

**UCLA**

**AAPI Nexus: Policy, Practice and Community**

**Title**

Guestploitation: Examining Filipino Human-Trafficking Guest Worker Cases through a Culturally Competent Practitioner's Model

**Permalink**

<https://escholarship.org/uc/item/9fx228d5>

**Journal**

AAPI Nexus: Policy, Practice and Community, 11(1-2)

**ISSN**

1545-0317

**Authors**

Liou, Cindy C.

Choi, Jeannie

Hu, Ziwei

**Publication Date**

2013

**DOI**

10.17953/appc.11.1-2.21841637h7h03u16

**Copyright Information**

This work is made available under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives License, available at

<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Peer reviewed

Practitioners' Essay

## Guestploitation:

### Examining Filipino Human-Trafficking Guest Worker Cases through a Culturally Competent Practitioner's Model

Cindy C. Liou, Jeannie Choi, and Ziwei Hu

#### Abstract

The trafficking of Filipino guest workers into modern-day slavery in the United States is an epidemic that demands an immediate response from both the American and Filipino governments. Often, law enforcement and service providers are not from the same linguistic and cultural background as trafficking survivors, especially given the variety of immigrant communities affected by human trafficking. With this article, we propose a service model for survivors of human trafficking that recognizes and addresses cultural differences. As a model on how to create such a framework, in this article, the authors use the example and describe this phenomenon of “guestploitation”—a system that victimizes Filipino guest workers through the Philippines’ labor export system and United States’ convoluted guest worker program—and how the problem is compounded by cultural barriers, communication difficulties, and the complexity of the American legal system. They draw upon their own casework and experiences to put forth several legal and policy recommendations aimed at assisting Filipino guest worker trafficking victims and preventing this widespread abuse. The authors use a culturally competent working model to inform effective ways to combat human trafficking with the goal of encouraging similar culturally competent methods of working with other trafficking victims from other immigrant communities.

The United States is no stranger to the sordid past of slavery. Although it is now universally illegal to own humans as chattel, slavery continues to flourish today in a modern form known as human trafficking. Today, thousands of individuals arrive in the

United States through the national guest worker program. While the Department of Labor (DOL) and some federal regulations exist to regulate the abuse of temporary labor, guest workers largely remain unprotected and unable to change their employment if they are mistreated, threatened, or exploited in a manner that rises to the level of a “severe form of human trafficking” first defined in the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(9) (2000) (TVPA).

Recently, the United States has experienced a multitude of cases involving the trafficking of Filipino guest workers. The number of these cases directly correlates to the confluence of the guest worker system in the United States and the Filipino government’s labor export model. These cases have had a profound impact on our agency’s antitrafficking efforts. Asian Pacific Islander Legal Outreach was founded in 1975 with the mission to promote culturally and linguistically appropriate services for the most marginalized segments of the Asian Pacific Islander community in the greater San Francisco Bay Area. The agency’s legacy of antiviolence work, particularly with immigrant victims of domestic violence, led to the 2001 creation of the Asian Anti-Trafficking Collaborative (AATC) with our sister social services agencies of Asian Women’s Shelter, Narika, and Cameron House.<sup>1</sup> As of October 2012, AATC reformulated as the Anti-Trafficking Collaborative of the Bay Area (ATCBA), with the partner agencies Asian Women’s Shelter, Narika, The SAGE Project, and Mujeres Unidas y Activas.

The AATC and ATCBA provides comprehensive social and legal services for labor and sex trafficking survivors from a variety of nationalities and ethnicities from more than thirty countries, of all gender identities, and of all ages. Starting in approximately 2009, AATC opened a number of Filipino guest worker trafficking cases. Mostly involving hotel workers and caregivers, these cases soon comprised one-third of the AATC caseload. The three authors of this article have all worked, either directly or indirectly, in providing legal assistance to Filipino guest workers. Our collective experiences as practitioners serving these clients were the inspiration for writing this article and enabled us to observe the issues that arise in connection with Filipino guest workers.

Often, law enforcement and service providers are not from the same linguistic and cultural background as trafficking survivors, especially given the variety of immigrant communities affected by hu-

man trafficking. The cultural gap between survivors and those who seek to serve them can thus lead to confusion, misunderstanding, and retraumatization and may ultimately frustrate efforts to provide survivors with what they need. With this article, we propose a service model for survivors of human trafficking that recognizes and addresses cultural differences. To do this, we will (1) describe the Philippines' historical labor exporting model and the United States' creation of its guest worker program and explore both governments' response to human trafficking; (2) draw upon our own cases and analyze commonalities of six criminal and civil cases involving the trafficking of Filipino guest workers in the United States; and (3) make recommendations toward a culturally competent framework to assist Filipino guest worker trafficking victims in the United States, which may inform effective culturally competent frameworks to work with other immigrant trafficking victims.

## The Export of Filipino Labor, the U.S. Guest Worker Program, and Government Responses to Human Trafficking

### **The Philippines**

To understand the high number of trafficking cases involving Filipino guest workers in the United States, we first examine the Philippines' model of labor exportation. The Philippines is among the leading source countries of migrant labor worldwide (Brillo, 2008, 35). As of December 2009, there are more than 8.5 million Filipino nationals living abroad (Commission on Filipinos Overseas, 2009). Much of this can be traced to Ferdinand Marcos's 1974 Presidential Decree No. 422, since codified as Article 12 of the Philippine Labor Code, which states, "it is the policy of the State . . . to facilitate and regulate the movement of workers in conformity with the national interest." Labor migration seemed to offer the dual benefits of relieving the domestic unemployment, while also producing a reliable stream of revenue (Wimaladharma, Pearce, and Stanton, 2004, 13). After Gloria Macapagal Arroyo became president in 2001, she pushed through legislation such as the Anti-Trafficking in Persons Act of 2003, Ra. No. 9208, and ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2005. In May 2010, Beningno "Noynoy" Aquino III was elected president, running on policy points based on expanded protection for migrant workers,

a repatriation assistance program, and task forces on illegal recruitment and trafficking (Crisostomo, 2010).

