Migrants in Spanish Strawberries

DRAFT

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2. How are foreign workers admitted once the demand for them has been certified?
Spain is the second largest producer of fresh strawberries in the world. About ninety percent of Spanish strawberries are grown in the province of Huelva, in south-western Andalucia.

There are four main channels through which foreign workers are admitted to Spanish agriculture: (1) quota (contingente); (2) general admissions (regimen general); (3) legalization based on social or labor integration (arraigo social / laboral); (4) “one-time” legalization (regularización extraordinaria) (table 1). Agricultural employers’ preferences for one channel over another have evolved over time and varied between provinces and crops.

Out of approximately 50,000 strawberry planters and harvesters employed in Huelva each season, 30,000 are foreign workers contracted through the quota system directly in their countries of origin. The remaining 20,000 are either foreign workers who have legalized their status in Spain or Spanish citizens. Compared to other agricultural provinces, irregular employment of foreign workers in Huelva has been relatively low since 2003. According to Huelva authorities the success of seasonal admissions to Huelva stems from the ability of employer organizations, labor unions and provincial administration to reach a compromise on each step of the foreign worker admission process. The goal of this presentation is to explain the process regulating the admission of seasonal foreign workers to Huelva agriculture.
### Table 1
The four channels of foreign worker admission to Spanish labor market (and agriculture)

<table>
<thead>
<tr>
<th>Foreign Worker outside of Spain</th>
<th>Foreign Worker in Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Quota</strong></td>
<td><strong>General Admissions</strong></td>
</tr>
<tr>
<td><em>Contingente</em></td>
<td><em>Régimen General</em></td>
</tr>
<tr>
<td><strong>Legal base</strong></td>
<td><strong>Legalization for Social or Labor Reasons</strong></td>
</tr>
<tr>
<td>RD 2393/2004</td>
<td>RD 2393/2004</td>
</tr>
<tr>
<td><strong>Basic features and objectives</strong></td>
<td><strong>Arraigo (Social / Laboral)</strong></td>
</tr>
<tr>
<td>Indicate annual ceilings of foreign workers to be admitted to the jobs and provinces deemed unable to attract workers present in Spain.</td>
<td>Admit foreign workers in those jobs and provinces which were not included in quotas.</td>
</tr>
<tr>
<td>Serve as an on-going, “small” regularization to grant legal status to those migrants who have been living or working in Spain for long enough to develop social or labor ties with the Spanish society or labor market.</td>
<td>Attempt to “set irregular migration counter to zero”.</td>
</tr>
<tr>
<td><strong>Frequency</strong></td>
<td><strong>“One time” legalization</strong></td>
</tr>
<tr>
<td>Annual, except when legalization is authorized</td>
<td>Whenever migrant meets conditions.</td>
</tr>
<tr>
<td>On-going, whenever migrant meets conditions.</td>
<td>Authorized on an exceptional basis, usually each time a new migration law is passed.</td>
</tr>
<tr>
<td><strong>Labor market test</strong></td>
<td><strong>“One time” legalization</strong></td>
</tr>
<tr>
<td>Quota</td>
<td>Catalog of unattractive jobs</td>
</tr>
<tr>
<td>Catalog of unattractive jobs</td>
<td>ES Certification</td>
</tr>
<tr>
<td>exempt</td>
<td>exempt</td>
</tr>
</tbody>
</table>
### Table 2

