

108TH CONGRESS
2D SESSION

S. 2185

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2004

Mr. CHAMBLISS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Temporary Agricul-
5 tural Work Reform Act of 2004”.

1 **SEC. 2. ADMISSION OF TEMPORARY H-2A WORKERS.**

2 (a) IN GENERAL.—Section 218 of the Immigration
3 and Nationality Act (8 U.S.C. 1188) is amended to read
4 as follows:

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 “SEC. 218. (a) APPLICATION.—No alien may be ad-
7 mitted as an H-2A worker (as defined in subsection
8 (u)(4)) unless the employer has filed with the Secretary
9 of Labor an application stating the following:

10 “(1) TEMPORARY OR SEASONAL WORK OR
11 SERVICES.—

12 “(A) IN GENERAL.—The agricultural em-
13 ployment for which the H-2A worker or work-
14 ers is or are sought is temporary or seasonal,
15 the number of workers sought, and the wage
16 rate and conditions under which they will be
17 employed.

18 “(B) SEASONAL WORK.—For purposes of
19 subparagraph (A), the term ‘seasonal’ means an
20 annually recurring time period in which a par-
21 ticular crop is planted, cultivated, or harvested,
22 along with the ancillary activities that are re-
23 quired to support such planting, cultivation, or
24 harvest. For purposes of an employer’s eligi-
25 bility to hire H-2A workers, an application filed
26 under this subsection shall be classified as a

1 ‘seasonal job opportunity’ if the crop activity is
2 traditionally performed in that geographical
3 area during the time specified on the applica-
4 tion. There shall be no limit to the number of
5 applications that can be filed by an agricultural
6 employer during any 12-month period as long
7 as each application has a clearly specified sea-
8 son for that particular crop activity.

9 “(2) BENEFITS, WAGE, AND WORKING CONDI-
10 TIONS.—The employer will provide, at a minimum,
11 the benefits, wages, and working conditions required
12 by subsection (m) to all workers employed in the
13 jobs for which the H–2A worker or workers is or are
14 sought and to all other temporary workers in the
15 same occupation at the place of employment.

16 “(3) NONDISPLACEMENT OF UNITED STATES
17 WORKERS.—The employer did not displace and will
18 not displace a United States worker employed by the
19 employer during the period of employment and dur-
20 ing a period of 30 days preceding the period of em-
21 ployment in the occupation at the place of employ-
22 ment for which the employer seeks approval to em-
23 ploy H–2A workers.

24 “(4) RECRUITMENT.—Using the State work-
25 force agency, the employer has attempted to recruit

1 domestic workers within the State or region of tradi-
2 tional or expected labor supply. The obligation to en-
3 gage in recruitment under this paragraph shall ter-
4minate on the date the H-2A workers depart for the
5 employer's place of employment.

6 “(5) OFFERS TO UNITED STATES WORKERS.—
7 The employer has offered or will offer the job for
8 which the nonimmigrant is, or the nonimmigrants
9 are, sought to any eligible United States worker who
10 applies and is equally or better qualified for the job
11 and who will be available at the time and place of
12 need.

13 “(6) 50 PERCENT RULE.—The employer will
14 provide employment to any qualified United States
15 worker who applies to the employer until 50 percent
16 of the period of the work contract under which the
17 H-2A worker who is in the job was hired has
18 elapsed.

19 “(7) PROVISION OF INSURANCE.—If the job for
20 which the nonimmigrant is, or the nonimmigrants
21 are, sought is not covered by State workers' com-
22 pensation law, the employer will provide, at no cost
23 to the worker, insurance covering injury and disease
24 arising out of, and in the course of, the worker's em-
25 ployment which will provide benefits at least equal to

1 those provided under the State workers' compensa-
2 tion law for comparable employment.

3 “(8) REQUIREMENTS FOR PLACEMENT OF H-2A
4 WORKERS WITH OTHER H-2A EMPLOYERS.—A non-
5 immigrant who is admitted into the United States as
6 an H-2A worker may be transferred to another em-
7 ployer that has certified to the Secretary of Home-
8 land Security that it has filed an application under
9 this subsection and is in compliance with this sec-
10 tion. The Secretary of Homeland Security shall es-
11 tablish a process for the approval and reissuance of
12 visas for such transferred H-2A workers as nec-
13 essary.

14 “(9) STRIKE OR LOCKOUT.—There is not a
15 strike or lockout in the course of a labor dispute
16 which, under regulations promulgated by the Sec-
17 retary of Labor, precludes the provision of the cer-
18 tification described in section 101(a)(15)(H)(ii)(a).

19 “(10) PREVIOUS VIOLATIONS.—The employer
20 has not, during the previous 2-year period, employed
21 H-2A workers and substantially violated a material
22 term or condition of approval with respect to the
23 employment of domestic or nonimmigrant workers,
24 as determined by the Secretary of Labor after notice
25 and opportunity for a hearing.

1 “(b) PUBLICATION.—The employer shall make avail-
2 able for public examination, within 1 working day after
3 the date on which an application under this section is filed,
4 at the employer’s principal place of business or worksite,
5 a copy of each such application (and such accompanying
6 documents as are necessary).

