

**AGREEMENT
BETWEEN
THE REPUBLIC OF GUATEMALA
AND
THE UNITED STATES OF AMERICA
CONCERNING A TEMPORARY AGRICULTURAL WORKERS PROGRAM**

The Republic of Guatemala (hereinafter “the Guatemalan Party”), and the United States of America (hereinafter “the U.S. Party”), hereinafter, collectively the “Parties”;

ESTABLISHING policy guidelines for Guatemala through the Department of Labour Mobility of the Ministry of Labour and Social Welfare or its registered foreign labor recruiters to provide or seek to provide recruitment services for U.S. employers requesting temporary labor certification to employ nonimmigrant workers under the H-2A visa program;

AFFIRMING their commitment to the rule of law and to the protection of workers’ rights, including the wages and working conditions of U.S. workers and of foreign workers in the United States;

CONSIDERING their shared desire to coordinate mutually beneficial policy to contribute to regional competitiveness;

RECOGNIZING their shared interest in the successful administration and enforcement of the U.S. H-2A visa program, under which U.S. employers hire temporary agricultural foreign workers where there are not sufficient, able, willing, and qualified U.S. workers available at the time and place of need and the hiring of foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed;

AFFIRMING the importance of establishing standards and best practices between the United States and Guatemala for the recruitment and employment of H-2A visa program workers, consistent with the applicable laws, regulations, and rules in the United States and Guatemala; and

CONSIDERING that the fair, legal, transparent, and orderly hiring of temporary migrant workers, with the facilitation of the Department of Labour Mobility of the Ministry of Labour and Social Welfare and the registered foreign labor recruiters is of value to the implementation of the H-2A temporary agricultural workers program.

Agree as follows:

ARTICLE 1: Objectives

The objectives of this Agreement are as follows:

1. Strengthen bilateral cooperation surrounding the U.S. H-2A visa program, under which U.S. employers hire temporary agricultural foreign workers where there are not sufficient able, willing, and qualified U.S. workers available and the hiring of foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Parties intend to strengthen cooperation through joint efforts that include the involvement of relevant governmental agencies and private organizations in the United States and Guatemala.
2. Facilitate the bestowal of H-2A visas for temporary agricultural Guatemalan workers and promote a regular, orderly and secure migration, focusing in the territories with the highest risk of irregular migration.
3. Protect the wages and working conditions of U.S. workers and Guatemalan H-2A visa program workers; and
4. Further facilitate the availability of temporary agricultural labor in compliance with U.S. and Guatemalan laws, regulations, and rules.

ARTICLE 2: Scope of Collaboration

In furtherance of these objectives, the Parties intend to pursue the following initiatives:

1. Facilitate and monitor the recruitment, consistent with U.S. and Guatemalan law, of Guatemalan H-2A visa program workers by the Guatemalan Department of Labour Mobility of the Ministry of Labour and Social Welfare and its registered foreign labor recruiters;
2. Promote the creation of mechanisms between the Parties that is expected to facilitate a regular, orderly and secure recruitment that fosters accountability and transparency throughout the process;
3. Prevent fraud and abuse in the recruitment process; and
4. Improve awareness about the H-2A visa program's requirements and obligations through continued outreach and education.

The Parties affirm their expectation that the recruitment, employment, and return of H-2A visa program workers to Guatemala will be conducted in accordance with the applicable laws, regulations, and rules, in the United States and Guatemala.

Where appropriate, the Parties intend to encourage and coordinate the involvement of relevant U.S. and Guatemalan governmental agencies.

ARTICLE 3: Worker Protections and Recruitment

The Parties believe in the importance of safe and lawful recruitment, employment, working conditions, housing facilities, and transportation services for H-2A visa program workers, and intend to collaborate on the following:

1. Promoting timely, safe, and orderly recruitment practices of Guatemalan H-2A visa program workers by working with Guatemala to establish a process for the regular application, investigation, bonding, and approval or renewal of certificates of registration for any persons or entities who engage or plan to engage a U.S. employer in the recruitment of H-2A visa program workers within Guatemala;
2. Strengthening the cooperation mechanisms to prevent, report, and investigate violations of the H-2A visa program, including fraud, abuse, discrimination and retaliation for reporting any such violations, against Guatemalan H-2A visa program workers before, during, and after their participation in the H-2A visa program;
3. Strengthening efforts aimed at ensuring that Guatemalan H-2A visa program workers receive, upon the conclusion of investigative procedures, all of the back wages found due by the U.S. Department of Labor's Wage and Hour Division in coordination with the Ministry of Labour and Social Welfare for the benefit of the workers, without any deductions or fees;
4. Encouraging H-2A visa program workers and employers to provide feedback regarding their experiences with the program, including but not limited to the guidelines offered by the Department of Labour Mobility of the Ministry of Labour and Social Welfare;
5. Using the ongoing collaboration of the U.S. Parties' agencies with the Guatemalan Parties' agencies, to this end; and
6. Strengthening efforts aimed at ensuring that the Ministry of Labour and Social Welfare and Ministry of Foreign Affairs implement a mechanism that provides Guatemalan consular attention, assistance and protection to the Guatemalan workers participating in the H-2A visa program, while in the United States.