**The Three Principal Labor Market Tests**

<table>
<thead>
<tr>
<th></th>
<th>Quota Test</th>
<th>Catalog of Unattractive Jobs Test</th>
<th>ES Certification Test</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RD 2393/2004 (art. 79)</td>
<td>RD 2393/2004 (art. 50)</td>
<td>RD 2393/2004 (art. 50)</td>
</tr>
<tr>
<td></td>
<td>Annual Quota Dispositions</td>
<td>RCL 2005/2391 (14-11-05)</td>
<td>RCL 2005/2391 (14-11-05)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Resolución de 8 de Febrero, 2005 del Servicio Publico Estatal (BOE 24-02-05)</td>
<td>Resolución de 8 de Febrero, 2005 del Servicio Publico Estatal (BOE 24-02-05)</td>
</tr>
<tr>
<td><strong>Basic Features</strong></td>
<td>Identifies the jobs in each province which cannot attract Spanish, EU and legally resident Third Country workers.</td>
<td>Identifies the jobs in each province which cannot attract Spanish, EU and legally resident Third Country workers.</td>
<td>Verifies if the jobs identified by employers are unable to attract Spanish, EU and legally resident Third Country workers.</td>
</tr>
<tr>
<td><strong>Frequency</strong></td>
<td>Every calendar year</td>
<td>Every four months</td>
<td>On-going</td>
</tr>
<tr>
<td><strong>Authorizing entity</strong></td>
<td>Secretary of State for Immigration and Emigration</td>
<td>National ES</td>
<td>Provincial ES</td>
</tr>
<tr>
<td><strong>Other entities involved in testing</strong></td>
<td>National ES, Regional governments and regional ES, Tri-partite Labor, Commission on Immigration, The High Immigration Policy Council, The Interministerial Commission on</td>
<td>Regional ES</td>
<td>Provincial ES, labor unions and employer organizations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tri-partite Labor Commission on Immigration</td>
<td>Province ES, labor unions and employer organizations.</td>
</tr>
<tr>
<td>Application in</td>
<td>Foreigners Provincial ES, labor unions and employer organizations.</td>
<td>Not applicable since 2005</td>
<td>Rarely used</td>
</tr>
</tbody>
</table>
2. How are labor shortages assessed?

In order to contract foreign workers Spanish agricultural employers must demonstrate that there are no adequate and available Spanish, EU or legally residing foreign workers to take the jobs they offer. There are three main labor market tests: (1) quota (contingente); (2) catalog of unattractive jobs (catalogo de difícil cobertura); (3) ES certification (certificación negativa) (table 2).

2.1. Quota test

Agricultural employers contracting through quotas should first verify if the jobs they offer have been included in the annexes to annual quota instructions. The jobs in the annexes are subject to numerical cups and are grouped by provinces, e.g. in the annex to 2004 quota instructions Huelva was assigned 8000 seasonal jobs in agriculture. This meant that Huelva employers apply for up to 8000 seasonal foreign workers to be contracted abroad because the competent authorities developing quota had reached a conclusion that 8000 seasonal agricultural workers would be missing in Huelva that year.

The responsibility for the development of quota instructions and annexes is vested in the State Secretary for Immigration and Emigration (Ministry of Labor) (figure 1). Every September the State Secretary for Immigration and Emigration requests provincial ES to propose how many foreign workers should be admitted to their provinces and to which jobs. Provincial ES elaborate a report based on employment trends data registered in ARGOS and HERMES databases as well as based on the feedback from employer organizations and labor unions.

Provincial proposals are next reviewed by regional and national ES and consulted with the representatives of Spanish employer organizations (COE) and labor unions (UGT, CC.OO) (Comisión Laboral Tripartita de Inmigración). The Comisión Laboral submits national quota proposal to the State Secretary for Immigration and Emigration Interministerial Commission on Foreigners. The State Secretary consults quota with the High Council on Migration Policy to verify if it would not pose integration problems. Upon High Council’s and Interministerial Commission’s approval, the State Secretary submits national quota proposal for the publication in the Official State Bulletin. Given the difficulty of adjusting quota assignments to reality, the government reserves the right to reassign quotas throughout the year.

By 2004 it became clear that quotas for the admission of stable workers (for one year or longer) were constantly underused and quotas for the admission of temporary workers (for up to one year) were overused. Employers in temporary jobs would always request more workers than authorized claiming that they could never predict with precision how many workers they would really need by the time they were consulted in quota development process. As a result, after 2005 quota tables for temporary jobs were no
longer fixed. Employers of temporary workers had to use the other two labor market tests to certify labor demand, but once they certified it they were no longer subject to numerical caps when applying for admission through quota.

**Figure 1**
Quota Test
2. 2. Catalog of unattractive jobs test
Unlike quota, which is published once a year, the catalog of unattractive jobs is published every four months, on January 1\textsuperscript{st}, May 1\textsuperscript{st}, September 1\textsuperscript{st}. The responsibility for the development of catalog is vested in the national ES. National ES analysts employment trends over the past 12 months in order to verify which of the occupations meet the criteria to be included in the provisional registry.

Once developed, the provisional registry is sent for the evaluation by regional ES. Regional ES pass the provisional catalogue to provincial ES in each province. Provincial ES discuss amendments to the provisional catalog with employer organizations and labor unions.