7 “(c) LIST.—The Secretary of Labor shall compile, on
8 a current basis, a list (by employer) of the applications
9 filed under subsection (a). Such list shall include the wage
10 rate, number of aliens sought, period of intended employ-
11 ment, and date of need. The Secretary of Labor shall
12 make such list available for public examination in Wash-
13 ington, DC.

14 “(d) SPECIAL RULES FOR CONSIDERATION OF AP-
15 PPLICATIONS.—The following rules shall apply in the case
16 of the filing and consideration of an application under sub-
17 section (a):

18 “(1) DEADLINE FOR FILING APPLICATIONS.—
19 The Secretary of Labor may not require that the ap-
20 plication be filed more than 45 days before the first
21 date the employer requires the labor or services of
22 the H–2A worker or workers.

23 “(2) REVIEW.—The Secretary of Labor shall
24 review such an application only for completeness and
25 obvious inaccuracies.

1 “(3) ISSUANCE OF APPROVAL.—Unless the Sec-
2 retary of Labor finds that the application is incom-
3 plete or obviously inaccurate, the Secretary of Labor
4 shall provide the certification described in section
5 101(a)(15)(H)(ii)(a) within 15 days of the date of
6 the filing of the application.

7 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

8 “(1) PERMITTING FILING BY AGRICULTURAL
9 ASSOCIATIONS.—An application to import an alien
10 as a temporary agricultural worker may be filed by
11 an association of agricultural producers which use
12 agricultural services.

13 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
14 EMPLOYERS.—If an association is a joint or sole em-
15 ployer of temporary agricultural workers, such work-
16 ers may be transferred among its producer members
17 to perform agricultural services of a temporary or
18 seasonal nature for which the application was ap-
19 proved.

20 “(3) STATEMENT OF LIABILITY.—The applica-
21 tion form shall include a clear statement explaining
22 the liability under this section of an employer who
23 places an H-2A worker with another H-2A em-
24 ployer if the other employer displaces a United

1 States worker in violation of the condition described
2 in subsection (a)(8).

3 “(4) TREATMENT OF VIOLATIONS.—

4 “(A) MEMBER’S VIOLATION DOES NOT
5 NECESSARILY DISQUALIFY ASSOCIATION OR
6 OTHER MEMBERS.—If an individual producer
7 member of a joint employer association is deter-
8 mined to have committed an act that is in viola-
9 tion of the conditions for approval with respect
10 to the member’s application, the denial shall
11 apply only to that member of the association
12 unless the Secretary of Labor determines that
13 the association or other member participated in,
14 had knowledge of, or had reason to know of, the
15 violation.

16 “(B) ASSOCIATION’S VIOLATION DOES NOT
17 NECESSARILY DISQUALIFY MEMBERS.—

18 “(i) JOINT EMPLOYER.—If an associa-
19 tion representing agricultural producers as
20 a joint employer is determined to have
21 committed an act that is in violation of the
22 conditions for approval with respect to the
23 association’s application, the denial shall
24 apply only to the association and does not
25 apply to any individual producer member

1 of the association, unless the Secretary of
2 Labor determines that the member partici-
3 pated in, had knowledge of, or had reason
4 to know of, the violation.

5 “(ii) SOLE EMPLOYER.—If an associa-
6 tion of agricultural producers approved as
7 a sole employer is determined to have com-
8 mitted an act that is in violation of the
9 conditions for approval with respect to the
10 association’s application, no individual pro-
11 ducer member of such association may be
12 the beneficiary of the services of temporary
13 alien agricultural workers admitted under
14 this section in the commodity and occupa-
15 tion in which such aliens were employed by
16 the association which was denied approval
17 during the period such denial is in force,
18 unless such producer member employs such
19 aliens in the commodity and occupation in
20 question directly or through an association
21 which is a joint employer of such workers
22 with the producer member.

23 “(f) EXPEDITED ADMINISTRATIVE APPEALS OF CER-
24 TAIN DETERMINATIONS.—Regulations shall provide for an
25 expedited procedure for the review of a denial of approval

1 under this section, or at the applicant's request, for a de
2 novo administrative hearing respecting the denial.

3 “(g) MISCELLANEOUS PROVISIONS.—

4 “(1) WITHHOLDING OF DOMESTIC WORKERS.—

5 No person or entity shall willfully and knowingly
6 withhold domestic workers prior to the arrival of H-
7 2A workers in order to force the hiring of domestic
8 workers under subsection (a)(6).

9 “(2) ENDORSEMENT OF DOCUMENTS.—The

10 Secretary of Homeland Security shall provide for the
11 endorsement of entry and exit documents of non-
12 immigrants described in section 101(a)(15)(H)(ii)(a)
13 as may be necessary to carry out this section and to
14 provide notice for purposes of section 274A.

15 “(3) PREEMPTION OF STATE LAWS.—The pro-

16 visions of subsections (a) and (c) of section 214 and
17 the provisions of this section preempt any State or
18 local law regulating admissibility of nonimmigrant
19 workers.

