

# FREEDOM NETWORK USA

## TO EMPOWER TRAFFICKED AND ENSLAVED PERSONS

### Human Trafficking and J-1 Visas for Temporary Workers (Summer Work Travel Program) *September 2012*

#### What is the J-1 Visa?

The J-1 is a non-immigrant visa meant for individuals approved for work- and study-based cultural exchange visitor programs.<sup>1</sup> There are 14 sub-categories of J-1 visas, covering a wide array of occupations, from au pairs to interns to amusement park workers.<sup>2</sup> There were approximately 320,000 J-1 visas issued in 2010, of which 132,342 were issued for the Summer Work Travel (SWT) program, one of the largest categories of J-1 workers.<sup>3</sup> This paper will focus on the J-1 SWT program because of a number of issues that have arisen. Since J-1 SWT “participants” are young adults who come to the U.S. for short periods of time, generally to work in low-skilled positions and who lack the basic protections afforded to various categories of temporary workers, they are particularly at-risk for egregious exploitation and human trafficking.

#### What’s the problem?

SWT is intended as a summer work and cultural exchange opportunity in the United States for international post-secondary students still enrolled in school outside the United States.<sup>4</sup> The program was originally intended not as an employment program, but to foster positive relations between the United States and other countries through these exchanges with international students. In recent years, however, advocates report that the students’ experiences often have very little to do with cultural exchange or travel.

The SWT Program is administered by the State Department, which utilizes third-party “sponsors” to recruit, select, and place program “participants” with U.S. “host” employers. Almost any for-profit or not-for-profit entity can apply to the State Department to be a sponsor.<sup>5</sup> If the entity’s application is accepted and it pays a fee, the State Department will designate it as a sponsor.

Sponsors locate participants through recruiters in the participants’ countries of origin and through websites often promising great jobs and cultural experiences.<sup>6</sup> The SWT participants can pay hundreds, even thousands, of dollars to the sponsors to participate in the program. The SWT regulations do not require sponsors or employers to provide program participants with an employment contract, a guaranteed wage, or number of work hours. As a result, participants can arrive deeply in debt to find the job they were promised

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<sup>1</sup>The United States introduced the J-1 Exchange Visitor Visa Program under the Mutual Educational and Cultural Exchange Act (also known as the Fulbright-Hays Act of 1961). *See* 22 U.S.C. § 2451 *et seq.*

<sup>2</sup> U.S. Department of State, *available at* <http://j1visa.state.gov/programs>.

<sup>3</sup> U.S. Department of State, *available at* <http://j1visa.state.gov/basics/facts-and-figures/>.

<sup>4</sup>*Id.*

<sup>5</sup>*See* 22 C.F.R. § 62.3(a) (2012).

<sup>6</sup> *See, e.g.*, SPIRIT CULTURAL EXCHANGE, <http://www.spiritexchange.com/> (last visited Sept. 25, 2012); U.S.-UKRAINE FOUNDATION, <http://www.exchangeusa.org/> (last visited Sept. 25, 2012).

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does not pay enough or provide enough hours to survive in the United States, let alone engage in cultural activities. This situation can be exacerbated by overpriced housing, transportation, and other fees participants must pay to employers and/or sponsors while in the United States. As a result, J-1 participants can become effectively trapped in their work situation.<sup>7</sup>

While the SWT regulations require sponsors to monitor participants' well-being, the SWT program's enforcement structure often means students are left without adequate support. The State Department has little enforcement authority over the host employers under the SWT regulations, and consequently relies on the sponsors to oversee the ultimate employment conditions.<sup>8</sup> Moreover, the State Department does not have the authority to sanction or bar exploitive employers from hiring SWT students; it only has the authority to sanction sponsors. The sponsors are, therefore, primarily responsible for monitoring their own and their employer-partners' compliance with the regulations. The sponsor, a private entity that can have an economic relationship with the host employers,<sup>9</sup> has little incentive to self-police or regulate its business partners. Because of this lax oversight and the precarious financial situation of many J-1 SWT students, numerous instances of exploitation, and several reports of forced labor, have arisen in the J-1 SWT context.

For example, a 2011 federal indictment charged New York area organized crime syndicates, including members of the Gambino and Bonnano families, with offenses stemming from the recruitment of women from Eastern Europe and Russia under the J-1 SWT program to work as exotic dancers in the New York City area.<sup>10</sup> The indictment charged the defendants with offenses related to visa fraud and transporting, harboring, and inducing the illegal entry of women from Eastern Europe and Russia under the J-1 SWT program. Several defendants had pleaded guilty at the time of this report.

