

*Documented Migration from Mexico to the U.S.:
Temporary Worker Programs and Its New Challenges*

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Abstract

This paper discusses the ubiquitous participation of Mexicans in “legal” channels of migration to the United States, focusing on labor migration that takes place through temporary migrant worker programs (TMWPs). Although in recent years most of the academic attention has been placed on the phenomenon of irregular migration, little research has noted the presence of Mexicans who cross the border by “legal” means. The paper addresses “legal” patterns of contemporary labor migration from Mexico to the United States in the following manner. The second section sets the theoretical bases that explain the re-emergence of TMWPs and the tendency to locate migrant workers in precarious conditions of employment. The third section describes how TMWPs like the H-2A and H-2B Visa Programs operate, as well as the number of Mexicans that participate in them. The characteristics of the jobs in which Mexican migrants are employed are also discussed taking into account the author’s ethnographic research in a community in Veracruz where two cases were observed—the temporary migration of H-2B visa workers contracted to work at American fairs and carnivals and H-2A visa workers hired for the harvesting of oranges and sweet potatoes in American farms. The aim is to illustrate the limitations and challenges that TMWPs in the U.S. represent for Mexican migrants by exemplifying the precarious conditions that exist in their hiring and working conditions.

Keywords: Documented Migration, Temporary Migrant Worker Programs, Mexican Migration, Precarious Employment

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Introduction

This paper analyzes the omnipresent participation of Mexicans in "legal" channels of migration to the United States, focusing on labor migration that takes place through temporary migrant worker programs (TMWPs). Although Mexico-U.S. migration has been widely studied, most of the literature has focused on the phenomenon of irregular migration. Nonetheless, Mexican migration also occurs through "legal" channels. In fact, Mexicans represent a significant labor force in the different employment-based programs that are offered by the U.S. government. In the permanent visa program and the H-1B visa program, for example, Mexico was the fourth country that provided the most significant number of skilled or specialized labor to the United States in 2015 (U.S. Department of Homeland Security 2015). The most significant percentage of Mexican migrant workers is still, however, mostly concentrated in non-immigrant programs, the H-2A and H-2B Visa Programs—TMWPs for covering the demand in low-skilled occupations. Despite their significant participation, research is still scarce on the employment and hiring conditions that Mexican migrant workers face in such programs.

The discussion below pretends to show an initial analysis of a work in progress which is being carried out with temporary migrant workers coming, mostly, from Tlapacoyan—a municipality located in the norther-central area of the state of Veracruz, Mexico. From this community, a significant number of men and women migrate every year through the H-2B visa program, contracted to work at fairs and carnivals in the United States. During fieldwork activities, interviews with H-2A visa workers who travel to Florida and North Carolina every year contracted for the harvesting of oranges and sweet potatoes have also taken place. The data presented here was obtained following a qualitative methodology and is based on the ethnographic work carried out in the community of origin—Tlapacoyan—and two carnivals in the United States during 2017 and the beginning of 2018. In total, 50 in-depth interviews with H-2B visa workers (11 women and 39 men) and four interviews with H-2A workers (only men) have been collected. Several semi-structured interviews with U.S. workers and employers who have direct contact with Mexican H-2B visa workers have also taken place.

The main objective of this paper is to analyze how external structures (e.g., globalization) that modify the labor market translate into migration controls (migration policies) that place migrant workers in precarious communities of practice. In other words, the paper aims to exemplify how Mexican workers who participate in the H-2A and H-2B visa programs are exposed to unfavorable working conditions, which are aggravated by the vulnerability imposed in their condition as temporary migrants. Considering two cases, H-2B temporary migrants contracted to work at fairs and carnivals and H-2A temporary migrants hired to harvesting oranges and sweet potatoes, the research questions are the following: 1) what kind of labor conditions Mexican workers face as a result of their temporary migration under the H-2A and H-2B Visa Programs? Also, 2) who (actors such as employers or intermediaries) or what (structures) constraints or enables H-2A and H-2B workers' possibilities to improve their working conditions?

The present work is organized as follows. The next section sets the theoretical bases that explain the re-emergence of TMWPs and the tendency to locate migrant workers

in precarious conditions of employment. This section is followed by a description of how the H-2A and H-2B visa programs operate, as well as the number of Mexicans that participate in them. The characteristics of the jobs Mexican migrants are employed are also discussed taking into account the author's ethnographic research in a community in Veracruz where the two case studies were observed.

