

HUMAN TRAFFICKING IN AMERICA | Work visa program rife with problems

FRAUD'S WELCOME MAT



KEITH MYERS | THE KANSAS CITY STAR

Hoping to enter the U.S. legally, Marvin Perez-Gomez of Guatemala paid a con artist for a nonexistent visa. He later entered the U.S. illegally and was deported back to Guatemala. Here he shows off a favorite T-shirt from the used clothing his family sells.

Even the most flagrantly bogus documents let workers slip through and become targets for abuse. A Kansas City case may hint at the scope of the guest worker problem.

By MARK MORRIS
The Kansas City Star

The largest suspected human trafficking ring ever uncovered by U.S. law enforcement brought its victims into the country on commercial airliners, using completely legal documents, records show.

For almost a decade, three companies and 12 accused human traffickers charged in a landmark Kansas City human trafficking case allegedly took advantage of a guest worker visa program that is easy to defraud.

An investigation by The Kansas City Star found it's a loophole-ridden system that permits traffickers to file transparently bogus paperwork that goes virtually unchecked by at least three federal agencies.

With approved visas in hand, traffickers around the country have brought thousands of workers to the United States, where they are often exposed to hazardous living and working conditions and paid just pennies an hour.

And the U.S. Labor Department — the agency charged with protecting workers — does little to root out the

problems, even returning almost \$200 million earmarked for visa fraud detection to the federal Treasury.

As part of its investigation, The Star obtained hundreds of pages of previously undisclosed investigative records from the alleged Kansas City conspiracy and examined thousands of pages of wiretap transcripts and other documents from labor trafficking cases around the country.

The stories of abuse include workers in Missouri being injured on the job and going without adequate medical treatment because their employers didn't buy workers' compensation insurance; employers requiring workers in Alabama to rent crowded apartments so shabby that they resembled "pig sties" while the trafficking schemes' leaders

lived in a \$700,000 home with an air-conditioned doghouse; and women illegally working in a Tennessee motel paid so little that they were "dying of hunger."

Federal prosecutors exposed weaknesses in the guest worker visa program as recently as May, when they announced human trafficking charges in Kansas City against the leaders of the Giant Labor Solutions conspiracy.

Prosecutors alleged that GLS and others brought more than 1,000 foreign workers to Missouri, stole their wages and exposed some to terrible living and working conditions. It's the first human trafficking case in the nation filed under federal racketeering laws.

Some defendants in the GLS case allegedly heaped debt onto workers and threatened to have them deported if they didn't illegally perform work that was not permitted under their visas.

Those victims came to the United States carrying visas issued by the government's H-2B program, which funnels temporary guest workers into non-agricultural, seasonal jobs, such as those in the hospitality and landscaping industries.

At a recent court hearing on the GLS case, Assistant U.S. Attorney Cynthia Cordes said that flaws in the program make it attractive to criminals.

"The structure of the H-2B visa program makes it a prime vehicle for gross and widespread abuse," Cordes said. "As evident by the indictment itself, the H-2B visa program offers a means to take advantage of international workers and empowers criminals to have the upper hand once the workers have arrived in the United States."

To be sure, thousands of legitimate businesses use the H-2B program to find temporary, full-time help for peak periods when Americans are not available or do not want the jobs. For honest employers, the paperwork process can be arduous and painstaking.

But for a criminal labor broker with no scruples about falsifying applications, obtaining visas is

simple. What's more, federal labor officials admit they have no authority to enforce the terms of the contracts between foreign workers and the employers who bring them over.

During a recent debriefing with federal prosecutors in Virginia, Gabor Teglasi — a Hungarian illegally in the United States — bragged about how he and others exploited American guest worker visas to traffic thousands of foreigners to St. Louis and other cities.

"The United States deserved what happened in this case," Teglasi said.

But instead of tightening the program, federal bureaucrats recently "streamlined" it so that guest worker visas could be approved more quickly and with even less oversight, The Star's investigation found.

