

Office of Inspector General

U.S. Department of Labor
Office of Audit

EVALUATION OF THE NORTH CAROLINA GROWERS ASSOCIATION

Report Number: 04-04-008-03-325
Date Issued: March 31, 2004

TABLE OF CONTENTS

ACRONYMS iii

EXECUTIVE SUMMARY 1

BACKGROUND 4

RESULTS OF EVALUATION 5

 NCGA Failed to Properly Report
 Workers Who Abandoned Their Jobs 5

 NCGA Requests for Workers Anticipated
 High Number of Abandonments 8

 Contract Ending Dates May Increase Abandonment Rate 11

 The Impact of H-2A Abandonments on Illegal
 Immigration Could Not be Determined 14

CONCLUSION 15

RECOMMENDATIONS 16

ETA’S RESPONSE TO THE DRAFT EVALUATION REPORT 17

OIG’S CONCLUSION TO ETA’S RESPONSE 18

ATTACHMENT A – OBJECTIVE, SCOPE AND METHODOLOGY

ATTACHMENT B – SAMPLING PLAN AND PROJECTED RESULTS

ATTACHMENT C – LIST OF APPROVED APPLICATIONS FOR ALIEN
EMPLOYMENT CERTIFICATION

APPENDIX 1 – THE COMPLETE TEXT OF ETA’S RESPONSE TO THE
DRAFT REPORT

ACRONYMS

BCIS	Bureau of Citizenship and Immigration Services
CFR	Code of Federal Regulations
CY	Calendar Year
DOL	Department of Labor
ETA	Employment and Training Administration
FY	Fiscal Year
H-2A	VISA Category - Temporary Agricultural
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act of 1986
NCECSC	North Carolina Employment Security Commission
NCGA	North Carolina Growers Association
NIIS	Nonimmigrant Information System
OIG	Office of the Inspector General
SWA	State Workforce Agency
USCIS	United States Citizenship and Immigration Services
WHD	Wage and Hour Division

EXECUTIVE SUMMARY

The Office of the Inspector General evaluated the North Carolina Growers Association's (hereafter NCGA or Association) Temporary Agricultural (H-2A) program activities during calendar year 2001.¹ Our evaluation was conducted in response to a complaint filed by the North Carolina Monitor Advocate.² The complaint alleged NCGA:

- did not properly report workers who abandoned their jobs to the North Carolina Employment Security Commission (NCESC);
- submitted applications that contained inflated requests for temporary workers which created an artificial oversupply of laborers, encouraged workers to abandon their jobs and resulted in illegal immigration; and
- falsified expected periods of employment, which encouraged workers to abandon their jobs and forfeit their rights to return transportation and three-quarters contract guarantees.³

In addressing the complaints, our objectives were to evaluate: the extent and cause of worker abandonments, including the accuracy of the Association's reporting of abandonments; the Association's practices or procedures that may have contributed to worker abandonments; and the financial impact on workers who abandoned their jobs prior to completion of their contracts.

We found that NCGA was not accurately reporting abandonments. The abandonment reports to NCESC were sporadically submitted, incomplete and inaccurate. Further, NCGA did not comply with requirements to report abandonments to the Bureau of Citizenship and Immigration Services (BCIS). From a sample of H-2A workers employed during Calendar Year (CY) 2001, we

¹ The H-2A program allows employers to hire foreign workers to fill temporary positions that employers are unable to fill with qualified domestic workers. ETA certified more than 4,000 H-2A applications in fiscal year 2001, which included nearly 45,000 workers. ETA approved 40 NCGA applications for work to commence and end in calendar year 2001. The applications approved nearly 10,000 workers for joint employment by NCGA and the approximately 1,000 association growers listed on the applications.

²Each state has a Monitor Advocate Program to ensure that equitable and equal employment services are provided to Migrant Seasonal Farm Workers (MSFW) as that provided to non-MSFWs.

³ H-2A regulations guarantee that a worker will be paid for return transportation to the worker's country of origin and three-fourths of the hours specified in the job offer, provided that the worker remains until the ending date stated in their contracts with the Association.

estimate over one-half of NCGA's foreign workers abandoned their jobs. Our research found no reliable method to measure the extent that worker abandonments contributed to illegal immigration.⁴

Concerning allegations of inflated requests for workers and false periods of employment, the number of workers requested on NCGA's applications was overstated to accommodate expected abandonments. We also found that NCGA requested some workers for longer periods than needed to harvest crops, a practice that may have contributed to increased abandonment rates.

We recommend that the Assistant Secretary for Employment and Training develop, document and implement a plan to stringently monitor NCGA's use of the H-2A program. Specifically, we recommend that ETA:

- Ensure that NCGA complies with requirements to accurately report workers who abandon their jobs or terminate early;
- Coordinate reporting requirements with BCIS.
- Ensure that NCGA requests only the numbers of workers growers actually need; and
- Review dates of need contained on applications and insist they more accurately reflect dates workers are needed for harvests.

ETA's Response to the Draft Report

ETA responded that:

- DOL regulations do not require coordination of abandonment reporting activities between governmental agencies, and that ETA lacks the authority to track and report worker abandonment;
- ETA does not question employers regarding the number of workers they request; and
- employers have increasingly shifted to diversified crop operations, making extended dates of need necessary to accommodate their multi crop activities. ETA agrees to reinforce its policy to verify that

⁴ An INS publication, dated January 2003, estimated that the unauthorized immigrant population in the United States increased by an average of 350,000 per year during the 1990's. By comparison, the average number of H-2A workers admitted into the United States during the fiscal years 1999 through 2002 was just over 27,000 workers, according to the 2002 Yearbook of Immigration Statistics, dated October 2003.

employers' dates of need are reasonable and correlate with their historical practices.

OIG's Conclusion to ETA's Response

We continue to recommend ETA ensure that NCGA reports workers who abandon their jobs or are terminated for cause. Regulations only release employers from transportation and employment guarantees when the NCESC local office is notified of worker abandonment or termination. Additionally, we continue to believe that increased coordination between the involved agencies will improve program operations.

