

108TH CONGRESS  
1ST SESSION

# H. R. 2899

To establish two new categories of nonimmigrant workers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mr. KOLBE (for himself and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish two new categories of nonimmigrant 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 “Border Security and  
5 Immigration Improvement Act”.

6 **SEC. 2. NEW NONIMMIGRANT WORKER VISA CATEGORIES.**

7 Section 101(a)(15)(H) of the Immigration and Na-  
8 tionality Act (8 U.S.C. 1101(a)(15)(H)) is amended—

1 (1) by striking “or (iii)” and inserting “(iii)”;  
2 and

3 (2) by striking “and the alien spouse” and in-  
4 serting the following:

5 “or (iv)(a) subject to section 218A, who is coming  
6 to the United States to fill a job opportunity for  
7 temporary full-time employment at a place in the  
8 United States; or (b) whose status is adjusted under  
9 section 251 and who (except in the case of a spouse  
10 or child provided derivative status) is employed in  
11 the United States; and, except as provided in sec-  
12 tions 218A and 251, the alien spouse”.

13 **SEC. 3. ADMISSION OF TEMPORARY H-4A WORKERS.**

14 (a) IN GENERAL.—Chapter 2 of title II of the Immi-  
15 gration and Nationality Act (8 U.S.C. 1181 et seq.) is  
16 amended by inserting after section 218 the following:

17 “ADMISSION OF TEMPORARY H-4A WORKERS

18 “SEC. 218A. (a) PETITION.—In the case of a petition  
19 under section 214(c) initially to grant an alien non-  
20 immigrant status described in section  
21 101(a)(15)(H)(iv)(a), the Secretary of Homeland Secu-  
22 rity—

23 “(1) shall impose a fee on the petitioning em-  
24 ployer of—

25 “(A) \$1000, in the case of an employer  
26 employing more than 500 employees; or

1           “(B) \$500, in the case of any other em-  
2           ployer; and

3           “(2) shall approve the petition only after deter-  
4           mining that the petitioning employer—

5           “(A) has satisfied the recruitment require-  
6           ments of subsection (i); and

7           “(B) has attested in such petition that the  
8           employer—

9           “(i) with respect to the employment  
10          eligibility confirmation system established  
11          under subsection (j)—

12           “(I) will use such system to  
13          verify the alien’s identity and employ-  
14          ment authorization after such ap-  
15          proval and before the commencement  
16          of employment;

17           “(II) will advise the alien of any  
18          nonconfirmation with respect to the  
19          alien provided by such system; and

20           “(III) will provide the alien an  
21          opportunity to correct the information  
22          in the system causing such noncon-  
23          firmation before revoking the offer of  
24          employment in order that the require-  
25          ment of subclause (I) is satisfied be-

1           fore the commencement of employ-  
2           ment;

3           “(ii) will provide the nonimmigrant  
4           the same benefits, wages, and working con-  
5           ditions provided to other employees simi-  
6           larly employed in the same occupation at  
7           the place of employment;

8           “(iii) will require the nonimmigrant to  
9           work hours commensurate with those of  
10          such other employees;

11          “(iv) will not ask the nonimmigrant to  
12          refrain from accepting work for any com-  
13          petitor of the employer;

14          “(v) did not displace and will not dis-  
15          place a United States worker (as defined  
16          in section 212(n)(4)) employed by the em-  
17          ployer within the period beginning 90 days  
18          before and ending 90 days after the date  
19          of filing of the petition; and

20          “(vi) otherwise will comply with all  
21          applicable Federal, State, and local labor  
22          laws, including laws affecting migrant and  
23          seasonal agricultural workers, with respect  
24          to the nonimmigrant.

25          “(b) NONIMMIGRANT VISAS.—

1           “(1) NO FEE.—Neither the Secretary of State,  
2           nor the Secretary of Homeland Security, shall au-  
3           thorize the imposition of an application fee on an  
4           alien seeking a nonimmigrant visa under section  
5           101(a)(15)(H)(iv)(a) in an amount that exceeds the  
6           actual cost of processing and adjudicating such ap-  
7           plication.

