

NO WAY IN: U.S. Immigration Policy Leaves Few Legal Options for Mexican Workers

by Rob Paral*

EXECUTIVE SUMMARY

Current immigration policies are completely out of sync with the U.S. economy's demand for workers who fill less-skilled jobs, especially in the case of Mexican workers. While U.S. immigration policies present a wide array of avenues for immigrants to enter the United States, very few of these avenues are tailored to workers in less-skilled occupations. It should come as no surprise, then, that immigrants come to or remain in the United States without proper documentation in response to the strong economic demand for less-skilled labor.

Among the findings of this report:

- According to the Bureau of Labor Statistics, 48 percent of all job openings, some 27 million positions, between 2002 and 2012 “are expected to be held by workers who have a high school diploma or less education.”
- Given that 12.5 percent of native-born adults age 25 and older lacked a high school diploma in 2003, compared to 32.8 percent of the foreign-born, it is clear that a large number of less-skilled jobs will be filled by immigrants.
- According to the 2003 American Community Survey, Mexicans comprised 30.7 percent of all foreign-born workers in the United States, but amounted to 88.8 percent of the

foreign-born labor force in “farming, fishing, and forestry”; 60.2 percent in “construction and extraction”; and 51.6 percent in “building and grounds cleaning and maintenance.”

- Only one of the five categories of visas for permanent immigration status is tailored to less-skilled workers, and it is capped at 5,000 visas per year.
- Only two of the 16 employment-based visa categories for temporary immigrant status are available to workers in industries that require little or no formal training. One (H2A) is restricted to agricultural workers and the other (H2B) is not only capped at 66,000, but is limited to “seasonal” or otherwise “temporary” work that is defined so restrictively as to disqualify workers in many industries.
- Roughly 76 percent of Mexicans receiving temporary work visas in 2002 were recipients of only H2A and H2B visas. In other words, Mexican workers are crowded into categories in which few visas are available for most industries.
- The family-based immigration system is not capable of compensating for deficiencies in the employment-based system due to arbitrary numerical caps. In the case of Mexican nationals, wait times for visas under the “family preference” system are currently 7-10 years for the spouse of an LPR and 10-12 years for the unmarried adult child of a U.S. citizen.

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INTRODUCTION

The debate over whether or not the U.S. economy needs workers from abroad has intensified since President Bush proposed a new temporary worker program in a January 2004 speech. In May 2005, Senators John McCain (R-AZ) and Edward Kennedy (D-MA) introduced legislation – the Secure America and Orderly Immigration Act – that builds upon the idea of a temporary worker program by also proposing the expansion of pathways to lawful permanent residence for temporary workers (including those already in the country in an undocumented status). This legislation is based on an understanding that the current U.S. immigration system provides very few legal avenues for the admission of workers needed by the U.S. economy to fill less-skilled jobs, thereby creating incentives for undocumented immigration, primarily from Mexico, in response to actual labor demand.

U.S. immigration policies allow prospective immigrants (as opposed to temporary visitors) to legally enter the United States, if visa petitions are filed on their behalf by an employer or a family member who is either a U.S. citizen or lawful permanent resident (LPR). However, there are extremely few employment visas available to accommodate the millions of immigrant workers whom the U.S. labor market demands as construction workers, factory workers, groundskeepers, and housekeepers. As a result, many workers from abroad enter or remain in the country either in an undocumented status or by using the family-based immigration system, which is by definition not designed to be an employment program. In order to correct this imbalance, the U.S. immigration system must be reformed to place a far greater emphasis on the U.S. economy's demand for immigrant workers, especially those from Mexico, who fill less-skilled jobs.