The ease with which the system can be defrauded allows criminals to use U.S. law to turn foreign workers into something very close to slaves, said Mary Bauer, legal director of the Southern Poverty Law Center.

"For too long, our country has benefited from the labor provided by guest workers but has failed to provide a fair system that respects their human rights and upholds the most basic values of our democracy," Bauer said.

Red flags ignored

H-2B is a small visa program used by businesses that can't find American workers to take temporary, full-time seasonal jobs. Workers with such visas clean hotels, shuck shellfish and teach youngsters to ski at Colorado ski resorts.

Given the size of the U.S. work force, the program is relatively tiny. Only 66,000 new visas are approved every year.

Until some recent rules went into effect, applications were submitted first to state labor agencies, which verified that employers had made good-faith efforts to hire Americans by advertising the jobs and interviewing applicants.

Criminals quickly found ways around that.

One East Coast visa fraud conspiracy simply scheduled interviews with U.S. applicants

for inconvenient times, such as 6 p.m. on Christmas Eve. The few Americans who actually appeared reported later that the interviewers were "intimidating" and made the jobs sound "as bad as possible."

Even false financial information sometimes doesn't raise red flags.

In application after application, The Star's investigation found that the U.S. departments of Labor, Homeland Security and State routinely certified and approved the applications and issued the visas.

Last year, Ilkham Fazilov, a Kansas City defendant in the GLS case, signed paperwork on behalf of Five Star Cleaning, asking for 87 H-2B visas.

In the application, Five Star contended that it had a gross annual income of almost \$1.6 million and employed more than 90 employees since January 2007. The spreadsheets also gave a detailed accounting of its payroll and hours worked for the entire year of 2007.

A check by authorities with state incorporation records — available online without cost — would have shown that none of that was true. Fazilov didn't incorporate Five Star Cleaning until Dec. 18, 2007.

While Five Star also claimed to have the money to pay workers once they arrived in the United States, a review of records by The Star showed that the company conducted no bank activity in 2007.

Government watchdogs also might have noticed that GLS and Crystal Management, two other companies charged in Kansas City, each submitted identical financial information on their visa requests.

Indeed, both companies reported the exact same gross annual income — \$1,434,347 — and the same annual profit down to the penny — \$125,414.11.

Examples outside of Missouri aren't hard to find, either. In 2007, the government issued 25 H-2B visas for a Virginia contractor that provided workers to load trucks from a nearby manufacturing plant onto rail cars. But the plant had stopped producing trucks almost a year before.

Immigration lawyer Kent Felty, who represented trafficking victims in civil suits against an Oklahoma company, said he isn't surprised that such red flags go unnoticed.

"None of the people involved in the H-2B process talk to each other," Felty explained.

Searching for fraud can be time-consuming and expensive. But sometimes even having Congress appropriate millions to combat it isn't enough.

Congress ordered the Department of Homeland Security in 2005 to collect a new \$150 fee for H-2B visa applications and give a portion to the Department of Labor for fraud prevention and detection.

But that money never was spent, The Star's investigation found.

The Labor Department allowed almost \$200 million collected for visa fraud enforcement to lie dormant over the last two years, apparently because it questioned whether it could legally spend the money.

A Department of Labor spokesman said that much of that \$200 million was earmarked to investigate fraud in another guest worker visa program. That money was returned to the Treasury, he said, because without complaints, the department has no authority to look for fraud.

The \$200 million lapse was "unconscionable," said the chairman of the U.S. House Committee on Education and Labor, Rep. George Miller of California. He added that rooting out fraud and abuse in guest worker programs must be a higher priority.

"Congress is working with the new administration to ensure that they will be able to use these funds to prevent fraud committed by unscrupulous labor recruiters, and businesses that exploit guest workers and deny jobs to U.S. workers," Miller said.

In a statement to The Star, Secretary of Labor Hilda Solis pledged to improve her department's fraud-prevention record.

"Ensuring compliance with our laws is a priority for this

administration," Solis said. "Any deficiencies in past strategies to achieve that end will be addressed, and we will continue to strengthen our efforts to ensure we are not only detecting foreign labor fraud and assisting in prosecuting offenders, but preventing criminals from taking advantage of the programs in the first place."