8           “(2) BIOMETRIC IDENTIFIERS.—The Secretary  
9           of State and the Secretary of Homeland Security  
10          shall issue to aliens obtaining status under section  
11          101(a)(15)(H)(iv)(a) only machine-readable, tamper-  
12          resistant visas and other travel and entry documents  
13          that use biometric identifiers. The Secretary of State  
14          and the Secretary of Homeland Security shall jointly  
15          establish document authentication standards and bi-  
16          ometric identifier standards to be employed on such  
17          visas and other travel and entry documents from  
18          among those biometric identifiers recognized by do-  
19          mestic and international standards organizations.

20          “(3) PHYSICAL EXAMINATION.—Prior to the  
21          issuance of a nonimmigrant visa to any alien under  
22          section 101(a)(15)(H)(iv)(a), the consular officer  
23          shall require such alien to submit to a medical exam-  
24          ination to ascertain whether such alien is ineligible  
25          to receive a visa on a health-related ground.

1           “(4) PRIORITY FOR VISITOR VISAS FOR IMME-  
2           DIATE RELATIVES.—In the case of an alien who is  
3           the spouse, parent, son, or daughter of a non-  
4           immigrant described in section 101(a)(15)(H)(iv), if  
5           the alien is applying for a nonimmigrant visa under  
6           section 101(a)(15)(B)—

7                   “(A) the alien’s application shall be given  
8                   priority; and

9                   “(B) notwithstanding sections 214(b) and  
10                  291, in establishing that the alien has a resi-  
11                  dence in a foreign country which the alien has  
12                  no intention of abandoning, the burden of proof  
13                  required shall not be greater than a preponder-  
14                  ance of the evidence.

15           “(5) VISITS OUTSIDE UNITED STATES.—Pursu-  
16           ant to regulations established by the Secretary of  
17           Homeland Security, an alien having status as a non-  
18           immigrant described in section 101(a)(15)(H)(iv)(a)  
19           may make brief visits outside the United States and  
20           may be readmitted without having to obtain a new  
21           visa. Such periods of time spent outside the United  
22           States shall not cause the period of authorized ad-  
23           mission in the United States to be extended.

24           “(c) PERIOD OF AUTHORIZED ADMISSION.—

1           “(1) INITIAL PERIOD.—In the case of a non-  
2 immigrant described in section 101(a)(15)(H)(iv)(a),  
3 the initial period of authorized admission as such a  
4 nonimmigrant shall be 3 years.

5           “(2) RENEWALS.—

6           “(A) IN GENERAL.—The Secretary of  
7 Homeland Security may extend such period not  
8 more than once, in a 3-year increment.

9           “(B) TREATMENT OF LONG-TERM EM-  
10 PLOYEES.—In any case in which a non-  
11 immigrant has held a job for 3 years or more,  
12 an extension under subparagraph (A) may be  
13 granted only upon the filing of a petition by the  
14 nonimmigrant’s employer establishing that—

15           “(i) not earlier than 2 months prior to  
16 such filing, the employer advertised the  
17 availability of the nonimmigrant’s job ex-  
18 clusively to United States workers for not  
19 less than 14 days using the electronic job  
20 registry described in subsection (i); and

21           “(ii) the employer offered the job to  
22 any eligible United States worker who ap-  
23 plied by means of such registry and was  
24 equally or better qualified for such job and  
25 available at the time and place of need.

1           (C) NO FEES.—The Secretary of Home-  
2 land Security shall not impose a fee on a peti-  
3 tioning employer in the case of a petition to ex-  
4 tend the stay of an alien having nonimmigrant  
5 status described in section  
6 101(a)(15)(H)(iv)(a).

7           “(3) LOSS OF EMPLOYMENT.—

8           “(A) IN GENERAL.—Subject to subsection  
9 (e), any period of authorized admission of an  
10 alien having nonimmigrant status described in  
11 section 101(a)(15)(H)(iv)(a) shall terminate if  
12 the nonimmigrant is unemployed for 45 or more  
13 consecutive days.

14           “(B) RETURN TO FOREIGN RESIDENCE.—  
15 An alien whose period of authorized admission  
16 terminates under subparagraph (A) shall be re-  
17 quired to return to the country of the alien’s  
18 nationality or last residence.