FOREIGN-BORN WORKERS PLAY CRITICAL ROLE IN THE U.S. LABOR FORCE

There is a high demand in the United States for workers in jobs that require little or no formal education. According to the Bureau of Labor Statistics, there probably will be about 56 million job openings between 2002 and 2012, and 42 million of those, or 75 percent, “are projected to be filled by workers who do not have a bachelor’s degree and who are entering an occupation for the first time.” Moreover, 27 million of these positions “are expected to be held by workers who have a high school diploma or less education.” That amounts to roughly 48 percent of all job openings in the country.¹

Given that 12.5 percent of native-born adults age 25 and older lacked a high school diploma in 2003, compared to 32.8 percent of the foreign-born,² it is clear that a large number of less-skilled jobs will be filled by immigrants. Some observers nevertheless contend that foreign-born workers in less-skilled jobs displace their native-born counterparts. However, the experience of the U.S. economy in the 1990s does not support that argument. The United States received the largest number of immigrants in its history during the 1990s,³ including many who lacked much formal education, yet unemployment and poverty rates among the native-born fell substantially.⁴ Moreover, employment in about one-third of all U.S. job categories would have contracted during the 1990s if not for the presence of recently arrived immigrant workers, even if all unemployed U.S.-born workers with recent job experience in those categories had been available.⁵

Recent data from the American Community Survey (ACS) indicate that foreign-born workers continue to be an indispensable part of the U.S. labor force. According to the ACS, the foreign-born accounted for 14.3 percent of all workers in the

¹ Roger Moncarz & Olivia Crosby, “Job outlook for people who don’t have a bachelor’s degree,” *Occupational Outlook Quarterly* 48(4), Winter 2004-05, p. 3.

² Luke J. Larsen, *The Foreign-Born Population in the United States: 2003*, Current Population Reports, P20-551. Washington, DC: U.S. Census Bureau, August 2004, p. 4.

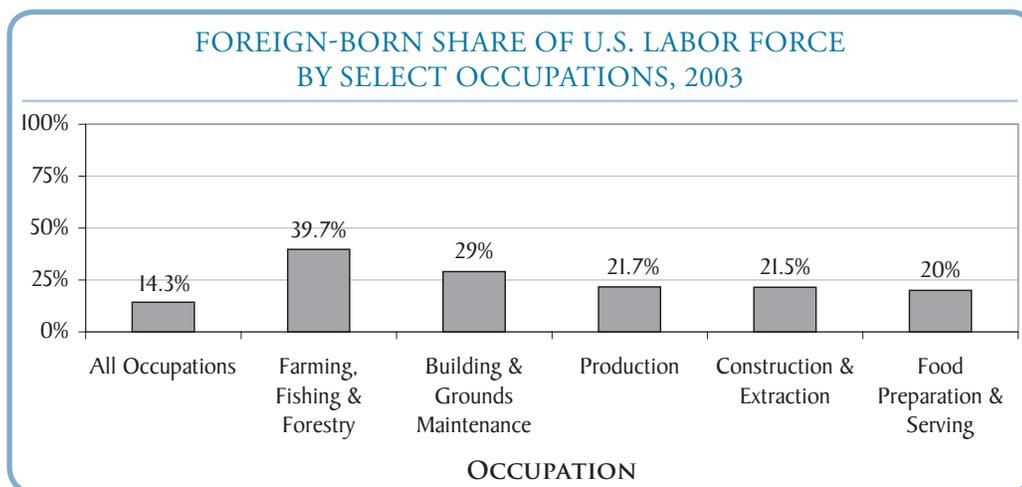
³ Nolan Malone, et al., *The Foreign-Born Population: 2000*, Census 2000 Brief, C2KBR-34. Washington, DC: U.S. Census Bureau, December 2003, p. 2.

⁴ Joseph Dalaker, *Poverty in the United States: 2000*, Current Population Reports, P60-214. Washington, DC: U.S. Census Bureau, September 2001, p. 7.

⁵ Rob Paral, *Essential Workers: Immigrants are a Needed Supplement to the Native-Born Labor Force*. Washington, DC: Immigration Policy Center, American Immigration Law Foundation, March 2005.