The latest U.S. Department of State Trafficking in Persons (TIP) Report 2012 designated the Philippines as a Tier 2 country (U.S. Department of State, 2012). Traffickers, in partnership with organized crime syndicates and complicit law enforcement, regularly operate through local recruiters sent to recruit family and friends. Traffickers utilize a variety of visas, including student, intern, and exchange program visas to send workers abroad.

Efforts undertaken by the Philippine government in fiscal year (FY) 2011 include the designation of fifty-eight prosecutors to work on antitrafficking cases by the Department of Justice and the operation of forty-two temporary shelters for victims of all types of abuse. As of the publishing of the FY 2012 TIP Report, Philippine courts had 680 pending or ongoing trafficking cases. The government increased the number of convictions from nine traffickers in FY 2010 to twenty-nine trafficking offenders in FY 2012. In FY 2012, two convictions involved forced labor, and one of the convictions in FY 2011 is the Philippines' first-ever labor-trafficking conviction (U.S. Department of State, 2011, 2012).

### **The United States**

Next, we turn to the United States' demand for immigrant and noncitizen workers to fill low-wage jobs. One scholar has noted that the 1942 Bracero program for farm labor was "the moment when American employers became entwined with the idea of cheap foreign labor" (Tripathi, 2009, 525). The Bracero program "was a bilateral accord between the United States and Mexico, under which Mexican workers were brought to the United States to perform seasonal agricultural labor, and then returned to Mexico" (Baker, 2004, 84). Widely critiqued for the ways in which it enabled the exploitation of guest workers, increased illegal immigration, and was difficult to administer, the Bracero program came to an end in 1964 after "intense lobbying from organized labor and Latino organizations" (Lichtenstein, 2007, 682). In 1952, the H-2 visa, which was a program geared explicitly toward temporary guest workers, was authorized under the Immigration and Nationality Act (INA) (Ashby, 2008, 899). Specifically, the H-2 provision of the INA provided for the admission of foreign agricultural guest workers "if unemployed persons cannot be found in this country" (Immigration and National-

ity Act Section 101(a)(15)(H)(ii)). However, the statute contained no provisions for oversight or accountability.

In 1986, Congress passed the Immigration Reform and Control Act, dividing the H-2 program into the H-2A program for agricultural guest workers and the H-2B program for low-wage non-agricultural, low-skill workers, such as landscaping, construction, and hotel labor (Rudrappa, 2009, 357). The numbers of both H-2A and H-2B visas issued have increased greatly over the last several years. H-2A visas have more protections than H-2B workers due to advocacy efforts. The Immigration Act of 1990 created H-1B visas for skilled foreign guest workers, such as teachers, nurses, and computer programmers (Hahm, 2000, 1679–80).

The influx of nonimmigrant guest workers into the United States created situations rife with potential for labor exploitation. Some labor exploitation situations may rise to the level of human trafficking. Human trafficking differs from other forms of labor exploitation because it functions as modern-day slavery through the mechanisms of involuntary servitude, debt bondage, forced labor, and / or commercial sexual exploitation of minors. In 2000, Congress enacted the TVPA, changing and expanding the definition of *involuntary servitude* and creating a legal definition of *human trafficking* in the United States. It enhanced three aspects of federal government activity to combat trafficking in persons: protection, prosecution, and prevention, and, in recent times, it includes the fourth dimension of partnerships (Patel, 2009, 820). The TVPA recognizes that “in addition to physical force, psychological abuse and nonviolent coercion can create an environment of fear and intimidation that may prevent a worker from leaving” (Kim, 2007, 963).

The TVPA and its subsequent reauthorizations in 2003, 2005, 2008, and 2013<sup>2</sup> criminalized trafficking, created a civil action for victims to sue their traffickers, and created the T-visa and U-visa as new forms of immigration relief available to immigrant victims of crime. The TVPA also created the special status Continued Presence that can only be requested by federal law enforcement to provide trafficking victims that may be potential witnesses in a criminal case with temporary work authorization (22 U.S.C. 7101; 18 U.S.C. § 1595; Kim and Hreshchyshyn, 2004, 14)

A trafficking victim may be eligible for the T-visa and / or the U-visa. Under the TVPA, only victims of a “severe form of human trafficking” are eligible for T-visas.<sup>3</sup> A U-visa is available to victims

of certain types of crimes, including involuntary servitude and trafficking, and the individual must be helpful to the investigation or prosecution of the qualifying criminal activity (8 U.S.C. §1101(a)(15)(U)).

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008) (TVPRA 2008) also created a new criminal statute prohibiting fraud in foreign labor contracting under 18 U.S.C. §1351. This imposes criminal liability on those who, knowingly and with the intent to defraud, recruit workers from outside the United States for employment within the United States by means of materially false or fraudulent representations. Although not a trafficking offense, this crime is closely linked to forced labor and has been used in conjunction with trafficking prosecutions. The TVPRA 2013 also added “fraud in foreign labor contracting” to the qualifying crime categories eligible for U-visas, creating further immigration remedies for trafficking survivors.

### Commonalities among the Filipino Guest Worker Trafficking Cases in the United States

The Spanish-American War ended in 1898 with the cessation of the Philippines by Spain to the United States, which resulted in U.S. sovereignty until 1946 and the long-term presence of military bases, as well as the immigration of laborers to the West Coast and Hawaii (Gong, Gage, and Tacata Jr., 2003, 473). Thus Filipinos are more familiar with American lifestyles and the English language in comparison to many other Asian communities. Additionally, turning to cultural studies of Filipino values may help inform the trends of these cases; why Filipino guest workers have difficulty terminating their trafficking situation and seeking help; and how these understandings can assist our ability to identify and assist Filipino trafficking victims. Social scientists who study Filipino culture state that within the Filipino network of relationships, it is important to foster good interpersonal relationship (*pakikisama*) and to honor one’s debts of obligation and gratitude (*utang na loob*), and the sanction for breaking social conventions was through shame/sense of propriety (*hiya*) and loss of esteem or honor (*amor propio*) (Gong et al., 2003, 472).