19           “(C) VISA VALIDITY.—An alien whose pe-  
20 riod of authorized admission terminates under  
21 subparagraph (A), and who returns to the  
22 country of the alien’s nationality or last resi-  
23 dence under subparagraph (B), may reenter the  
24 United States on the basis of the same visa to  
25 resume the status existing at the time of the



1 alien's departure if the alien satisfies all the  
2 other requirements otherwise applicable to an  
3 alien seeking an initial grant of status under  
4 section 101(a)(15)(H)(iv)(a). The period of au-  
5 thorized admission of an alien entering under  
6 this subparagraph shall expire on the date on  
7 which it would have expired had the alien not  
8 been required to depart the United States.

9 “(d) RETURN TRANSPORTATION.—

10 “(1) IN GENERAL.—In the case of an alien who  
11 is provided nonimmigrant status under section  
12 101(a)(15)(H)(iv)(a) and who is dismissed without  
13 cause from employment by the employer before the  
14 end of the period of authorized admission, the em-  
15 ployer shall be liable for the reasonable costs of re-  
16 turn transportation of the alien abroad and may not  
17 require or permit the alien to reimburse, or other-  
18 wise compensate, the employer for part or all of such  
19 costs.

20 “(2) CIVIL MONEY PENALTY.—If the Secretary  
21 of Homeland Security finds, after notice and oppor-  
22 tunity for a hearing, a failure to meet a condition  
23 of paragraph (1), the Secretary—

24 “(A) shall require the employer to pay  
25 each nonimmigrant with respect to whom such

1 a failure occurs the costs owed under paragraph  
2 (1); and

3 “(B) may impose a civil money penalty in  
4 an amount not to exceed \$5,000 for each non-  
5 immigrant with respect to whom such a failure  
6 occurs.

7 “(e) PORTABILITY.—

8 “(1) IN GENERAL.—A nonimmigrant alien de-  
9 scribed in paragraph (2) who was previously issued  
10 a visa or otherwise provided nonimmigrant status  
11 under section 101(a)(15)(H)(iv)(a) is authorized to  
12 accept new employment upon the filing by the pro-  
13 spective employer of a new petition on behalf of such  
14 nonimmigrant as provided under subsection (a). The  
15 Secretary of Homeland Security shall impose a fee  
16 for such a petition consistent with the fee imposed  
17 under subsection (a)(1). Employment authorization  
18 shall continue for such alien until the new petition  
19 is adjudicated. If the new petition is denied, no other  
20 such petition is pending, and the alien has ceased  
21 employment with the previous employer, such au-  
22 thorization shall cease and the alien shall be re-  
23 quired to return to the country of the alien’s nation-  
24 ality or last residence in accordance with subsection  
25 (c)(3).

1           “(2) ALIENS DESCRIBED.—A nonimmigrant  
2 alien described in this paragraph is a nonimmigrant  
3 alien—

4           “(A) who has been lawfully admitted into  
5 the United States;

6           “(B) on whose behalf an employer has filed  
7 a nonfrivolous petition for new employment not  
8 later than 45 days after the last date on which  
9 the employee was lawfully employed in the  
10 United States; and

11           “(C) who, subsequent to such lawful ad-  
12 mission, has not been employed without author-  
13 ization in the United States.

14           “(f) TREATMENT OF SPOUSES AND CHILDREN.—

15           “(1) SPOUSES.—A spouse of an alien having  
16 nonimmigrant status described in section  
17 101(a)(15)(H)(iv)(a) shall not be eligible for deriva-  
18 tive status by accompanying or following to join the  
19 alien. Such a spouse may obtain status under section  
20 101(a)(15)(H)(iv)(a) based only on an independent  
21 petition filed by an employer petitioning under sub-  
22 section (a) with respect to the employment of the  
23 spouse.

24           “(2) CHILDREN.—A child of an alien having  
25 nonimmigrant status described in section

1 101(a)(15)(H)(iv)(a) shall not be eligible for the  
2 same nonimmigrant status unless—

3 “(A) the child is accompanying or fol-  
4 lowing to join the alien; and

5 “(B) the alien is the sole custodial parent  
6 of the child or both custodial parents of the  
7 child have obtained such status.

