

J-1 Guestworkers in the United States: A Case Study of McDonald's

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Introduction

The United States has long been the destination for foreign-born workers in search of upward mobility, and an opportunity for a safe and dignified life for their families. Since the 1800s, our nation has benefited from the work of immigrants and migrants as a source of economic growth and geographic expansion (Southern Poverty Law Center, 2013). Historically, many immigrants came from Europe and China, though the average American might associate modern foreign-born workers with the Spanish-speaking migrants in the agriculture industry.

This is no coincidence. The Braceros program allowed about 4.5 million Mexicans to work for U.S. growers during labor shortages between 1942 and 1964. Problematic features of this defunct program persist—such as wage theft, unstable and excessive work hours, substandard employer-controlled housing, and intimidation and abusive harassment—and affect thousands of current guestworkers in the United States (Southern Poverty Law Center, 2013). The U.S. Senate passed an immigration reform bill in June 27, 2013, which called for, among other things, increasing the number of temporary work visas for unskilled immigrants participating in a State Department sponsored guestworker program (MacDonald, 2013). Senator Bernie Sanders asserted that discussions around guestworker provisions should focus on the lower-skilled J-1 Exchange Visitor visa program due to the increased competition for entry-level jobs (Jamieson, 2013). Labor activists argued further that immigration reform should address the exploitation of guestworkers, as governmental protections could prevent the depression wages for all workers and create a highly vulnerable segment of the workforce (Jamieson, 2013; “Leveling Playing Field,” 2012; Peterson & Murray, 2013).

In 2012, the U.S. Department of State issued nearly 700,000 temporary guestworker visas—including approximately 175,000 J-1 visas under the Exchange Visitor program (Center for Immigration Studies, 2013). According to the National Guestworker Alliance (NGA), guestworker programs are exploitative in several ways: workers are recruited with the understanding that they would work under respectable conditions and be able to earn a decent wage (National Guestworker Alliance, n.d.a). Instead, they often pay thousands of dollars in recruiter and visa fees to participate in the program, and become ensnared in debt. Similarly to the Braceros, many guestworkers experience wage theft, and are subjected to poor working conditions and abusive management (National Guestworker Alliance, n.d.a). Living conditions offer no reprieve, as workers often are forced to live in substandard, employer-controlled housing (National Guestworker Alliance, n.d.a). And while most people would simply quit their jobs rather than endure inhumane treatment, guestworkers cannot legally seek employment elsewhere; they also risk retaliation, deportation and debt that they cannot repay if they express their grievances (National Guestworker Alliance, n.d.a).

These entrenched violations have often resulted in labor trafficking, forced labor, and exploitation of foreign-born workers, and according to report by The Dickinson School of Law at the Pennsylvania State University and NGA (“Leveling Playing Field,” 2012), domestic-born

workers should take notice. These abuses are indicative of employment problems that U.S. employees also face and have implications for the broader workforce. The report found that unscrupulous employers have replaced permanent jobs with temporary positions, and have used coerced and powerless guestworkers as a source of a cheap and replaceable labor. Not only do these practices create insecurity where stability used to exist, but they also contribute to the end of decent wages and working conditions for everyone, including U.S. workers (“Leveling Playing Field,” 2012).

This article seeks to understand the plight of guestworkers in the United States through the description of J-1 Exchange Visitor program. Research for this paper was conducted on March 16, 2013. Widespread problems with the J-1 visa program will be illustrated through case studies of the Hershey’s and McDonald’s student guestworker scandals, and examination of the program as described by the U.S. State Department and the sponsoring programs that recruit students. Loopholes in the program that employers take advantage of will also be discussed.

Justice at Hershey’s campaign

On March 6, 2013, central Pennsylvania became the focal point of J-1 worker employment relations violations scandal for the second time in two years. The first incident involved about 200 international student guestworkers who began a campaign against candy maker Hershey’s on August 17, 2011. The student workers were expecting very different working conditions prior to arriving in the U.S. According to the U.S. Department of State website, the J-1 Exchange Visitor Program “promotes mutual understanding between the people of the United States and the people of other countries by education and cultural exchanges,” (U.S. Department of State, n.d.). More importantly, the students based their expectations on interactions they had with previous J-1 participants, recruiters from Council for Educational Travel, USA (CETUSA)—which contracted the students through agencies in their home countries—and a few based expectations on their own previous experiences (Human Rights Delegation Report, 2011).