National ES services discusses the amended proposals with the representatives of employers and labor unions. The Tripartite Committee on Labor Migration could agree on

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1 The criteria for provisional catalog are:

1. Provincial labor market penetration indicator > National labor market penetration indicator
2. Provincial job seekers scarcity indicator < National job seekers scarcity indicator
3. Provincial job access difficulty indicator > National job access difficulty indicator
4. Geographic mobility < 0.30
the inclusion of exclusion of certain jobs and provinces (even if conditions indicate otherwise) and approves the catalog. Employers seeking to contract foreign workers in the provinces and jobs which have been placed in the catalog can apply with the provincial labor services and contract them as soon as the new catalog is published. The catalog is the second easiest method of labor shortages certification after quota, but since its inception in 2005 it has had a modest impact on the admissions of seasonal workers in Huelva agriculture.

According to agricultural employers the economic indicators used in the development of provisional catalog fail to qualify many of the agricultural jobs as unattractive. Spanish agricultural employers have postulated that agricultural jobs such as strawberry harvesting should be included in the catalog permanently, because the sector is on the verge of crisis. Given political difficulties associated with catalog modification, Spanish agricultural employers have had to rely on ES certification. The decentralized structure of Spanish ES services and relatively uncomplicated procedures have been more amenable to agricultural sector’s needs and increasingly more seasonal workers have been admitted to Spain based on ES certification labor market test.

2. 3. ES certification test

2.3.1. Legal base

Article 50 of the Royal Decree 2393/2004 authorizes employer to accredit labor shortages through ES certification if the job they offer has not been included in the quota or in the catalog. The responsibility for the certification is vested with the regional ES. However, regional ES have ceded certification competences to provincial and local ES. The decentralization of ES certification responsibility down to provincial and local ES has facilitated the development of special certification procedures based on special circumstances.

In Huelva, where the demand for foreign strawberry harvesters have been large and growing Labor Migration Taskforce has been created to assist ES in certification process. Huelva Labor Migration Taskforce has been composed of the representatives of provincial ES, major labor unions (UGT, CC. OO), employer organizations (COAG, ASAJA, UPA-CORA, Freshuelva, ACPH), central, regional and local governments (Ministry of Labor, Junta de Andalucía, FAMP).

2.3.2. Application for certification

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2 The only regions where ES certification continues to be vested in national ES are Spain’s enclaves in Africa (Ceuta, Melilla) and the Basque Country.
Employers and employer organizations seeking to certify labor shortages must apply at the very latest 105 days before the expected admission of foreign worker because ES certification procedure takes 15 days and the provincial Labor Office reserves at least 90 days to processing the application for foreign workers. While provincial ES offices allow the applications to be filed by individual employers, provincial Labor Offices require that employers who contract less than 10 workers apply through accredited employer organizations. Thus while employers are free to choose between applying for ES certification directly and through employer organizations, the vast majority use the services of employer organizations.

In Huelva the accredited employer organizations form Huelva Labor Migration Taskforce (Freshuelva, COAG, ASAJA, UPA-CORA, ACPH). Even though foreign labor recruitment is only one of the many services they provide, it has become an increasingly important service. The fees these organizations charge differ according to the services they provide. Typically, they collect documents, negotiate ES certification with provincial ES and other members of Huelva Labor Migration Taskforce, submit the documents to the provincial Labor Office, conduct selection in the countries of origin. In some cases they also provide post-admission assistance. The most involved in the post-admission stage – COAG – hires social workers to regularly monitor working and living conditions. The main advantage of this extra service, from employers and workers point of view, is that it facilitates the transfer of workers between employers, if need be (COAG, 2008).

Whether employers choose to apply directly or through employer organizations affects the information they will need to provide, who and how will test labor market for them, and what type of certification will be issued. Employers applying for certification on their own file an ES-designed work offer form (documento de oferta) with local ES. Local ES analysts test labor market for them and the local ES director issues their certification. Employers applying for certification via employer organizations file an organization-designed petition for foreign worker form (petición de trabajadores extranjeros contratados en sus países de origen) with their organization. The members of Labor Migration Taskforce negotiate a blanket certification for them with the provincial ES director who is a member of the Labor Migration Taskforce.

ES-designed work offer inquires about:

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3 The minimum number of foreign workers employers could request directly is set in the annual quota instructions and has varied from year to year. Throughout the 1990s employers did not have to use the services of employer organizations at all. In 2002 they had to use them regardless of the number of workers they requested. In 2003 and 2004 they had to use them if they aimed to contract less than 5 workers and since 2006 less then ten.