8 “(3) SPECIAL RULE FOR SPOUSES AND CHIL-  
9 DREN OF FORMER H-4B NONIMMIGRANTS.—In the  
10 case of a spouse or child of an alien who was a non-  
11 immigrant described in section 101(a)(15)(H)(iv)(b)  
12 before obtaining a change in nonimmigrant status to  
13 that of a nonimmigrant under section  
14 101(a)(15)(H)(iv)(a), the spouse or child shall be el-  
15 ible for nonimmigrant status under section  
16 101(a)(15)(H)(iv)(a) if the principal alien is the only  
17 alien among them authorized to be employed in the  
18 United States.

19 “(g) GROUNDS FOR INELIGIBILITY.—

20 “(1) BAR TO FUTURE VISAS FOR CONDITION  
21 VIOLATIONS.—Any alien having nonimmigrant sta-  
22 tus described in section 101(a)(15)(H)(iv)(a) shall  
23 not again be eligible for the same nonimmigrant sta-  
24 tus if the alien violates any term or condition of  
25 such status.

1           “(2) ALIENS UNLAWFULLY PRESENT.—Any  
2 alien who enters the United States after August 1,  
3 2003, without being admitted or paroled shall be in-  
4 eligible for nonimmigrant status described in section  
5 101(a)(15)(H)(iv)(a) during the 3-year period begin-  
6 ning on the date of such alien’s departure or re-  
7 moval from the United States.

8           “(h) ADJUSTMENT TO LAWFUL PERMANENT RESI-  
9 DENT STATUS.—

10           “(1) IN GENERAL.—For purposes of adjust-  
11 ment of status under section 245(a), employment-  
12 based immigrant visas shall be made available with-  
13 out numerical limitation to an alien having non-  
14 immigrant status described in section  
15 101(a)(15)(H)(iv)(a) upon the filing of a petition for  
16 such a visa—

17                   “(A) by the alien’s employer; or

18                   “(B) by the alien, but only if the alien has  
19 maintained such nonimmigrant status for at  
20 least 3 years.

21           “(2) CONSTRUCTION.—The fact that an alien is  
22 the beneficiary of a petition described in paragraph  
23 (1), or has otherwise sought permanent residence in  
24 the United States, shall not constitute evidence of

1 ineligibility for nonimmigrant status under section  
2 101(a)(15)(H)(iv)(a).

3 “(3) SPECIAL RULE FOR FORMER H-4B NON-  
4 IMMIGRANTS.—In the case of an alien who was a  
5 nonimmigrant described in section  
6 101(a)(15)(H)(iv)(b) before obtaining a change in  
7 nonimmigrant status to that of a nonimmigrant  
8 under section 101(a)(15)(H)(iv)(a), in determining  
9 admissibility for purposes of adjustment of status  
10 under section 245(a), the grounds for inadmissibility  
11 specified in paragraphs (6)(A), (6)(B), (6)(C),  
12 (7)(A), and (9)(B) of section 212(a) shall not apply.

13 “(i) MANDATORY USE OF ELECTRONIC JOB REG-  
14 ISTRY.—

15 “(1) ADVERTISEMENT OF JOB OPPORTUNITY  
16 TO UNITED STATES WORKERS.—In order to satisfy  
17 the recruitment requirements of this subsection, the  
18 employer shall have—

19 “(A) taken good faith steps to recruit  
20 United States workers for the job for which the  
21 nonimmigrant is sought, including advertising  
22 the job opportunity exclusively to United States  
23 workers for not less than 14 days on an elec-  
24 tronic job registry established by the Secretary  
25 of Labor (or a designee of the Secretary, which

1           may be a nongovernmental entity) to carry out  
2           this section;

3           “(B) offered the job to any United States  
4           worker who applied by means of such registry  
5           and was equally or better qualified for the job  
6           for which the nonimmigrant was sought; and

7           “(C) advertised and offered the job to indi-  
8           viduals other than United States workers solely  
9           by means of such registry and after the termi-  
10          nation of such 14-day period.