Upon arrival, approximately 400 foreign students from countries such as China, Turkey, Moldova, Mongolia, Romania, Ghana, and Thailand became caught in a web of contractual relationships between various corporations; work completed at a packing facility was done for one employer, whereas warehouse work was completed for another employer who deducted rent payments from their paychecks—whether the students were left with money to live on or not (Human Rights Delegation Report, 2011). The students endured abusive supervision, unsafe and grueling working conditions often on night shifts—which isolated them from American workers—and automatic salary deductions for housing and other employment-related costs (Human Rights Delegation Report, 2011; Luce, 2013; Preston, 2012). The workers staged a sit-in on August 17, 2011 to protest against the abuses that they and many other student workers experienced at a packing facility in Palmyra, PA (Human Rights Delegation Report, 2011).

While the Hershey's guestworkers demonstrated against unfair treatment, they also recognized the negative implications that abuses of the J-1 visa program had on the domestic workforce; in addition to demanding that Hershey's stop exploiting student guestworkers, they also called for the payment of living wages for local workers (National Guestworker Alliance, n.d.c).

This campaign caught the attention of the media and the labor movement, and garnered supporters in Pennsylvania and from across the country (Human Rights Delegation Report, 2011). The State Department reacted to the complaints on February 14, 2012, by banning CETUSA from participating in the J-1 program for two years (Fernandez, 2012). Additionally, in attempts "to bring the program back to its core cultural purposes," (Preston, 2012, para. 4) the State Department revised rules under the cultural exchange program, prohibiting students from working in warehouse, construction, manufacturing and food-processing work (Preston, 2012). On November 14, 2012, CETUSA, the staffing agency SHS and Excel Logistics, Hershey's warehouse operator, agreed to pay \$213,042 in back wages, and Excel agreed to pay \$143,000 in fines for health and safety violations (U.S. Department of Labor, 2012; National Guestworker Alliance, 2012).

McDonald's Must Pay campaign

Given the Department of State's rapid response to the complaint and the outpouring of public support that the Hershey's campaign received, it is surprising that on March 6, 2013 a second student guestworker scandal in Pennsylvania was once again in the news; this time, it involved 15 McDonald's students guestworkers in Harrisburg, PA. The students chose to work for McDonald's for a few reasons: some wanted to be in close proximity to large metropolitan areas such as Philadelphia and New York City (S. David Heydemann, personal communication, March 16, 2013). Many of the students decided to participate in the J1 program with McDonald's simply because it was a company that they recognized (S. David Heydemann, personal communication, March 16, 2013). This brand recognition caused students to expect very strict work standards and procedures at McDonald's. A well-known corporation like McDonald's seemed like a safer option than taking a risk with a no-name bed and breakfast (S. David Heydemann, personal communication, March 16, 2013).

Some students learned about the exchange program through flyers posted at their universities, while others had friends and family members who participated in the same visa program (S. David Heydemann & a student guestworker, personal communication, March 16, 2013). After paying \$3,000-\$4,000 each (a student guestworker, personal communication, March 16, 2013), students found themselves in a situation of "indentured servitude" (Costa, 2011b) where they were unable to purchase a return flight home, easily switch to another employer, or repay fees after leaving the position (Economic Policy Institute, 2011). If they expressed their discontent with management, they were threatened with retaliation (National Guestworker Alliance, n.d.c). One 25-year-old student from Paraguay, a graphic design student, described a

manager's response to her complaints about forced overtime: student guestworkers in the past wanted to work double shifts.

Another student, 19, from Peru stated that workers—both male and female—were forced to live in an employer-owned basement, eight people to a room, without windows or privacy for a total of \$2,000 per month. This arrangement was especially problematic for female workers from more conservative cultures, where women lived in separate living quarters (a student guestworker, personal communication, March 16, 2013). Last year, he worked for Wendy's through the J-1 program and was happy with his experience; this time, however, working for McDonald's was the extreme opposite of the positive cultural exchange that he had with Wendy's (a student guestworker, personal communication, March 16, 2013). McDonald's managers could show up at their basement apartment at any time demanding that they work shifts on their days off, or the workers were expected to be on call with management sometimes calling ten minutes before shifts began, or at 5am or 6am (a student guestworker, personal communication, March 16, 2013). At the same time, management often did not provide consistent work hours to meet their basic needs in addition to covering rent payments, which were deducted automatically from each paycheck (a student guestworker, personal communication, March 16, 2013). When workers requested more hours, management claimed that there weren't any hours available (a student guestworker, personal communication, March 16, 2013). He added that both employers and the sponsoring agency, Geovision, had a responsibility of ensuring that abuses didn't take place. "I think that McDonald's is a good corporation. It's an opportunity for all the people that work here... but they need to respect the dignity, the rights, and more benefits and [better] conditions for the [employees]," (a student guestworker, personal communication, March 16, 2013).