4 The post-admission monitoring provided by COAG helps to move workers between employers for social reasons (conflicts between employers and workers, conflicts between workers etc.). In case of labor-related problems (inability of employers to keep up with the minimum work and housing standards), all Huelva employer organizations try to transfer workers.
(a) employer’s identification data and contact information
(b) description of work offer including brief work description, pertinent experience necessary, place of work, type of work contract, start date, duration, work schedule, ability of employer to organize transportation and housing.
(c) employee criteria including current employment status, ability to travel, ability to operate a vehicle, experience and education needed for the job (languages, computer skills, professional certifications, personal skills, other skills, experience in other jobs, other prerequisites).
(d) advertisement criteria
(e) selection contact person
(f) information for Interview matching
(g) the declaration by employer that (s)he will facilitate search for candidates, conduct interviews on the agreed conditions, inform ES on the outcome of selection.

Employer organization petitions for foreign workers differ between each other, but are less comprehensive than those designed by ES services. An ACPH form inquires about:
(a) employer’s identification data and contact information
(b) number of workers requested and their preferred nationality
(c) worker’s housing address
(d) duration of work contract
Moreover, the employer must declare the readiness to:
(e) cooperate with employer organizations and labor unions in their commitment to contract “proportional numbers of (Spanish, EU or legally resident third country) workers” from the lists provided by labor unions.
(f) provide the minimum of 18 full workdays a month (75% of full employment).
(g) be up to date with social security and tax payments
(h) facilitate the transfer of workers to and from other members of the same employer organization if weather conditions call for it.
(i) facilitate employer organization any documents relating to the employment of workers

According to local ES staff processing individual certification requests, employers are aware of the contents of collective labor agreements and always declare the “right” conditions, regardless whether they can secure them or not. ES are not obliged to conduct work-site checks. Instead, they focus on the detection of such work offers that seem discriminatory towards locally and regionally available workers. For instance, they may refuse to accept a work offer seeking a worker speaking particular foreign language unless an employer can prove that this skill is absolutely necessary to conduct the work-related tasks (SAE, 2008b). If ES analysts receive an offer that seems discriminatory, they

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5 E.g. a strawberry farmer applying directly with ES is unlikely to have his work offer approved for labor market test if (s) he seeks a harvester who speaks Arabic. However, he may get his offer approved if he can prove that all of the harvesters he employs are Arabic speakers and contracting a non-Arabic speaker may obstruct work productivity or require separate housing. In some cases it does not suffice for employers seeking to employ foreign worker to require that the worker speaks Arabic, but require that (s) he speaks
request employer to rewrite work conditions. If an offer remains formulated in a way that ES analysts judge to be discouraging Spanish or legally residing migrant applicants, processing offices’ directors may refuse to process them (SAE, 2008c). ES staff acknowledges that some employers have become increasingly intelligent in writing the work offers obstructing ES ability to offer these jobs to Spanish or legally residing migrant candidates. Local ES directors instruct their analysts to “use common sense” when assessing work offers. It is up to a particular ES office director to help the analysts to better detect some common tricks. Most cannot provide any further training than this instructing them to use “common sense”.

Provincial ES directors processing certification requests made via employer organizations (and Labor Migration Taskforce) trust that accredited employer organizations have ensured that their members play by the rules. However, employer organizations do not seek to verify if their members ask for foreign workers because they would rather not contract a Spanish worker. Neither do they conduct worksite checks. Instead, they verify if their clients were able to offer foreign workers minimum employment in the past and have been up to date with social security and tax payments – the three criteria to which Labor Office analysts pay the most attention.

If employer organizations find that any of their members owe social security and taxes, they ask them to make the necessary payments in order to be able to submit their applications to the Labor Office. If they find any employers who were not able to provide minimum employment in the past, they warn them that the Labor Office will most likely suspend their right to admit foreign workers this year, but they do not preclude them from applying. While employer organizations cooperate with labor unions and ES in matching their members with Spanish, EU and legally-resident Third Country National workers, they support themselves from the fees collected for matching their members with foreign workers contracted in the countries of origin and not the Spanish or foreign workers contracted in Spain.

2.3.3. Labor market test

Once work offers and petitions for foreign workers have been screened and rewritten where necessary, provincial ES start to search for adequate and available Spanish, EU and legally-resident migrant workers. The search lasts for 15 days.