We also continue to recommend that ETA implement a plan to ensure that NCGA does not request workers in larger numbers than needed or for longer periods of time than necessary to meet the Association's needs. NCGA's practice of accounting for turnover in their initial request for workers has allowed them to circumvent strict regulations for the replacement of workers.

ETA misinterprets OIG's finding related to NCGA's contract ending dates. We did not conclude that NCGA falsified expected periods of employment. Rather, OIG concluded that NCGA's use of the same ending date for more than 90 percent of their workforce overstated the length of time they needed a majority of the workers we sampled. Many of these workers failed to receive their return transportation, despite their having worked a majority of the contract period.

BACKGROUND

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, allows agricultural employers who anticipate difficulty in obtaining domestic workers to petition, through the Bureau of Citizenship and Immigration Services (BCIS), for permission to import nonimmigrant aliens into the United States for temporary work. Administration of this program, commonly called H-2A, is the responsibility of three Federal departments: The Departments of Labor (DOL), Homeland Security, and State.

Two agencies share DOL's responsibilities: The Employment and Training Administration (ETA) grants certification to agricultural employers who demonstrate both a need for foreign labor and a willingness to abide by contractual guarantees that must be offered to both foreign and domestic workers. The Employment Standards Administration's Wage and Hour Division (WHD) enforces compliance with the contractual guarantees.

The North Carolina Growers Association (hereafter NCGA or Association) is an association of agricultural employers located throughout the State of North Carolina. The Association jointly employs, along with its participating member growers, workers to work in tobacco and a wide variety of other crops.

NCGA submitted 40 Applications for Alien Employment Certification that was for work to commence and end during the Calendar Year 2001. (See Attachment C.) These certified applications included approximately 1,000 growers and requested a total of 9,948 workers. The Association used these certifications to employ nearly 8,500 workers.

RESULTS OF EVALUATION

NCGA FAILED TO PROPERLY REPORT WORKERS WHO ABANDONED THEIR JOBS

The complainant asserted that NCGA did not properly report worker abandonments to local State Workforce Agency (SWA) offices,⁵ as required by H-2A program regulations. We found NCGA's reporting of abandonment data was sporadic, incomplete and inaccurate.

We found that more than one-half (51 percent) of the workers in our sample of CY 2001 workers failed to complete their contracts and abandoned their jobs.⁶ "Abandonments" include workers who left their assigned growers prior to the end of the contract, either with or without notification to their employer, and also those who completed their last assignment but refused transfer to another grower and departed prior to the end of the contract period. By abandoning their jobs, workers forfeit their rights to contract guarantees and return transportation to their countries of origin.⁷

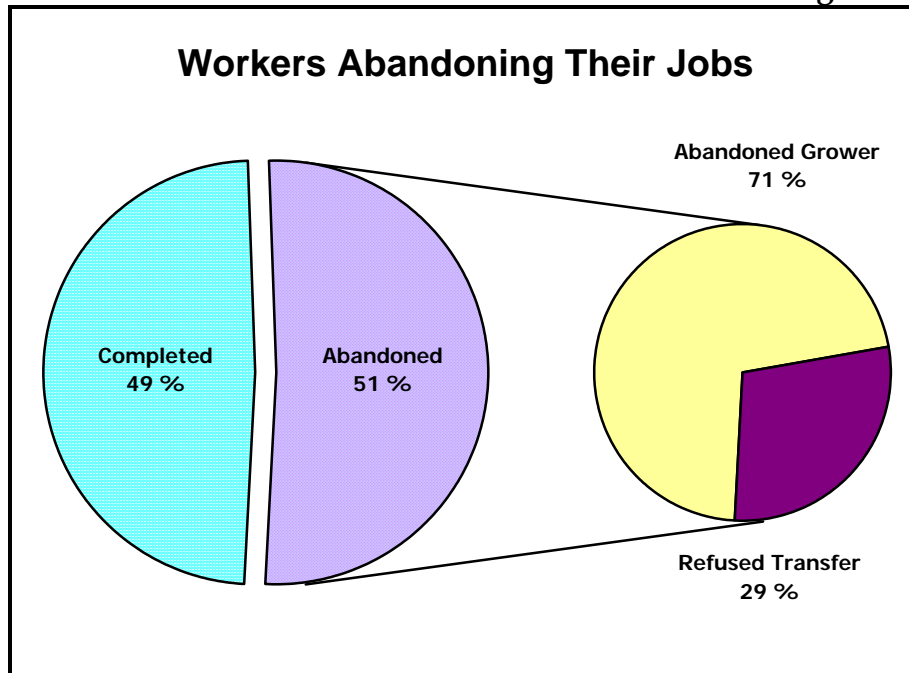
Of those workers who abandoned their jobs, 71 percent left the jobs before completing work for their assigned growers, while the remaining 29 percent completed work for their last assigned grower, but refused a transfer to another grower and quit. (See Figure 1.)

⁵ ETA's General Administrative Letter No. 01-02 provides a list of centralized locations for H-2A filing and notification to the designated SWA. The SWA designated for the State of North Carolina is the Employment Security Commission office in Raleigh. This is the location where NCGA submitted their abandonment and termination reports.

⁶ All percentages discussed in the remainder of this report that are identified as obtained from our sample are point estimates. See Attachment B for a discussion of our sampling methodology and the results.

⁷ Our sample of 136 workers included 66 workers who completed their work for NCGA and received a check from NCGA for their return transportation. These checks averaged \$169 per worker.

Figure 1



Labor regulations at 20 Code of Federal Regulations (CFR) Section 655.102(b)(11) state:⁸

If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the local office of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker. . . and that worker is not entitled to the “three-fourths guarantee” . . .