The students filed a complaint with the Department of State on March 6, 2013, and walked off the job to protest of work hours as short as four hours per week to shifts as long as 25 consecutive hours, unpaid wages, shoddy housing owned by the employer, and retaliation for voicing their discontent (Eidelson, 2013). Geovisions claimed to have a monthly check-in policy where student participants could give feedback on their experience, and problems could be resolved—the check-ins never occurred despite multiple requests by the students (S. David Heydemann, personal communication, March 16, 2013).

Exploitation instead of 'cultural exchange'

The J-1 guestworker program is the largest of its kind in the U.S., admitting foreign-born workers into full- or part-time job positions such as au pairs, ride operators at amusement parks, hotel maids, dairy farm laborers, to name a few (Economic Policy Institute, 2011). The Congressional statement of purpose in the Fulbright-Hays Act asserted:

[The J-1 visa program enables] the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by

means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world. (Fulbright-Hays Act, 1961)

Jennifer Rosenbaum of NGA contended that the J-1 program, developed in 1965, was originally meant to serve as a “Cold-War-era diplomatic tool”--spreading the principles of American culture to young people around the world (Rosenbaum, 2013, para. 2). These days, according to a report prepared by the Pennsylvania State University’s Dickinson School of Law and NGA, guestworkers are regularly used as a cheap and vulnerable alternative to U.S. workers (“Leveling Playing Field,” 2012).

In addition to providing a ‘cultural exchange,’ companies that recruit student workers often promise a tried-and-true system that provides security and administrative support. Geovisions’ website stated:

Most GeoVisions employers have had foreign students work for them before, and most of our employers have selected GeoVisions for many years. All of our employers arrange housing for students, and, before you leave your home country, you will know your general type of job, your wages, and the cost of housing. (Geovisions, n.d.a)

Geovisions’ website also offers a quote from popular Travel Channel celebrity, Anthony Bourdain, urging students to explore all possibilities to travel and achieve personal growth. There is also no lack of testimonials or photos of smiling participants in exotic locations. The South Africa testimonial corresponded with a photo of a young man walking down a dirt road with a lion.

If you're physically fit, hungry to learn and be better, I urge you to travel - as far and as widely as possible. Sleep on floors if you have to. Find out how other people live, eat and cook. Learn from them wherever you go. --Anthony Bourdain (Geovisions, n.d.b)

Without GeoVisions, this would have been only a dream. Assuming I could have dreamt such a thing. But participating on this volunteer abroad project changed my life forever. Name: Gary Westfall, Destination: EAST LONDON, SOUTH AFRICA (Geovisions, n.d.b)

Clearly, some J-1 guestworkers have positive experiences in the program, as evidenced in one guestworker’s exchange last year. NGA organizer Sarah David Haydeman agrees that many participants cycle through the program without encountering problems. She noted, however, genuinely positive culture exchanges are “not because of the program, [but] in spite of the program. It’s because the individual employer... chooses to treat them well. The program itself really isn’t able to be monitored by the Department of State.” (S. David Heydemann, personal communication, March 16, 2013). A report by the Economic Policy Institute (Costa, 2011a)

found that the State Department outsourced monitoring and oversight of the program to entities that had an interest in ensuring profitability: program sponsors such as Geovisions. Such companies were in no position to enforce standards, as it would have impacted the financial success of the company (Costa, 2011a). Employers who hire guestworkers benefited from this lack of monitoring and enforcement; in displacing U.S. workers, employers avoided having to pay prevailing wages under State Department regulations, as well as payroll taxes, state taxes and health care costs (Costa, 2011b). Ontiveros (2012) argued that the Thirteenth Amendment, which prohibits slavery or involuntary servitude, should be used to protect the rights of immigrants and guestworkers.