20 “(4) FEES.—

21 “(A) IN GENERAL.—The Secretary of

22 Labor may require, as a condition of approving
23 the application, the payment of a fee in accord-
24 ance with subparagraph (B) to recover the rea-
25 sonable costs of processing applications.

1 “(B) AMOUNTS.—

2 “(i) EMPLOYER.—The fee for each
3 employer that receives a temporary alien
4 agricultural labor certification shall be
5 equal to \$100 plus \$10 for each job oppor-
6 tunity for H-2A workers certified, pro-
7 vided that the fee to an employer for each
8 temporary alien agricultural labor certifi-
9 cation received shall not exceed \$1,000.

10 “(ii) JOINT EMPLOYER ASSOCIA-
11 TION.—In the case of a joint employer as-
12 sociation that receives a temporary alien
13 agricultural labor certification, each em-
14 ployer-member receiving such certification
15 shall pay a fee equal to \$100 plus \$10 for
16 each job opportunity for H-2A workers
17 certified, provided that the fee to an em-
18 ployer for each temporary alien agricul-
19 tural labor certification received shall not
20 exceed \$1,000. The joint employer associa-
21 tion shall not be charged a separate fee.

22 “(C) PAYMENTS.—The fees collected under
23 this paragraph shall be paid by check or money
24 order made payable to the ‘Department of
25 Labor’. In the case of employers of H-2A work-

1 ers that are members of a joint employer asso-
2 ciation applying on their behalf, the aggregate
3 fees for all employers of H-2A workers under
4 the application may be paid by one check or
5 money order.

6 “(D) INFLATION ADJUSTMENT.—In the
7 case of any calendar year beginning after 2005,
8 each dollar amount in subparagraph (B) may
9 be increased by an amount equal to—

10 “(i) such dollar amount; multiplied by

11 “(ii) the percentage (if any) by which
12 the average of the Consumer Price Index
13 for all urban consumers (United States
14 city average) for the 12-month period end-
15 ing with August of the preceding calendar
16 year exceeds such average for the 12-
17 month period ending with August 2004.

18 “(h) FAILURE TO MEET CONDITIONS.—If the Sec-
19 retary of Labor finds, after notice and opportunity for a
20 hearing, a failure to meet a condition of subsection (a),
21 or a material misrepresentation of fact in an application
22 under subsection (a)—

23 “(1) the Secretary of Labor shall notify the
24 Secretary of Homeland Security of such finding and
25 may, in addition, impose such other administrative

1 remedies (including civil money penalties in an
2 amount not to exceed \$1,000 per violation) as the
3 Secretary of Labor determines to be appropriate;
4 and

5 “(2) the Secretary of Homeland Security may
6 disqualify the employer from the employment of H-
7 2A workers for a period of 1 year.

8 “(i) WILLFUL FAILURES AND WILLFUL MISREPRE-
9 SENTATIONS.—If the Secretary of Labor finds, after no-
10 tice and opportunity for a hearing, a willful failure to meet
11 a condition of subsection (a) or a willful misrepresentation
12 of a material fact in an application under subsection (a),
13 or a violation of subsection (g)(1)—

14 “(1) the Secretary of Labor shall notify the
15 Secretary of Homeland Security of such finding and
16 may, in addition, impose such other administrative
17 remedies (including civil money penalties in an
18 amount not to exceed \$5,000 per violation) as the
19 Secretary of Labor determines to be appropriate;

20 “(2) the Secretary of Labor may seek appro-
21 priate legal or equitable relief to effectuate the pur-
22 poses of subsection (g)(1); and

23 “(3) the Secretary of Homeland Security may
24 disqualify the employer from the employment of H-
25 2A workers for a period of 2 years.

1 “(j) DISPLACEMENT OF UNITED STATES WORK-
2 ERS.—If the Secretary of Labor finds, after notice and
3 opportunity for a hearing, a willful failure to meet a condi-
4 tion of subsection (a) or a willful misrepresentation of a
5 material fact in an application under subsection (a), in
6 the course of which failure or misrepresentation the em-
7 ployer displaced a United States worker employed by the
8 employer during the period of employment on the employ-
9 er’s application under subsection (a) or during the period
10 of 30 days preceding such period of employment—

11 “(1) the Secretary of Labor shall notify the
12 Secretary of Homeland Security of such finding and
13 may, in addition, impose such other administrative
14 remedies (including civil money penalties in an
15 amount not to exceed \$15,000 per violation) as the
16 Secretary of Labor determines to be appropriate;
17 and

18 “(2) the Secretary of Homeland Security may
19 disqualify the employer from the employment of H-
20 2A workers for a period of 3 years.

21 “(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—
22 The Secretary of Labor shall not impose total civil money
23 penalties with respect to an application under subsection
24 (a) in excess of \$90,000.

1 “(l) FAILURES TO PAY WAGES OR REQUIRED BENE-
2 FITS.—If the Secretary of Labor finds, after notice and
3 opportunity for a hearing, that the employer has failed to
4 pay the wages, or provide the housing allowance, transpor-
5 tation, subsistence reimbursement, or guarantee of em-
6 ployment, required under subsection (a)(2), the Secretary
7 of Labor shall assess payment of back wages, or other re-
8 quired benefits, due any United States worker or H-2A
9 worker employed by the employer in the specific employ-
10 ment in question. The back wages or other required bene-
11 fits under section subsection (a)(2) shall be equal to the
12 difference between the amount that should have been paid
13 and the amount that actually was paid to such worker.