United States in 2003. However, foreign-born workers comprised a far higher percentage of the workforce in particular occupations. Foreign-born workers amounted to 39.7 percent of the U.S. labor force in “farming, fishing, and forestry occupations”; 29 percent in “building and grounds cleaning and

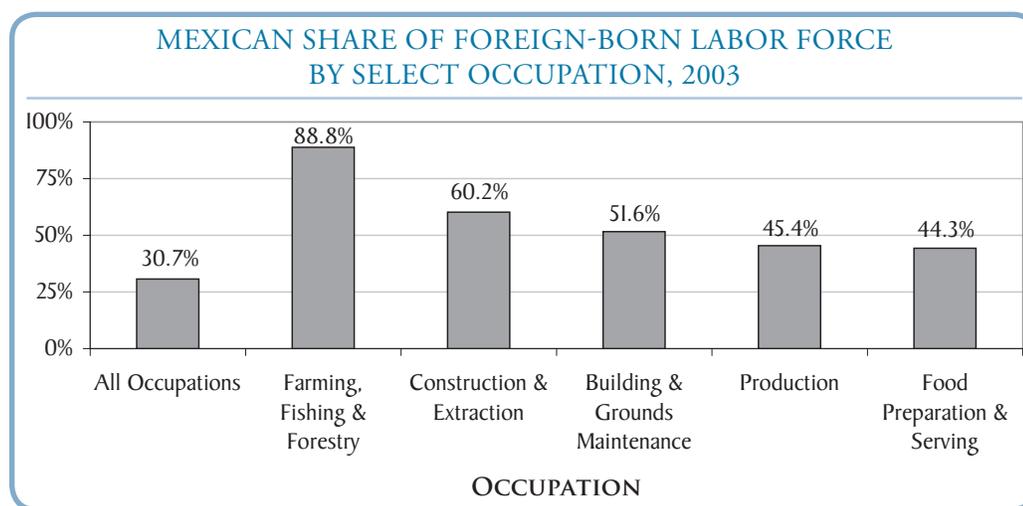
maintenance occupations”; 21.7 percent in “production occupations” (which includes workers in assembly, food processing, textiles, and apparel); 21.5 percent in “construction and extraction occupations” (which includes mining); and 20 percent in “food preparation and serving related occupations.”



Source: American Community Survey.

Although foreign-born workers who fill less-skilled jobs hail from many different countries, the largest portion comes from Mexico.⁶ While Mexicans accounted for 30.7 percent of all foreign-born workers in the United States in 2003, they comprised 88.8 percent of the foreign-born labor force in “farming, fishing, and forestry”; 60.2 percent in “construc-

tion and extraction”; 51.6 percent in “building and grounds cleaning and maintenance”; 45.4 percent in “production”; and 44.3 percent in “food preparation and serving.” As a result, industries that rely heavily on Mexican workers are most directly affected by the failure of U.S. immigration policies to respond to U.S. labor demand.



Source: American Community Survey.

⁶ This report focuses on Mexican immigrants due to limitations in the data provided by the *Statistical Yearbooks* published by the Department of Homeland Security’s Office of Immigration Statistics. The *Yearbooks* present data on immigrants by country of origin, not by the occupational skill levels of immigrants. However, given the numerical preponderance of Mexican workers in less-skilled occupations, Mexican workers can serve as a substitute for workers in less-skilled occupations as a whole.