In this historical context and regulatory environment, several commonalities emerge among Filipino guest worker labor-trafficking cases. Many trafficking situations involving undocumented

immigrants in the United States result as a combination of unsafe migratory patterns combined with strict U.S. immigration laws. However, the cases of H-1B and H-2B Filipino guest workers tends to reflect what Sandra Ezquerra describes as *legalized trafficking*:

[A]lthough the recruitment or mode of entry to the receiving country have not been illegal, the formal relations between employers and migrant workers—designed by the state—have the potential to recreate situations of vulnerability, subordination, and exploitation often found in cases of (illegal) trafficking. . . . While illegal immigration, for example, refers to an action—usually individual—that fails to respect the law, legalized trafficking refers to a process that, although usually considered as negative and illegal, due to biased policy making, becomes both legal and socially acceptable. (Ezquerra 2007, 118)

It is through this process of legalized trafficking that our agency analyzed six cases involving the trafficking of Filipino guest workers in the United States post-TVPA, some being criminal prosecutions and some being civil cases, to understand the trends and commonalities. The cases need not have trafficking charges and claims for the victims to be eligible to receive T-visas and U-visas based on trafficking. Our agency has worked with and provided legal advice to more than one hundred Filipino guest workers from September 2009 until publication, and has worked directly on some of the cases analyzed in this article. Some Filipino guest workers—particularly male guest workers, due to the predominant focus of services for trafficking victims on female survivors of sex trafficking—have difficulty seeking culturally and linguistically competent services for trafficking victims and have chosen to relocate to the Bay Area in California, which has a significant Filipino population.

Not all Filipino guest workers that have called our office or been subject to labor abuse are trafficking victims; for these workers, there may be other immigration options such as U-visas and civil remedies. We must conduct a thorough and in-depth screening of each case, and the decision is usually made with careful application of the entirety of the facts to the statutory definitions of *human trafficking*. The key question for screening an adult guest worker as a victim of human trafficking is whether given the totality of the circumstances—including physical and nonphysical



forms of force, fraud, or coercion—the victim felt unable to terminate his or her employment.

For the sake of this article, we focus on Filipino guest workers that have been defined as victims of human trafficking by assessment by either our office or law enforcement, or recognized by their immigration status as having received a T-visa and Department of Health and Human Services certification letter recognizing them as a *bona fide* human-trafficking victim. Although we use academic understandings of Filipino culture as a springboard to analyze these cases and encourage a culturally competent framework on how to work with all immigrant victims of human trafficking, none of these observations are meant to be overbroad, constricting, thoughtless, or negative stereotypes.

Based on our casework and details emerging from other cases, many Filipino victims of human trafficking through guest worker visas tend to be low-income, be unemployed or underemployed, be with dependent families, and have limited household income. Workers learn about opportunities to work in the United States through friends, family members, or print advertisements.

Recruitment typically occurs through a third-party agency. The agencies require applicants to pay “processing” and/or “placement” fees. In many cases, the final employer is several times removed from the original guest worker. For example, the guest worker might first learn about employment through a recruitment firm based in the Philippines. The firm conducts an initial screening and schedules interviews for potential guest workers with recruitment agencies from the United States. The U.S.-based recruitment agency places the guest worker with a labor contractor, who will then contract out the guest worker’s labor to hotels, care facilities, or other employers. The trafficking process—and associated liability—is often spread among several parties, both domestic and foreign, which makes prosecution difficult.

The many layers to the recruitment process also disconnect the labor demand from the labor supply, such that initial recruiters have little incentive to accurately predict the amount of labor necessary for certain industries, resulting in the overrecruitment of guest workers. As a result, Filipino guest workers often enter the United States with the promise and expectation of one type of labor, only to be diverted to another sector or region, due to insufficient demand with the original employer. In several of our cases, guest workers

contracted to work in country clubs in Florida were, upon arrival, sent to Mississippi to plant trees and to California to work in care homes instead of their promised jobs. In many of the cases, such as in *U.S. v. Askarkhodjaev*, No. 4: 09-CR-00143 (W.D. Mo. May 27, 2009), guest workers recruited into the hotel industry found that during low season there was not enough work for them. Underemployed, the guest workers were unable to pay off the recruitment and became subject to substantial payroll deductions from their traffickers.

Once the guest worker arrives in the United States, the labor contractor may place the worker in an apartment with other guest workers. In other circumstances, as in *U.S. v. Morales* and *U.S. v. Pelayo*, the guest worker might be forced to sleep in empty beds when they are available, on clinical tables, or on couches in the lobby. The apartments are often overcrowded and underfurnished, and workers are charged an array of fees for housing, transportation, uniforms, and sometimes even food, with the fees typically far exceeding the actual cost to the labor contractor; labor contractors sometimes collect several times the actual cost of an apartment's rent by housing several workers in the apartment and charging each worker a few hundred dollars per month for rent, rather than a share of the actual rent.

When the guest worker starts the job, the trafficker exploits the worker's vulnerable immigration status by withholding or underpaying wages. In many cases, the trafficker also demands exorbitant fees from workers, ostensibly to pay for visa renewals or other immigration processing, when the trafficker may or may not actually submit any legitimate applications. Traffickers exercise illegal labor practices, such as coercing workers into working when they are ill or forbidding workers from quitting, and threatening to report them to immigration authorities for deportation. Workers are unable to question employer practices due to the risk of deportation. Some workers even have their passports confiscated, such as in *U.S. v. Farrell* ("Many of the workers were reluctant to do so but obeyed out of the 'honor and respect' Filipino culture demanded they show their employers") and *Mairi Nunag-Tañedo et al. v. East Baton Rouge Parish School Board et al.*

The debt bondage situation created by large debts owed to third parties and family members and by deductions is further exacerbated with Filipino guest workers because of the concept of *utang na loob*, requiring that the individual Filipino guest worker

repay their debt of obligation or gratitude (as in one's obligation to a parent), which may never be fully repaid and last for generations (Dolan, 1991). Among our clients, many Filipino guest workers who had been trafficked felt that despite oppressive working conditions, they had incurred a debt of obligation with the agency and employer that had originally facilitated the favor to assist in their arrival to the United States. Many other Filipino guest workers in these cases had taken out large loans from friends and family members to pay for transportation and recruitment fees for these jobs, and felt the need to stay in exploitative situations to pay off their debts.