14 “(m) MINIMUM BENEFITS, WAGES, AND WORKING
15 CONDITIONS.—

16 “(1) PREFERENTIAL TREATMENT OF ALIENS
17 PROHIBITED.—

18 “(A) IN GENERAL.—Employers seeking to
19 hire United States workers shall offer the
20 United States workers not less than the same
21 benefits, wages, and working conditions that the
22 employer is offering, intends to offer, or will
23 provide to H-2A workers. Conversely, no job
24 offer may impose on United States workers any

1 restrictions or obligations which will not be im-
2 posed on the employer's H-2A workers.

3 “(B) INTERPRETATIONS AND DETERMINA-
4 TIONS.—While benefits, wages, and other terms
5 and conditions of employment specified in this
6 subsection are required to be provided in con-
7 nection with employment under this section,
8 every interpretation and determination made
9 under this Act or under any other law, regula-
10 tion, or interpretative provision regarding the
11 nature, scope, and timing of the provision of
12 these and any other benefits, wages, and other
13 terms and conditions of employment, must be
14 made in conformance with the governing prin-
15 ciples that the services of workers to their em-
16 ployers and the employment opportunities af-
17 farded to workers by their employers, including
18 those employment opportunities that require
19 United States workers or H-2A workers to
20 travel or relocate in order to accept or perform
21 employment, mutually benefit such workers, as
22 well as their families, and employers, principally
23 benefiting neither, and that employment oppor-
24 tunities within the United States further benefit

1 the United States economy as a whole and
2 should be encouraged.

3 “(2) REQUIRED WAGES.—

4 “(A) An employer applying for workers
5 under subsection (a) shall offer to pay, and
6 shall pay, all workers in the occupation for
7 which the employer has applied for workers, not
8 less than the prevailing wage.

9 “(B) In complying with subparagraph (A),
10 an employer may request and obtain a pre-
11 vailing wage determination from the State em-
12 ployment security agency.

13 “(C) In lieu of the procedure described in
14 subparagraph (B), an employer may rely on
15 other wage information, including a survey of
16 the prevailing wages of workers in the occupa-
17 tion in the area of intended employment that
18 has been conducted or funded by the employer
19 or a group of employers, that meets criteria
20 specified by the Secretary of Labor in regula-
21 tions.

22 “(D) An employer who obtains such pre-
23 vailing wage determination, or who relies on a
24 qualifying survey of prevailing wages, and who
25 pays the wage determined to be prevailing, shall

1 be considered to have complied with the re-
2 quirement of subparagraph (A).

3 “(E) No worker shall be paid less than the
4 greater of the prevailing wage or the applicable
5 State minimum wage.

6 “(3) REQUIREMENT TO PROVIDE HOUSING OR A
7 HOUSING ALLOWANCE.—

8 “(A) IN GENERAL.—An employer applying
9 for workers under subsection (a) shall offer to
10 provide housing at no cost to all workers in job
11 opportunities for which the employer has ap-
12 plied under that section and to all other work-
13 ers in the same occupation at the place of em-
14 ployment, whose place of residence is beyond
15 normal commuting distance.

16 “(B) TYPE OF HOUSING.—In complying
17 with subparagraph (A), an employer may, at
18 the employer’s election, provide housing that
19 meets applicable Federal standards for tem-
20 porary labor camps or secure housing that
21 meets applicable local standards for rental or
22 public accommodation housing or other sub-
23 stantially similar class of habitation, or in the
24 absence of applicable local standards, State
25 standards for rental or public accommodation

1 housing or other substantially similar class of
2 habitation. In the absence of applicable local or
3 State standards, Federal temporary labor camp
4 standards shall apply.

5 “(C) CERTIFICATE OF INSPECTION.—Prior
6 to any occupation by a worker in housing de-
7 scribed in subparagraph (B), the employer shall
8 submit a certificate of inspection by an ap-
9 proved Federal or State agency to the Secretary
10 of Labor.

11 “(D) WORKERS ENGAGED IN THE RANGE
12 PRODUCTION OF LIVESTOCK.—The Secretary of
13 Labor shall issue regulations that address the
14 specific requirements for the provision of hous-
15 ing to workers engaged in the range production
16 of livestock.

17 “(E) LIMITATION.—Nothing in this para-
18 graph shall be construed to require an employer
19 to provide or secure housing for persons who
20 were not entitled to such housing under the
21 temporary labor certification regulations in ef-
22 fect on June 1, 1986.