The abuses that J-1 workers experience are indicative of a larger problem of enforcement. The Department of State's monitoring program of 13 inspectors for over 350,000 students couldn't begin to meet the needs of current and future guestworkers (Costa, 2012). Additionally, the State Department's Inspector General has issued reports denouncing the program's lack of monitoring and an absence of data that hinders them from being able to make meaningful recommendations (Costa, 2011a). Yet, program participation has grown by 96 percent over the past 21 years (Costa, 2011a). For these reasons, the McDonald's guestworkers demanded that an agreement be reached concerning working conditions for all workers, as the exploitation of guestworkers depresses wages for all U.S. workers (S. David Heydemann, personal communication, March 16, 2013).

Conclusion

On March 15, 2013, days after the students filed a complaint with the Department of State, McDonald's cut ties with the students' employer Andy Cheung, and forced the franchise owner to sell all 13 of his Harrisburg restaurants (Parisian, 2013; Veronikis, 2013a, Eidelson, 2013, March 14). This reaction represented a step forward for the workers. Whether McDonald's response to the student protests had an impact on its labor practices is unlikely. Importantly, the students believed that their struggle represented broader issues that all workers face. Perhaps that is why even after workers' visas expired, the former student guestworkers continued the campaign from their home countries. Allies in about 30 countries participated in an international day of action on June 6, 2013 ("Global Day Action," n.d.).

Jorge Rios, 27, from Argentina spoke to supporters at a Chicago demonstration:

At first, I thought we were being exploited because we were guestworkers, but the more I spoke to others about my experience, the more I realized that McDonald's workers all across the country are facing the exact same work conditions that I did.

The only difference is, I can return to my country soon and this nightmare will be over.

For the tens of thousands of other McDonald's workers right here in the U.S., the nightmare never ends. (Parisian, 2013, para. 5)

When vulnerable workers stand up against intimidation and exploitation, they fight for all U.S. workers while putting their own livelihoods on the line. In an op-ed article about low-wage workers, Richard Eskow stated,

The fight for both -- good jobs and a [fair] wage -- is a fight to improve the economy for all of us. Economies don't grow by trickling down from the rich. They grow from the bottom up, as lower-income people improve their standard of living and increase the consumption of consumer goods. They also grow from the middle out, as the middle class is once again able to spend its way into a better life -- for itself, and for everyone. (Eskow, 2013, para. 23)

As low-wage occupations continue to grow and fuel our economic recovery (National Employment Law Project, 2012)--whether workers are able to earn a decent living or not--we are lucky to have those who are willing to endanger their already precarious situations for the sake of broader society. When asked what would he say to Andy Cheung if he could say anything at all, a 24-year-old student worker from Chile stated, "He just messed with the wrong people this time," (personal communication, March 16, 2013).

References

- Center for Immigration Studies. (2013). Nearly 700,000 guestworker visas issued in in 2012. Retrieved April 14, 2013 from <http://www.cis.org/vaughan/700000-guestworker-visas-issued-2012>
- Costa, D. (2011a). Guestworker diplomacy: J visas receive minimal oversight despite significant implications for the U.S. labor market. Economic Policy Institute, (317), 1–47.
- Costa, D. (2011b). Facilitating diplomacy and cultural exchange, or providing temporary labor? [PowerPoint slides] Retrieved on April 18, 2013 from epi.3cdn.net/481b570c5a9c0205e4_12m6i6d8p.pdf
- Economic Policy Institute. (2011). Public commentary from the Economic Policy Institute: Exchange visitor program—summer work travel program. Retrieved on April 18, 2013 from http://www.epi.org/press/news_from_epi_hershey_strike_reveals_failures_of_j_visa_program/
- Eidelson, J. (2013). Striking guest workers will take McDonald's fight global. Retrieved on April 18, 2013 from <http://www.guestworkeralliance.org/category/mcdonalds-must-pay/>
- Eskow, R. (2013, August 8). The fast-food strikers are fighting for all of s. The Huffington Post. Retrieved on August 30, 2013 from http://www.huffingtonpost.com/rj-eskow/the-fast-food-strikers-are-b-3728990.html?utm_hp_ref=tw
- Fernandez, B. (2012). Nonprofit banned for two years in guest-worker probe. Retrieved on April 18, 2012 from <http://www.guestworkeralliance.org/2012/02/nonprofit-banned-for-two-years-in-guest-worker-probe-philadelphia-inquirer-21012/>
- Fulbright-Hays Act. (1961). Retrieved on April 18, 2013 from <http://www2.ed.gov/about/offices/list/ope/iegps/fulbrighthaysact.pdf>
- Geovisions. (n.d.a). U.S. work and travel. Retrieved on April 18, 2013 from http://www.geovisions.org/pages/4_us_work_travel.cfm
- Geovisions. (n.d.b). Geovisions: Really interesting ways to learn about your world. Retrieved on April 18, 2013 from <http://www.geovisions.org/>
- Global Day of Action (n.d.). Standing up to McDonald's labor abuse worldwide. Retrieved on August 29, 2013 from <http://notlovinit.com/>
- Jamieson, D. (2013, June 19). Bernie Sanders: Immigration reform should rein in guest worker programs. Huffington Post. Retrieved on August 28, 2013 from http://www.huffingtonpost.com/2013/06/19/bernie-sanders-immigration-reform_n_3467243.html?view=print&comm_ref=false