### Legal and Policy Recommendations

Immigrant victims of labor exploitation and trafficking have many complex legal needs. Here, we recommend that service providers, policy makers, and legal scholars use a culturally appropriate framework when engaging with Filipino trafficking victims. Although some broad cultural observations are made, they are not meant to be static stereotypes; rather, we seek to encourage the use of a culturally sensitive perspective on how to best work with immigrant victims of human trafficking. In many instances, awareness alone of potential complications from cultural attitudes or traditions can aid in competency. Filipino guest worker trafficking victims are eligible for many forms of different legal relief, but must also traverse through multiple, complicated legal systems. For example, obtaining immigration relief, public benefits, and civil remedies from the traffickers, as well as participating in the criminal prosecution of the traffickers and restitution process, all require frequent and complex interaction with law enforcement, opposing counsel, and public agencies.

### Identification of a Victim

Identification of human trafficking among guest workers trafficked into forced labor remains a problem. Often, trafficking victims that self-identify as consenting participants to a guest worker program are automatically deemed as nonvictims. Those who "do not fit traditional conceptions of involuntary or nonconsenting victims . . . may instead face deportation" (Chang and Kim, 2007, 333).

Additionally, many Filipinos guest workers who have been trafficked may have difficulty in trusting other social service pro-

viders and law enforcement in the United States. In Filipino culture, there are two categories of the fellow human being or *kapwa*: the *Ibang-Tao* (outsider) and the *Hindi-Ibang-Tao* (“one-of-us”). “In Filipino social interaction, one is immediately ‘placed’ into one of these two categories; and how one is placed determines the level of interaction one is shown” (Pe-Pua and Protacio-Marcelino, 2000, 56). It is in our experience that our Filipino clients have felt more comfortable initiating contact and telling their ordeal to those they identify best with—usually other Filipinos who can speak their language.

While some Filipino trafficking victims were referred to our agency through law enforcement referrals, the majority of our Filipino clients were referred through other community-based organizations or through other Filipino clients of AATC. Some of this behavior is potentially attributable to the concept of *bayanihan*, in which the obligation and responsibility to help one’s neighbors and own people is inherent in interpersonal relationships (Spangler, 1992, 31). One Filipina trafficking client, upon learning that we would assist her in applying for a T-visa and obtaining benefits, immediately sent text messages to more than thirty other Filipino guest workers she had worked with, who were located in more than five states, to call our office for assistance.

Many Filipino guest workers that our office interviewed cited cultural factors for being unable to leave their employers. Culturally, we have found that many Filipinos also fear law enforcement due to negative experiences with corrupt law enforcement and government officials. Many of the guest workers also viewed their employers as authority figures, affecting their feelings of ability to question their employers’ authority. According to Dolan, “Philippine respect for authority is based on the special honor paid to elder members of the family and, by extension, to anyone in a position of power” (Dolan, 1991). Challenge to authority is generally to be avoided. In addition, many Filipinos are devout Catholics, and this strong personal faith and cultural value enables many of them to endure many hardships in the assurance that *bahala na ang Diyos*: “God will take care of things.” Although some may view this as fatalism, such beliefs may fuel guest workers with determination to endure difficult situations in order to achieve their objectives (Pe-Pua and Protacio-Marcelino, 2000, 55).

Once reporting is initiated, victims require assistance in their interactions with law enforcement. Many Filipinos find it difficult

to refuse when asked to be interviewed, but their indirect pattern of communication indicates that euphemisms in verbal exchange, expressive body language, and voice intonations may say more than the words themselves. Attorneys and law enforcement will experience better success in conducting an informative and accurate interview with a Filipino guest worker trafficking victim if they first spend time establishing rapport and allowing themselves to be “interviewed” by the client so the clients then feel comfortable enough to disclose their opinions and experiences (Pe-Pua and Protacio-Marcelino, 57).

Although many Filipinos speak some English, proficiency in speaking and comprehension varies, leading to errors and miscommunication in the interview. Historically in the Philippines, “some argued that English was essential to economic progress because it opened the Philippines to communication with the rest of the world, facilitated foreign commerce, and made Filipinos desirable employees for international firms both in the Philippines and abroad” (Dolan, 1991). In 2006, a survey in the Philippines indicated that 65 percent of the population claimed to have the ability to understand spoken and written English, with 48 percent stating that they write English, but with only 32 percent reporting that they spoke the language (Bautista and Bolton, 2008, 5). We have personally conducted interviews and attended law enforcement interviews of Filipino victims that have been inaccurate and frustrating because of the interviewer’s overestimation of the client’s fluency in English.

In our experiences, many Filipino victims have a tendency to agree to a statement as a matter of respect for authority and have a desire to seem agreeable despite not always entirely understanding the question. These cultural and linguistic tendencies have a great impact on the accuracy of the interview and law enforcement’s perception of whether the individual would be classified as a victim of human trafficking. For example, in an interview we worked on, during a Federal Bureau of Investigation (FBI) interview with the author’s client, the FBI agent asked the author’s client, “Did your employer ever force you to keep working for them?” The client, understanding English quite well as a second language, did not wait for the Tagalog interpreter to interpret the question, and answered, while shaking her head, “No, no.” However, in this case, the client understood the question to be whether any physical force was used against her by her employer. In reality,

the employer had subjected the client to psychological, coercive threats of deportation and threats to “cancel” her visa.

Some untrained law enforcement officers view guest workers with expired visas as ineligible to remain in the country and will ignore their attempts to contact law enforcement about their abuse, treating them like criminals instead. In some instances, guest workers contacting our agency have related stories of abused guest workers contacting law enforcement, only to have law enforcement initiate immigration removal proceedings against the potential victims. Thus these victims need assistance in their first contact with law enforcement to report their case.

Many trafficking victims require much support during a criminal investigation and prosecution. Aside from providing basic needs such as shelter, food, and medical care, many things can disturb the stability of a victim, such as fears of retaliation against the family, or financial stress and a sense of *hiya* related to recruitment debts and supporting immediate and potentially extended family members. In one case, our client’s father passed away during the pendency of the criminal case, and so he was unable to attend his father’s funeral due to his potential testimony in the criminal case against his trafficker and T-visa requirements to remain in the country. This incident greatly destabilized the client and required intervention from social workers and counselors.