23 “(F) HOUSING ALLOWANCE AS ALTER-
24 NATIVE.—

1 “(i) IN GENERAL.—In lieu of offering
2 housing pursuant to subparagraph (A), the
3 employer may provide a reasonable housing
4 allowance, but only if the requirement of
5 clause (ii) is satisfied. Upon the request of
6 a worker seeking assistance in locating
7 housing, the employer shall make a good
8 faith effort to assist the worker in identi-
9 fying and locating housing in the area of
10 intended employment. An employer who of-
11 fers a housing allowance to a worker, or
12 assists a worker in locating housing which
13 the worker occupies, pursuant to this
14 clause shall not be deemed a housing pro-
15 vider under section 203 of the Migrant and
16 Seasonal Agricultural Worker Protection
17 Act (29 U.S.C. 1823) solely by virtue of
18 providing such housing allowance. How-
19 ever, no housing allowance may be used for
20 housing which is owned or controlled by
21 the employer. The employer must provide
22 the Secretary of Labor with a list of the
23 names of all workers assisted under this
24 clause and the local address of each such
25 worker.

1 “(ii) CERTIFICATION.—The require-
2 ment of this clause is satisfied if the Gov-
3 ernor of the State certifies to the Secretary
4 of Labor that there is adequate housing
5 available in the area of intended employ-
6 ment for migrant farm workers, and H-2A
7 workers, who are seeking temporary hous-
8 ing while employed at farm work. Such
9 certification shall expire after 3 years un-
10 less renewed by the Governor of the State.

11 “(iii) AMOUNT OF ALLOWANCE.—

12 “(I) NONMETROPOLITAN COUN-
13 TIES.—If the place of employment of
14 the workers provided an allowance
15 under this subparagraph is a non-
16 metropolitan county, the amount of
17 the housing allowance under this sub-
18 paragraph shall be equal to the state-
19 wide average fair market rental for
20 existing housing for nonmetropolitan
21 counties for the State, as established
22 by the Secretary of Housing and
23 Urban Development pursuant to sec-
24 tion 8(c) of the United States Hous-
25 ing Act of 1937 (42 U.S.C. 1437f(c)),

1 based on a 2-bedroom dwelling unit
2 and an assumption of 2 persons per
3 bedroom.

4 “(II) METROPOLITAN COUN-
5 TIES.—If the place of employment of
6 the workers provided an allowance
7 under this paragraph is in a metro-
8 politan county, the amount of the
9 housing allowance under this subpara-
10 graph shall be equal to the statewide
11 average fair market rental for existing
12 housing for metropolitan counties for
13 the State, as established by the Sec-
14 retary of Housing and Urban Devel-
15 opment pursuant to section 8(c) of
16 the United States Housing Act of
17 1937 (42 U.S.C. 1437f(c)), based on
18 a 2-bedroom dwelling unit and an as-
19 sumption of 2 persons per bedroom.

20 “(4) REIMBURSEMENT OF TRANSPORTATION.—

21 “(A) TO PLACE OF EMPLOYMENT.—

22 “(i) IN GENERAL.—A worker who
23 completes 50 percent of the period of em-
24 ployment of the job opportunity for which
25 the worker was hired, measured from the

1 worker's first day of work in such employ-
2 ment, shall be reimbursed by the employer
3 for the cost of the worker's transportation
4 and subsistence from the place from which
5 the worker was approved to enter the
6 United States to work for the employer (or
7 place of last employment, if the worker
8 traveled from such place) to the place of
9 employment by the employer, except that
10 the employer shall not be required to reim-
11 burse visa, passport, consular, or inter-
12 national border-crossing fees or any other
13 fees associated with the worker's lawful ad-
14 mission into the United States to perform
15 employment that may be incurred by the
16 worker.

17 “(ii) **TIMELY REIMBURSEMENT.**—Re-
18 imbursement to the worker of expenses for
19 the cost of the worker's transportation and
20 subsistence to the place of employment
21 shall be considered timely if such reim-
22 bursement is made not later than the
23 worker's first regular payday after the
24 worker completes 50 percent of the period

1 of employment of the job opportunity as
2 provided under this paragraph.

3 “(B) FROM PLACE OF EMPLOYMENT.—A
4 worker who completes the period of employment
5 for the job opportunity involved shall be reim-
6 bursed by the employer for the cost of the
7 worker’s transportation and subsistence from
8 the place from which the worker was approved
9 to enter the United States to work for the em-
10 ployer, or to the place of next employment, if
11 the worker has contracted with a subsequent
12 employer who has not agreed to provide or pay
13 for the worker’s transportation and subsistence
14 to such subsequent employer’s place of employ-
15 ment.

16 “(C) LIMITATION.—

17 “(i) AMOUNT OF REIMBURSEMENT.—
18 Except as provided in clause (ii), the
19 amount of reimbursement provided under
20 subparagraph (A) or (B) to a worker or
21 alien shall not exceed the lesser of—

22 “(I) the actual cost to the worker
23 or alien of the transportation and sub-
24 sistence involved; or

1 “(II) the most economical and
2 reasonable common carrier transpor-
3 tation charges and subsistence costs
4 for the distance involved.

5 “(ii) DISTANCE TRAVELED.—No reim-
6 bursement under subparagraph (A) or (B)
7 shall be required if the distance traveled is
8 100 miles or less or if the worker is not re-
9 siding in employer-provided housing or
10 housing secured through an allowance as
11 provided in paragraph (3).

