Improper Fee Charging
How It Occurs, How To Investigate It, and What To Do About It
Disclaimer

- The purpose of this discussion is educational. Improperly handled allegations/instances of fee charging can get you in real trouble. You need to get case specific legal advice if you encounter this problem.

- This presentation will orient you to the issues so you can have more confidence in handling the problem if it arises.
What Is Fee Charging?

- Short Definition – “Paying to get on the list”

- Estimates are that **about 60%** of H-2A employment opportunities involve some kind of fee charging. That’s probably low.
Ignorance Is Not Bliss

- Conspiracy to commit human trafficking (federal felony)
- Loss of ALL workers at the consulate
- Revocation of I-129 Petition
- Debarment from future H-2A applications
- U.S. lawsuits
- Mexican lawsuits
Types of Fee Charging Schemes

- Weekly cut of earnings – worker pays $$ per week for “X” weeks
- Flat fee before or after season
- Services or in-kind exchanges during or after season
Green Acres employs 30 H-2A workers. Many have been coming for years and their leader, Ivan, 'is just like family.' Ivan, a native of Monterrey, is a particularly valued employee. One worker is new.

On a Sunday, Green Acres’ owner gets a call from the new worker. He says that 10 guys promised to pay Ivan $150/week for a job at Green Acres. The worker says they don't mind paying $150/week with more time (work has been slow), but now Ivan wants $200/week. The worker won't say who the other 9 are. He asks Green Acres’ owner to intervene to set the deal straight.

Ivan denies everything. The worker is a chilango, lazy, and a troublemaker. There never was a deal to pay $150 per week. Ivan states that one worker gave him $200, but that was in gratitude for the job.
What Should Green Acres Do?

- Get legal counsel. Green Acres has a serious situation on its hands.
- Investigate
- Reimburse
Investigate

- Plausibility: Which story is most plausible?
- Factors:
  - Does this sound like other fee charging schemes?
  - Cultural considerations?
  - Common sense?
Interviewing

- Interview all workers
- Interview in family groups – 3 or so at a time
- Language – Interpreter
- Anti-retaliation warnings
Evaluating The Information

- Evaluate objectively – Ivan is “just like family”
- Which story is most plausible?
- Decide. If fees were charged, reimburse
Prevention

- Do not rely on the “Ivans” who work with you.

- Work with reputable agents/recruiters
  - Consider Mexico’s National Employment Service (“SNE”): competent, professional, non-corrupt
  - SNE strongly prohibits fee charging and can address cultural issues in a way neither you nor your recruiter can
Prevention: Ethical Practices

- What goes on in Mexico does not necessarily stay in Mexico.

- You can be held liable in US and Mexican courts for what goes on in a bar in Pachuca.

- An ounce of prevention is a pound of cure.
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