11          “(2) EXCEPTION.—The requirements of this  
12          subsection shall not apply to any employer who is  
13          continuing—

14                 “(A) employment of an employee granted a  
15                 change in nonimmigrant status from that of a  
16                 nonimmigrant                 under                 section  
17                 101(a)(15)(H)(iv)(b) to that of a nonimmigrant  
18                 under section 101(a)(15)(H)(iv)(a); or

19                 “(B) self-employment after being granted  
20                 such a change in status.

21          “(3) AVAILABILITY OF JOB REGISTRY INFORMA-  
22          TION.—

23                 “(A) CIRCULATION IN INTERSTATE EM-  
24                 PLOYMENT SERVICE SYSTEM.—The Secretary of  
25                 Labor shall ensure that job opportunities adver-

1           tised on the electronic job registry established  
2           under this subsection are circulated through the  
3           interstate employment service system and other-  
4           wise furnished to State public employment serv-  
5           ices throughout the country.

6           “(B) INTERNET.—Consistent with sub-  
7           section (c)(2)(B) and this subsection, the Sec-  
8           retary of Labor shall ensure that the electronic  
9           job registry established under this subsection  
10          may be accessed by all interested workers, em-  
11          ployers, and labor organizations by means of  
12          the Internet.

13          “(4) DEFINITION.—For purposes of this sub-  
14          section, the term ‘United States worker’ means an  
15          individual who—

16                  “(A) is a citizen or national of the United  
17                  States; or

18                  “(B) is an alien who is lawfully admitted  
19                  for permanent residence, is admitted as a ref-  
20                  ugee under section 207, is granted asylum  
21                  under section 208, or is an immigrant otherwise  
22                  authorized, by this Act or by the Secretary of  
23                  Homeland Security, to be employed.

24          “(j) EMPLOYMENT ELIGIBILITY CONFIRMATION SYS-  
25          TEM.—



1           “(1) IN GENERAL.—The Secretary of Homeland  
2 Security shall establish a confirmation system  
3 through which the Secretary (or a designee of the  
4 Secretary, which may be a nongovernmental enti-  
5 ty)—

6           “(A) responds to inquiries made by per-  
7 sons and other entities (including those made  
8 by the transmittal of data from machine-read-  
9 able documents) at any time through a toll-free  
10 telephone line or other toll-free electronic media  
11 concerning an individual’s identity and whether  
12 the individual is authorized to be employed; and

13           “(B) maintains records of the inquiries  
14 that were made, of confirmations provided (or  
15 not provided), and of the codes provided to in-  
16 quirers as evidence of their compliance with  
17 their obligations under this Act.

18           “(2) INITIAL RESPONSE.—The confirmation  
19 system shall provide confirmation or a tentative non-  
20 confirmation of an individual’s identity and employ-  
21 ment eligibility within 3 working days of the initial  
22 inquiry. If providing confirmation or tentative non-  
23 confirmation, the confirmation system shall provide  
24 an appropriate code indicating such confirmation or  
25 such nonconfirmation.

1           “(3) SECONDARY VERIFICATION PROCESS IN  
2           CASE OF TENTATIVE NONCONFIRMATION.—In cases  
3           of tentative nonconfirmation, the Secretary of  
4           Homeland Security shall specify, in consultation  
5           with the Commissioner of Social Security, an avail-  
6           able secondary verification process to confirm the va-  
7           lidity of information provided and to provide a final  
8           confirmation or nonconfirmation within 10 working  
9           days after the date of the tentative nonconfirmation.  
10          When final confirmation or nonconfirmation is pro-  
11          vided, the confirmation system shall provide an ap-  
12          propriate code indicating such confirmation or non-  
13          confirmation.