TMWPs and the double “precariousness” of temporary migrant workers

In the last decades of the twentieth century, several political, economic and technological changes produced a new phase of economic globalization. The end of the Cold War meant a restructuring of the global political order while a new configuration of capitalism—based on neoliberal ideas—and new information and communication technologies developed (Aragonés Castañer 2000; Escobar Villanueva 2007). A major change in human mobility was the emergence of a new international division of labor (Sassen 1998). Castles (2013) argues that two characteristics of this new international division of labor are: 1) the flexibility and temporality of the labor market (which also includes new forms of recruitment intermediation) and 2) labor market segmentation in the lines of gender, race/ethnicity, legal status, and age. In industrial countries, segmented labor markets polarize labor in two main sectors (Piore 1979). On the one hand, the primary sector is constituted by nationals (citizens) who have access to permanent, well-paid, jobs. On the other hand, the secondary sector incorporates minority groups, young people, women, and migrants who are left with jobs that are temporary, low-skilled, and often characterized with low wages and poor working conditions.

In 1990 the high-tech economic boom put “in vogue” immigration policies among industrialized countries that opened the doors to the highly skilled, to cover the labor shortages that the new economy had produced (Martin, Abella and Kuptsch 2006). Along with the admission of professionals, however, TMWPs also re-emerged (Martin 2006). These “new” TMWPs served to meet the demands of low-skilled labor in traditional sectors like agriculture and construction, but also the growing demand in the service sector. TMWPs, such as the H-2A and H-2B visa programs that the U.S. government operates, tend to put migrant workers at a disadvantage position because, in addition to being conditioned by a limited period of stay, temporary migrant workers enter directly into the secondary sector of the labor market which is characterized by jobs that are precarious.

The term precarious employment has traditionally been used to refer to the changes in the quality of paid employment that industrialized countries have undergone since the mid-70s. These changes began with the end of the Fordist era, a period characterized by the creation of “standard jobs” and the growth of the welfare state. According to Kalleberg (2011), standard jobs are those that meet three norms: 1) offer high wages, which can also increase over time; 2) provide extra benefits like social security and retirement pension; 3) give some autonomy and control over work activities, schedules, and contract conditions. Precarious employment, on the contrary, involves those jobs that move from the norm of “standard jobs,” producing conditions of insecurity and instability for workers (Hualde, Guadarrama and López 2015).

Moreover, the term has also been used (see Cranford 2003; Anderson 2010; Fudge 2012) to describe the vulnerable situation migrant workers are exposed to as a result

of immigration controls that restrict migrant workers in low-skilled occupation to temporary status. A working definition that includes the double “precariousness” of temporary migrants is proposed by Vosco (2010), who defines it as:

[W]ork for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shared by the relationship between employment status (i.e., self-employed or paid employment), form of employment (e.g., temporary or permanent, part-time or full time), and dimensions of labour market insecurity, as well as social context (e.g., occupation, industry, and geography) and social location (or the interaction of social relations, such as gender, and legal and political categories, such as citizenship). (Vosko 2010:2)

Vosko’s definition recognizes the objective dimensions that produce job insecurity: low wages, lack of social benefits and limited access to rights, but also accepts that these conditions are affected by the social relations of supply and demand that exist in the labor market. In other words, the definition recognizes that being a woman or a migrant, for example, can place these workers in precarious conditions because socially these groups have been marginalized to specific niches of the labor market. In the case of migrant workers in low-skilled occupations, immigration laws and policies in industrialized countries grant them only a temporary status that immediately excludes them from standard labor relations. Figure 1 shows the analytical framework used to analyze four dimensions of precarious employment among H-2A and H-2B visa workers.

Dimension	Objective Aspects
TEMPORARY	Contract
ORGANIZACIONAL Degree of control (individual and collective) about the work carried out	Position
	Shifts and working load/days
ECONOMIC Income	Wages/salaries Other forms of payment
	Social benefits
SOCIAL Legal protection of work and workers	Labor rights
	Housing and transportation*

* "Housing and transportation" is not included in the model proposed by Guadarrama, Hualde and López (2015); it was included considering that these are a kind of labor benefits which is relevant for temporary migrant workers.