Many guest worker human-trafficking cases are multivictim cases. It is difficult to sort out the victims and understand their dynamics. There may be conflicts between the victims, such as whether some victims have become recruiters and perpetrators of abuses of other victims. It is also hard to provide shelter and basic resources for multiple victims. Additionally, many guest worker victims are male, and most existing shelters for trafficking victims are domestic violence shelters for women. This can also cause instability in criminal and civil cases in which male victims must travel and even leave the state to look for more work and shelter. Many Filipinos migrated to the San Francisco Bay Area upon termination of their trafficking to seek services upon hearing of our agency’s services and connection to the Filipino community.

Another method of assistance in the criminal process is to assist the victim in calculating accurate restitution and preparing victim impact statements. When traffickers are convicted under 18 U.S.C. Chapter 77 violations, restitution for trafficking victims

is mandatory under 18 U.S.C. § 1593(a). Victim impact statements allow individuals to express how the crime has affected their lives and relay this information to the judge in determining the sentencing and restitution. This process can be complicated, as many of our Filipino clients have expressed forgiveness for their traffickers due to a combination of cultural beliefs and religious faith, and many do not wish to write victim impact statements.

### **Immigration Relief and Proposed Changes**

In February 2012, the DOL issued a Final Rule, Temporary Non-agricultural Employment of H-2B Aliens in the United States, Final Rule, 77 FR 10038, February 21, 2012 (Department of Labor, 2012). This Final Rule amended the H-2B program by revising the process for employers to obtain temporary labor certifications and introducing regulations increasing worker protections. But on April 26, 2012, it was blocked from taking effect by a lawsuit brought by business owners in the U.S. District Court for Northern District of Florida. Further, in mid-June 2012, a bipartisan group of senators on the Senate Appropriations Committee also voted to block the DOL from implementing this Final Rule (Thompson, 2012). The district court's decision to grant a preliminary injunction against enforcement of the 2012 H-2B rule was upheld on April 1, 2013 by the U.S. Court of Appeals for the Eleventh Circuit on the ground that the employers are likely to prevail on their allegation that DOL lacks H-2B rulemaking authority. See *Bayou Lawn & Landscape Servs. et al. v. Secretary of Labor*—F.3d—2013 WL 1286129, No. 12-12462 (11th Cir. Apr. 1, 2013).

While we will not detail each of the many improvements that could be made to the different guest worker visas, the passage of this Final Rule and other laws like this, such as protections for guest workers in Comprehensive Immigration Reform, would help rectify many of the problems identified in the policy recommendations mentioned in the following text. However, until business interest and politics release their hold on laws that will protect the rights of workers and improve the H-2B program, these structural immigration problems remain a reality for guest workers and increase the possibility of their trafficking.

Fundamentally, the guest worker program must be restructured to be less coercive by allowing guest workers to obtain visas that do not obligate and tie them to work for a specific employer.

Tying a guest worker to a specific employer violates fundamental rights to work in a free labor market. Guest workers must be allowed the opportunity to find alternative employment when they report unsafe or unfair working conditions to an appropriate agency. There must also be a system and process that allows guest workers to apply for legal permanent residency in the United States.

Employers in the United States should be required to bear all the costs of recruiting and transporting guest workers, as paying the many fees and being subjected to payroll deductions for these fees have led to a debt bondage situation for many of the Filipino guest workers. Tighter controls should be created to ensure that the final end-user employers are in charge of obtaining certification and visas for guest workers. Recruiters in the Philippines and the United States along all chains of the recruitment and processing of workers should be tracked, and their names should be published. The DOL should create a streamlined process to deny guest worker applications from employers that have violated the rights of guest workers, especially if there have been allegations related to trafficking (Global Workers Justice Alliance, 2010, 1).

Currently, there is only extensive screening of guest workers entering the United States, but very little follow-up on the well-being of guest workers once they are in the United States. Thus there are few to no mechanisms to ensure that the employers are complying with guest worker contracts. The DOL should require all employers to report to them during the course and conclusion of a guest workers' term of employment (Southern Poverty Law Center, 2007, 44).

Until some of these basic restructurings are done, the U-visa and T-visa have been the primary tools used to stabilize the immigration status of human-trafficking victims. As to why there are so few T-visas issued for trafficked guest workers, there remains an underidentification of trafficking survivors. The discourse on human trafficking has long been centered on sex trafficking, and many local law enforcements remain either ignorant of the statutory definitions of human trafficking or merely conflate it with prostitution. Legal advocates, social services, and local law enforcement also remain less familiar with T-visas. Additionally, T-visas have more complicated elements to satisfy in comparison to other remedies.

There remains a reluctance to identify guest workers as trafficking victims. In some of the cases we have worked on, a group



of guest workers were identified and divided by law enforcement into two groups: (1) trafficking victims and (2) material witnesses that were not trafficking victims. The group identified as trafficking victims were issued Continued Presence and given law enforcement certifications to submit with their T-visa or U-visa applications. The group of people identified solely as material witnesses were given short-term temporary immigration relief that was not renewed, and were subsequently placed into removal proceedings upon expiration of Continued Presence.

Immigration relief for Filipino guest worker trafficking victims tends to rely too heavily on law enforcement's willingness to sign U-visa certifications and the dearth of legal services agencies qualified to prepare T-visas. Other noncriminal federal and state government agencies with investigating power should be allowed to certify U-visas and T-visas and designate trained investigators to work on trafficking cases. As of 2011, the DOL announced that its Wage and Hour Division would also issue U-visas on the basis of only five out of the twenty-six available enumerated grounds: involuntary servitude, peonage, trafficking, obstruction of justice, or witness tampering (U.S. Department of Labor, 2011). The DOL remains silent about signing T-visas and should create a protocol and designate trafficking investigations to specific trained investigators as well. The U.S. Equal Employment Opportunity Commission has also worked on trafficking cases and should be more widely considered as potential U-visa and T-visa certifiers, as they are often left out of federally funded task forces that are law enforcement heavy. State counterparts such as the Department of Fair Employment and Housing and DOL Standards Enforcement in California should also be recognized by U.S. Citizenship and Immigration Services (USCIS) (the adjudicators of U-visas and T-visas) as eligible certifiers.