Spanish employers are not required to actively look for workers themselves. As long as they interview the candidates sent by provincial ES (and labor unions in case of certification through Labor Migration Taskforce) and report on candidate interview, they

berber, since the probability that there would be a Berber speaking applicant on ES list of unemployed is much smaller.
fulfill their duty as far as labor market test is concerned. The main responsibility for matching national workers with jobs rests with the ES.

Even though provincial ES should check the availability of unemployed workers within the entire territory of Spain, in practice they limit themselves to the region (autonomous community). ES analysts verify if their regional database does not contain an unemployed who matches the criteria described by employer. If they do not find anybody they post the job offer on the office bulletin board and enter it into the regional, but usually not to national ES work offers database. Andalucia ES work offers inquire if an employer has special preferences as far as the geographical scope of search for a candidate is concerned. If an employer does not request ES to look for the candidate in Spain, ES analysts will look for the candidate in Andalucia only. Andalucia employers could also choose not to authorize local ES to diffuse work offer on publicly accessible ES website, limiting the diffusion to ES databases and bulletin boards. Some ES directors who reported having made employers seeking certification authorize ES to post them on the ES website.

If regional databases indicate the availability of workers with a requested profile, ES staff calls them to schedule an interview with an employer. ES directors expect their staff to call twice (SAE, 2008b). Some ES analysts call three times, others once. Contacting potential candidates four months before the expected job offer is not always effective. Some of the officially unemployed are working in other jobs (e.g. olive harvest) and cannot be reached. Others would rather start working right away instead of committing themselves to a seasonal job four months later.

Certification requests submitted through employer organizations are certified through the Labor Migration Taskforce. The members of the taskforce agree that workers present in Spain are not interested in harvesting strawberries and assume that besides the expensive hydroponic production no other alternatives are available.

The goal of the Taskforce is to ensure that employers do not ask for more workers that it is necessary for the area they planted and that they offer a job to any national worker interested in it. The members of the Taskforce do not recognize work offers from employers who were not able to provide their workers with the full stipulated employment during the previous season (UGT, 2008; CC. OO, 2008).

The Taskforce recognizes that some of the jobs offered in strawberry agriculture could attract unemployed and itinerant workers moving between crops across Spain according

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6 When one of the national ES directors and I verified the availability of agricultural jobs in Huelva in the middle of strawberry harvest (April, 10, 2008), we found no jobs posted, even though some 30 000 foreign workers were slated to be admitted from the countries for the 2008 Huelva strawberry campaign.

7 Employers who were not able to provide at least 18 full workdays a month during the season cannot apply for new workers during one year. By contrast, employers who were able to provide workers with full employment could be granted more workers than in the past (UGT, 2008).
to the harvest cycle. To this effect the director of provincial of ES participating in certification requires employer organizations to encourage their members to contract any unemployed or itinerant workers who will ask them for job throughout the entire duration of the harvest. Some employers do, others do not. Unless the unemployed and itinerant workers follow up with a complaint for having been refused a job once the harvest started ES, they may find it difficult to secure a job.

Since the ES staff does not monitor interviews, employers who interviewed “national” workers must submit an interview report (solicitud resultado de selección) to the local ES office which recommended them (art. 3 TAS 1745/2005). The interview form asks employer to inform ES office what job was offered, who reported for an interview, what were the results of the interview. Some ES analysts file the forms without verifying their contents carefully.

When offered a choice between contracting local and foreign worker, Huelva employers prefer local workers, because workers from the same province do not require free housing and their transportation costs are low. However, when offered a choice between out of province and foreign workers, Huelva employers prefer foreign workers because the higher transportation costs and free housing tend to offset their potential to stay on the job during the entire season. Andalucía agricultural workers who have worked for 35 days qualify for 180 days of unemployment benefits and many are said to leave as soon as they accumulate the necessary 35 days (subsidiario agrario).

Local, provincial, regional and national ES administrators informally acknowledge that they cannot force out-of-province Spanish workers to take poorly-paid and difficult jobs, such as those in strawberry harvesting, suspecting that this would “transfer poverty from one province to another” (INEM, 2008). Even if jobs were better paid and mechanized, ES administrators fear that out-of-province Spanish workers would not be happy performing them due to separation from family as well as inadequate infrastructure provided to temporary workers (housing, childcare services etc.). Paradoxically, the same working and living conditions that are considered to be inadequate for Spanish workers are considered to be adequate for foreign workers. ES administrators are aware of the undeclared work that many of the unemployed perform in their hometowns. “Humanitarian considerations” favor letting Spanish workers remain in their provinces while collecting unemployment benefits.