12 “(D) EARLY TERMINATION.—If the worker
13 is laid off or employment is terminated for con-
14 tract impossibility (as described in paragraph
15 (5)(D)) before the anticipated ending date of
16 employment, the employer shall provide the
17 transportation and subsistence required by sub-
18 paragraph (B) and, notwithstanding whether
19 the worker has completed 50 percent of the pe-
20 riod of employment, shall provide the transpor-
21 tation reimbursement required by subparagraph
22 (A).

23 “(E) TRANSPORTATION BETWEEN LIVING
24 QUARTERS AND WORK SITE.—The employer
25 shall provide transportation between the work-

1 er's living quarters (such as housing provided
2 by the employer pursuant to paragraph (3), in-
3 cluding housing provided through a housing al-
4 lowance) and the employer's work site without
5 cost to the worker, and such transportation will
6 be in accordance with applicable laws and regu-
7 lations.

8 “(5) GUARANTEE OF EMPLOYMENT.—

9 “(A) OFFER TO WORKER.—The employer
10 shall guarantee to offer the worker employment
11 for the hourly equivalent of at least three-
12 fourths of the work days of the total period of
13 employment, beginning with the first work day
14 after the arrival of the worker at the place of
15 employment and ending on the expiration date
16 specified in the job offer. For purposes of this
17 subparagraph, the hourly equivalent means the
18 number of hours in the work days as stated in
19 the job offer and shall exclude the worker's
20 Sabbath and Federal holidays. If the employer
21 affords the United States or H-2A worker less
22 employment than that required under this sub-
23 paragraph, the employer shall pay such worker
24 the amount which the worker would have

1 earned had the worker, in fact, worked for the
2 guaranteed number of hours.

3 “(B) FAILURE TO WORK.—Any hours
4 which the worker fails to work, up to a max-
5 imum of the number of hours specified in the
6 job offer for a work day, when the worker has
7 been offered an opportunity to do so, and all
8 hours of work actually performed (including vol-
9 untary work in excess of the number of hours
10 specified in the job offer in a work day, on the
11 worker’s Sabbath, or on Federal holidays) may
12 be counted by the employer in calculating
13 whether the period of guaranteed employment
14 has been met.

15 “(C) ABANDONMENT OF EMPLOYMENT,
16 TERMINATION FOR CAUSE.—If the worker vol-
17 untarily abandons employment before the end
18 of the contract period, or is terminated for
19 cause, the worker is not entitled to the three-
20 fourths guarantee described in subparagraph
21 (A).

22 “(D) CONTRACT IMPOSSIBILITY.—If, be-
23 fore the expiration of the period of employment
24 specified in the job offer, the services of the
25 worker are no longer required for reasons be-

1 yond the control of the employer due to any
2 form of natural disaster (including a flood, hur-
3 ricane, freeze, earthquake, fire, or drought),
4 plant or animal disease, pest infestation, or reg-
5 ulatory action, before the employment guar-
6 antee in subparagraph (A) is fulfilled, the em-
7 ployer may terminate the worker’s employment.
8 In the event of such termination, the employer
9 shall fulfill the employment guarantee in sub-
10 paragraph (A) for the work days that have
11 elapsed from the first work day after the arrival
12 of the worker to the termination of employ-
13 ment. In such cases, the employer will make ef-
14 forts to transfer the United States worker to
15 other comparable employment acceptable to the
16 worker.

17 “(n) PETITIONING FOR ADMISSION.—An employer,
18 or an association acting as an agent or joint employer for
19 its members, that seeks the admission into the United
20 States of an H-2A worker must file a petition with the
21 Secretary of Homeland Security. The petition shall be ac-
22 panied by the certification described in section
23 101(a)(15)(H)(ii)(a).

24 “(o) EXPEDITED ADJUDICATION BY THE SEC-
25 RETARY.—The Secretary of Homeland Security shall es-

1 tablish a procedure for expedited adjudication of petitions
2 filed under subsection (n) and within 7 working days of
3 such filing shall, by fax, cable, or other means assuring
4 expedited delivery, transmit a copy of notice of action on
5 the petition to the petitioner and, in the case of approved
6 petitions, to the appropriate immigration officer at the
7 port of entry or United States consulate (as the case may
8 be) where the petitioner has indicated that the alien bene-
9 ficiary (or beneficiaries) will apply for a visa or admission
10 to the United States.

11 “(p) DISQUALIFICATION.—

12 “(1) Subject to paragraph (2), an alien shall be
13 considered inadmissible to the United States and in-
14 eligible for nonimmigrant status under section
15 101(a)(15)(H)(ii)(a) if the alien has, at any time
16 during the past 5 years, violated a term or condition
17 of admission into the United States as a non-
18 immigrant, including overstaying the period of au-
19 thorized admission.

20 “(2) WAIVERS.—

21 “(A) IN GENERAL.—An alien outside the
22 United States, and seeking admission under
23 section 101(a)(15)(H)(ii)(a) shall not be
24 deemed inadmissible under such section by rea-
25 son of paragraph (1) or section 212(a)(9)(B). A

1 waiver under this subparagraph may be granted
2 only once to an individual alien.

