this information may not be provided. Accordingly, percentages do not add up to 100%.



Policy Recommendations

Given the rampant exploitation documented in the process of recruiting temporary visa workers, both Congress and the Administration should take action to increase worker protections and hold recruiters, contractors, and employers accountable for these abuses. Policy changes that would help to effectively protect temporary visa workers during recruitment include:

<p>Ensure Strong Accountability Including Joint Employer Liability</p> <p>Ultimately, employers must be held accountable for the recruiters and contractors they use to recruit their temporary visa workers. If not, there is no incentive or guarantee that employers will work with the most ethical recruiters. By holding employers accountable, it puts the onus on the employer to work with recruiters who are engaging in good behavior. Employers should be required to use recruiters that are registered and certified by the Department of Labor, disclose their entire recruitment supply chain, and should be held jointly and severally liable for violations committed by recruiters or contractors they use.</p>	<p>Certify and Register Approved Recruiters</p> <p>Effective and integrated government oversight of recruiters is critical to preventing abuse and holding accountable those who perpetuate exploitation. Foreign labor recruiters and contractors should be required to obtain a certificate of registration from the Department of Labor in order to recruit temporary visa workers. The Department of Labor should maintain a public, updated list of all certified recruiters that employers are required to use and should provide tools and resources to employers and workers so they can know they are using a certified, registered recruiter. The Department of State, and particularly consulates in workers’ home countries, should also regularly use this list to ensure the use of legitimate recruiters.</p>
<p>Enforce Ban on Recruitment Fees</p> <p>Importantly, there must be rigorous enforcement of the ban on charging fees by foreign labor recruiters and contractors. Illegally charging fees, including visa fees, processing fees, transportation fees, legal expenses, and placement fees, is common. Workers should be provided information about illegal recruitment fees, resources for who to contact to report illegal fees, and protections for reporting illegal fees, including from firing and blacklisting. Banning recruitment fees across visa categories should also be codified into law.</p>	<p>Require Disclosure of Information to Workers</p> <p>Recruiters and contractors are mandated to disclose the full and complete information about terms and conditions of employment to workers so they have a clear and truthful understanding of the job conditions, responsibilities, wages, and identity of the employer for the job for which they are being recruited. Workers should be provided this information in writing in their primary language at the time of recruitment, at the time of visa processing, and once the worker has arrived at the worksite in the United States. Currently, there is little oversight to make sure that these contracts are presented to workers correctly so that the workers fully understand the nature of the employment conditions and their rights and protections.</p>

The Department of Labor, Department of State, and Department of Homeland Security should each explore steps they can take to protect temporary work visa holders from exploitation at the time of recruitment, before they start their work in the United States. These agencies should also increase interagency coordination and transparency to move these policies forward.

At the same time, many of these provisions will require action from Congress to fully implement and ensure long-term change. Bipartisan legislation to reform foreign labor recruitment and regulate recruiters and contractors has been introduced and considered by Congress in the past, including as part of the immigration reform legislation passed by the Senate in 2013, and contained many of the recommended policies. Congress should revisit these past proposals, strengthen them to address the continued abuse of workers, and pass legislation to protect temporary visa workers and strengthen accountability for abusive recruitment practices.