

Philippine News

February 11-17, 2004

Rights of Migrant Workers

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Undocumented migrants are caught in the mire of exploitation and abuse because they usually do not know that they don't have to go through this.

There is a prevailing misimpression that since an undocumented migrant has no right to work in the U.S., he or she is not entitled to basic workers' rights and benefits. Unfortunately, this misimpression does not only instigate or encourage abusive behavior on the part of unscrupulous employers. Undocumented migrants themselves are bound by the same erroneous notion so that they unwittingly fuel the vicious cycle of abuse and exploitation.

Undocumented migrants are also generally unaware that they still enjoy basic civil rights even if they are non-citizens. The U.S. Constitution contains basic principles that undocumented migrants could turn to for protection against exploitation and abuse.

Protection under the fundamental law

First, under the Bill of Rights of the U.S. Constitution, undocumented migrants are entitled to equal protection of the law. The constitutional guarantee of equal protection of the law does not distinguish between citizens or migrants. This precept is especially significant to undocumented workers who suffer physical or sexual abuse in the workplace and are reluctant to make a complaint. The fact that one is an undocumented migrant does not diminish or remove one's right to seek redress for any wrongdoing by another.

Secondly, the Thirteenth Amendment proscribes involuntary servitude. Victims of human trafficking who are forced to work, for instance, are protected by this constitutional provision.

Thirdly, the Fifth Amendment guarantees the right of persons to remain silent. This means one may not be compelled to answer questions by a government agent. And if an undocumented migrant refuses to answer questions pertaining to his or her immigration status, for example, said migrant may not be arrested or detained for such refusal.

Fourthly, the Fourth Amendment guarantees the right against unreasonable searches and seizures. No government agent may search one's home or office without consent unless the agent has a valid search warrant. A valid search warrant must tell in detail the places to be searched, and the things to be seized as these details indicate the limits of the warrant. The search or seizure cannot legally extend to places or things not stated in the warrant. Without such warrant, one may refuse to let the government agent in. A valid search warrant does not obligate one to answer the questions of the government agents enforcing such warrant. An exception is made in an emergency such as when a person inside is heard asking for help.

Measure of Caution

As a measure of caution, it would do well for non-citizens to know what to do when confronted by government agents. For one, a non-citizen must remember to assert one's rights and seek legal advice before executing any document waiving away one's rights. This is important particularly in light of the fact that immigration regulations have changed in the aftermath of 9/11. At any rate, foreign nationals who are inside the U.S. have certain basic rights.

For instance, a foreign national has the right to talk to a lawyer before answering questions of government agents (like the INS or the police) or before signing any document. However, the foreign national does not have the right to a government-appointed attorney and must therefore hire an attorney or get in touch with one who is willing to help for free.

In this regard, it would be helpful to know the contact information for such organizations as the American Civil Liberties Union (ACLU phone 212 549 2500); the Asian American Legal Defense and Education Fund (AALDEF phone 202 966 5932); National Lawyers Guild--Post 9/11 Project phone 212 505 9119; National Immigration Project phone 617 227 9727 or the US Commission on Civil Rights (UCCR phone 800 552 6843) who may be able to provide free legal assistance or referrals to legal practitioners who specialize in immigration matters.

It must be noted that the law requires foreign nationals to carry certain types of official immigration papers with them at all times such as the green card, the I-94, Employment Authorization Card, and other documents that prove that they have registered with the INS. Failure to bring these documents may expose such alien to a misdemeanor charge.

In case of an arrest by an INS agent, it would be advisable to bear in mind that the foreign national arrested generally has the following rights: (a) the right to a bond hearing (to determine whether he or she may be released on a bond); (b) the right to be released from detention if not charged within a given period; (c) the right to a hearing to defend himself or herself from deportation charges; and (d) the right to contact his or her consulate.

A foreign national may ask for a bond hearing before an immigration judge who determines whether he or she may be released on a bond, and if so, how much the bond would be. The right to a bond hearing is available even if the foreign national has not yet been charged by the INS.

The INS must decide within 48 hours whether it will initiate immigration proceedings against an arrested foreign national and whether it will keep such foreign national in custody. Under a new rule, however, the 48-hour period may be extended in cases of "an emergency or other extraordinary circumstance." A new law also allows the INS to detain a non-citizen for a period of seven (7) days before initiating immigration and criminal charges if the Attorney-General has certified the detainee as a "terrorist" or a threat to national security. The detainee may question his or her continued detention in a federal court.

A foreign national may, of course, waive his or her right to a hearing and agree to leave the U.S. In such case, such foreign national may lose the right to apply for immigration status and may find it difficult to re-enter the U.S. in the future.

Basic Worker's Rights

While there are extreme cases of employer abuse which compel undocumented workers to look to the fundamental law for relief, there are subtle, but no less unjust forms of exploitation that run counter to basic workers' rights provided under state and federal laws.

Generally, undocumented workers have the right to be paid for work done. This means the undocumented worker is entitled to be paid the minimum wage in U.S. dollars once a week. This means that work performed beyond 40 hours per week entitles the worker to overtime pay at time-and-a-half, or 1.5 times the regular hourly wage for every extra hour.

The undocumented worker is entitled to a safe workplace, where there is no discrimination or harassment on grounds of race, color, religion, age, disability, national origin or gender. They also have the right to organize. Undocumented workers cannot be punished or threatened by employers for organizing to improve work conditions.

Breaking the Silence

Initially, it would seem to make sense to take a step back and suffer in silence. After all, many undocumented migrant workers knew that their situation would be particularly difficult. But do the choices ultimately come down to putting up or shutting up?

Not necessarily. For one, civic groups as well as the government could step up efforts to disseminate information on the statutory rights and entitlements of undocumented workers. Nothing feeds the cycle of exploitation better than ignorance of the law. It must be emphasized that while the present legal framework does not always put the undocumented worker on equal footing with their counterparts in the workforce, they are still entitled to basic labor rights and benefits under certain federal and state laws. Such information campaign must be directed not just at the undocumented worker but at the employers as well.

In the meantime, Filipino migrant workers would soon have the opportunity to ventilate their concerns through the ballot. The Philippine presidential elections will generate discussion and debate as to what policies and laws would protect the interests of Filipino migrant workers. The new administration should be able to negotiate with governments of receiving countries for improved living and working conditions of migrant workers. With the overseas voting law in place, Filipino migrant workers can now choose the leaders who will stand up for them and protect their rights.

More importantly, it must be remembered that there is strength in numbers. Thousands of migrant workers have already been integrated into the fabric of life in the U.S. Yet as individuals isolated from others similarly situated, they are merely seen, not heard. Migrant workers need to be organized into a sector fully aware of its capacity to advocate for meaningful changes that take into account their interests and their positive contributions to American society. As an organized sector, undocumented migrant workers could speak with the clarity and resonance of one voice that best articulates the collective dream of a better life.