Busting GLS

Investigative records recently obtained by The Star reveal that procedural safeguards in the H-2B visa program had little to do with uncovering the alleged GLS conspiracy.

Rather, the case broke open after federal agents followed up on tips from business associates of the accused conspirators.

On Oct. 11, 2007, two disgruntled business associates of alleged conspiracy kingpin Abror Askarkhodjaev opened the door to investigators. And while those associates looked on, agents tore through the Westport Road offices of GLS.

Poring through filing cabinets, investigators found labor contracts with more than a dozen hotels and golf courses between Overland Park and South Carolina, including the Westin Crown Center and two Kansas City area Hilton properties, the Doubletree and the Embassy Suites on the Plaza. Other than denying any wrongdoing, spokesmen for the hotels declined to comment on the case, citing the pending investigation.

Agents also scrutinized payroll records, visa applications and personnel files on foreign workers employed by GLS.

One of the associates pointed agents to computers that held digital copies of more payroll and employment data. A computer expert swooped in and copied the hard drives, which took investigators and prosecutors months to digest.

The agents' next reported foray into the GLS offices came on April 15, 2009, the day after they interviewed an unhappy worker.

Alexis Julio Tejada Encarnacion had been recruited in the Dominican Republic to work

for Crystal Management, a company affiliated with GLS, according to authorities.

Encarnacion's family had gone \$3,000 in debt to send him to work in the United States. Arriving in February with 25 other Dominicans, he was told that he would instead be working for GLS, a violation of his visa.

Two days later, a GLS manager gathered the workers in a motel parking lot in Johnson County and sorted them by English-speaking ability. The five best English speakers, including Encarnacion, were to stay and work in Kansas City.

GLS loaded the rest onto vans and shipped them to a DVD manufacturing plant in Alabama. In a recent interview, Ronny Marty, a Dominican who worked for GLS at the Alabama plant, confirmed Encarnacion's story.

"When we arrived in Kansas City they changed everything," Marty recalled. "They said, 'We don't have any hotel jobs, but we have jobs with DVDs. If you don't like it, you can go back to your country.'"

GLS housed the five workers remaining in Kansas City in a two-bedroom apartment. Together, the workers paid GLS \$1,500 a month for an apartment that the company rented for just \$600.

Encarnacion lost a full 65 hours of wages over his first seven weeks of work because of deductions for his visa, uniforms and transportation.

Marty said he faced a similar situation in Alabama. "This guy was charging us for everything," Marty said.

On Tax Day 2009, federal agents wired Encarnacion with electronic audio and video equipment and sent him to GLS offices to complain that he wasn't making enough to help his family pay off the \$3,000 debt.

According to a summary of the meeting, Viorel Simon, now a defendant in the human trafficking case, warned Encarnacion that if he quit his hotel job, GLS would cancel his visa and he would become an illegal immigrant.

Simon also refused Encar-

nacion's plea for cheaper rent, transportation and visa fees.

"Simon told him that it was his problem," according to the summary.

'Dying of hunger'

If things go wrong for H-2B workers after they arrive in the United States, they quickly learn they have even fewer protections than migrant farm workers.

Already deeply in debt to a recruiter, the workers have no option of changing jobs and can't use federally funded legal services available to guest workers in other visa programs.

Complaining often is futile.

As one of the top managers of a Virginia-based labor contracting firm, Dzmityr Krasautsau heard those complaints. Until last December, his job was to make certain that hundreds of foreign employees that his conspiracy had hired under the H-2B program kept going to work each day.

Krasautsau also had to take the calls when workers asked why deductions for rent and transportation made their paychecks so small.

But unlike most labor traffickers, Krasautsau and his co-conspirators had drifted into the crosshairs of a federal task force, which recorded his telephone calls.

Transcripts of those calls obtained by The Star show that, on Nov. 4, 2008, a Jamaican labor recruiter called Krasautsau to complain about how he was treating five women who worked for him as housekeepers. After two weeks of long hours at a motel in Gatlinburg, Tenn., the women had received paychecks totaling less than \$50 each.