Similarly, employers who petition BCIS for workers agree to meet the requirements of 8 CFR Section 214.2(h)(5)(vi)(A):

The Petitioner further agrees to notify the Service in the manner specified within twenty-four hours if an H-2A worker absconds or if the authorized employment ends more than five days before the

⁸NCGA and its member growers jointly employ the H-2A workers they bring into the country. As a joint employer, NCGA is equally responsible for reporting worker abandonments as are the assigned growers.

relating certification document expires, and to pay liquidated damages of ten dollars for each instance where it cannot

demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance it cannot demonstrate that its H-2A worker either departed the United States or obtained authorized status based on another petition. . .

After October 3, 2001,⁹ the Association did not submit any abandonment and termination reports to the NCESC. Prior to that date, they periodically submitted reports to the main NCESC office in Raleigh.¹⁰ However, the reports lacked valuable information, such as the name of the assigned grower or the worker's date of departure. Additionally, some of the reports submitted to the NCESC included a cover letter with the following disclaimer: "This report contains repetitious information due to computer program error, multiple transfer transactions, and prior reporting." Although NCGA indicated the reports were cumulative, we noted several examples of workers who had been included in earlier reports but omitted from subsequent reports. No explanations were offered for the omissions.

The data was also incomplete. We selected a random sample of 136 H-2A workers from the universe of workers employed by Association growers during CY 2001, and found that NCGA failed to report more than half (57 percent) of those workers who abandoned their jobs.

Neither ETA nor NCESC monitors NCGA reporting of worker abandonments. Reports are submitted centrally to NCESC, where they are maintained, but no effort is made to ensure that the reports are accurate or complete.

ETA's Chief of the Division of Foreign Labor Certification provided us with the following statement regarding growers' failure to notify the SWA when workers abandon or are terminated:

ETA does not track employer's notification to the SWA of worker abandonments/terminations. The failure to report worker abandonments and/or terminations would not be considered a

⁹ NCGA submitted one additional report, dated November 15, 2002, but only after being informed by OIG that the October 3, 2001 report was the last report NCESC claimed to have received for the 2001 season.

¹⁰ Training and Employment Guidance Letter 21-01 (dated April 24, 2002) now directs employers to report workers within two business days of either the worker's termination or the discovery of the worker's abandonment.

substantial violation, and will not be the basis for denial of future certification.

We also found that the Association did not report any workers who absconded or failed to complete their employment contracts to the BCIS. By signing the petition application, "Form I-129, Petition for a Nonimmigrant Worker" the petitioner agrees to comply with the reporting and documentation requirements included in the cited regulation.

However, when NCGA was asked if they complied with the regulation by reporting worker abandonments and terminations to BCIS, their representative provided us the following response: "The INS regulation cited has never been implemented by specifying a manner or person to whom notice of absconded or terminated workers is to be reported."

The manner for reporting changes to the terms and conditions of employment of a worker is provided at 8 CFR Section 214.2(h)(11)(i)(A), which states:

If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

NCGA REQUESTS FOR WORKERS ANTICIPATED HIGH NUMBER OF ABANDONMENTS

The complainant alleged NCGA submits and ETA approves orders that contain false requests for foreign labor, which create an artificial oversupply of foreign workers. The complainant contended that the resulting oversupply of workers contributes to illegal immigration, when workers find the work they were promised is not available and they seek other employment.

H-2A program regulations require those who want temporary guest workers to submit "Form ETA 750 (Application for Alien Employment Certification)" and attach "Form ETA 790 (Agricultural Food Processing Clearance Order)." The application and job offer include the number of workers needed and the dates for which they will be needed. During Fiscal Year (FY) 2001, ETA certified more than 4,000 applications nationwide, including nearly 45,000 temporary agricultural workers. During this same general time period, CY 2001, ETA certified 40 NCGA applications, which included requests for nearly 10,000 workers. The Association used these certifications to employ nearly 8,500 foreign guest workers.

For the growers we interviewed, the number of workers NCGA requested of ETA on certifications exceeded the sum that individual growers had requested of NCGA for the growing season. NCGA requested workers anticipating that many would abandon their jobs or refuse transfer to another grower and quit.

Overall, 29 percent of the Association's growers (37 of 129) who responded to our question indicated their request for workers differed from the number NCGA requested on their behalf, in certifications, submitted to ETA.¹¹ For these 37 growers, NCGA requested an average of about 3 more workers than these growers wanted.

NCGA's representative provided us with the following statement as justification for the inflated requests:

The NCGA states that it does not simply total up the number of workers requested by growers and enter that total on its applications. The NCGA staff determines how many workers will be needed to perform the work covered by a specific application based on the number of workers requested by members represented on the application, the extent of concurrent employment of the same workers by more than one member, the specific dates of need for workers, whether newly admitted workers will be required or whether workers already admitted will become available from other employers. . .

We asked ETA about the practice of approving certifications with inflated requests for workers, and they provided us with the following statement:

...ETA does not knowingly allow NCGA to request more workers than they anticipate needing. As a matter of policy, ETA does not go beyond the signed application form provided by employers that they will abide by the contents of the job order and the assurances provided. The premise that the employer has a certain number of job openings and the subsequent recruitment efforts made by the SWAs against those job openings are the guiding factors behind ETA's certification efforts.

By requesting a sufficient number of workers to replace anticipated abandonments, NCGA is circumventing requirements at 8 CFR Section

¹¹ We asked growers who had employed one or more sampled worker to tell us how many workers they had requested from NCGA for the 2001 season. For the 129 growers who provided us a response, we compared the number they provided with the number of workers requested for them by NCGA.

214.2(h)(5)(ix), which provides the process for substituting a worker after admission. The regulation provides:

An H-2A petition may be filed to replace H-2A workers whose employment was terminated early. . . . It must also be filed with a statement giving each terminated worker's name, date and country of birth, termination date, and evidence the worker has departed the United States. A petition for a replacement may not be approved when requirements of paragraph (h)(5)(vi) of this section have not been met. A petition for replacements does not constitute the notice that an H-2A worker has absconded or has ended authorized employment more than five days before the relating certification expires.