Most importantly, guest workers should be given other immigration options to remain in the United States and be able to work while challenging labor abuses. For example, in compliance with TVPRA 2008, USCIS as of March 2011 permits victims of human trafficking who have filed civil action against their employer and hold A-3 and G-5 visas to remain and work legally in the United States while their civil cases are pending (U.S. Citizenship and Immigration Services, 2011). Deferred action and work opportunities should also be made available for guest workers who are seeking civil redress against their traffickers as well.

Options such as deferred action can be valuable because although the DOL investigations are meant to be confidential and protect workers from retaliation, in practice, many guest workers have very little recourse from being terminated from their employers and losing their immigration status as a form of retaliation from complaining about abuses at work. Retaliation is difficult to prove, and employers can easily formulate other reasons for terminating guest workers.

### **Civil Remedies and Proposed Changes**

Many victims of exploitation and trafficking also have the right to access civil remedies (Kim and Hreshchyshy, 2004; Werner and Kim, 2008). Filing a civil lawsuit or bringing a case against an employer can be empowering for the victim, particularly if law enforcement has declined to criminally prosecute the case. Civil litigation allows the victims to file a lawsuit to potentially obtain greater monetary damages. Some agencies have assisted guest workers in initiating civil suits against their traffickers.<sup>4</sup> However, civil litigation is time consuming and may not be appropriate for all victims. Other options for exploited guest workers may include wage and hour claims, work injury compensation, or initiating investigations through the DOL or comparative state agencies.

Many guest workers are unable or do not know how to file complaints, and the difficulty in seeking legal redress is compounded if they return to the Philippines. The Department of State should have dedicated individuals to address complaints from guest workers and trafficking victims that may have repatriated (Global Workers Justice Alliance, 2010, 1). The Southern Poverty Law Center has suggested that employers of guest workers should be required to post bonds to cover guest workers' claims for wages and costs based on abuses that guest workers can access even if they return to their home countries (Southern Poverty Law Center, 2007, 44).

Many guest workers, once they escape abusive and trafficking situations from their employers, are forced to find employment in underground, informal industries such as the caregiver and domestic worker industries. To support these workers, states should ensure that basic minimum wage and overtime protections in the state laws are extended to these industries that have long been excluded from basic labor protections (American University Washington College of Law and Centro de los Derechos del Migrante, 2010, 36).

## Targeted Filipino Community Outreach

Most importantly for the Filipino guest workers, community outreach and education is critical to maximizing the impact of the proposed policies as well as of existing protections. Like other immigrant communities, the Filipino community relies heavily on interpersonal relationships within the community for information. This may be due in part to limited English proficiency among the new immigrants and a fear of retaliation against them or against relatives in the Philippines. However, be aware that the role of social networks in the Filipino community can be harmful. For example, misplaced trust has led to rampant *notario* (immigration consultant) fraud. One of our clients was defrauded by the law firm of a Filipino attorney who has since been disbarred and criminally charged for unethically defrauding many Filipino guest workers and trafficking victims (Morgan, 2009). Outreach is also necessary to locate and encourage exploited Filipino guest workers to come forward.

## Conclusion

Although responders to trafficking cannot always be directly representative of diverse immigrant communities, consideration of history and culture can assist in the creation of culturally aware and appropriate frameworks to assess, identify, and work with immigrant trafficking survivors. The exploitation of Filipino guest workers is an epidemic that demands an immediate response from both the U.S. and Philippine governments. In the Philippines, the lack of domestic job opportunities and dependence on remittances sent from overseas workers has contributed to the vulnerability of these overseas workers to exploitative, and sometimes slavery-like, conditions. On the other side of the Pacific, the demand for cheap labor in the United States created a guest worker regime that lacks accountability and foresight, thus incentivizing unscrupulous employers and recruiters to take advantage of foreign employees. Compounding this phenomenon of “guestploitation” further are a number of cultural barriers, communication difficulties, and the complexity of the American legal system.

While the American legal system does provide some avenues of legal relief for exploited Filipino guest workers, eradicating “guestploitation” will require a concerted effort by the Filipino government to stem the flow of exploitative domestic recruiting and to strengthen protections for and monitor the welfare of guest

workers, and for the United States to restructure its guest worker program so that the program is transparent, permit guest workers to apply for permanent status, and enforce penalties on employers who abuse the system. A culturally appropriate framework analogous to our work with Filipino guest workers must be used to address the trafficking of different immigrant communities, such as Indian guest workers (e.g., *David, et al v. Signal International LLC*), Thai guest workers (e.g., the Global Horizons case), and Mexican agricultural workers. Upon the implementation of these policy recommendations, the United States might then truly live up to being the “land of the free.”

### Acknowledgment

The authors would like to thank and acknowledge Melissa Sayoc for reviewing this article.

### Notes

- 1 In June 2009, Cameron House became an inactive member of AATC but continues to work with AATC on a case-by-case basis (Lee and Parker, 2010, 2–5).
- 2 The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), combined with the Trafficking Victims Protection Reauthorization Act (TVPRA 2013), was signed into law on March 7, 2013.
- 3 “Severe form of trafficking” is defined by the TVPA as: “(A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. §7102(8); for other T-visa elements, see 8 U.S.C. §1101(a)(15)(T).
- 4 Cases involving Filipino guest workers include *Mairi Nunag-Tañedo v. East Baton Rouge Parish School Board* (C.D. Cal. 2010) and *Magnifico v. Villanueva* (S.D. Fla. 2010). *Jimenez v. Vanderbilt* (M.D. Tenn. 2011) was recently filed by the National Guestworker Alliance in March 2011 on behalf of Mexican guest workers.

