

MEMORANDUM

Date: April 8, 2019

To:

From:

RE: Casella, Alexandra and Cox, Adam B. 2018. "A Property Rights Approach to Temporary Work Visas". *The Journal of Legal Studies*

BACKGROUND

In its most simplistic definition, economics is the study of scarce resources and their allocation. Casella and Cox's paper extends this study to temporary work visas in The United States. Temporary work visas are understood to bundle valuable property rights of domestic firms and foreign workers, such as the right of an employer to employ a worker for a given period of time, and subsequently, that employee's right to live and work in the country for that period of time. Currently, visas are obtained by firms directly, on behalf of specific employees. However, this system is often criticized for its inefficient distribution, and in their paper, Casella and Cox present an alternate, more efficient system that could be utilized. As this will be largely a summary of Casella and Cox's findings, all quotes are from their paper cited above, and will be followed by the number of the page upon which it appears.

CONCLUSION

Casella and Cox maintain that the current temporary work visa program is inefficient and unprotective. They suggest a 2 market system consisting of first auctioning "pre-contract visas"

to firms directly, and then allowing for their trade in a secondary market. By employing an auctioning system, the visas will be allocated to the highest bidders, whom Casella and Cox claim are likely to be the firms who value the visas the most. Additionally, these are firms that are likely to experience the most productivity through the employment of foreign workers. Next, by allowing the visas to be traded in a secondary market, their inherent rights are unbundled, market forces control supply and demand, and migrant workers are further protected by no longer tying their right to work and live in The United States to their employment with a fixed firm. Should it become necessary, a migrant worker could find other employment and still retain their right to live and work in The United States until the visa expires. This solution appears to target the criticisms outlined by Casella and Cox, and potential criticisms to the proposed system are addressed in depth in their paper. As the research is incredibly recent, no further research has been done regarding this potential system. Casella and Cox expand on previous work by Giovanni Peri, who recommends an auction system for temporary work visas in order to increase their efficiency and increase government revenue (Peri, 2012) as well as the plethora of literature relating to tradable environmental permits. It will be interesting to see if this is a system that will ever be attempted in The United States. However before such a time, more research is necessary to address the following issues: whether the proposal is economically feasible, whether the issues with the current system that are outlined by the authors are the most important criticisms of the current system, and whether or not the proposed system will adequately handle these criticisms.

ISSUES

This paper examines whether the current temporary work visa system in The United States is inefficient. If it is, how can the rules surrounding Temporary Work Visas be modified to more efficiently allocate property rights, thus eliminating the criticisms that exist under the status quo?

ANALYSIS

Labour based migration has been a relevant topic in politics in very recent history, especially in The United States. “A Property Rights Approach to Temporary Work Visas” examines the current temporary work visa program in The United States and outlines 3 main criticisms therein. Namely, that the program inefficiently allocates the work visas, fails to protect domestic workers, and further exposes migrant workers to potential exploitation. First, we will explore these criticisms according to Casella and Cox.

Casella and Cox argue that Temporary Work Visas are not distributed in a manner that guarantees that the parties which value the property rights the most are the parties which eventually acquire them. This argument is first made using a supply and demand analysis of the market for visas. For many visa programs in The United States, the supply of visas is capped by a legislated quota. This means that demand for temporary work visas regularly exceeds their supply, especially for visas that are highly coveted. For example, in the paper, it is shown that in 2016, the H1-B visa for skilled workers received 236 000 applications against a quota of 85 000. Almost 3 times the supply was being demanded by firms. What happens in this scenario, is that the visas are allocated by a lottery system, in which effectively, the visas are randomly distributed until the cap is met. On this basis of random distribution, Casella and Cox argue that the system is inefficient.

The second argument made is that domestic workers are not protected adequately under the status quo. Under the current system, employers are responsible for screening their temporary workers. Casella and Cox characterize this as a “conflict of interest”(3), as firms are unlikely to have domestic workers’ and society’s overall interests in mind. Historically, legislation has been passed in an attempt to better protect domestic workers through additional government regulation of the visa applications. For example, employers were traditionally required under the Immigration and Nationality Act to show that “there are not sufficient

[domestic] workers who are able, willing, qualified...and available”(3) for the position which firms wish to fill through the employment of migrant workers. However, instead of these requirements being reviewed by the government, it is now sufficient for “employers simply to attest to the existence of the labor market facts that justify” the employment of temporary migrant workers over domestic workers. Now, rather than having to seek government approval, the system is designed in a manner where firms simply seek to avoid disapproval. Temporary migrant workers can be attractive to firms. They can often be paid less than the market wage of domestic workers in a given field, as these wages are still likely to be higher than the equivalent in a migrant worker’s origin country. Firms are believed to be profit maximizing, and thus, if the existing regulations are not effectively enforced, there is little protection provided to domestic workers against migrant workers as substitutes.

The final criticism provided is in regards to the potential exploitation of migrant workers under the current system. Where current visas are obtained by, and tied to the employer, a migrant worker waives their right to live and work in The United States in the event that their employment with that firm is terminated. As the right to live and work in The United States is particularly attractive, Casella and Cox emphasize the possibility that “workers might enter into contracts that...should be forbidden”(5) in order to gain the valuable property rights they confer.

In an effort to alleviate these concerns, Casella and Cox offer an alternate system. Their proposal consists of a 2 market system, in which the visas’ rights are unbundled and untied. Under this system, the visas will be auctioned to the firms directly as “pre-contract visas” that are not attached to a specific migrant worker. These visas are also then tradable on a secondary market between firms, meaning that the visas and their rights are going to be acquired by the firms who value them the most, likely firms for which temporary migrant labour will be most productive. This strategy also provides an element of protection for domestic workers, as the increased costs associated with obtaining a visa for a firm will likely induce firms

to only seek the visas if it is absolutely necessary and most productive to do so. Once the visa becomes attached to an employment contract and is signed by an employee, the rights become unbundled; the firm retains the right to employ the employee for the remainder of the visas' term and the employee retains the right to live and work in The United States, both independently. By untying the right to live and work in The United States for a fixed period of time, employees now have the option of seeking employment from other firms should conditions warrant it, and firms can transfer their right to employ said employee again through the secondary market, with an associated pro-rata price.

Additional References

Peri, Giovanni. 2012. "Rationalizing U.S. Immigration Policy: Reforms for Simplicity, Fairness, and Economic Growth". *Washington: The Brookings Institution*.