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Margaret O'Donoghue

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# A PROPOSED OVERHAUL OF THE STATE DEPARTMENT'S SUMMER WORK TRAVEL PROGRAM TO PREVENT LABOR VIOLATIONS AND HUMAN TRAFFICKING

*by* MARGARET O'DONOGHUE

**T**he United States State Department's Summer Work Travel Program (SWT) has been the object of serious media scrutiny over the last several years. This cultural exchange program affords foreign university students the opportunity to work for a summer in the United States each year and benefit from a cultural exchange under the non-immigrant J-1 visa.<sup>1</sup> While the State

Department contends that the vast majority of student exchange visitors have been pleased with their experience, several investigations and media reports have brought to light incidents of abuse and deception on the part of employers eager to exploit these temporary workers. Student workers have alleged withheld wages, long working hours, apartments with deplorable living conditions, lack of transportation, threats of deportation, and even in some instances sex trafficking.<sup>2</sup> There are various systemic abuses that occur within this program that a variety of advocates are seeking to address by overhauling the program to create more transparency and safety for these student workers.

#### LACK OF CULTURAL OPPORTUNITIES

The SWT program, which runs year-round to accommodate summer holidays globally, is designed to allow foreign post-secondary students, who could not otherwise afford to visit the United States, the opportunity to experience American culture by subsidizing part of their travel and living expenses.<sup>3</sup> Over time, however, it has become the nation's largest temporary guest worker program, managing more than 300,000 participants employed in the U.S. labor market each year.<sup>4</sup> By the State Department's own admission, it is essentially a job placement program with minimal to no focus on cultural opportunities.<sup>5</sup> Employers are more than willing to take advantage of these students since they are exempt from paying Social Security, Medicare, and federal and state unemployment taxes for exchange visitor employees.<sup>6</sup>

In marketing the SWT Program to employers, sponsors have openly advertised these cost savings. One website even included a "Payroll Tax Savings Calculator" which estimated that an employer would save a total of \$2,317 on a J-1 employee earning \$8.00 an hour over a U.S. worker.<sup>7</sup> Due to the undeniable economic benefit of choosing these temporary laborers over U.S. workers, it is not at all surprising that many employers get involved in the SWT program solely for profit rather than to facilitate cultural exchange.

#### STATE DEPARTMENT'S FAILURE TO REGULATE

Another core problem with the SWT Program is that it is administered by the U.S. State Department and is understaffed and underfunded as a result.<sup>8</sup> All other guest worker programs are administered by either the Department of

Labor or the Department of Homeland Security, which have more experience and capital for regulating such matters.<sup>9</sup> Furthermore, over the past 21 years, the Government Accountability Office (GAO) and the State Department's own Inspector General published three reports with evident criticisms of the lack of oversight, data to make meaningful assessments, and accountability to student workers for abuses.<sup>10</sup> While the State Department has taken this criticism more seriously due to recent media attention, the crux of the problem remains due to the insufficient personnel available to oversee sponsors and test for abuses of the system.<sup>11</sup> For instance, the State Department issued remedial interim final rules in 2011 and 2012, and sponsors have since been required to provide annual reports with cost schedules to the State Department, contact student participants monthly to stay in touch, actively assist participants in finding initial work and replacement work, and require a cultural component to an employer's work amongst other requirements.<sup>12</sup> However, because the issue of understaffing has not been resolved, only 1 percent of sponsors are ever visited and State Department employees are not even able to get through all of the annual reports from these sponsors, which totaled more than 1,400.<sup>13</sup>

An impression is thus created that the rules are meant to be broken as the State Department remains completely reliant on the sponsors themselves to report their own non-compliance or the non-compliance of the employer.<sup>14</sup> Since the State Department has no jurisdiction over individual employers and the only authorized sanction it has is to remove a sponsor for lack of compliance, sponsors who turn themselves or their employers in to the authorities stand to lose profits, relationships with employers who favor J-1 visa holders, and their very existence.<sup>15</sup> In one particularly egregious case, a sponsor was eventually given this removal sanction after receiving significant media criticism.<sup>16</sup> However, such enforcement of the SWT regulations in every case should arguably not be dependent upon students and labor organizers to publicize their experiences to the media.

#### TYPES OF ABUSES AND VIOLATIONS

The lack of regulation of a large scale unskilled work force with little knowledge of their legal rights has created a program rife with exploitation and abuse. The most well publicized example of such abuse occurred in 2011, when 300 J-1 visa holders went on strike at a Hershey's distribution plant in Pennsylvania.<sup>17</sup> As part of their protest, these students described to human

rights groups how they were forced to work at punishing speeds under abusive supervision.<sup>18</sup> They spoke about how deductions were taken out of their pay for employment related costs and how subpar, overcrowded housing left them with no money to recuperate their visa costs or travel—the purpose for many of coming to the United States in the first place.<sup>19</sup> More recently, in March 2013, 17 SWT workers went on strike at a McDonald's in central Pennsylvania charging similar abuses.<sup>20</sup> The visiting students each paid over \$3,000 for the chance to work and were promised full-time summer jobs at McDonald's.<sup>21</sup> However, some ended up only receiving a handful of hours, some were forced to work over 25 consecutive hours without overtime, and many were forced to share a bedroom with seven co-workers with rent being taken out of their paychecks.<sup>22</sup>

Other examples ranged from mere disappointment to nefarious tales of kidnapping and sex trafficking.<sup>23</sup> In one instance reported to the press, a visiting student was forced along with other women at gunpoint to work in a strip club and was subsequently raped by one of the employers.<sup>24</sup> Overall, one of the most common complaints SWT workers have is that employers will include housing as an employee benefit and then attempt to reduce wages accordingly, regardless of whether that particular employee requested company housing or not.<sup>25</sup> Because there are no retaliation provisions in Exchange Visitor Program visas, and because of the lack of enforcement by the State Department described above, student workers have been reportedly threatened with deportation, job termination, inability to re-enter the U.S., and even harm to their families if they dare to complain about sub-standard work conditions.<sup>26</sup>