14           “(4) DESIGN AND OPERATION OF SYSTEM.—  
15          The confirmation system shall be designed and oper-  
16          ated—

17                   “(A) to maximize its reliability and ease of  
18                   use consistent with insulating and protecting  
19                   the privacy and security of the underlying infor-  
20                   mation;

21                   “(B) to respond to all inquiries made by  
22                   employers seeking to employ nonimmigrants de-  
23                   scribed in section 101(a)(15)(H)(iv) on whether  
24                   individuals are authorized to be employed and

1 to register all times when such inquiries are not  
2 received;

3 “(C) with appropriate administrative, tech-  
4 nical, and physical safeguards to prevent unau-  
5 thorized disclosure of personal information; and

6 “(D) to have reasonable safeguards against  
7 the system’s resulting in unlawful discrimina-  
8 tory practices based on national origin or citi-  
9 zenship status, including—

10 “(i) the selective or unauthorized use  
11 of the system to verify eligibility;

12 “(ii) the use of the system prior to an  
13 offer of employment; or

14 “(iii) the exclusion of certain individ-  
15 uals from consideration for employment as  
16 a result of a perceived likelihood that addi-  
17 tional verification will be required, beyond  
18 what is required for most job applicants.

19 “(5) RESPONSIBILITIES OF THE COMMISSIONER  
20 OF SOCIAL SECURITY.—

21 “(A) IN GENERAL.—As part of the con-  
22 firmation system, the Commissioner of Social  
23 Security, in consultation with the entity respon-  
24 sible for administration of the system, shall use  
25 the information maintained by the Commis-

1           sioner to assist in confirming (or not con-  
2           firming) the identity and employment eligibility  
3           of an individual in a manner that is determined  
4           by the Secretary of Homeland Security to be re-  
5           liable, secure, not susceptible to identity theft,  
6           and to minimize fraud. The Commissioner shall  
7           not disclose or release social security informa-  
8           tion (other than such confirmation or noncon-  
9           firmation).

10           “(6) RESPONSIBILITIES OF THE SECRETARY.—

11           As part of the confirmation system, the Secretary of  
12           Homeland Security, in consultation with the entity  
13           responsible for administration of the system, shall  
14           establish a reliable, secure method, which, within the  
15           time periods specified under paragraphs (2) and (3),  
16           compares the name of the alien, the alien identifica-  
17           tion or authorization number, the date, and the  
18           workplace location which are provided in an inquiry  
19           against such information maintained by the Sec-  
20           retary in order to confirm (or not confirm) the iden-  
21           tity and employment eligibility of an individual in a  
22           manner that is determined by the Secretary to be re-  
23           liable, secure, not susceptible to identity theft, and  
24           to minimize fraud.

1           “(7) UPDATING INFORMATION.—The Commis-  
2           sioner of Social Security and the Secretary of Home-  
3           land Security shall update their information in a  
4           manner that promotes the maximum accuracy and  
5           shall provide a process for the prompt correction of  
6           erroneous information, including instances in which  
7           it is brought to their attention in the secondary  
8           verification process described in paragraph (3).

9           “(8) LIMITATION ON USE.—Notwithstanding  
10          any other provision of law, nothing in this subsection  
11          shall be construed to permit or allow any depart-  
12          ment, bureau, or other agency of the United States  
13          Government to utilize any information, data base, or  
14          other records assembled under this subsection for  
15          any other purpose other than as provided for under  
16          this section or section 251.

17          “(k) ENFORCEMENT OF EMPLOYER OBLIGATIONS.—

18                 “(1) IN GENERAL.—

19                         “(A) SECRETARY OF HOMELAND SECUR-  
20                         ITY.—Except as provided in paragraphs (2)  
21                         and (3), if the Secretary of Homeland Security  
22                         finds, after notice and opportunity for a hear-  
23                         ing, a failure to meet a condition of subsection  
24                         (a)(2), the Secretary may impose a civil money  
25                         penalty in an amount not to exceed \$10,000 for

1           each nonimmigrant with respect to whom such  
2           a failure occurs.

3           “(B) SECRETARY OF LABOR.—Except as  
4           provided in paragraphs (2) and (3), the Sec-  
5           retary of Labor exclusively may exercise any en-  
6           forcement authority granted in the Fair Labor  
7           Standards Act of 1938 (29 U.S.C. 201 et seq.)  
8           to address a failure to meet a condition of sub-  
9           section (a)(2).