"This is very desperate," said the Jamaican recruiter. "Those girls in Tennessee, they are dying of hunger. Nobody has any money."

Krasautsau later was convicted of conspiracy to transport and harbor illegal aliens, money laundering and visa fraud and is now serving a 78-month prison sentence.

The Star found that not all labor trafficking schemes in-

volve hundreds of workers spread over big cities in dozens of states.

For seven months between 2005 and 2006, four Filipino workers lived in fear of two motel owners in Oacoma, S.D. — population 406.

After Robert and Angelita Farrell arranged for the workers to come to the United States, they immediately took their passports, cut their already minimum-wage pay in half, required them to work long hours with no overtime, and loaded them with debt in the form of visa fees, transportation costs and exorbitant rent.

At first, workers accepted the hardships, believing that their employers had their best interests at heart.

"They knew better," Gina Agulto, one of the workers, told jurors at the Farrells' criminal trial.

The Farrells insisted that the workers take second jobs at fast food restaurants to generate fatter paychecks, which the workers then signed over to the motel owners to pay off their escalating debts. The couple also insisted that the workers not talk to other people in town, speak with their American co-workers or go anywhere without their permission.

According to allegations in a civil suit filed in March in South Dakota, the scheme unraveled after Robert Farrell appeared in the workers' apartment one evening and dumped the bloody carcasses of two deer on the floor, intending the workers to use the meat for food.

Finally, the workers alerted authorities.

Indeed, criminals sometimes can scam thousands of dollars from the unwary by dangling the mere promise of an H-2B visa in front of a prospective worker.

Marvin Danilo Perez-Gomez, of Chimaltenango, Guatemala, quit his job making fireworks and paid \$2,000 to an unsavory recruiter, who promised an H-2B visa and a legal job planting pine trees in Mississippi.

But he was disappointed when he arrived at the U.S. Embassy to process the paperwork and get his visa.

"There were more than 50 peasants, and the American officers were laughing at us," Perez-Gomez told The Star. "They denied my visa just like they did with all who were there."

Perez-Gomez eventually entered the United States illegally and began work at a Postville, Iowa, meatpacking plant. Immigration agents raided the plant in 2008, and he eventually was deported.

Don Mooers, a lawyer representing Save Small Business, which lobbies on behalf of legitimate businesses using the H-2B program, said his group supports reasonable regulations to better protect workers.

"These workers need to be treated fairly," Mooers said, "and the employers need to respect the program."

'Virtually no oversight'

