



THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
RICE UNIVERSITY

A PROPOSAL FOR IMMIGRATION REFORM

BY

DAGOBERT L. BRITO, PH.D.

GEORGE A. PETERKIN PROFESSOR OF POLITICAL ECONOMY AND
BAKER INSTITUTE RICE SCHOLAR, RICE UNIVERSITY, AND
PROFESSOR, CENTRO DE INVESTIGACIÓN Y DOCENCIA ECONÓMICAS, A. C., MEXICO

AND

HECTOR OLEA, PH.D.
PRESIDENT, GAUSS ENERGIA

OCTOBER 2007

A Proposal for Immigration Reform

THESE PAPERS WERE WRITTEN BY A RESEARCHER (OR RESEARCHERS) WHO PARTICIPATED IN A BAKER INSTITUTE RESEARCH PROJECT. WHEREVER FEASIBLE, THESE PAPERS ARE REVIEWED BY OUTSIDE EXPERTS BEFORE THEY ARE RELEASED. HOWEVER, THE RESEARCH AND VIEWS EXPRESSED IN THESE PAPERS ARE THOSE OF THE INDIVIDUAL RESEARCHER(S), AND DO NOT NECESSARILY REPRESENT THE VIEWS OF THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY.

© 2007 BY DAGOBERT L. BRITO AND HECTOR OLEA, PH.D.

THIS MATERIAL MAY BE QUOTED OR REPRODUCED WITHOUT PRIOR PERMISSION,
PROVIDED APPROPRIATE CREDIT IS GIVEN TO THE AUTHOR AND
THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY.

Executive Summary

It is not possible to deport the 10 million to 20 million undocumented workers currently in the United States without incurring unacceptable political and economic costs. However, there is not a consensus in the United States in favor of granting permanent resident status to such undocumented immigrants. This paper presents a possible solution to this impasse. The first element of the proposal is to register undocumented workers who are in the United States and grant them temporary work permits with repatriation dates spaced over a period of years. Such a proposal would allow employers to hire workers without penalty. The allocation of repatriation dates could be done by a lottery. Spacing repatriation of undocumented workers over a period of years would avoid a disruption in the labor market and permit a humane and rational schedule of repatriation. The undocumented workers that do not register and are identified can be deported without disruption of the economy.

The second element of this proposal is that, in the case of undocumented immigrants from Mexico, the registering of undocumented Mexicans be done jointly with Mexico. Mexico has a very extensive network of consular offices in the United States. The task of registering undocumented workers would be much easier if Mexico registered its own nationals. Further, such an agreement could serve as a framework that would allow Mexican workers controlled access to the U.S. labor market. The number of non-Mexican undocumented workers is smaller, and thus the problem of registering non-Mexican workers is more manageable.

There will be cases where implementation of this policy will result in hardship. These issues can be addressed separately once the current crisis is resolved. American immigration policy for the 21st century is an issue that will have to be further addressed soon in the political agenda of the United States. It is, however, an issue that is better addressed without the shadow of 10 million to 20 million undocumented immigrants hanging over the debate.

Mexico and the United States can enter into talks immediately to start crafting an agreement. A well-crafted treaty can be presented to the U.S. Senate next year. Immigration reform could still be one of the accomplishments of the Bush administration.

1. Introduction

The recent failure of the immigration reform bill in the U.S. Senate suggests that there is not a consensus in the United States in favor of granting permanent residential status to undocumented immigrants. The purpose of this paper is to provide an alternate proposal. The first element of this proposal is to register workers who are in the United States illegally and grant them temporary work permits with repatriation dates spaced over a period of years. This would avoid a disruption in the labor market while assuring the return of those immigrants to their country of origin and permit a humane and rational schedule of repatriation. The second element of this proposal is to work jointly with Mexico in the case of undocumented immigrants from Mexico. A majority of undocumented workers currently in the United States come from Mexico. The task of registering undocumented workers would be much easier if Mexico registered its own nationals. This could serve as a framework for an agreement that would allow Mexican workers controlled access to the United States labor market. Such an agreement would be in the best interest of both countries.