- Leveling the playing field. (2012). Retrieved on April 14, 2013 from <http://www.guestworkeralliance.org/wp-content/uploads/2012/06/Leveling-the-Playing-Field-final.pdf>
- Luce, S. (2013). The good, the bad, and the ugly: A Labor Day assessment of the past year. *New Labor Forum*, 21(3), 66–73. doi:10.1353/nlf.2012.0049
- Ontiveros, M. L. (2012). A strategic plan for using the Thirteenth Amendment to protect immigrant workers. *Wisconsin Journal of Law, Gender & Society*, 27(2), 133–161.
- MacDonald, L. (2013). US immigration reform and guest workers – Michael Clemens. Retrieved on August 28, 2013 from <http://www.cgdev.org/blog/us-immigration-reform-and-guest-workers-%E2%80%93-michael-clemens>
- Parisian, E. (2013, April 1). They're not lovin' it: Striking workers may be McDonald's worst nightmare. Retrieved on August 30, 2013 from http://www.huffingtonpost.com/elizabeth-parisian/mcdonalds-striking-workers_b_2979237.html?view=print&comm_ref=false
- Peterson, K., & Murray, S. (2013). House weighs more guest-worker visas in immigration bill. *The Wall Street Journal*. Retrieved on August 30, 2013 from <http://online.wsj.com/article/SB10001424127887323997004578644252151913218.html>
- Preston, J. (2012). State Department revises foreign student job program after abuse complaints. Retrieved on April 18, 2012 from <http://www.guestworkeralliance.org/2012/05/state-dept-revises-foreign-student-job-program-after-abuse-complaints-nyt-5412>
- National Guestworker Alliance. (n.d.a). Who are guestworkers? Retrieved on April 13, 2013 from <http://www.guestworkeralliance.org/about-guestworkers/>
- National Guestworker Alliance. (n.d.b). NGA wins new protections for Wal-Mart, Hershey's supply chain workers. Retrieved on April 13, 2013 from <http://www.guestworkeralliance.org/category/justice-at-hersheys-2/>
- National Guestworker Alliance. (n.d.c). Category: Justice at Hershey's. Retrieved on April 13, 2013 from <http://www.guestworkeralliance.org/category/justice-at-hersheys-2/>
- National Guestworker Alliance. (n.d.c). Notice of failure to comply with J-1 SWT regulations. Retrieved on April 13, 2013 from <http://www.guestworkeralliance.org/wp-content/uploads/2013/03/3.6.2013-McDonalds-guestworker-complaint-to-Dept-of-State.pdf>
- Rosenbaum, J. J. (2013). Exploitation isn't "cultural exchange." *CQ Roll Call*. Retrieved on August 30, 2013 from http://www.rollcall.com/news/exploitation_isnt_cultural_exchange_commentary-226475-1.html?zkPrintable=true

- Southern Poverty Law Center. (2013). A brief history of guestworkers in America. Retrieved April, 11, 2013 from <http://www.splcenter.org/publications/close-to-slavery-guestworker-programs-in-the-united-states/a-brief-history-of-guestwork>
- U.S. Department of State. (n.d.). J-1 visa exchange visitor program. Retrieved on April 18, 2013 from <http://j1visa.state.gov/participants/>
- U.S. Department of Labor. (2012). U.S. Labor Department recovers back wages for student workers, fines companies for labor violations at warehouse in Palmyra, PA. Retrieved on April 18, 2013 from <http://www.dol.gov/opa/media/press/osha/OSHA20122169.htm#.UKPmReOe9mg>
- Veronikis, E. (2013). McDonald's cuts ties with midstate operator over guest worker scandal. Retrieved on August 29, 2013 from http://www.pennlive.com/midstate/index.ssf/2013/03/mcdonalds_cuts_ties_with_midst.html