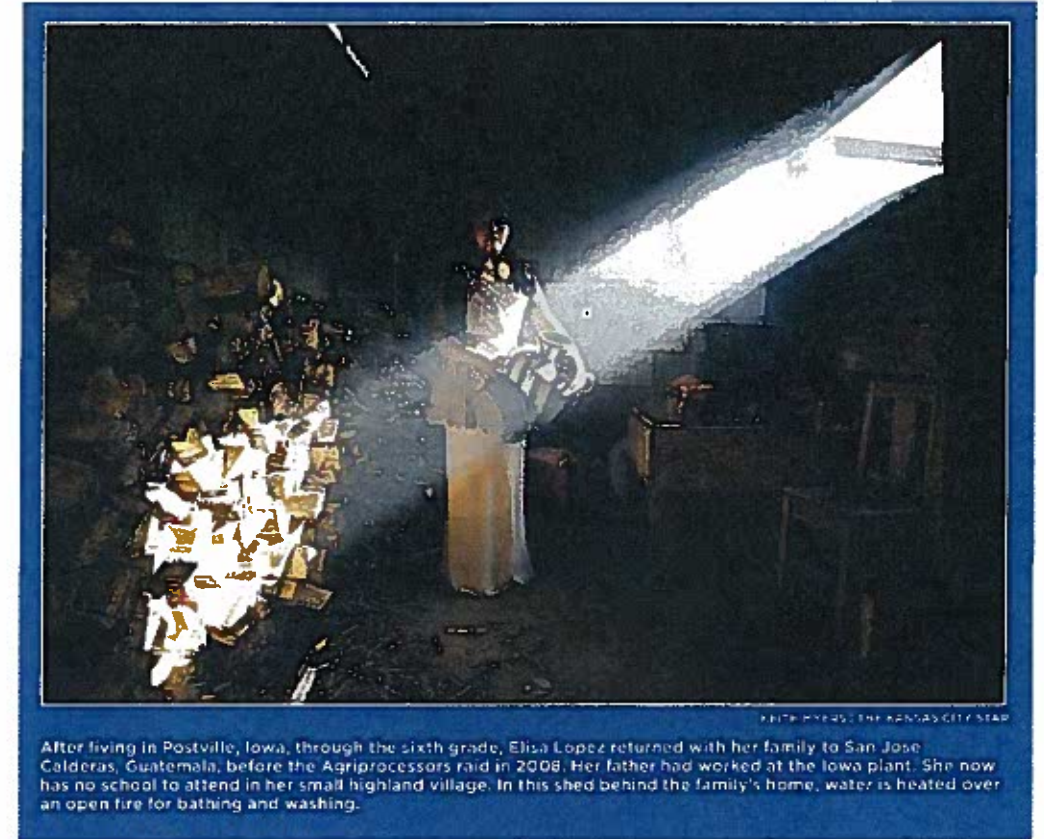
Uncovering fraud in the Department of Labor's visa certification program now is the "fastest-growing area" of criminal investigations, according to the department's Office of Inspector General.

The investigators said the department's senior management should put "maintaining the integrity" of its guest worker programs at or near the top of its priority list.

But Ales Wooditch, who spent four years as an intelligence analyst with the Labor Department's Office of Labor Racketeering and Fraud Investigations, said the department should try to limit fraud *before* it happens.

"We don't have any systematic prevention measures in place," Wooditch said. "The fact that we don't have a fraud prevention unit is of concern."

Faced with complaints from small business owners about backlogs in granting guest-worker visas, the Labor Department has opted to streamline the program to allow the



After living in Postville, Iowa, through the sixth grade, Elisa Lopez returned with her family to San Jose Calderas, Guatemala, before the Agriprocessors raid in 2008. Her father had worked at the Iowa plant. She now has no school to attend in her small highland village. In this shed behind the family's home, water is heated over an open fire for bathing and washing.

department to issue the visas quickly.

Now it's taking the word of employers that proper documentation could be produced if the application were audited.

Assistant U.S. Attorney Joseph E. DePadilla in Virginia recently told a judge that the new procedures will make catching criminals even more difficult.

"The H-2B program is very simple to defraud on a systemic level and the rule changes will make it even easier for the criminals," DePadilla said.

Under the new procedures, the Labor Department has given its Wage and Hour Division the authority to investigate problems in the H-2B program. But experts question whether Wage and Hour has the capacity or competence to protect low-wage workers, such as

H-2B visa holders.

In March, the Government Accountability Office released a report of its undercover investigation of Wage and Hour, concluding that the division's procedures actually made workers *more* vulnerable to the kind of wage theft common in labor trafficking cases.

As part of its investigation, the GAO filed fictitious complaints with the division, including one that touched on one of the Labor Department's top enforcement priorities — protecting children from hazardous working conditions.

Undercover investigators told the division that children were operating heavy machinery, such as grinders and circular saws, at a California meatpacking plant during school hours.

Wage and Hour investigators never even recorded that they

had received the tip, much less investigated it.

In their 2010 budget request to Congress, Wage and Hour administrators asked for an additional 288 staff members to, in part, improve enforcement for the H-2B program.

Any move toward stricter enforcement of the program would be an improvement, experts said.

Catherine K. Ruckelshaus, legal co-director of the National Employment Law Project, said it could hardly get worse.

"H-2B is being abused left and right and there's virtually no oversight over the program," Ruckelshaus said. "It's a perfect storm of no enforcement and that just perpetuates the practices."