Since the passage of the Immigration Reform Act in 1986, the number of illegal workers in the United States has reached 10 million to 12 million. Some estimates are as high as 20 million. This is one of the largest movements of people in the history of mankind, exceeding the population movements after World War II, the partition of India or the fall of the Western Roman Empire. This influx of people crossing the borders of the most powerful country on earth illegally could happen only because of the diverse interests in the United States that welcome such immigration. These immigrants are, for the most part, hardworking and productive people who make a significant economic contribution to the United States. It would be very difficult for the economy of the United States to operate without such immigrants.

Nevertheless, there are principled reasons for concern about uncontrolled immigration and many reasons to question our current immigration policy. Illegal immigration impacts the poor in the United States harshly and increases the income inequality. George Borjas and Lawrence Katz have estimated that illegal immigration has resulted in an 8 percent decline in the real wages of

A Proposal for Immigration Reform

those Americans who have not finished high school. Further, the educational and social service needs of undocumented immigrant families have placed a burden on many communities.

Thus, while the current immigration policy of the United States imposes an unequal burden on the poor and many communities, the economy depends on the services of undocumented workers. As the population ages, this dependence will increase. Granting permanent legal status to hardworking individuals and families who are productive and have made many sacrifices to be in the United States seems just. However, this policy can be implemented only at a cost that will be borne by the less fortunate and less-educated Americans. Consequently, there are no clear ethical or moral grounds to favor one side over the other in the immigration debate. However one feels about the status of undocumented immigrants, it is bad public policy to permit such open and notorious violation of the immigration and social security laws. It is damaging to the social fabric of the United States, and the illegal status of these workers makes them vulnerable to exploitation.

Advocates on both sides of the immigration debate have conceded that it is impossible to deport the 10 million to 20 million illegal immigrants that may be in the United States. There are several reasons for this view. First, it would be very difficult for the economy of the United States to operate without such immigrants, particularly if they were withdrawn from the labor force over a very short period of time. Second, the logistics of arresting and deporting 10 million to 20 million people are daunting. There would be mistakes, families would be separated, and the reaction to the images of that many people being forced to board trains, buses or airplanes for deportations would make such a policy not politically viable in the United States.

Finally, under its legal traditions, it can be argued that the United States owes a duty to the people who came to the United States to work without formal permits. There are many legal doctrines under U.S. law by which reliance on current practice and/or failure to enforce property rights in turn creates rights for people who have relied on such practices or the expectation of continued lack of enforcement; laches, promissory estoppel, and adverse possession come to mind. The failure of the United States and many local jurisdictions to enforce immigration and employment laws could be said to be "open and notorious." This lack of enforcement has

A Proposal for Immigration Reform

induced millions of people to pay large sums of money and bear hardships to come to this country and work. There may be no duty to these people in law, but surely there is a duty in equity.

In the face of such ambiguity, perhaps the best that can be expected is a pragmatic solution that will allow the United States to regain control of its borders and labor markets at a reasonable cost.

2. A Proposal

The failure of the immigration reform bill in the U.S. Senate suggests, there is not a consensus in the United States to grant permanent residential status to illegal immigrants. However, there is an alternative. Everyone who is in the United States illegally can be registered and be given a temporary work permit. This will be a very difficult task, but certainly no more difficult than registering undocumented immigrants for Z visas as proposed in the Senate bill. A grace period would be created so that those individuals who are currently working using illegal documents could correct their records. During this grace period, individuals with a claim for political asylum or other cause that would block their deportation would be required to file their claim. After the grace period has expired, the existing laws against the use of fraudulent documents could be enforced and a fast system of deportation could be implemented for those individuals who did not register.

Once the illegal immigrants are registered, repatriation dates could be assigned by a lottery. These repatriation dates could be spaced over a period of two to six years in order to avoid a disruption in the labor market.