The Parties expect that strengthened collaboration and cooperation will contribute to a fair and transparent recruitment process to benefit and protect the workers of both countries.

Based on these principles, the Parties acknowledge the following requirements of the H-2A visa program:

1. H-2A visa program workers cannot be required to make any payment of any kind for any activity related to the workers obtaining or maintaining H-2A visa program status by the employer and its agents, including, but not limited to, as applicable, a facilitator, recruiter, or employment agency. Prohibited payments include, but are not limited to, costs associated with applications for H-2A temporary labor certification, petitions for H-2A classification, H-2A visa applications, applications for admission to the United States, and costs of return transportation (including food expenses), to be borne by the worker's last U.S. employer, to the required location in Guatemala, if the worker is terminated by the employer without justifiable cause (i.e., through no fault of the worker), or otherwise completes the work in accordance with the terms of admission to the United States. Such payments also include direct or indirect payment of attorneys' fees, application or petition preparation and filing fees, or recruitment costs;
2. Pursuant to U.S. law and regulation, private labor recruiters are prohibited from confiscating or withholding worker identity documents or other valuable items (e.g., work or travel permits, passports), and the retention of such documents shall not be used as a means to bind workers to employment or to restrict their labor mobility;
3. Unless specifically required by U.S. Federal or State law, under U.S. law all deductions to the wages of H-2A visa program workers for any assignment of wages, irrespective of whether such deduction is or might be considered to be for the benefit of the worker, must be voluntary and meet the following criteria pursuant to U.S. law and regulation:
 - i. All deductions must be initiated at the worker's request, without coercion;
 - ii. Neither the employer, recruiter, nor any agent of either an employer or recruiter may derive any profit from the transaction;
 - iii. The worker may designate the amount of the deduction and choose to stop the deduction at any time;
 - iv. The worker's recruitment and employment will not be adversely affected by a decision not to have the deduction; and
 - v. Neither the employer, recruiter, nor any agent of either an employer or recruiter may in any manner influence or coerce the worker in regard to the deduction.

4. Employers seeking to employ H-2A visa program workers are expected to abide by applicable anti-discrimination laws and regulations.

ARTICLE 4: Implementation

Based on these principles and International Agreements ratified by Guatemala, the Government of Guatemala expects to establish the following as legally binding standards under Guatemalan law, or regulations for the recruitment of workers for U.S. employers utilizing the H-2A visa program:

1. Guatemala through the Department of Labour Mobility of the Ministry of Labour and Social Welfare intends to establish a process for the regular application, investigation, bonding, and approval or renewal of registration for any persons or private entities who engage or plan to engage a U.S. employer in the international recruitment of H-2A visa program workers within Guatemala. These persons or entities are hereinafter referred to as "foreign labor recruiters";
2. Guatemala shall continuously maintain a list readily accessible to the officials of the United States Government, of all the persons or entities hired by, or working on behalf of, any persons or entities registered as foreign labor recruiters in Guatemala, including foreign labor recruiters whose registrations were not approved, or renewed, or have been revoked;
3. Guatemala shall require registered foreign labor recruiters to provide to the Ministry of Labour and Social Welfare an executed contract or agreement identifying the solicitation, recruitment, and related services and activities that the foreign labor recruiter will perform for the U.S. employer. The written contract or agreement shall cover all persons or entities hired by or working for the foreign labor recruiter and the agents, contractors, or employees of those persons and entities, whether or not the foreign labor recruiter is in privity of contract with any such persons. The contract or agreement shall require that the U.S. employer attest it is not offering terms and conditions of employment more favorable to foreign workers than to U.S. workers, and shall contain a contractual prohibition on charging fees to the worker for any activity related to obtaining H-2A labor certification, including, but not limited to, payment of the employer's attorneys' and/or employer's representatives' fees, visa application or border fees or services related thereto, or finders' fees, or recruitment costs. While the foreign labor recruiter may charge reasonable fees to the U.S. employer for its services, the contract shall state that the foreign labor recruiter may not pass along any costs to the worker, nor may it charge the employer any costs associated with becoming registered as a foreign labor recruiter by Guatemala. Copies of executed written contracts or agreements shall be available upon request by the U.S. Department of Labor or any other Federal agency conducting an audit, investigation, or law enforcement investigation;