EMPLOYMENT-BASED SYSTEM ADMITS TOO FEW WORKERS FOR LESS-SKILLED JOBS

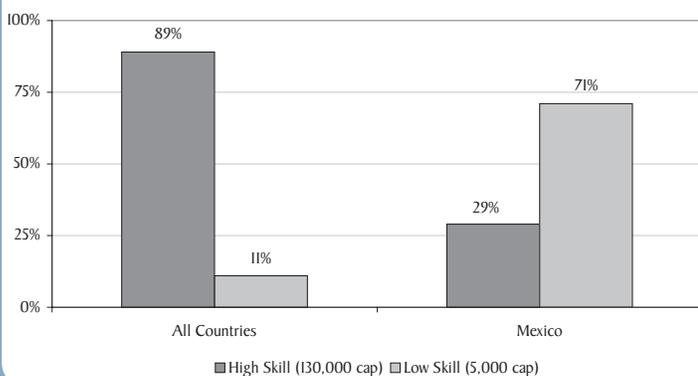
Despite the critical role played by foreign-born workers in many less-skilled job categories, the current immigration system offers very few employment-based visas for these workers. Nearly all of the visa “preference” categories that do exist for workers in less-skilled jobs are subject to arbitrary numerical caps that do not even come close to matching the level of labor demand in the U.S. economy. The result is that an enormous number of prospective employment-based immigrants are “crowded” into a small number of highly limited visa categories.

There are five preference categories of visas for permanent immigration status and only one is set aside for workers in less-skilled jobs. Four of the five favor immigrants with higher levels of education or financial capital and are therefore not relevant to less-skilled workers. The remaining category, the employment-based “third preference,” allots only 5,000 visas each year to workers in occupations that require less than two years of higher education, training, or experience.⁷ This visa category, which is designated for “other workers,” is nearly the only employment-based avenue for permanent

immigration available to workers in less-skilled jobs. About 71 percent of Mexicans receiving an employment-based visa for permanent immigration to the United States used this preference category in 2001.⁸

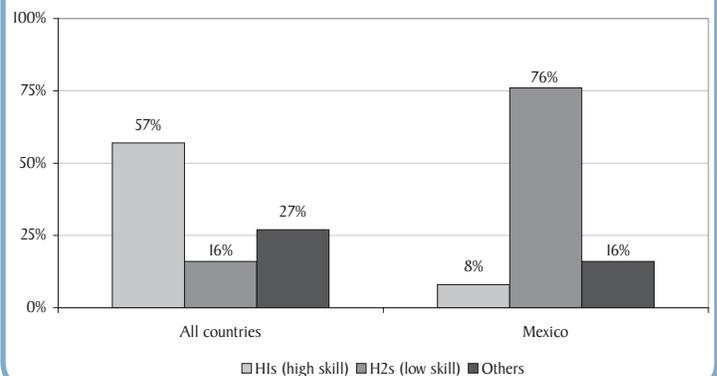
A similar bottleneck exists for workers in less-skilled jobs who seek employment-based visas for temporary immigrant status. There are 16 different types of temporary immigrant visas available for employment and training in the United States, and in 2002 some 656,000 persons were admitted under these categories. Of these 16 visa categories, only two – H2A and H2B – are available to workers in industries that require little or no formal training. H2As are restricted to agricultural workers. H2Bs are not only capped at 66,000, but are limited to “seasonal” or otherwise “temporary” work that is defined so restrictively as to disqualify workers in many industries. Workers in less-skilled jobs received only 16 percent of all temporary employment and training visas awarded in 2002. Roughly 76 percent of Mexicans receiving temporary work visas in 2002 were recipients of only H2A and H2B visas. In other words, Mexican workers are crowded into categories in which few visas are available for most industries.

DISTRIBUTION OF EMPLOYMENT-BASED VISAS FOR PERMANENT RESIDENCE, 2001



Source: Office of Immigration Statistics, Department of Homeland Security, *Yearbook of Immigration Statistics*.

DISTRIBUTION OF TEMPORARY EMPLOYMENT-BASED VISAS, 2002



Source: Office of Immigration Statistics, Department of Homeland Security, *Yearbook of Immigration Statistics*.

⁷ The cap is set at 10,000, but 5,000 visas are reserved each year for beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

⁸ All statistics in this report on the numbers of temporary and permanent immigrants entering the United States under various visa categories are taken from the most recent tables published by the Department of Homeland Security’s Office of Immigration Statistics in its *Statistical Yearbooks*.