We asked NCGA if they routinely petitioned BCIS (formerly INS) to replace workers who abandoned their jobs. Their representative provided us with this statement:

There is no procedure for petitioning the INS for replacement of workers who abscond or are terminated early. Normal turnover must be accounted for in the initial request for workers, to the extent that there is sufficient inspected and approved housing available to do so. . . .

Ready access to replacement workers allows the Association to avoid petitioning for them and demonstrating to BCIS that they have complied with 8 CFR Section 214.2(h)(5)(vi) – a requirement to report abandonments that the Association has failed to meet in the past. Not only does this practice circumvent the BCIS regulation, but it also overstates the need for workers on “Applications for Alien Employment Certification.”

However, the evidence we reviewed does not substantiate allegations that workers abandoned their jobs and contributed to illegal immigration because of lack of work. Both workers who fulfilled their contract and those who abandoned their jobs were generally employed full-time. In our sample, workers who completed their contracts worked an average of just over 45 hours per week, and even those workers who abandoned their jobs averaged nearly 40 hours of work per week.

CONTRACT ENDING DATES MAY INCREASE ABANDONMENT RATE

The complainant alleged NCGA certifications contain false periods of employment, which included ending dates that ran into November. The complainant states that most tobacco work is over by mid to late September. The allegation also stated that false periods of employment cause workers to abandon their jobs, forfeiting their right to paid transportation and the three-quarter guarantee.

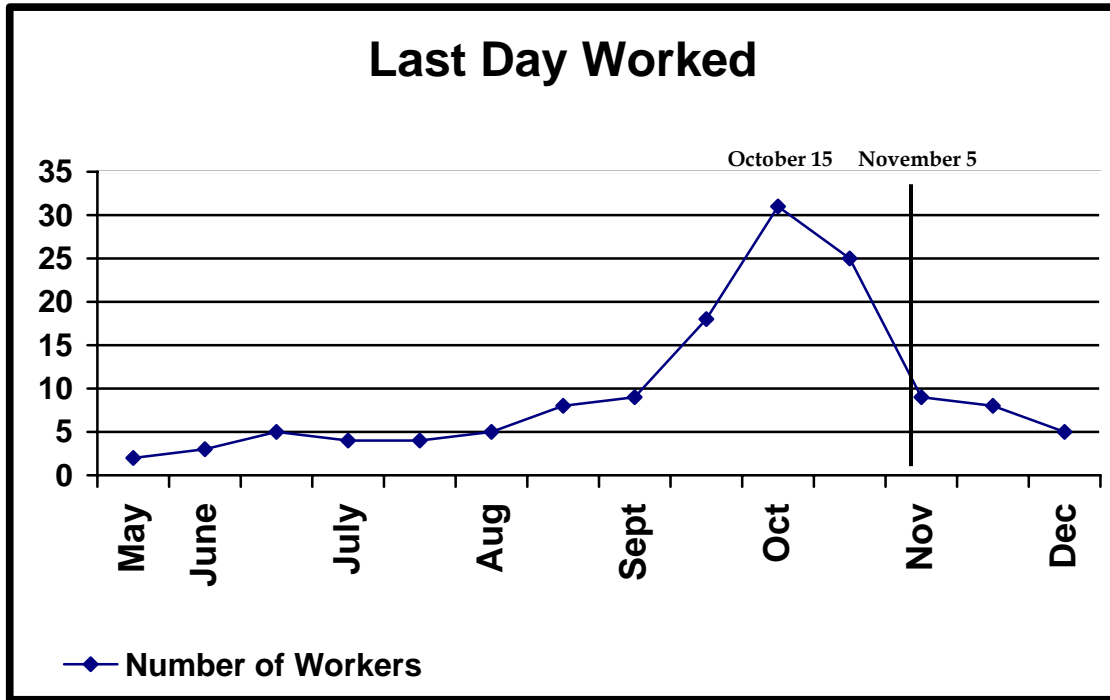
Most of NCGA's applications to ETA included requests from numerous employers and offered work in diversified crops.¹² According to ETA's H-2A Program Handbook, master applications may be filed as long as the applications cover virtually identical job opportunities with a number of employers. According to a statement made to us by ETA's Chief of the Division of Foreign Labor Certification, "The NCGA is allowed. . . to file one master application for its grower members with only one contract period reflected on each of the applications."

NCGA's practice of using the same ending date for a majority of workers may contribute to the number of workers who abandon their jobs. Overall, 93 percent of workers NCGA requested (9,221 of 9,948) were on diversified crop orders that had ending dates of November 5, 2001. While NCGA submitted many different applications to accommodate the various beginning dates its growers needed workers, all diversified crop applications contained the same ending date. The only significant differences among a majority of the Association's diversified crop applications were the beginning dates of need that NCGA requested.

Agricultural statistics indicate that NCGA's tobacco growers did not need workers as late in the year as they were requested. We obtained agricultural statistics for CY 2000 (the year before our evaluation period) and found that the normal tobacco-harvesting season ran from the middle of September until the middle of October, depending upon the type of tobacco being harvested. As Figure 2 illustrates, sampled workers' departures peaked during the first two weeks in October, which coincides with the end of the tobacco harvest season. Figure 2 also illustrates that workers were requested to remain until November 5, 2001, a date that came after most had already left.

¹² Twenty-four out of 40 applications offered work in a diversity of crops. We found that 93 percent of workers (8,580 of 9,221) certified on these diversified crop applications were offered the following job description: "Workers will be expected to work in Tobacco and other minor crops..."