3 “(B) LIMITATION.—In any case in which
4 an alien is admitted to the United States upon
5 having a ground of inadmissibility waived under
6 subparagraph (A), such waiver shall be consid-
7 ered to remain in effect unless the alien again
8 violates a material provision of this section or
9 otherwise violates a term or condition of admis-
10 sion into the United States as a nonimmigrant,
11 in which case such waiver shall terminate.

12 “(q) ABANDONMENT OF EMPLOYMENT.—

13 “(1) IN GENERAL.—An alien admitted or pro-
14 vided status under section 101(a)(15)(H)(ii)(a) who
15 abandons the employment which was the basis for
16 such admission or status shall be considered to have
17 failed to maintain nonimmigrant status as an H-2A
18 worker and shall depart the United States or be sub-
19 ject to removal under section 237(a)(1)(C)(i).

20 “(2) REPORT BY EMPLOYER.—The employer
21 (or association acting as agent for the employer)
22 shall notify the Secretary of Homeland Security
23 within 7 days of an H-2A worker’s having pre-
24 maturely abandoned employment.

1 “(3) REMOVAL BY THE SECRETARY.—The Sec-
2 retary of Homeland Security shall promptly remove
3 from the United States any H-2A worker who vio-
4 lates any term or condition of the worker’s non-
5 immigrant status.

6 “(4) VOLUNTARY TERMINATION.—Notwith-
7 standing paragraph (1), an alien may voluntarily
8 terminate his or her employment if the alien prompt-
9 ly departs the United States upon termination of
10 such employment.

11 “(r) REPLACEMENT OF ALIEN.—

12 “(1) IN GENERAL.—Upon presentation of the
13 notice to the Secretary of Homeland Security re-
14 quired by subsection (q)(2), the Secretary of State
15 shall promptly issue a visa to, and the Secretary of
16 Homeland Security shall admit into the United
17 States, an eligible alien designated by the employer
18 to replace an H-2A worker—

19 “(A) who abandons or prematurely termi-
20 nates employment; or

21 “(B) whose employment is terminated
22 after a United States worker is employed pur-
23 suant to subsection (a)(6), if the United States
24 worker voluntarily departs before the end of the
25 period of intended employment or if the employ-

1 ment termination is for a lawful job-related rea-
2 son.

3 “(2) CONSTRUCTION.—Nothing in this sub-
4 section is intended to limit any preference required
5 to be accorded United States workers under any
6 other provision of this Act.

7 “(s) IDENTIFICATION DOCUMENT.—

8 “(1) IN GENERAL.—Each alien authorized to be
9 admitted under section 101(a)(15)(H)(ii)(a) shall be
10 provided an identification and employment eligibility
11 document to verify eligibility for employment in the
12 United States and verify such person’s proper iden-
13 tity.

14 “(2) REQUIREMENTS.—No identification and
15 employment eligibility document may be issued
16 which does not meet the following requirements:

17 “(A) The document shall be capable of re-
18 liably determining whether—

19 “(i) the individual with the identifica-
20 tion and employment eligibility document
21 whose eligibility is being verified is in fact
22 eligible for employment;

23 “(ii) the individual whose eligibility is
24 being verified is claiming the identity of
25 another person; and

1 “(iii) the individual whose eligibility is
2 being verified is authorized to be admitted
3 into, and employed in, the United States
4 as an H-2A worker.

5 “(B) The document shall be in a form that
6 is resistant to counterfeiting and to tampering.

7 “(C) The document shall—

8 “(i) be compatible with other data-
9 bases of the Secretary of Homeland Secu-
10 rity for the purpose of excluding aliens
11 from benefits for which they are not eligi-
12 ble and determining whether the alien is
13 unlawfully present in the United States;
14 and

15 “(ii) be compatible with law enforce-
16 ment databases to determine if the alien
17 has been convicted of criminal offenses.

18 “(t) EXTENSION OF STAY OF H-2A WORKERS IN
19 THE UNITED STATES.—

20 “(1) EXTENSION OF STAY.—If an employer
21 seeks approval to employ an H-2A worker who is
22 lawfully present in the United States, the petition
23 filed by the employer or an association pursuant to
24 subsection (n) shall request an extension of the
25 alien’s stay and a change in the alien’s employment.

1 “(2) WORK AUTHORIZATION UPON FILING PE-
2 TITION FOR EXTENSION OF STAY.—In the case of an
3 alien who is lawfully present in the United States,
4 the alien is authorized to commence the employment
5 described in a petition under paragraph (1) on the
6 date on which the petition is filed. For purposes of
7 the preceding sentence, the term ‘file’ means sending
8 the petition by certified mail via the United States
9 Postal Service, return receipt requested, or delivered
10 by guaranteed commercial delivery which will provide
11 the employer with a documented acknowledgment of
12 the date of receipt of the petition. The employer
13 shall provide a copy of the employer’s petition to the
14 alien, who shall keep the petition with the alien’s
15 identification and employment eligibility document
16 as evidence that the petition has been filed and that
17 the alien is authorized to work in the United States.
18 Upon approval of a petition for an extension of stay
19 or change in the alien’s authorized employment, the
20 Secretary of Homeland Security shall provide a new
21 or updated employment eligibility document to the
22 alien indicating the new validity date, after which
23 the alien is not required to retain a copy of the peti-
24 tion.