To mitigate hardships, the United States could refund a portion of the taxes paid by the individual upon repatriation. Individuals who qualified could enlist in the armed forces and earn citizenship. Special courts could be set up to consider special hardship cases and/or the claims of individuals who meet certain qualifications for permanent residence. It will be necessary to address the question of children hereafter born in the United States to holders of temporary work

A Proposal for Immigration Reform

permits, and also the effect that marriages between permanent residents of the United States and holders of temporary work permits would have on resident status. Thought will be required to reach humane solutions that do not encourage strategic or exploitive behavior.

Once individuals are registered and have a repatriation date, there is room for flexibility and time to refine the program. For example, the repatriation dates could be transferable between individuals who hold these temporary work permits. A person with low skills who draws a long-term work permit could sell his or her repatriation date to a higher skilled person who has a short-term work permit.

It is very likely that a careful study of the problem will find that the United States labor force requires immigration. Thus, it may well be that a decision will later be made that most of these legal temporary workers should be granted permanent residence or that there should be some selection in who gets permanent residence. Another possibility is that holders of the temporary work permits be allowed to participate in lotteries for permanent residence if they demonstrate proficiency in English and do not have criminal records. These lotteries could be weighed to consider education, language proficiency or other factors that reflect the needs of the United States labor market. These subsequent lotteries could serve two purposes: first, they would permit a way of augmenting the permanent labor force, and they would provide incentives for holders of temporary permits to learn English and avoid criminal behavior.

3. Incentives

One of the less meaningful parts of the recent debate about immigration reform was whether “The Path to Earned Citizenship” was a form of amnesty. A large number of illegal immigrants, if not most of the people working in the United States illegally, are really more interested in having access to the United States labor market than in exercising U.S. political rights. Most of the undocumented workers in the United States are from Mexico and many of them plan to return to Mexico after earning and saving a certain amount of money.

A Proposal for Immigration Reform

Recent United States immigration policies have been counterproductive. The unexpected consequence of the stricter border enforcement, coupled with little or no enforcement once the undocumented workers are in the United States, has been to replace Mexican temporary seasonal migration patterns with permanent immigration, often involving families.

In the past, most undocumented Mexican workers remained deeply tied to their language and culture, keeping a close relationship with their communities of origin through social, family and economic bonds. The participation of these workers in the United States labor market was transitory and was not a result of a desire to immigrate to the United States permanently. Stricter border controls significantly increased the costs of frequent border crossing, and, as a result, undocumented workers now tend to extend their stay in the United States. Prior to the strict border enforcement policies, studies showed that undocumented workers had made an average of 4.5 trips to the United States every five years. After the strict border enforcement policies were implemented, studies have shown that the typical undocumented worker makes 1.1 trips in a five-year period.

This policy has weakened the link between the undocumented immigrant and his or her native community. It has encouraged permanent family immigration. This family immigration has placed a burden on local school systems, medical facilities and other local social services in the United States. Inasmuch as these costs are borne by local communities, this has created a backlash in many communities against undocumented workers.

4. The Case of Mexico

A program that grants permanent residence to Mexicans working in the United States illegally may not be in the best interests of Mexico or the United States. The Heritage Foundation estimates that a 66 million increase in the immigrant population will result if the current population of illegal workers is granted legal status. This estimate may or may not be accurate. But the fact that the estimate appeared to have been a surprise to the policy community, and that there does not seem to be alternative competing estimates, is worrying. The implications of such

A Proposal for Immigration Reform

a change in the character of the population and its potential impact on the distribution of income and the demand for public services needs to be studied.

Such a population loss may not be in the best interest of Mexico. At the present time, Mexico is in a process of political and economic transition. In the short term, the foreign exchange earned by Mexican workers in the United States is valuable, but in the long term, if Mexico is going to develop economically, Mexico cannot afford to lose a substantial percentage of the cream of its labor force. Some estimates forecast that by 2010, Mexico will need some of the workers that are now in the United States. Thus, a program that grants permanent residence to Mexicans working in the United States could have adverse consequences for Mexico. In the short term, there would be a decrease of foreign exchange, as the Mexican workers now in the United States become permanent residents. In the long term, Mexico would lose a portion of its population that is ambitious and hard working and better educated than the population that remained in Mexico.