**Own elaboration, adapted from the four objective dimensions of precarious employments proposed by Guadarrama, Hualde and López (2015).

Figure 1: Objective dimensions used for the analysis of precarious employment**.

Temporary programs for non-immigrants: H-2A and H-2B visas

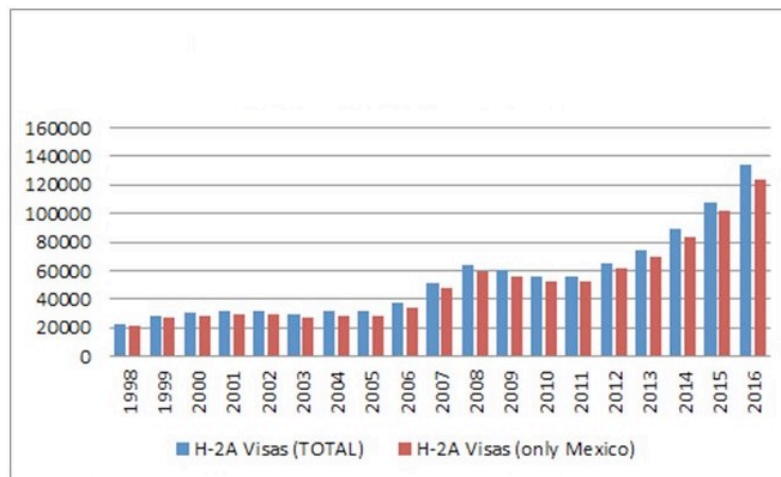
The programs for low-skilled occupations operating in the United States offer short-term visas, with a duration of less than one year, and with no path to permanent residency, which is why they are classified as programs for non-immigrants. Figure 2 shows a comparative table on the four employment-based migration programs that the United States operate today. Although the H-2A and H-2B visa categories share

similar characteristics like their temporality, the programs incorporate migrant workers into different sectors. The H-2A visa program, on the one hand, is designed to meet the demand for temporary or seasonal labor in agricultural activities when the number of domestic workers is insufficient. The H-2B visa program, on the other hand, is designed for recruiting foreign workers to cover occupations that are temporary, non-agricultural in nature, mostly in the service sector. Mexicans have the largest rates of participation (91 percent and 72 percent, respectively) in both the H-2A and H-2B visa programs as illustrated in Figures 3 and 4.

	Visa Programs			
	Permanent Workers	Temporary Workers		
Visa granted	PERM (5-point preferential system) EB-1 – EB-5 visa categories	H-1B Visa	H-2A Visa	H-2B Visa
Work category	Professionals, business investors, special cases.	Specialized workers (Highly skilled)	Workers for agriculture	Workers for nonagricultural labor
Visa Duration	Permanent	3 year, can be renovated	10 months or less	9 months or less
	RESIDENCE ←	allows a path to	Nonimmigrant visa	

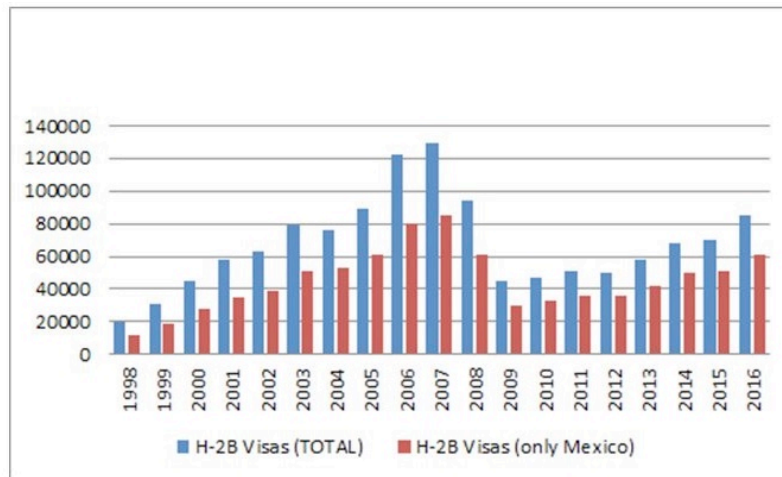
**Own elaboration, data obtained from USCIS, available at [<https://www.uscis.gov/working-united-states/working-us>]

Figure 2: Four employment-based visa programs in the U.S.