25 “(u) DEFINITIONS.—For purposes of this section:

1 “(1) AREA OF EMPLOYMENT.—The term ‘area
2 of employment’ means the area within normal com-
3 muting distance of the worksite or physical location
4 where the work of the H-2A worker is or will be
5 performed. If such worksite or location is within a
6 Metropolitan Statistical Area, any place within such
7 area is deemed to be within the area of employment.

8 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible
9 individual’ means, with respect to employment, an
10 individual who is not an unauthorized alien (as de-
11 fined in section 274A(h)(3)) with respect to that em-
12 ployment.

13 “(3) DISPLACE.—In the case of an application
14 with respect to 1 or more H-2A workers by an em-
15 ployer, the employer is considered to ‘displace’ a
16 United States worker from a job if the employer lays
17 off the worker from a job that is essentially the
18 equivalent of the job for which the H-2A worker or
19 workers is or are sought. A job shall not be consid-
20 ered to be essentially equivalent of another job un-
21 less it involves essentially the same responsibilities,
22 was held by a United States worker with substan-
23 tially equivalent qualifications and experience, and is
24 located in the same area of employment as the other
25 job.

1 “(4) H-2A WORKER.—The term ‘H-2A worker’
2 means a nonimmigrant described in section
3 101(a)(15)(H)(ii)(a).

4 “(5) LAYS OFF.—

5 “(A) IN GENERAL.—The term ‘lays off’,
6 with respect to a worker—

7 “(i) means to cause the worker’s loss
8 of employment, other than through a dis-
9 charge for inadequate performance, viola-
10 tion of workplace rules, cause, voluntary
11 departure, voluntary retirement, or the ex-
12 piration of a grant or contract (other than
13 a temporary employment contract entered
14 into in order to evade a condition described
15 in paragraph (3) or (8) of subsection (a);
16 but

17 “(ii) does not include any situation in
18 which the worker is offered, as an alter-
19 native to such loss of employment, a simi-
20 lar employment opportunity with the same
21 employer (or, in the case of a placement of
22 a worker with another employer under sub-
23 section (a)(8), with either employer de-
24 scribed in such subsection) at equivalent or
25 higher compensation and benefits than the

1 position from which the employee was dis-
2 charged, regardless of whether or not the
3 employee accepts the offer.

4 “(B) CONSTRUCTION.—Nothing in this
5 paragraph is intended to limit an employee’s
6 rights under a collective bargaining agreement
7 or other employment contract.

8 “(6) PREVAILING WAGE.—The term ‘prevailing
9 wage’ means, with respect to an agricultural occupa-
10 tion in an area of intended employment, the rate of
11 wages that includes the 51st percentile of employees
12 with similar experience and qualifications in the ag-
13 ricultural occupation in the area of intended employ-
14 ment, expressed in terms of the prevailing method of
15 pay for the occupation in the area of intended em-
16 ployment.

17 “(7) UNITED STATES WORKER.—The term
18 ‘United States worker’ means an employee who—

19 “(A) is a citizen or national of the United
20 States; or

21 “(B) is an alien who is lawfully admitted
22 for permanent residence, is admitted as a ref-
23 ugee under section 207, is granted asylum
24 under section 208, or is an immigrant otherwise

1 authorized, by this Act or by the Secretary of
2 Homeland Security, to be employed.”.

3 (b) CONFORMING AMENDMENT.—Section
4 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-
6 ing “seasonal nature, or (b)” and inserting “seasonal na-
7 ture, and with respect to whom the Secretary of Labor
8 determines and certifies to the Secretary of Homeland Se-
9 curity that the intending employer has filed with the Sec-
10 retary of Labor an application under section 218(a), or
11 (b)”.

12 **SEC. 3. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
13 **SERVICES CORPORATION.**

14 (a) IN GENERAL.—Section 305 of the Immigrant Re-
15 form and Control Act of 1986 (8 U.S.C. 1101 note) is
16 amended—

17 (1) by striking “A nonimmigrant” and inserting
18 “(a) IN GENERAL.—A nonimmigrant”; and

19 (2) by adding at the end the following:

20 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
21 poration may not provide legal assistance for or on behalf
22 of any alien, and may not provide financial assistance to
23 any person or entity that provides legal assistance for or
24 on behalf of any alien, unless the alien—

1 “(1) is present in the United States at the time
2 the legal assistance is provided; and

3 “(2) is an alien to whom subsection (a) ap-
4 plies.”.

5 (b) MEDIATION.—Section 305 of the Immigrant Re-
6 form and Control Act of 1986 (8 U.S.C. 1101 note), as
7 amended by subsection (a), is further amended by adding
8 at the end the following:

9 “(c) REQUIRED MEDIATION.—The Legal Services
10 Corporation may not bring a civil action for damages on
11 behalf of a nonimmigrant described in section
12 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
13 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90
14 days prior to bringing the action a request has been made
15 to the Federal Mediation and Conciliation Service to assist
16 the parties in reaching a satisfactory resolution of all
17 issues involving all parties to the dispute and mediation
18 has been attempted.”.

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