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Where the immigration debate meets my snowboard instructor

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Last summer the big national issue was immigration reform. One side said “build a fence and enforce the law.” Another said “create comprehensive immigration reform that includes making a way for undocumented workers to become citizens.” The debate ended in an impasse. It was for me yet another debate “out there” until a fellow snowboard instructor told me that some ski areas were having trouble finding adequate instructors.

Immigration, like most areas of government, is an alphabet soup of laws and programs. Foreign ski and snowboard instructors come to this country through a seasonal work visa called the H-2B, which is for non-agricultural work. A business that wants to use this visa must fill out paperwork that is reviewed by the state department of labor as well as three agencies of the federal government. It’s likely that Pablo, who gave me one of my first snowboard lessons in Colorado, came to this country through this kind of visa.

Only 66,000 H-2B visas are granted each year. Thanks a special law, workers who had obtained a visa in a previous year were exempted from the cap if they wanted to return. In fiscal year 2007, some 69,000 foreign workers used this provision. But it expired during the immigration blow-up, effectively cutting the number of visas by more than half, and Congress never came close to reauthorizing it.

The returning-worker law was doomed by the larger issue over immigration, which included debates over agricultural workers, high-tech workers, economics versus politics and a proposal that businesses verify the legal status of everyone they hire. The Hispanic Congressional Caucus opposed piecemeal laws such as the returning-worker rule, favoring comprehensive reform and a new paths to citizenship. Union advocates such as Rep. George Miller (D-Calif.), meanwhile, argued that the H-2B program required more vigorous enforcement of worker protection laws and the visa’s “prevailing wage” requirement.

On the other side, U.S. Rep. Tim Bishop (D-NY), wrote that absent the returning-worker law, “many family-owned businesses that depend on such employees will be without the workforce they need to stay in business.” Sen. Barbara Mikulski (D-Md.), keeping mind the folks who harvest crabs in her state’s waters, said that without the exemption, “many businesses would be forced to limit services, lay off permanent U.S. workers or, worse yet, close their doors.”

Since the legal supply of H-2B workers has been halved, businesses have adapted in a lot of ways. Some, I suspect, simply flout the law. That puts companies that hew to the law at a competitive disadvantage.

Customers may see changes, too. If I return to Colorado and want to take a lesson with Pablo, there's a good chance he won't be there. As gas stations did years ago, businesses that depend on low-wage workers will find ways to shift some of the work onto consumers, and call it self-service.

Some ski and snowboard instructors hope that the law will improve their own conditions. After all, their pay is typically low (high-priced Vail, for example, proposed in its visa application to hire instructors at \$9.06 to \$18.05 an hour) and housing costs in resort areas are high, due to limited land for building. Other instructors, however, are pessimistic. After all, there's a limit to what even well-healed skiers will pay for a lesson, meaning that raising instructor pay—one obvious way of attracting more U.S. job applicants—could simply price some instructors out of a job.

Ski towns and ski areas, which use the H-2B program for lift attendants, retail clerks and housekeepers as well as instructors, are scrambling to adjust. The timetable laid down in immigration law puts ski areas at a disadvantage: By the time they are able to submit their applications, much of the quota has already been filled.

So they've ramped up efforts to recruit U.S. workers by holding job fairs and advertising on Facebook and other social networks. Copper Mountain, a well-known Colorado resort, has advertised for experienced instructors on Craig's List. According to one Denver-based snowboard instructor I know, that's the first time Copper has had to recruit experienced instructors. I expect, though I haven't read this yet in industry publications, that the larger, better known resorts will be able to poach some employees from their smaller brethren. No surprise there—regulations that make it more difficult to do business usually give the bigger boys an advantage.

As for Minnesota and the Midwest, a few ski areas have dabbled in foreign workers, but at least for day areas such as Afton Alps, the dispute has no impact. They're able to hire local workers.

Instead, the businesses most affected are landscaping and lawn care services, nurseries, golf clubs, and summer resorts. Fran Regan of the Minnesota Department of Employment & Economic Development (DEED) told me in an e-mail that in fiscal year 2007, DEED transmitted 95 H-2B applications from Minnesota employers to the U.S. Department of Labor. In turn, that department certified a total of 75 applications for a total of 2,125 workers. So even if they never leave the state for a ski trip, Minnesotans may see the impact of the restrictions, too.