The current administrations in Mexico and the United States have shared views and interests in this matter. The Mexican government recognizes that sovereign nations have the right to control their borders and govern their internal labor markets. Control of the border between the United States and Mexico is in the interest of both countries. At the present time, Mexico is bearing the cost of trying to stop the traffic in illicit drugs on its northern border. Mexican President Felipe Calderon is spending lives and large amounts of money trying to destroy the cartels that use Mexico as a route for transit of illegal drugs from South America to the United States. Mexico is also a route of transit for illegal immigrants from Central America to the United States. Both of these phenomena are problems for Mexico and are, in a large part, the result of policy failures in the United States. Both the market for illegal drugs and the market for illegal workers in the United States impose a high cost on Mexico.

The illegal labor market can be eliminated, as it is possible to create legal alternatives. As discussed above, the United States and Mexico could negotiate an agreement whereby Mexican nationals in the United States would be allowed to work legally with an orderly schedule of repatriation. A mechanism for issuing permits to new workers could also be negotiated. In return for giving Mexican workers controlled access to the American labor market, Mexico would

A Proposal for Immigration Reform

cooperate with the United State in controlling the joint border and securing Mexico's southern border. Such an agreement is in the best interests of both countries.

Much of the necessary infrastructure is already in place. Mexico has a very extensive network of consular offices in the United States. It already issues identification in the United States, the matricular consular, that is accepted in many states as valid identification. Mexico could register its nationals in the United States and issue some form of identification that would serve as a work permit. The expiration dates on these work permits could be distributed in a manner that would smooth the repatriation of these workers over a period of time. Their places, when they return to Mexico, would be available to workers in Mexico, and these new permits would be issued in a process under the joint control of the two countries. A valuable by-product of such a policy would be to create in Mexico a labor force that has had experience working in the United States.

Under these proposals, Mexico would become a participant in a process that is controlled by and is the responsibility of both countries. If Mexico is a partner in the process by which Mexican workers come to the United States to work in a legal fashion, then it becomes in Mexico's interest to become a partner in the control of the joint border.

Once a program allowing a specified number of Mexican workers to work in the United States is in place, the availability of such legal workers would reduce the political opposition against strict employer sanctions for hiring illegal workers. The United States could then take measures to regulate the labor market and make it very costly to employ undocumented workers. Reducing the demand for undocumented workers through aggressive enforcement of employer sanctions and the availability to employers of documented workers would reduce the attraction of coming the United States as an illegal worker.

5. Conclusions

There is not a consensus in the United States to grant permanent residential status to illegal immigrants. An alternative is to register those workers who are in the United States illegally and

A Proposal for Immigration Reform

grant them temporary work permits. This could be a very difficult task, but it is one that can be made easier if it is done jointly with the cooperation of Mexico. Most of the undocumented workers currently in the United States come from Mexico, so the task of registering undocumented workers from countries other than Mexico would be much easier if Mexico registered its own nationals. The number of non-Mexican undocumented workers is smaller and thus the problem would be more manageable. Those that did not register and are identified in the process of enforcing immigration rules in the workplace against illegal workers could be deported without disruption of the economy.

This is not a solution that will please groups that want to place individuals in the country on the road to eventual citizenship, and there will be cases where implementation of this policy will result in hardship. These issues can be addressed separately and with imagination once the current crisis is resolved. American immigration policy for the 21st century is an issue that will have to be further addressed soon in the political agenda of the United States. It is, however an issue that is better addressed without the shadow of 10 million to 20 million undocumented immigrants hanging over the debate.

Mexico and the United States can enter into talks immediately to start crafting an agreement. A well-crafted treaty can be presented to the U.S. Senate next year. Immigration reform could still be one of the accomplishments of the Bush administration.