2.3.4. Certification

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8 Multiple choice between: (a) successfully contracted; (b) gave up voluntarily; (c) did not show up; (d) did not finish the interview process; (e) did not meet work conditions; (f) did not accept offered conditions; (g) did not correspond to the profile; (h) the position had already been taken; (i) other.

9 Labor matching and unemployment assistance in Spain is divided between regional and national ES and unless local ES administrators communicate to national ES administrators that an unemployed worker has refused to accept a job such worker will continue to collect unemployment benefits.
If the ES directors in charge have doubts regarding work description or selection decisions, they can also issue conditional certification, thereby warning provincial Labor to examine the application in detail (table 4).

Appeals to certification decisions are rare. Employers who had applied directly with ES services and have been denied it sometimes try their luck with another ES office since application for certification is free of charge and re-application with another office is not formally prohibited. Employers who had applied through employer organizations are almost always granted certification unless they were denied it for such clear-cut reasons as the inability to guarantee workers full employment.

### Table 3
Three possible certification outcomes

<table>
<thead>
<tr>
<th>Full Certification</th>
<th>Conditional Certification</th>
<th>No Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>ES could not find any candidates</td>
<td>ES found the conditions of work offer or selection potentially discriminatory but could not ascertain it.</td>
<td>Employer contracted the candidates sent by ES</td>
</tr>
<tr>
<td>ES found the candidates, but employer justified their non-contracting.</td>
<td></td>
<td>Employer has not informed ES on the results of selection</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Employer has not been able to justify non-contracting.</td>
</tr>
</tbody>
</table>

3. **How are foreign workers admitted once the demand for them has been certified?**

Having secured ES certification, individual employers or employer organizations should apply with provincial Labor Office for the authorization to contract foreign workers in their countries of origin. Given that the minimum number of foreign workers to contract is ten, most of Huelva’s strawberry growers apply through employer organizations. Since 2004 employer organizations have been authorized to “chain campaigns”, i.e. contract move foreign workers between crops, employers and provinces according to the ripening

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10 Under certain circumstances enumerated in quota dispositions (e.g. very large employers) applications should be made with the DGI office in Madrid.
cycle. Employer organizations petitioning for employment of workers in chained campaigns must apply in the Labor Office of the province which will first receive foreign workers. Seasonal foreign worker requests must be made at least 3 months prior to the expected employment date. Most individual petitions are made during the last week. Foreign worker requests must include: (1) authorization of an employer organization to represent an employer; (2) ES certification of labor shortages (if quota charts or registry do not apply); (3) petition for foreign worker (forms IIA or IIIA) and work offer (quota annexes IIB or IIC and IIIB or IIIC) (table 6). Requests can be nominative or anonymous, depending on whether they concern returners or new workers.

Table 4
Seasonal Worker Admissions to Huelva Strawberry Agriculture

<table>
<thead>
<tr>
<th>Approximate Timeline</th>
<th>1. Assessment of past admissions by the Provincial Migration Task Force.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days preceding expected admission</td>
<td></td>
</tr>
<tr>
<td>240-210</td>
<td>1. Assessment of past admissions by the Provincial Migration Task Force.</td>
</tr>
<tr>
<td>120-90</td>
<td>2. Labor market test (Provincial ES Certification)</td>
</tr>
<tr>
<td></td>
<td>3. Application at the Provincial Labor Office</td>
</tr>
<tr>
<td>90-60</td>
<td>4. Verification of application eligibility status by the Provincial Labor Office</td>
</tr>
<tr>
<td></td>
<td>5. Negotiation of quota with the countries of origin</td>
</tr>
<tr>
<td></td>
<td>6. Pre-selection by the cooperating organs in the countries of origin</td>
</tr>
<tr>
<td>60-30</td>
<td>7. Selection of new workers in the countries of origin</td>
</tr>
<tr>
<td></td>
<td>8. Authorization of work and residence permits</td>
</tr>
</tbody>
</table>
9. Authorization of visas