Figure 2



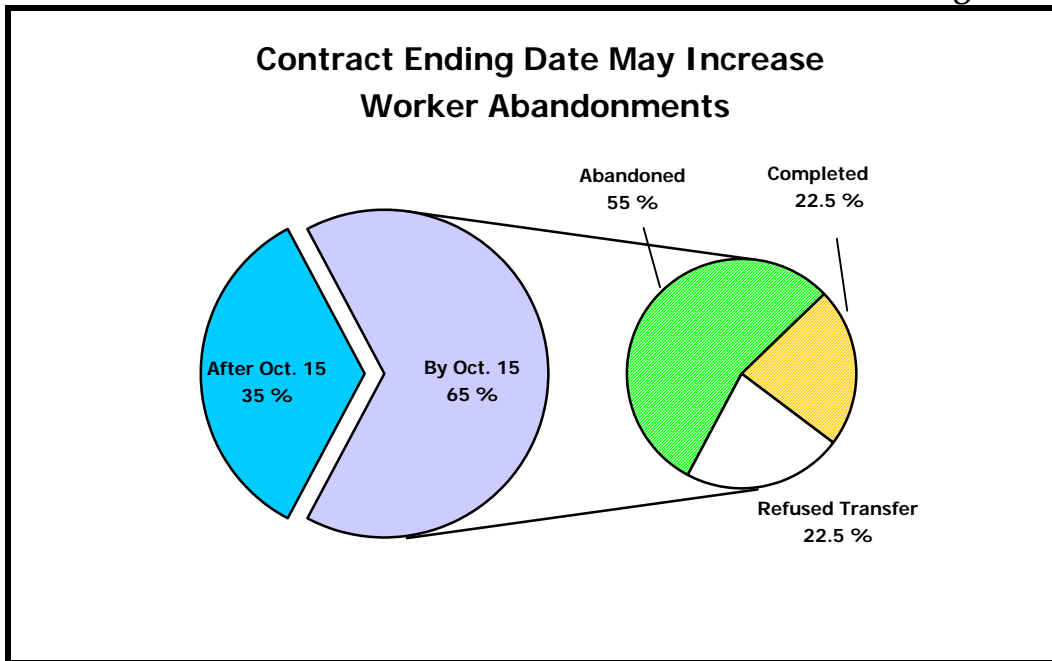
Evidence provided by the Association growers also indicates workers were requested longer than needed. We asked a sample of growers for the ending date of need they had requested from NCGA. Nearly 20 percent of growers who provided us this information, indicated a date that was at least two weeks earlier than the November 5th date used for all diversified crop orders.¹³ On average, these growers requested an ending date that was 27 days earlier than the November 5th date NCGA requested of ETA.

We found that 65 percent of sampled workers (89 of 136) had worked their last day by October 15, 2001. More than half of these workers (49 of 89) abandoned their jobs, and the remaining workers were equally divided between those who refused transfer to another grower and those who completed their contracts early. On average, workers who refused a transfer finished work for their last grower on September 22, 2001, more than a month before the contract was to end.¹⁴ Workers who completed their contracts early (by October 15, 2001), worked their last day on October 10, 2001, on average. (See Figure 3.)

¹³ We asked growers who employed one or more sampled workers to provide us with the ending date they had requested from NCGA for the 2001 season. One hundred and twenty-eight growers responded to this question, and 24 of them supplied a date that was at least two weeks earlier than November 5, 2001.

¹⁴ About two-thirds of these workers (13 of 20) worked for growers who told us that they needed their workers until November.

Figure 3



We asked ETA if they believed it was reasonable for NCGA to use November 5, 2001 as the ending date for a majority of its workers. They provided us with the following response:

ETA does not look beyond the anticipated starting and ending dates of need in their certification determination. NCGA provides assurance that they will meet the three-fourths wage guarantee that covers the entire contract period of employment and the workers are made aware of the contract period upon recruitment Without compelling reason, staff would not routinely question the information provided by the employer regarding dates of need.

Had the Association been diligent about submitting applications with contract ending dates that truly represented the needs of its growers, workers who wished to depart after the tobacco harvest could have been hired under those contracts. These workers would have then received reimbursement for their return transportation.

**THE IMPACT OF H-2A ABANDONMENTS ON
ILLEGAL IMMIGRATION COULD NOT BE DETERMINED**

Although the complainant alleged that abandonments increase illegal immigration, we could not identify a reliable means of determining the number of H-2A workers who had abandoned their jobs and remained in this Country.

The system for monitoring worker arrivals and departures into the United States is the Nonimmigrant Information System (NIIS). The NIIS is BCIS's principal means for identifying workers who have overstayed their visas. The system collects data from Form I-94 (Arrival-Departure Record), which is divided into two parts – the arrival portion, which is provided to an immigration agent when the worker enters the country; and the departure portion, which the worker is supposed to turn in when he or she departs the country.

The U. S. Department of Justice, Office of Inspector General reported that the NIIS is not producing reliable information, especially as it relates to worker departures.¹⁵ According to the recent report, a principal cause for the unreliable data is workers' failure to turn in the departure portion of their I-94's when they leave the country.

Linking abandonment data with information collected by BCIS could assist in identifying guestworkers who remain in the Country illegally. However, the reliability of both systems' data must be improved and reporting requirements enforced.

¹⁵ USDOJ-OIG report no. I-2002-006, "Follow-Up Report on INS Efforts to Improve the Control of Nonimmigrant Overstays," dated April 2002.

CONCLUSION

DOL's role in the H-2A program is to ensure that both domestic and nonimmigrant laborers' rights are protected. Domestic workers are guaranteed a right to any job for which they are qualified before any nonimmigrant laborers are hired, and both domestic and nonimmigrant laborers are guaranteed rights to specified wages and working conditions. This obligation requires proper oversight of the North Carolina Growers Association; an organization whose requests for H-2A workers during CY 2001 comprised nearly one-fourth of the total number of H-2A workers certified nationwide in FY 2001.