#### CONCLUSION

The SWT program needs real structural change in order to provide a safe working environment to university students around the world. The State Department final rules appeared to constitute an impressive and comprehensive overhaul, but it seems that sponsors will not be persuaded to follow the government rules and work to protect the students they recruit until there is a concrete economic incentive. If the State Department is going to continue to manage the SWT program, it should follow the advice of its own Office of Inspector General and create a team of government personnel that is responsible for these students as they spend a limited amount of time in the United States. The horrific experiences of foreign students should compel the U.S.

government to better monitor the actions of current sponsors and employers, and only fund those that are credible.

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NOTES

1 Hollbrook Mohr et. al., *U.S. Fails to Tackle Student Visa Abuses*, HUFFINGTON POST, Dec. 6, 2010, available at [http://www.huffingtonpost.com/2010/12/06/student-visa-abuses\\_n\\_792376.html](http://www.huffingtonpost.com/2010/12/06/student-visa-abuses_n_792376.html).

2 *Id.*; Patricia Medige and Catherine Griebel Bowman, *U.S. Anti-Trafficking Policy and the J-1 Visa Program: The State Department's Challenge from Within*, 7 INTERCULTURAL HUM. RTS. L. REV. 103, 115 (2012).

3 State Department Exchange Visitor Program—Summer Work Travel, 77 Fed. Reg. 27593 (May 11, 2012).

4 Daniel Costa, *Guestworker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*, ECONOMIC POLICY INSTITUTE, July 14, 2011, available at [http://www.epi.org/publication/j\\_visas\\_minimal\\_oversight\\_despite\\_significant\\_implications\\_for\\_the\\_labor\\_ma/3](http://www.epi.org/publication/j_visas_minimal_oversight_despite_significant_implications_for_the_labor_ma/3).

5 State Department, *supra* note 3, at 7.

6 Costa, *supra* note 4, at 30.

7 *Id.* at 31.

8 *Id.* at 29.

9 *Id.* at 30.

10 Office of Inspector General (OIG), *U.S. Dept. of State, The Exchange Visitor Program Needs Improved Management and Oversight* (Audit Report 00-CI-028) (Washington D.C.: State Dept., OIG, Sept. 2000); U.S. General Accounting Office (GAO), U.S. Information Agency; Inappropriate Uses of Educational and Cultural Exchange Visas (GAO/NSIAD-90-61) (Washington D.C.: GAO, February, 1990); and GAO, State Department: Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Categories of the Exchange Visitor Program (GAO-06-106) (Washington D.C., GAO, Oct. 2005); State Department Exchange Visitor Program, 76 Fed. Reg. 23177 (interim final rule proposed April 26, 2011); State Department Exchange Visitor Program—Summer Work Travel, 77 Fed. Reg. 27593 (interim final rule proposed May 11, 2012).

11 Medige and Bowman, *supra* note 2, at 124.

12 State Department, *supra* note 4, at 4.

13 Costa, *supra* note 4, at 17.

14 Medige and Bowman, *supra* note 2, at 107.

15 State Department Exchange Visitor Program, 76 Fed. Reg. 23177 (interim final rule proposed April 26, 2011); State Department Exchange Visitor Program—Summer Work Travel, 77 Fed. Reg. 27593 (interim final rule proposed May 11, 2012).; Costa, *supra* note 4, at 8, 29.

16 The Council of Exchange and Travel USA (CETUSA) was removed as a program sponsor after negative press from the student worker strike in Hershey, PA in the summer of 2011; Medige and Bowman, *supra* note 2, at 142.

17 Jennifer Gordon, *America's Sweatshop Diplomacy*, NEW YORK TIMES, Aug. 24, 2011, available at [http://www.nytimes.com/2011/08/25/opinion/americas-sweatshop-diplomacy.html?\\_r=0](http://www.nytimes.com/2011/08/25/opinion/americas-sweatshop-diplomacy.html?_r=0).

18 *Id.*

19 Colleen Breslin et. al., *Report of the August 2011 Human Rights Delegation to Hershey, Pennsylvania*, SOCIAL POLICY, Sept. 2, 2011, available at <http://www.brandeis.edu/ethics/pdfs/internationaljustice/Hersheys.pdf>.

20 Josh Eidelson, *McDonald's Guest Workers Stage a Surprise Strike*, THE NATION, March 6, 2013, available at <http://www.thenation.com/blog/173217/mcdonalds-guest-workers-stage-surprise-strike#axzz2ce193mHc>.

21 *Id.*

22 *Id.*

23 Youngbee Dale, *J-1 Visa Participants Treated No Different Than Human Trafficking Victims*, BUTLER TRAFFICKING HUMAN AWARENESS BLOG, Oct. 11, 2011, available at <http://bchta.wordpress.com/2011/10/12/j-1-visa-participants-treated-no-different-than-human-trafficking-victims/>.

24 Mohr, *supra* note 1.

25 Under the guidelines, an employer is allowed to deduct wages for bona fide employee benefits, which can include housing if voluntary. The employer must, however, itemize the costs of housing exactly and is not allowed to collect a profit; *see also* Exchange Visitor Program - Summer Work Travel, 77 FR 27593-01, Friday, May 11, 2012, at 14.

26 *Id.*; Costa *supra* note 5 at 31; Kit Johnson, *The Wonderful World of Disney Visas*, 63 FLA. L. REV. 915, 952 (Apr. 1, 2011).