10          “(2) PROHIBITION ON FEE REIMBURSEMENT.—  
11          An employer who has filed a petition under section  
12          214(c) to grant an alien nonimmigrant status de-  
13          scribed in section 101(a)(15)(H)(iv)(a) may not re-  
14          quire the alien to reimburse, or otherwise com-  
15          pensate, the employer for part or all of the cost of  
16          the fee imposed under subsection (a)(1). It is a vio-  
17          lation of this paragraph for such an employer other-  
18          wise to accept any reimbursement or compensation  
19          from such an alien as a condition on employment. If  
20          the Secretary of Homeland Security finds, after no-  
21          tice and opportunity for a hearing, a violation of this  
22          paragraph, the Secretary may impose a civil money  
23          penalty in an amount not to exceed \$10,000 for each  
24          such violation.

1           “(3) REQUIRED USE OF EMPLOYMENT ELIGI-  
2           BILITY CONFIRMATION SYSTEM.—If the Secretary of  
3           Labor finds, after notice and opportunity for a hear-  
4           ing, a failure to use the employment eligibility con-  
5           firmation system established under subsection (j) to  
6           verify a nonimmigrant’s identity and employment  
7           authorization before the commencement of employ-  
8           ment, or any other violation of subsection  
9           (a)(2)(B)(i), the Secretary may impose a civil money  
10          penalty in an amount not to exceed \$5,000 for each  
11          nonimmigrant with respect to whom such a violation  
12          occurs.

13          “(4) WAGE PROTECTIONS.—For purposes of  
14          subsection (a)(2)(B)(ii), all provisions of Federal,  
15          State, and local law pertaining to payment of wages  
16          shall apply to nonimmigrants described in section  
17          101(a)(15)(H)(iv)(a) in the same manner as they  
18          apply to other employees similarly employed in the  
19          same occupation at the place of employment.

20          “(1) LABOR RECRUITERS.—The Secretary of Labor  
21          shall develop rules regulating the conduct of labor recruit-  
22          ers under this section.”.

23          (b) EXEMPTION FROM NUMERICAL LIMITATIONS ON  
24          ADJUSTMENT OF STATUS.—Section 201(b)(1) of the Im-

1 migration and Nationality Act (8 U.S.C. 1151(b)(1)) is  
2 amended by adding at the end the following:

3           “(F) Nonimmigrants described in section  
4           101(a)(15)(H)(iv)(a) whose status is adjusted to  
5           permanent resident under section 245(a).”.

6           (c) CONFORMING AMENDMENT REGARDING PRE-  
7           SUMPTION OF NONIMMIGRANT STATUS.—Section 214(b)  
8           of the Immigration and Nationality Act (8 U.S.C.  
9           1184(b)) is amended by striking “(other than a non-  
10           immigrant described in subparagraph (H)(i), (L), or (V)  
11           of section 101(a)(15))” and inserting “(other than a non-  
12           immigrant described in subparagraph (L) or (V) of section  
13           101(a)(15), and other than a nonimmigrant described in  
14           clause (i) or (vi)(a) of section 101(a)(15)(H))”.

15           (d) ASSISTANCE TO FOREIGN GOVERNMENTS.—The  
16           Secretary of Labor and the Secretary of State shall con-  
17           sult with and advise foreign governments in the use and  
18           construction of facilities to assist their nationals in obtain-  
19           ing nonimmigrant status under section  
20           101(a)(15)(H)(iv)(a) of the Immigration and Nationality  
21           Act, as added by section 2.

22           (e) CLERICAL AMENDMENT.—The table of contents  
23           for the Immigration and Nationality Act (8 U.S.C. 1101  
24           et seq.) is amended by inserting after the item relating  
25           to section 218 the following:

“Sec. 218A. Admission of temporary H-4A workers.”.