FAMILY-BASED SYSTEM IS INEFFICIENT AT PROVIDING VISAS FOR WORKERS

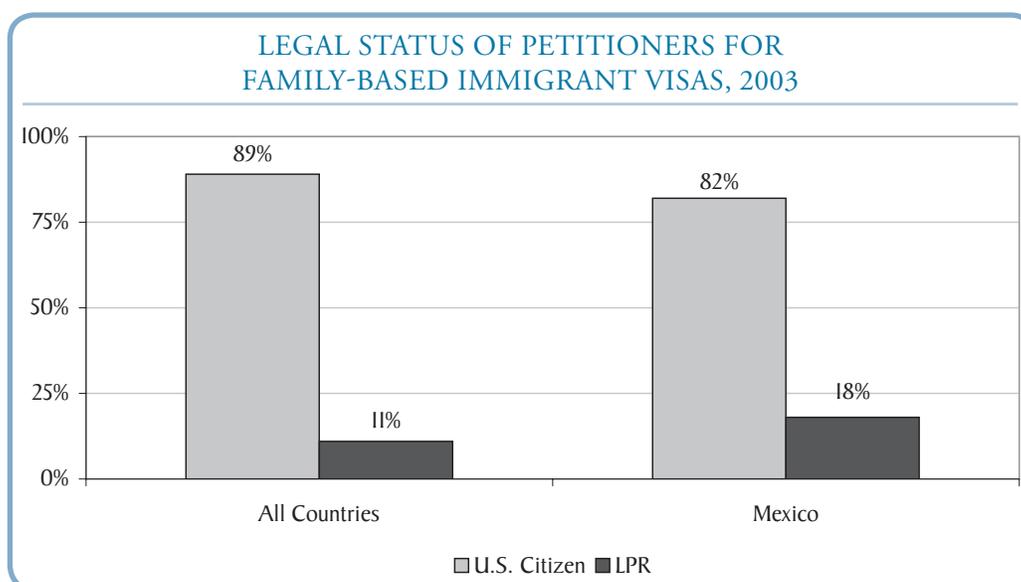
At first glance, it might seem as if the family-based immigration system is capable of compensating for deficiencies in the employment-based system. Given that the majority of immigration to the United States is based on family connections, it is logical to assume that these connections would perpetuate a steady stream of immigrants belonging to the same socioeconomic class as the family members who sponsor them. In other words, foreign-born workers filling less-skilled jobs in the United States would petition for immigrant visas on behalf of their family members abroad who would presumably also fill less-skilled jobs when they arrived.

In reality, however, the effectiveness and efficiency of the family-based immigration system is undermined by excessively long delays which stem from arbitrary numerical caps and highly complex rules and regulations. U.S. citizens may immediately obtain visas when petitioning for their spouses and minor children (under age 21) to immigrate to the United States. However, the allotment of visa numbers for all other relatives of U.S. citizens, and for all the relatives of lawful permanent residents (LPRs), is governed by a complex “family preference” system characterized by lengthy waiting times. For instance, in the case of Mexican nationals, wait

times are currently 7-10 years for the spouse of an LPR and 10-12 years for the unmarried adult child of a U.S. citizen. In general, wait times for the relatives of LPRs are many years longer than the wait times for relatives of U.S. citizens.⁹ Wait times of this magnitude not only undermine the family-reunification goal of the family-based immigration system, but also render that system an ineffective means of responding to U.S. labor demand.

Many immigrants who fill less-skilled jobs end up relying on U.S.-citizen family sponsors who are few and far between. Given the enormous wait times for the relatives of LPRs, it is not surprising that most immigrants who obtain lawful permanent residence through the family-based immigration system do so on the basis of sponsorship by a U.S. citizen. In 2003, 89 percent of all petitioners were U.S. citizens, whereas only 11 percent were LPRs. In the case of Mexico, 82 percent of petitioners were U.S. citizens and 18 percent were LPRs.