**Own elaboration, data obtained from US Department of State (2016).

Figure 3: Number of H-2A visas issued from 1998 to 2016.



* The total of H-2B visas issued for the years 2005, 2006 and 2007 include H-2R visas.

**Own elaboration, data obtained from US Department of State (2016).

Figure 4: Number of H-2B visas issued from 1998 to 2016.

Precarious conditions among H-2A and H-2B visa workers

Mexican H-2B visa workers contracted at fairs and carnivals in the United States are employed either as rides operators (mostly men), food stand attendants (women and men) or as workers at Games (no mechanical). Carnival employers contract Mexican H-2B visa workers to guarantee a “safe” workforce that stays from the beginning to the end of the season and accepts the precarious working and living conditions that are characterized of jobs in the carnival industry. Based on the interviews conducted, Table 1 shows the recurrent precarious conditions that Mexican H-2B visa workers face in American carnivals.

Table 1: Precarious working and living conditions of H-2B visa workers at carnivals

Precarious working conditions	Precarious living conditions
<p>Excessive work schedules</p> <ul style="list-style-type: none"> • Work more than the 48 hours established in the "contract" (60-80 hours in average) • Overtime work is not paid • Some employers do not allow them to take breaks 	<p>Cramped living conditions</p> <ul style="list-style-type: none"> • Live in trailers, rooms no bigger than 1.5m² • Some trailers are closed-boxes, no windows
<p>Risky working conditions and health problems</p> <ul style="list-style-type: none"> • Employers do not provide the necessary tools (helmets, gloves, etc.) • Work is carried out regardless of the weather. • Employers do not take care of injured workers 	<p>Unsanitary living conditions</p> <ul style="list-style-type: none"> • Have to cook outdoors • Trailers do not have toilets • If portable toilets are provided, they only clean them once • Trailers are infested with bedbugs and ticks
<p>No compensation or benefits</p> <ul style="list-style-type: none"> • Migrants do not receive health insurance • Travel expenses are not returned 	<p>Isolation conditions</p> <ul style="list-style-type: none"> • The parking lots of the trailers where they live are usually far from the cities; access to stores or other services is not guaranteed
<p>Others</p> <ul style="list-style-type: none"> • Physical contracts are not given, and when they are, they are written in English • Explanation on the payment of taxes and social security is not done • Discounts are made, and the reason is not explained 	<p>Others</p> <ul style="list-style-type: none"> • Sometimes, trailers do not have electricity nor water for two or three days • Sometimes, migrants do not have a trailer to sleep

The precarious working and living conditions among Mexicans H-2B visa workers are not homogeneous. Working conditions vary depending on employers, the size of the company, the degree of mobility of the carnival, the length of the season. Within the carnival industry, some corporate families operate a large number of rides, food stands and games and which working season includes traveling through different states from March to November. There are also small entrepreneurs that have only one or two games or food stands engaging in a limited number of fairs for two or three months, without leaving a single state. Thus, Mexican H-2B visa workers who recursively migrate to work at carnivals might face different working and living conditions. Figure 4 shows such variation in the case of a woman who migrated for two seasons to work as a food stand attendant.

Dimension	Objective Aspects	Season 1 (2014) Chicken Charlie's	Season 2 (2015) Paradise Amusements
TEMPORARY	Contract	3 months and 20 days (June-September)	9 months (March-beginning of November)
ORGANIZACIONAL	Occupation	Food stand Attendant (cook food, clean the food stand)	Food stand Attendant (cook, buy ingredients/food necessary for the concessionaire, clean, set up and tear down the food stand, attend clients)
	Shifts and working load /days	20 hours per week (Not allowed to work at her free time. 20 days without work) Mandatory break: Monday and Tuesday Around 4 or 7 workers were employed in each food stand (H-2B visa workers and the American owners)	From 70 to 80 hours a week When the fair was open: from 7am to midnight. (They didn't have "breaks" but they could eat food from the food stand they were working in, "free of charge"). 2 workers per food stand (only H-2B worked at the food stands)
ECONOMIC	Salary Other payments	Wage per hour: \$10.50 (\$210 per week) She didn't receive any extra payment	Weekly payment fixed at \$325 (in her second year she earned \$350 and received a \$100 bonus at the end of the season)
SOCIAL	Social benefits	An amount for her social security (taxes) and Medicaid were deducted from her weekly payment	The company didn't make any deductions, no social security or medical insurance.
	Labor rights	?	?
	Housing and transportation	The employer offered housing but workers had to pay. Workers were not allowed to eat or cook in their rooms	Housing and transportation was provided at no charge

Figure 5: Female H-2B visa worker contracted to work in food stands.