We found that approximately one-half of the Association's H-2A workers we sampled failed to complete their contracts and more than half of these workers went unreported to NCEC. None were reported to BCIS. NCGA combats their abandonment problem by requesting an excessive number of H-2A workers for a longer period of time than many were needed, thus ensuring an available pool of workers who are ready and willing to replace workers whose early departures have largely gone unreported. This practice of anticipating worker abandonments and requesting replacement workers in advance:

- bypasses the stringent requirements specified in BCIS regulations for replacing workers; and
- enables NCGA to avoid paying return transportation and/or contract guarantees, as many workers depart without completing their contracts.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Employment and Training develop, document and implement a plan to stringently monitor NCGA's use of the H-2A program. Specifically, we recommend ETA:

- Ensure that NCGA complies with requirements to accurately report workers who abandon their jobs or terminate early. To be of use in evaluating the program and to assist Wage and Hour in ensuring contract and transportation guarantees are met, reports should include the name of the assigned grower and the date that the worker abandoned or was terminated.
- Coordinate reporting requirements with BCIS. The source of abandonment data is the same for ETA and BCIS and the coordination of the requirements will minimize duplication and ensure consistency.
- Ensure that NCGA requests only the numbers of workers that growers actually need by requiring that NCGA submit supporting documentation with their applications. Supporting documentation would include copies of any written requests received from growers or a record of any verbal requests.
- Review dates of need contained on applications and insist the dates more accurately reflect dates workers are needed for harvests. By doing so, ETA may reduce the number of workers who abandon employment after completing their first assignment and forfeit their rights to the three-fourths guarantee and return transportation.

ETA'S RESPONSE TO THE DRAFT EVALUATION REPORT

ETA responded that, although DOL regulations require employer notification of worker abandonment to the SWA, they do not require coordination between ETA, SWA and USCIS (United States Citizenship and Immigration Services). ETA stated they do not have the authority to track and report worker abandonment, this being the purview of USCIS.

Additionally, ETA does not question employers regarding the number of workers requested, relying on an employer's knowledge of their staffing needs. ETA indicated that they do not have a mechanism in place or the staffing resources to question each employer's stated need for workers.

Further, ETA explained that due to employers' increasing use of diversified crop operations, it has become necessary for them to extend the dates of need to accommodate their diversified activities. However, ETA agrees to reinforce their policy to verify that employers' dates of need are reasonable and correlate with historical practices. (See the complete text of ETA's response at Appendix 1.)

OIG'S CONCLUSION TO ETA'S RESPONSE

We continue to recommend ETA ensure that NCGA properly report worker abandonment. Department regulations make employers responsible for providing or paying return transportation and fulfillment of the three-fourths guarantee unless the worker voluntarily abandons employment or is terminated before the end of the contract period and the employer notifies the local office of such abandonment or termination.

Although OIG agrees that regulations do not require ETA to coordinate reporting requirements with immigration services, we think increased coordination between the two agencies could only help improve program operations through more timely identification and tracking of worker abandonment.

We continue to recommend ETA implement a mechanism to ensure that NCGA requests workers only in sufficient numbers necessary to meet the needs of Association growers. Without such a mechanism, the NCGA will likely continue their practice of accounting for normal turnover in their initial request for workers. This practice has allowed them to replace workers who abandon without following the strict requirements specified in 8 CFR, Section 214.2(h)(5)(ix).

ETA misinterprets OIG's finding related to NCGA's contract ending dates. Although the complainant alleged that NCGA falsified expected periods of employment, we did not conclude that. Rather, we concluded that NCGA's use of the same ending date for more than 90 percent of their workforce overstated the length of time they needed a majority of the workers we sampled. This occurred because certifications were approved for diversified crops with growing seasons ending in November, while the majority of workers on the certifications were not needed after the tobacco season ended in October.

OIG recognizes the legitimacy of diversified crop applications, which may require extended contract dates to accommodate employers' needs. However, many of the workers we sampled completed assignments in September and early October but were only reimbursed for transportation home if they were willing to transfer to other growers after the tobacco season. Other workers refused transfer and were not paid return transportation even though there was no additional work for them to do. We continue to recommend ETA review dates of

need contained on applications and insist they more accurately reflect dates workers are needed for harvests. ETA may have to consider requiring multiple ending dates for diversified crop certifications.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

Our objectives were to evaluate the:

- extent and cause of worker abandonments, including the accuracy of the Association's reporting of abandonments;
- Association's practices or procedures that may have contributed to worker abandonments; and
- financial impact on workers who abandoned their jobs prior to completion of their contracts.

SCOPE AND METHODOLOGY

To satisfy our evaluation objectives, we reviewed NCGA program activities for workers whose employment began and ended in calendar year 2001. The review was conducted at three levels: (1) The Employment and Training Administration; (2) the State of North Carolina's Employment Security Commission; and (3) NCGA's administrative offices and at the homes and places of business for selected Association growers.

Employment and Training Administration

We interviewed staff at the National office to obtain their position on a number of issues, and we interviewed Regional office staff to obtain an understanding of the approval process and to obtain NCGA Applications for Alien Employment (ETA 750) for work that was to commence and end during our audit period. We reviewed and compiled information from these applications for use in determining our sample universe and performing analytical procedures.

North Carolina Employment Security Commission

Our work at NCECSC was limited to interviews with Employment Security staff and obtaining copies of abandonment and termination reports submitted by NCGA. We did not perform any work regarding the application process within the State, nor did we perform any procedures at any local employment service offices.

North Carolina Growers Association

We contacted NCGA and obtained a universe of workers who were employed by the Association and its member growers during the 2001 growing season. We then implemented a sampling plan. (See Attachment B.)

For the workers selected in our sample, we visited each grower with whom the sampled worker was assigned. The primary purpose of the visits was to perform a review of payroll documentation for the sampled worker. We recorded the hours worked, hours offered, and gross pay for each pay period and in total.

In addition to the payroll information, we also requested information from each grower related to their request for workers during our evaluation period and also determined why each worker's employment ended. We used this information to calculate the sample abandonment rate and to test whether workers who failed to complete their contracts were reported to the local employment security office and to BCIS.

We also used the worker's payroll information and his reason for leaving to compare and analyze those workers who completed their contracts with those who failed to complete and determine any potential causes for worker abandonments based on the practices and procedures employed by the Association or any individual grower included in our evaluation.