Despite many recent reforms and attempts by the State Department to address concerns, including issuance of new regulations in May 2012,<sup>11</sup> the SWT program still requires improvements to reduce the risk of trafficking, exploitation, and other abuses. The State Department itself has acknowledged that, "there have been complaints regarding job placement, work conditions, and participant accommodations."<sup>12</sup> The State Department also addressed the potential misuse of the visa for trafficking in the 2012 Trafficking in Persons (TIP) Report's country profile on the United States, stating:

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<sup>7</sup>See, e.g., Courtney Balcalso, *Far From Home and On Their Own*, MYWESTTEXAS.COM, (Jan 3, 2009), available at [http://www.mywesttexas.com/news/top\\_stories/article\\_834a6d09-1f76-563a-b5b7-e6089237d498.html](http://www.mywesttexas.com/news/top_stories/article_834a6d09-1f76-563a-b5b7-e6089237d498.html) (reporting on abuses of J-1 students in Midland, Texas); *U.S. Fails to Tackle Student Visa Abuses*, ASSOCIATED PRESS, Dec. 12, 2011, at A4, available at [http://www.huffingtonpost.com/2010/12/06/student-visa-abuses\\_n\\_792376.html](http://www.huffingtonpost.com/2010/12/06/student-visa-abuses_n_792376.html) (reporting on abuses of J-1 students working in Myrtle Beach); Holbrook Mohr, et al., *Student Visa Program: New Rules, Same Problems*, ASSOCIATED PRESS, June 26, 2011, at A7, available at [http://www.huffingtonpost.com/2011/06/20/student-visa-program-new\\_n\\_880202.html](http://www.huffingtonpost.com/2011/06/20/student-visa-program-new_n_880202.html) (reporting on abuse of Thai J-1 students working in the Florida Panhandle); Julia Preston, *Foreign Students in Work Visa Program Stage Walkout at Plant*, N.Y. TIMES, Aug. 18, 2011, at A11, available at [http://www.nytimes.com/2011/08/18/us/18immig.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2011/08/18/us/18immig.html?_r=1&pagewanted=all) (reporting on abuses of J-1 students employed at a Hershey plant in Pennsylvania).

<sup>8</sup>See 22 C.F.R. § 62.32(o).

<sup>9</sup> Some sponsors have a financial incentive to cultivate relationships with host employers because of the revenue they garner from the SWT program, specifically from J-1 visa holders.

<sup>10</sup>*United States v. Truchio*, et al., No 11-cr-00614-VM (S.D. N.Y. Nov. 17, 2011)

<sup>11</sup> Exchange Visitor Program – Summer Work and Travel, Interim final rule with request for comment, 77 Fed. Reg. 27593 (May 11, 2012), available at <https://www.federalregister.gov/articles/2012/05/11/2012-11253/exchange-visitor-program-summer-work-travel-p-3#> (last visited Sept. 24, 2012)

<sup>12</sup> Federal Register / Vol. 77, No. 92 / Friday, May 11, 2012 / Rules and Regulations, pp. 27594.

NGOs noted vulnerabilities in the J-1 Summer Work Travel program that can be indicators for human trafficking, including reports of fraudulent job offers, inappropriate jobs, job cancellations on arrival, and housing and transportation problems....In addition, numerous media reports highlighted vulnerabilities that are common indicators of human trafficking, including threats, intimidating practices, and irregular pay.<sup>13</sup>

The Freedom Network applauds the State Department both for acknowledging problems in the J-1 SWT program in its TIP report and for promulgating the Interim Final Rule of May 11, 2012. We continue to maintain, however, that further reforms are necessary. The State Department should:

## Recommendations

1. Ensure that SWT participants receive enforceable employment contracts that provide wage guarantees and adequate work hours that comply with federal and state employment laws.
2. Prohibit sponsors from placing participants in modeling, housekeeping, and janitorial occupations. The State Department already has acknowledged these occupations are frequently associated with trafficking and should ban them altogether.
3. Continue to enhance the cultural exchange and travel components of the SWT program as originally intended. For example, sponsors should be required to set aside time for participants' participation in cultural activities, either during each work week or over the visa period.
4. Allow the U.S. Department of Labor (USDOL) to play a role in the vetting and monitoring of the sponsors and host employers of SWT participants. The USDOL's mission is to foster, promote, and develop the welfare of workers, and it has the expertise and resources to monitor working conditions and the treatment of employees that the State Department lacks.
5. Ensure that, pursuant to the May 2012 regulations, sponsors disclose the ultimate employer to all participants before arrival in the United States, along with all expenses to be incurred, including housing, transportation, food, and other necessities, with safeguards to ensure that these expenses are appropriate.
6. Make public all available information about the number of participants sought for, and admitted on, J-1 visas each year, the number of participants recruited by each sponsor, and the identity and information of each host employer seeking and employing SWT participants.
7. Prohibit employer and sponsor retaliation, including future "blacklisting," against participants for asserting their rights under any federal or state law, and provide a private right of action for participants experiencing retaliation.
8. Encourage U.S. consulates and embassies in the country of origin to provide information about human trafficking and workers' rights to participants before their arrival in the United States.
9. Encourage criminal law enforcement and civil law enforcement (including, but not limited to, the USDOL and Equal Employment Opportunity Commission) to provide assistance to abused J-1 visa holders. Provide I-914 T visa certifications or I-918 U visa certifications on the bases of involuntary servitude, trafficking, peonage, and other criminal violations to assist J-1 visa providers.
10. Ensure that third-party foreign entities, such as recruiters, are in compliance with foreign recruitment laws, and publically disclose the names of these entities, to protect participants from exploitation in the countries of origin.

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<sup>13</sup>Trafficking in Persons Report (2012), U.S. Department of State, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2012/>.