4. Guatemala shall require registered foreign labor recruiters to provide workers they recruit for participation in the H-2A visa program with a full copy of the certified H-2A job opportunity description in Spanish or a language they understand, disclosing all the terms and conditions of employment, and their rights and protections under all applicable U.S. laws and regulations. The copy of the certified H-2A job opportunity description shall be provided no later than the time at which the worker located in Guatemala applies for the visa. Guatemala shall require that the certified foreign labor recruiter and the H-2A visa program worker sign a copy of the work contract and send a copy of the signed work contract to the Labour Mobility Department of the Ministry of Labour and Social Welfare;
5. Guatemala shall prohibit the use of supplemental work contracts or agreements as well as contract substitutions (i.e., the replacement of an original contract or any of its provisions with those that are less favorable) by foreign labor recruiters who recruit H-2A visa program workers;
6. Guatemala shall prohibit foreign labor recruiters from subjecting H-2A visa program workers to any form of human trafficking or forced, compulsory, bonded, indentured, or prison labor. Guatemala shall require that all work must be voluntary and workers have a right to terminate their employment at any time without penalty;
7. Guatemala shall require that foreign labor recruiters will not fail or refuse to hire, discharge, intimidate, threaten, restrain, coerce, or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, sex, national origin, religion, age, or disability, or as otherwise provided by the applicable laws, regulations, and rules, in the United States and Guatemala;
8. Guatemala shall require that wage advances or loans provided to workers, along with related interest rates, must comply with all applicable U.S. and Guatemalan laws and regulations, and workers shall not be required to participate in any form of forced or mandatory savings or purchase insurance policies, whether or not they may provide some benefit to the worker, including those that are in fact intended to recoup costs associated with recruitment or other services; and
9. Guatemala shall establish effective and confidential procedures for the reporting by and protection of any individual, or group of individuals, who discovers noncompliance, fraud, or abuse, and for investigating and resolving such reports, including mechanisms to impose penalties and sanctions on foreign labor recruiters and reimburse workers for any prohibited fees charged.

Based on the assurances by Guatemala, the Parties acknowledge that all of the preceding commitments are expected to be completed as soon as possible. When an H-2A visa program worker presents at the U.S. Consulate in Guatemala and applies for a visa:

1. The United States intends to take appropriate measures to ensure the applicant has received a reciprocal signed copy of the work contract by the registered foreign labor recruiter and the visa program worker in the language of the H-2A visa program worker and understands the terms of the contract; and
2. The United States interviews the H-2A visa program worker and determines eligibility for the visa.

The Parties intend to cooperate through the following actions, including but not limited to:

1. Promoting events in the United States and Guatemala to provide information about the H-2A Temporary Agricultural Workers Program's requirements;
2. Promoting initiatives to increase transparency and accountability under Guatemalan law of all foreign labor recruiters involved in the recruitment process; and
3. Ensuring that Guatemalan H-2A visa program workers who have suffered labor recruitment abuses and have returned to Guatemala have a simple and confidential means to report these abuses to appropriate Guatemalan or U.S. agencies and seek legal redress for any such abuse suffered.
4. If permissible under U.S. law, the United States intends to endeavor to notify Guatemala of foreign labor recruiters that are deemed ineligible for purposes of recruiting H-2A visa program workers due to violations of applicable law or regulation.
5. If permissible under U.S. law, the United States intends to notify local authorities in Guatemala if violations of any applicable U.S. or Guatemala law are discovered that may jeopardize the safety of U.S. persons or property.

ARTICLE 5: Outreach and Education

The Parties intend to develop and disseminate informational materials for prospective Guatemalan H-2A visa program workers, recruiters, and U.S. employers about their rights and obligations under applicable U.S. and Guatemalan laws, regulations, and rules.

ARTICLE 6: Process of Consultation

The Parties intend to share information, discuss best practices, and review the implementation of this Agreement as appropriate and in the United States–Guatemala Consular Dialogue. The Parties may hold consultations, at any time, in order to address any issue regarding the application or interpretation of this Agreement.

ARTICLE 7: General Provisions

1. The Parties intend to meet and review this Agreement and its implementation. The Parties intend to meet once every year alternating between the United States and Guatemala. The Parties may invite other appropriate organizations with expertise, as decided upon by the Parties.
2. Each Party intends to pay for all costs of its own participation in any areas of cooperation pursuant to this Agreement. Nothing in this Agreement shall be construed in such a way as to oblige the Parties to disburse or obligate any additional funds, different than their respective budgets.
3. This Agreement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against either the United States or Guatemala, their departments, agencies, or entities, their officers, employers or agents.
4. This Agreement shall enter into force upon the completion of an exchange of notes by both Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force, which exchange shall not occur prior to the entry into force of the Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on the Cooperation Regarding the Examination of Protection Claims. It may be amended by written agreement of the Parties. Either Party may terminate this Agreement by providing six (6) months prior written notification, to the other Party.

DONE at Washington DC, this 30 day of July 2019, in duplicate in the Spanish and English languages, each text being equally authentic.

**FOR THE REPUBLIC OF
GUATEMALA:**

**FOR THE UNITED STATES OF
AMERICA:**

Gabriel Aguilar AB

JR PM