### References

- Alimurung, Gendy. 2009. “Enslaved in Suburbia: Inside the World of Trafficked Indentured Servants and the Visa Violators Who Care for Our Old: Two Women, Two Fractured American Dreams.” *LA Weekly*, February 18. <http://www.laweekly.com/2009-02-19/news/enslaved-in-suburbia-behind-the-tract-house-door-filipino-indentured-ser->

- vants-and-visa-violators-caught-in-the-eldercare-trap (accessed August 30, 2012).
- American Federation of Teachers International Affairs Department. 2009. *Importing Educators: Causes and Consequences of International Teacher Recruitment*. Washington, DC: American Federation of Teachers International Affairs Department.
- American University Washington College of Law and Centro de los Derechos del Migrante. 2010. *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry*. Washington, DC: American University Washington College of Law and Centro de los Derechos del Migrante.
- Ashby, Bryce W. 2008. "Indentured Guests: How the H-2A and H-2B Temporary Guest Worker Programs Create the Conditions for Indentured Servitude and Why Upfront Reimbursement for Guest Workers' Transportation, Visa, and Recruitment Costs Is the Solution." *University of Memphis Law Review* 38 (Summer): 894–921.
- Baker, Alice J. 2004. "Agricultural Guestworker Programs in the United States." *Texas Hispanic Journal of Law and Policy* 10: 79–115.
- Bautista, Maria Lourdes S., and Kingsley Bolton, eds. 2008. *Philippine English: Linguistic and Literary Perspectives*. Hong Kong: Hong Kong University Press.
- Brillo, Bing Baltazar C. 2008. "Path Dependence, Increasing Returns, and Philippine Labor Migration Policy." *Crossroads* 8(1): 24–61.
- Caron, Cathleen. 2007. "Portable Justice, Migrant Workers, and the United States." *Clearinghouse Review Journal of Poverty Law and Policy* 40 (January–February): 549–57.
- Chacon, Jennifer M. 2006. "Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking." *Fordham Law Review* 74: 2977–3040.
- Chang, Grace, and Kathleen Kim. 2007. "Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)." *Stanford Journal of Civil Rights and Civil Liberties* 3: 317–44.
- Commission on Filipinos Overseas. 2009. "Stock Estimate of Overseas Filipinos as of December 2009." Philippines Overseas Employment Administration. <http://www.poea.gov.ph/stats/Stock%20Estimate%202009.pdf> (accessed August 30, 2012).
- Crisostomo, Sheila. 2010. "Noynoy Bares 22 Point Labor Policy Agenda." Philstar.com. [http://www.philstar.com/microsite/noynoy\\_aquino\\_inauguration\\_2010/article.aspx?articleId=590117&publicationSubCategoryId=63](http://www.philstar.com/microsite/noynoy_aquino_inauguration_2010/article.aspx?articleId=590117&publicationSubCategoryId=63) (accessed August 30, 2012).
- DeParle, Jason. 2007. "A Good Provider Is One Who Leaves." *New York Times*, April 22. <http://query.nytimes.com/gst/fullpage.html?res=9D04E7D6113FF931A15757C0A9619C8B63&pagewanted=all> (accessed August 30, 2012).

- Dolan, Ronald E., ed. 1991. *Philippines: A Country Study*. Washington, DC: Government Printing Office for the Library of Congress. <http://countrystudies.us/philippines/41.htm> (accessed August 30, 2012).
- Ezquerro, Sandra. 2007. "Gender, Migration, and the State: Filipino Women and Reproductive Labor in the United States." *Kasarinlan: Philippine Journal of Third World Studies* 22(1): 117–44.
- Global Alliance in Traffic Against Women. 2007. *Material Justice: Seeking Compensation in Trafficking Cases*. Bangkok: Global Alliance in Traffic Against Women.
- Global Workers Justice Alliance. 2010. "Changes to Improve the Protection of H-2 Workers in the Recruitment Process." Global Justice Workers Justice Alliance. [http://www.globalworkers.org/sites/default/files/h-2 changes 10 10.pdf](http://www.globalworkers.org/sites/default/files/h-2%20changes%2010%2010.pdf) (accessed August 30, 2012).
- Gong, Fang, Sue-Je L. Gage, and Leonardo A. Tacata Jr. 2003. "Helpseeking Behavior among Filipino-Americans: A Cultural Analysis of Face and Language." *Journal of Community Psychology* 31(5): 469–88.
- Hahm, Jung S. 2000. "American Competitiveness and Workforce Improvement Act of 1998: Balancing Economic and Labor Interests under the New H-1B Visa Program." *Cornell Law Review* 85 (September): 1673–701.
- Johnston, Elizabeth. 2010. "The United States Guestworker Program: The Need for Reform." *Vanderbilt Journal of Transnational Law* 43: 1121–50.
- Kim, Kathleen. 2007. "Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting *United States v. Kozminski* and Understanding Human Trafficking." *University of Toledo Law Review* 38: 941–72.
- Kim, Kathleen, and Kusia Hreshchyshyn. 2004. "Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the U.S." *Hastings Women's Law Journal* 16 (Winter): 1–36.
- Lee, Ivy C., and Lynette M. Parker. 2010. *Representing Survivors of Human Trafficking: A Promising Practices Handbook*. San Francisco: The Immigrant Legal Resource Center.
- Lichtenstein, Merav. 2007. "An Examination of Guest Worker Immigration Reform Policies in the United States." *Cardozo Public Law, Policy and Ethics Journal* 5: 689–727.
- Morgan, Emiley. 2009. "Utah Law Firm Indicted in Case of Visa Fraud." *Desert News*, July 29. <http://www.deseretnews.com/article/705319753/Utah-law-firm-indicted-in-case-of-visa-fraud.html> (accessed August 30, 2012).
- Patel, Ankita. 2009. "Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking." *Seattle Journal for Social Justice* 9 (Spring/Summer): 813–38.
- Pe-Pua, Rogelia, and Elizabeth Protacio-Marcelino. 2000. "Sikolohiyang Pilipino (Filipino psychology): A Legacy of Virgilio G. Enriquez." *Asian Journal of Social Psychology* 3: 49–71.