Answering the question of whether access to better employment conditions for H-2B workers is possible, qualitative data obtained through interviews and an analysis of the regulations stipulated in the programs show:

1. The guidelines of the H-2B visa program, in general, favor the interests of the employers (e.g., until 2015 American employers were not obliged to offer free housing to H-2B visa workers employed at the fairs and carnivals).
2. Even with the new regulations established in 2015—which stipulate more protections for migrant workers—the Department of Labor (DOL) does not sufficiently monitor the compliance of those regulations.
3. There is fear of retaliation among migrant workers because employers usually report workers who complain about their working and living conditions and blacklisting is a common practice.

Moreover, the agency that contracts workers in Tlapacoyan punishes with a year without applying for a visa to those workers who request a “change of company.” Thus, “conspiracy” between employers and intermediaries limits the possibilities of accessing to better job opportunities.

Unlike Mexican H-2B workers contracted at carnivals, the four H-2A visa workers interviewed did not depend on a recruitment agency to obtain their visa. Their recruitment was through friends and family members who recommended them directly to the “patron,” a Mexican-American farmer owner of orange and sweet potato fields in Florida and North Carolina. Figure 6 shows the case of one of the H-2A visa workers interviewed who participates in both the harvesting of oranges and sweet potatoes. Although the information is limited, through the in-depth interviews three aspects that indicate that these migrant workers also face precarious living and working conditions are:

1. Workloads are excessive. Migrants work for long hours, and although their payment should be per hour, they are pressured to cover the quota of the day (a certain number of truckloads). If they do not fulfill their load, the foreman

writes a report. Recurrent reports reduce the possibilities of being required the next season.

2. Employers do not provide with the necessary services such as bathrooms, proper places to rest or places to eat.
3. These migrants also live in trailers, in places far from the population. Their conditions are similar to those of the Braceros a few decades ago.

Dimension	Objective Aspects	Harvesting of oranges in Florida	Harvesting of sweet potatoes in N. Carolina
TEMPORAL	Contract	Early oranges/ Valenciana oranges 7 months (November–February/March-June)	Sweet potato Requires a visa extension (August-October)
ORGANIZACIONAL	Occupation	Harvesting of oranges and sweet potatoes	
	Shifts/ Working load	Orange: \$11.30 per hour (a tub per hour, at least 9 tubs a day, if workers do not meet the amount, they receive a report)	Sweet potato: \$0.50 per bucket (240-250 buckets per day)
ECONOMIC	Salary Other payments	It varies depending on the conditions of the field The fee transportations from Tlapacoyan to Monterrey is reimbursed	
SOCIAL	Social benefits	?	
	Rights	Inspectors visit workers camps every year (?)	
	Housing and Transportation	The employer offers housing (rooms in buildings and trailers) and transportations. They pay for their food (2 meals, \$65 dollars, for 6 days)	

Figure 6: Male H-2A visa worker contracted to harvest oranges and sweet potatoes.

Conclusion

The working conditions of H-2A and H-2B visa workers are far from being ideal or homogeneous. Mexican workers face different degrees of job insecurity, and migrants' vulnerability is exacerbated due to: first, the lack of regulation by American authorities; second, favoritism toward the American employer and their labor needs; and, third, the presence of intermediaries (agencies) who punish workers who seek to improve their working conditions by complaining or trying to be recruited in a different company. The temporary migration of Mexicans to the United States through the H-2A and H-2B visa programs present significant challenges because these programs are unilateral, and thus information collected from the Mexican side is almost nonexistent. Unfortunately, the challenges posed by TMWPs such as the H-2A and H-2B visa programs are far from being solved. However, it is necessary to continue analyzing in depth the conditions of the migrant workers who participate in them and to expand the research into other occupations where Mexican H-2B and H-2A visa workers participate.

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