Our fieldwork began in April 2002 and continued intermittently until July 2003. The evaluation was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

SAMPLING PLAN AND PROJECTED RESULTS

Our universe consisted of all H-2A workers jointly employed by the NCGA and its member growers on any of 40 Applications for Alien Employment Certifications approved for work beginning and ending during the calendar year 2001. (See Attachment C for the complete list of certified applications.) The applications certified by the ETA approved the use of 9,948 workers, and we found NCGA used them to employ 8,482 workers. Our sample size of 136 was calculated using a 95 percent confidence limit, with precision of 5 percent, and an expected error rate of 10 percent. All projections are made using the mathematical formulas for simple random sampling appraisal methodology.

Our projections fell into two categories: (1) projections for workers' exit status, which included workers who completed their contracts and those who abandoned their jobs; and (2) projections for the timing of workers' departures, which divides workers into those who left before or at the end of the tobacco harvesting season and those who left after. (See narrative and Table 1 below for detail.)

Projections for Workers' Exit Status:

Workers completed their contracts either by reaching the end of the contract period or by finishing work with their assigned growers and having NCGA determine that they were no longer needed.

Workers abandoned their jobs by: (1) leaving their growers, with or without notice; or (2) by completing their last assignment but refusing transfer to another grower prior to the end of the contract period. We projected for this category on the whole and for each of its two subcategories individually.

Workers who completed their contracts. Based upon a projection of the sample results, we are 90 percent confident that no more than 55.5 percent of the workers completed their contracts. The unbiased point estimate is 48.5 percent. We are 90 percent confident that no less than 3,517 workers and no more than 4,711 workers out of a total universe of 8,482 workers completed their contracts.

Workers who abandoned their jobs. This category includes both workers who abandoned their growers and those who completed their last assignment but

ATTACHMENT B

refused transfer to another grower. Based upon a projection of the sample results, we are 90 percent confident that no more than 58.5 percent of the workers abandoned their jobs. The unbiased point estimate is 51.5 percent. We are 90 percent confident that no less than 3,771 workers and no more than 4,965 workers out of a total universe of 8,482 abandoned their jobs.

Workers who abandoned their growers. Based upon a projection of the sample results, we are 90 percent confident that no more than 43.6 percent of the workers abandoned their growers. The unbiased point estimate is 36.8 percent. We are 90 percent confident that no less than 2,545 workers and no more than 3,698 workers out of a total universe of 8,482 workers abandoned their assigned growers.

Workers who completed their last assignment but refused transfer to another grower. Based upon a projection of the sample results, we are 90 percent confident that no more than 19.7 percent of the workers refused transfer to another grower. The unbiased point estimate is 14.7 percent. We are 90 percent confident that no less than 824 workers and no more than 1,670 workers out of a total universe of 8,482 workers refused to be transferred.

Projections for the Timing of Workers' Departures:

We divided workers into two groups: (1) those workers who worked their last day by October 15, 2001 (the approximate end of the tobacco harvesting season); and (2) those workers who worked their last day after October 15.

Workers who worked their last day by October 15, 2001. Based upon a projection of the sample results, we are 90 percent confident that no more than 72.10 percent of the workers left by October 15, 2001. The unbiased point estimate is 65.40 percent. We are 90 percent confident that no less than 4,979 workers and no more than 6,116 workers out of a total universe of 8,482 workers worked their last day by October 15, 2001.

Workers who worked their last day after October 15, 2001. Based upon a projection of the sample results, we are 90 percent confident that no more than 41.30 percent of the workers worked their last day after October 15, 2001. The unbiased point estimate is 34.60 percent. We are 90 percent confident that no less than 2,366 workers and no more than 3,503 workers out of a total universe of 8,482 workers left after October 15, 2001.

ATTACHMENT B

Table 1

Sample of H-2A Workers - Calendar Year 2001 Table of Projections				
Category	Attribute Point Estimate	Sampling Error	Lower Limit	Upper Limit
Contract Completers	48.5 % (4,114)	4.27 %	41.46 % (3,517)	55.54 % (4,711)
Abandoned Job	51.5 % (4,368)	4.27 %	44.46 % (3,771)	58.54 % (4,965)
Quit Assigned Grower	36.8 % (3,121)	4.12 %	30.01 % (2,545)	43.59 % (3,698)
Refused Transfer	14.7 % (1,247)	3.02 %	9.71 % (824)	19.69 % (1,670)
Last Day by October 15	65.4 % (5,547)	4.06 %	58.7 % (4,979)	72.1 % (6,116)
Last Day after October 15	34.6 % (2,935)	4.06 %	27.9 % (2,366)	41.3 % (3,503)

Note: Universe size for all categories equals 8,482 and sample size equals 136.
Projections were calculated using a 90 percent confidence limit.