10. Arrival in Spain
Table 5
Stable and temporary worker requests:
forms filed with Labor Offices

<table>
<thead>
<tr>
<th>Form</th>
<th>Stable</th>
<th>Temporary</th>
</tr>
</thead>
</table>
| II A | General information  
province, occupation, C.N.O number, number of work posts offered, preferred country of origin and reasons for that country.  
Requesting party contact and identity information | III A | Same as in IIA |
| II B Anonymous Offer | General information  
Occupation, C.N.O number, number of work posts  
Company’s contact and identity information  
Candidate’s requirements  
Academic/professional qualifications, professional training, driver’s permit, foreign languages, other qualifications | III B Anonymous Offer | General information  
Same as in II B except for specification whether seasonal or project-tied worker is requested.  
Company’s contact and identity information  
Candidate’s requirements  
Same as in II B |

Work offer conditions
**Work offer conditions**

- Work address, expected incorporation date, contract duration, professional category, salary including extra pays and any discounts, full/partial-time employment, schedule including breaks, provision of housing, board, transportation, pre-departure training, trial period, collective labor agreement applied.

- **Selection**
  - Contact and identity of the selecting representative should be specified as well as description of specific examination, if any.

<table>
<thead>
<tr>
<th>Section</th>
<th>General information</th>
<th>Work conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>II C Nominative Offer</td>
<td>Occupation, C.N.O number, number of work posts</td>
<td>Same as in II B</td>
</tr>
<tr>
<td>III C Nominative Offer</td>
<td>Same as in II B except for specification whether seasonal or project-tied worker is requested.</td>
<td>Same as in II B</td>
</tr>
</tbody>
</table>

- Worker’s identity information

- Selection
  - As in II B

- Same except employer organization must specify the amount discounted for housing and transportation. In case of chained campaign employer organization must also specify housing location, duration, salary, unemployment benefits, social security for each campaign.
In order to accept an application, provincial Labor Office and DGI analysts verify if conditions declared in the application forms correspond to collective labor agreements. There is no formal employer rating system, nor the database allowing Labor Office analysts detect common mistakes or problematic employers. Nonetheless, the analysts tend to pay more attention to the petitions by new employers. Some employer organizations are considered to be better at pre-screening their members offers than others (MTAS, 2008a). The Ministry of Labor reserves the right to verify working and living conditions at any point of time, but most worksite inspections have been conducted after a problem occurred, in response to labor unions and Guardia Civil requests. Provincial Labor Office should inform Migration Department of the Ministry of Labor in Madrid (DGI) on the outcome of work offer review in the province “immediately” after accepting applications.

DGI has five days to modify the demand for foreign worker submitted by each province but usually it accepts provincial Labor Offices requests. Once DGI approves provincial requests, it contacts the competent pre-selection institutions in the countries of origin to negotiate the quota and agree on the date and place of selection. The competent organs in the countries of origin are expected to pre-select twice as many workers as DGI requested to allow selection committee choose workers with the most adequate profile. The countries of origin could reduce the requested quota of workers. If a particular country of origin cannot commit itself to the selection of requested number of workers, the DGI tries to make up for it with the expanded offer to another country of origin. The DGI informs provincial Labor Offices on the outcome of negotiation with the countries of origin and the provincial offices pass the information to the employers or employer organizations who had requested workers. Competent organs in the country of origin pre-selects candidates.

Once the pre-selection is over, the representatives of DGI and/or the Spanish Embassy, employer organizations (and employers if they wish to) travel to the countries which pre-selected workers to conduct the final selection. The selection procedures had been agreed upon in bilateral labor agreements. Once the selection is over, the Selection Committee sends the results (form IV) to the DGI. The DGI passes a copy of the selection information to the Ministry of Interior. The Ministry of Interior verifies foreign workers’ criminal record in order to issue personal identification numbers (NIE) to each worker. The Ministry of Interior has up to two, exceptionally five days to assign workers’ identification numbers (NIE) and communicate them to the DGI and the Spanish Embassy so that it could prepare for visa authorization.

At the same time employer or employer organization request Provincial Labor Office work and residence authorization. Provincial Labor Office analyzes the documents (social security and tax payment status of the requesting employer, work contract) and conducts criminal check on the selected foreign worker. Apart from work contract (form V),
Employers must submit the declaration in which the selected worker commits him/herself to return to the country of origin once the contract has expired (form VI). Employer could check on the status of his/her application on line at http://www.map.es. Provincial Labor Office or DGI charges employers for residence and work permits, but the application process is free.