Mexican immigrants in the United States historically have relatively low rates of naturalization, so this gives prospective immigrants in Mexico few U.S.-citizen sponsors. Only 22.4 percent of Mexican immigrants in the United States in 2003 were naturalized U.S. citizens. As a result, the



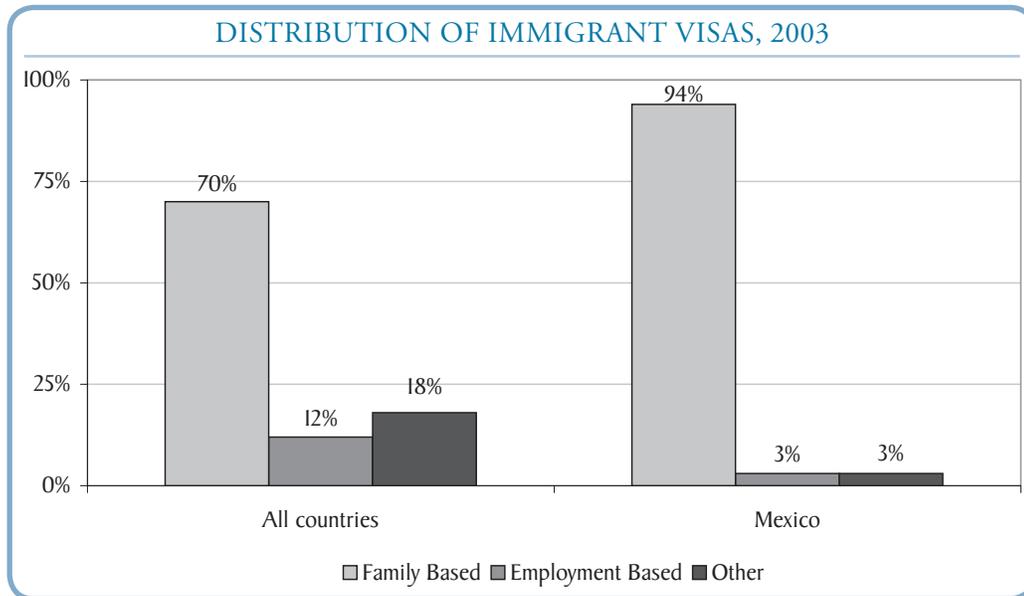
Source: Office of Immigration Statistics, Department of Homeland Security, *Yearbook of Immigration Statistics*.

⁹ U.S. Department of State, *Visa Bulletin*, no. 83, vol. VIII, July 2005.

majority of prospective immigrants in Mexico do not have a U.S.-citizen relative who could sponsor them for lawful permanent residence.

Despite the inadequacies of the family-based immigration system, immigrants from Mexico must rely overwhelmingly on family connections to enter the United States due to the

lack of employment-based visas open to them. Some 94 percent of Mexicans entering in 2003 did so through family relationships, whereas only 3 percent entered on employment visas. Moreover, other avenues for entry such as diversity visas and grants to refugees and asylees, which account for 18 percent of all entries worldwide, are not available to Mexicans.



Source: American Community Survey.

CONCLUSION

Current immigration policies are completely out of sync with the U.S. economy's demand for workers who fill less-skilled jobs, especially in the case of Mexican workers. Indeed, the current debate over whether or not to create a pathway to legal status for undocumented immigrants has more to do with labor policy than with undocumented immigration per se. While U.S. immigration policies present a wide array of avenues for immigrants to enter the United States, very few of these avenues are tailored to workers in less-skilled occupations. As a result, workers frequently use the family-based

immigration system, which is plagued by delays that last for years and favors the relatively few immigrants who have U.S.-citizen and LPR relatives who can petition on their behalf. It should come as no surprise, then, that immigrants come to or remain in the United States without proper documentation in response to the strong economic demand for less-skilled labor. U.S. immigration policies should be reoriented to meet actual labor needs. President Bush and other prominent policymakers have begun a public discussion that appears to be heading in this direction. This effort is essential in order to bring efficiency and realism to U.S. immigration policy.

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