ATTACHMENT C

List of Approved Applications for Alien Employment Certification					
No.	ETA Case No.	Wkrs.	Beg. Date of Need	End Date of Need	Crop
1.	20400814	18	01-FEB-01	15-NOV-01	Nursery
2.	20400815	4	01-FEB-01	01-NOV-01	Fruit
3.	20400827	2	26-JAN-01	26-OCT-01	Livestock
4.	20400832	25	01-FEB-01	05-NOV-01	Nursery
5.	20400833	57	01-FEB-01	05-NOV-01	Diversified Crops
6.	20400834	24	10-FEB-01	10-DEC-01	Christmas Trees
7.	20400854	12	15-FEB-01	05-NOV-01	Nursery
8.	20400892	164	01-MAR-01	05-NOV-01	Diversified Crops
9.	20400893	139	02-MAR-01	10-DEC-01	Christmas Trees
10.	20400921	8	11-MAR-01	30-NOV-01	Turf Farm
11.	20400940	4	15-MAR-01	05-NOV-01	Nursery
12.	20400941	25	15-MAR-01	10-DEC-01	Christmas Trees
13.	20400942	176	15-MAR-01	05-NOV-01	Diversified Crops
14.	20400949	11	16-MAR-01	05-NOV-01	Diversified Crops
15.	20400965	37	23-MAR-01	05-NOV-01	Diversified Crops
16.	20401006	2,019	02-APR-01	05-NOV-01	Diversified Crops
17.	20401007	58	02-APR-01	10-DEC-01	Christmas Trees
18.	20401008	67	02-APR-01	05-NOV-01	Diversified Crops
19.	20401061	86	16-APR-01	05-NOV-01	Diversified Crops
20.	20401062	890	16-APR-01	05-NOV-01	Diversified Crops
21.	20401082	4	18-APR-01	10-DEC-01	Christmas Trees
22.	20401143	4	08-MAY-01	05-NOV-01	Turf Farm
23.	20401144	154	07-MAY-01	05-NOV-01	Diversified Crops
24.	20401145	480	03-MAY-01	05-NOV-01	Diversified Crops
25.	20401173	435	07-MAY-01	05-NOV-01	Diversified Crops
26.	20401215	734	21-MAY-01	05-NOV-01	Diversified Crops
27.	20401259	721	04-JUN-01	05-NOV-01	Diversified Crops
28.	20401277	65	10-JUN-01	05-NOV-01	Diversified Crops
29.	20401316	55	18-JUN-01	10-DEC-01	Christmas Trees
30.	20401317	1,304	18-JUN-01	05-NOV-01	Diversified Crops
31.	20401360	1,209	02-JUL-01	05-NOV-01	Diversified Crops
32.	20401387	239	16-JUL-01	05-NOV-01	Diversified Crops
33.	20401416	176	30-JUL-01	05-NOV-01	Diversified Crops
34.	20401423	19	04-AUG-01	05-NOV-01	Diversified Crops
35.	20401434	157	16-AUG-01	05-NOV-01	Diversified Crops
36.	20401441	9	17-JUL-01	05-NOV-01	Diversified Crops
37.	20401459	3	03-AUG-01	05-NOV-01	Diversified Crops
38.	20401498	9	12-SEP-01	05-NOV-01	Diversified Crops
39.	20401502	341	25-OCT-01	10-DEC-01	Christmas Trees
40.	20401511	4	19-SEP-01	10-DEC-01	Christmas Trees
Number of Workers =		9,948			

**THE COMPLETE TEXT OF ETA'S
RESPONSE TO THE DRAFT REPORT**

The entire text of ETA's comments to the draft report follows this page.

APPENDIX 1

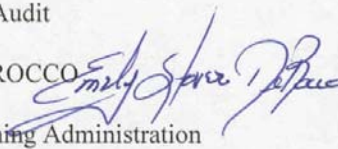
U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



MAR 31 2004

MEMORANDUM FOR: ELLIOT P. LEWIS
Inspector General for Audit

FROM: EMILY STOVER DeROCCO 
Assistant Secretary
Employment and Training Administration

SUBJECT: Evaluation of the North Carolina Growers Association
Draft Audit Report No. 04-04-008-03-325

Attached are the Employment and Training Administration's (ETA's) comments in response to the Office of the Inspector General's evaluation of the North Carolina Growers Association's (NCGA's) H-2A program activities. ETA's comments are based on the H-2A program operating procedures and the NCGA's participation in the program as a joint employer association.

In view of the unintended consequences that might result from departing from long standing historical practices of ETA and USCIS, the comments are directed only at the findings of the evaluation and not at the recommendations as provided by OIG.

Thank you for the opportunity to comment on this draft report. We look forward to receiving the final publication and working cooperatively with your office on future efforts.

Attachment

RECEIVED
MAR 31 2004

APPENDIX 1

OIG's Findings and Recommendations on the North Carolina Growers Association's (NCGA's) Participation in the H-2A Program and ETA's Response

OIG Finding

NCGA did not properly report workers who abandoned their jobs to the North Carolina Employment Security Commission (NCESC), nor to the United States Citizenship and Immigration Services (USCIS).

OIG Recommendation

The Employment and Training Administration (ETA) should ensure that NCGA complies with requirements to accurately report workers who abandon their jobs or terminate early. To be of use in evaluating the program and to assist Wage and Hour in ensuring contract and transportation guarantees are met, reports should include the name of the assigned grower and the date that the worker abandoned or was terminated.

ETA Response

ETA relies on the Department of Labor (DOL) regulations at 20 CFR 655.102(b)(ii) that require employer notification to the State Workforce Agency (SWA) of worker abandonment, but does not require any further coordination between ETA, SWA, and USCIS. ETA does not have the authority to track and report worker abandonment, as this is the purview of the USCIS.

OIG Finding

NCGA submitted applications that contained inflated requests for temporary workers which created an artificial oversupply of laborers which encouraged workers to abandon their jobs.

OIG Recommendation

ETA should coordinate reporting requirements with USCIS. The source of abandonment data is the same for ETA and USCIS and the coordination of the requirements will minimize duplication and ensure consistency.

ETA Response

ETA does not question employers regarding the number of workers requested on their applications because we rely on the employers' knowledge of their staffing needs. ETA does not have a mechanism in place nor the staffing resources to question each employer's stated need for workers.

OIG Finding

NCGA falsified expected periods of employment, which encouraged workers to abandon their jobs and forfeit their rights to return transportation and three-quarter contract guarantees.

APPENDIX 1

OIG Recommendation

Review dates of need contained on applications and insist they more accurately reflect dates workers are needed for harvests. By doing so, ETA may reduce the number of workers who abandon employment after completing their first assignment and forfeit their rights to the three-fourths guarantee and return transportation.

ETA Response

In the past few years employers have shifted from single crop to multi crop agricultural production due to economic necessity. Due to diversified crop operations, it became necessary for growers to extend their dates of need to accommodate the multiple crop activities. However, ETA will reinforce its policy to verify that employers' dates of need are reasonable and correlate with their historical practices.