Once work and residence authorizations have been issued employers or employer organizations have up to two months to request visa for foreign workers. However, due to a number of delays in the process often employers have only a month left to apply for visa by the time selection is over. Visa applications should, among others, include: work and residence authorization, signed contracts and annex V, commitment to return for seasonal workers. Visa processing should take no more than five (exceptionally ten) days. Both stable and seasonal visas tie foreign worker to a particular geographical zone and sector.

Foreign workers may enter Spain as soon as they receive visas and employers could guarantee them minimum employment. Employers must catalog their workers with social security within a month after arrival.

Employers report “loosing” up to a quarter of foreign workers in the process of admission and some inflate labor shortages to offset these expected reductions (table 6). Since the 2004 EU eastward enlargement the countries of origin and migrant workers themselves have played a more important role in keeping admissions of foreign labor in check than ES or Labor Office administrators. Huelva strawberry farmers are relatively satisfied with the seasonal worker admissions procedures but apprehensive about the short and ineffectiveness of existing bilateral labor agreements.

As of 2008 Spain has signed bilateral labor agreements with Morocco, Colombia, Ecuador, Poland, Romania, Bulgaria and Senegal. Exceptional recruitment outside of an agreement has been authorized with Ukraine. The agreement with Morocco has not been able to prevent Moroccan workers from absconding to other sectors and provinces. The agreements with Colombia and Ecuador have not been able to bring the costs of workers’ transportation down far enough to make the employment of Latin American workers in seasonal occupations economically viable. The agreement with Poland has not been able to redirect Polish workers’ post-2004 preferences for labor migration to the UK and Ireland. The agreement with Romania (and to a lesser degree with Bulgaria) has not helped to encourage Romanian government to promote work in Spain after Romanian government has realized that it needs its own labor to make the most of EU post-accession funds and to attract foreign investors. Following May 2007 European Commission’s endorsement of circular migration and mobility packages with Europe’s southern and south-eastern neighbors, some vested hopes in the recruitment of labor in Senegal and Ukraine, but 2008 recruitment in both countries have demonstrated a number
of difficulties, including high transportation costs, corruption and the mushrooming of unauthorized merchants of labor.

The special admission procedures implemented in Huelva have had a double effect on labor migration management. On the one hand, they have helped to diminish irregular employment since employers’ demands for foreign workers have been satisfied as long as Spain’s closest neighbors were able to provide the number and types of workers that Spanish employers needed. On the other hand, the proportion of Spanish, EU and legally resident third country national workers in Huelva strawberry agriculture has been diminishing indicating employers’ dependence on foreign workers contracted in the countries of origin. With fewer Spanish and legally resident migrant workers able to secure a job in Huelva’s strawberry agriculture, the sustainability of Spanish “red gold” has come to hinge on the Spanish government ability to conclude comprehensive bilateral labor agreements.
Table 6

Foreign worker admission reductions during the admissions process in Huelva’s strawberry agriculture

<table>
<thead>
<tr>
<th>Admission reduction</th>
<th>Institution</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Employer Organization</td>
<td>• Inability of employer to provide minimum employment (75% of full employment or 18 days per month during the 3 peak months).</td>
</tr>
<tr>
<td>October</td>
<td>ES and labor unions</td>
<td>• Inadequate ratio of workers to the area planted.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Expected contracting of the unemployed cataloged with ES</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Expected contracting of itinerant workers who reported to work in the last campaign.</td>
</tr>
<tr>
<td>November</td>
<td>Provincial Labor Office</td>
<td>• Inability to provide working and living conditions required by collective labor agreements or past program infractions.</td>
</tr>
<tr>
<td></td>
<td>DGI</td>
<td>• Inadequate redistribution of foreign labor between sectors and provinces and integration concerns.</td>
</tr>
<tr>
<td>December</td>
<td>Countries of origin</td>
<td>• While some countries are interested in authorizing as many migrant workers as possible (e.g. Morocco), others not (e.g. Romania). A series of other processes can intervene in the ability of employers to contract as many workers as they need e.g. inadequately conducted pre-</td>
</tr>
</tbody>
</table>
selection (e.g. Ukraine, Senegal).

January-May  Foreign workers  • Some foreign workers change their mind and give up on the seasonal work project due to better employment opportunities elsewhere. Some new EU member state nationals opt not to go to Spain if the number of workdays is expected to be insufficient to save enough. Some third country nationals abscond if better employment opportunities appear while they are in Spain.

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