- "R.A. No. 9208, Anti-Trafficking in Persons Act of 2003." 2003. PhilippineLaw.info. <http://philippinelaw.info/statutes/ra9208-anti-trafficking-in-persons-act-of-2003.html> (accessed September 22, 2011).
- Republic of the Philippines Department of Labor. 2011. "DOLE Hails Conviction of Human Trafficker in Zamboanga." Republic of the Philippines Department of Labor and Employment. [http://www.dole.gov.ph/ro\\_polo\\_updates/view/125](http://www.dole.gov.ph/ro_polo_updates/view/125) (accessed September 22, 2011).
- Rudrappa, Sharmila. 2009. "Cyber-Coolies and Techno-Braceros: Race and Commodification of Indian Information Technology Guest Workers in the U.S." *University of San Francisco Law Review* 44 (Fall): 353–72.
- Sadrudin, Hussein, Natalia Walter, and Joseph Hidalgo. 2005. "Globalization, Security and Human Rights: Immigration in the Twenty-First Century: Human Trafficking in the United States: Expanding Victim Protection beyond Prosecution Witnesses." *Stanford Law and Policy Review* 16: 379–416.
- Southern Poverty Law Center. 2007. *Close to Slavery: Guestworker Programs in the United States*. Montgomery, AL: Southern Poverty Law Center. [http://www.splcenter.org/sites/default/files/downloads/Close\\_to\\_Slavery.pdf](http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf) (accessed September 22, 2011).
- Spangler, Zenaida. 1992. "Transcultural Care Values and Nursing Practices of Philippine-American Nurses." *Journal of Transcultural Nursing* 3(28): 28–37.
- Srikantiah, Jayashri. 2007. "Perfect Victims and Real Victims: The Iconic Victim in Domestic Human Trafficking Law." *87 Boston University Law Review* 157, 205 (February).
- Sukthankar, Ashwini. 2012. *Visas, Inc: Corporate Control and Policy Incoherence in the U.S. Temporary Foreign Labor System*. New York: Global Justice Workers Alliance. [http://www.globalworkers.org/sites/default/files/visas\\_inc/index.html](http://www.globalworkers.org/sites/default/files/visas_inc/index.html) (accessed August 30, 2012).
- "Temporary Non-Agricultural Employment of H-2B Aliens in the U.S." *Federal Register* 76:53 (18 March 2011) p. 15129.
- Thompson, Gabriel. 2012. "The Big, Bad Business of Fighting Guest-worker Rights." *The Nation*, July 3. <http://www.thenation.com/article/168715/big-badbusiness-fighting-guest-worker-rights#> (accessed October 5, 2012).
- Trafficking Victims Protection Act of 2000. P.L. 106-386.
- Tripathi, Ragini. 2009. "The H-2B Visa: Is This How We Treat a Guest?" *Scholar: St. Mary's Law Review on Minority Issues* 11 (Spring): 519–55.
- U.S. Citizenship and Immigration Services. 2011. "USCIS Will Offer Protection for Victims of Human Trafficking and Other Violations." <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=6e7bf0a4017ae210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed August 30, 2012).

- U.S. Department of Labor. 2012. "Wage and Hour Division: Final Rule: Temporary Non-agricultural Employment of H-2B Aliens in the United States." <http://www.dol.gov/whd/immigration/H2BFinalRule/index.htm#.UG9A8E3LQrM> (accessed October 5, 2012).
- \_\_\_\_\_. 2011. "Department of Labor's U visa Process and Protocols Questions and Answers." <http://www.dol.gov/opa/media/press/whd/whd20110619-qa.pdf> (accessed August 30, 2012).
- U.S. Department of State. 2012. *Trafficking in Persons Report 2012*. Washington, DC: Government Printing Office.
- \_\_\_\_\_. 2011. *Trafficking in Persons Report 2011*. Washington, DC: Government Printing Office.
- Werner, Daniel, and Kathleen Kim. 2008. *3rd Edition of Civil Litigation on Behalf of Victims of Human Trafficking*. Los Angeles: Southern Poverty Law Center.
- Wimaladharna, Jan, Douglas Pearce, and David Stanton. 2004. "Remittances: The New Development Finance?" *Small Enterprise Development* 15(1): 12-19.



---

CINDY C. LIOU is a staff attorney at Asian Pacific Islander Legal Outreach. Cindy currently practices law in the areas of human trafficking, immigration law, family law, and domestic violence. She is the Coordinator for the Human Trafficking Project at the agency. Cindy has also co-counseled several civil litigation cases on behalf of human trafficking survivors. She is the winner of the 2013 San Francisco Collaborative Against Human Trafficking Modern Day Abolitionist Award for Policy and Advocacy. The San Francisco Commission on the Status of Women also passed a resolution in 2013 to honor her antitrafficking efforts. Cindy is also the co-author of several articles and the second edition of the manual *Representing Survivors of Human Trafficking*. Before working at Asian Pacific Islander Legal Outreach, Cindy handled a variety of pro bono cases at Wilson Sonsini Goodrich & Rosati, ranging from asylum to police misconduct cases. Cindy graduated from Stanford Law School, and before becoming an attorney, she consulted for the Corporate Social Responsibility Department of Starbucks Coffee Company.

JEANNIE CHOI is an attorney and development coordinator at Asian Pacific Islander Legal Outreach. Jeannie is a graduate of the William S. Richardson School of Law at the University of Hawai'i and the Goldman School of Public Policy at the University of California at Berkeley. She practices in the areas of immigration law and family law. Jeannie previously served as a policy analyst for the city and county of San Francisco, the Federal Reserve Bank of San Francisco, and the Department of Commerce and Consumer Affairs of the State of Hawai'i.

ZIWEI HU is a 2013 graduate from UC Berkeley School of Law. At Berkeley Law, Ziwei was involved with the California Asylum Representation Clinic, Students for Economic and Environmental Justice, Women of Color Collective, and Boalt Hall Student Association. In the summer of 2011, Ziwei worked as a law clerk at Asian Pacific Islander Legal Outreach, which she credits as a rewarding and formative experience that she will treasure for the rest of her life. Before law school, Ziwei lived abroad in the Philippines, learned to converse in Tagalog, and worked to economically empower trafficking survivors.