1 **SEC. 4. ADJUSTMENT OF STATUS TO THAT OF H-4b NON-**  
2 **IMMIGRANT.**

3 (a) IN GENERAL.—Chapter 5 of title II of the Immi-  
4 gration and Nationality Act (8 U.S.C. 1255 et seq.) is  
5 amended by inserting after section 250 the following:

6 “ADJUSTMENT OF STATUS TO THAT OF H-4B  
7 NONIMMIGRANTS

8 “SEC. 251. (a) IN GENERAL.—The Secretary of  
9 Homeland Security may adjust the status of an alien to  
10 that of a nonimmigrant under section  
11 101(a)(15)(H)(iv)(b) if the alien meets the following re-  
12 quirements:

13 “(1) UNLAWFUL RESIDENCE SINCE 2003.—

14 “(A) IN GENERAL.—The alien must estab-  
15 lish that the alien entered the United States be-  
16 fore August 1, 2003, and has resided in the  
17 United States in an unlawful status since such  
18 date and through the date the application is  
19 filed under this subsection.

20 “(B) NONIMMIGRANTS.—In the case of an  
21 alien who entered the United States as a non-  
22 immigrant before August 1, 2003, the alien  
23 must establish that the alien’s period of author-  
24 ized stay as a nonimmigrant expired before  
25 such date through the passage of time or the

1 alien's unlawful status was known to the Fed-  
2 eral Government as of such date.

3 “(C) EXCHANGE VISITORS.—If the alien  
4 was at any time a nonimmigrant exchange alien  
5 (as defined in section 101(a)(15)(J)), the alien  
6 must establish that the alien was not subject to  
7 the two-year foreign residence requirement of  
8 section 212(e) or has fulfilled that requirement  
9 or received a waiver thereof.

10 “(2) ADMISSIBLE AS IMMIGRANT.—The alien  
11 must establish that the alien—

12 “(A) is not inadmissible to the United  
13 States under paragraph (2), (3), or (4) of sec-  
14 tion 212(a);

15 “(B) has not been convicted of any felony  
16 or misdemeanor committed in the United  
17 States, excluding crimes related to unlawful  
18 entry or presence in the United States and  
19 crimes related to document fraud undertaken  
20 for the purpose of satisfying a requirement of  
21 this Act or obtaining a benefit under this Act;  
22 and

23 “(C) has not assisted in the persecution of  
24 any person or persons on account of race, reli-

1           gion, nationality, membership in a particular  
2           social group, or political opinion.

3           “(3) EMPLOYED.—The alien must establish  
4           that the alien—

5                   “(A) was employed in the United States  
6                   before August 1, 2003, and has worked in the  
7                   United States since such date and through the  
8                   date the application is filed under this sub-  
9                   section; or

10                   “(B) is the spouse or child of an alien who  
11                   satisfies the requirement of subparagraph (A).

12           “(b) APPLICATION FEE.—

13                   “(1) IN GENERAL.—The Secretary of Homeland  
14                   Security shall provide for a fee to be charged for the  
15                   filing of applications for adjustment of status under  
16                   this section. Such fee shall be sufficient to cover the  
17                   administrative and other expenses incurred in con-  
18                   nection with the review of such applications.

19                   “(2) PENALTY PAYMENT.—

20                   “(A) IN GENERAL.—In addition to the fee  
21                   imposed under paragraph (1), except as pro-  
22                   vided in subparagraph (B), the Secretary of  
23                   Homeland Security may accept an application  
24                   for adjustment of status under this section only  
25                   if the alien remits with such application \$1,500,

1 but such sum shall not be required from a child  
2 under the age of 17.

3 “(B) WAGE GARNISHMENT.—

4 “(i) IN GENERAL.—In lieu of paying  
5 the sum under subparagraph (A) upon fil-  
6 ing the application, an alien may elect to  
7 pay such sum by having the Secretary of  
8 Homeland Security garnish 10 percent of  
9 the disposable pay of the alien, in accord-  
10 ance with section 3720D of title 31,  
11 United States Code.

12 “(ii) INTEREST.—In the case of an  
13 outstanding debt created by an election  
14 under clause (i), the Secretary of Home-  
15 land Security shall charge an annual fixed  
16 rate of interest on the debt that is equal  
17 to the bond equivalent rate of 5-year  
18 Treasury notes auctioned at the final auc-  
19 tion held prior to the date on which inter-  
20 est begins to accrue.

21 “(iii) FINAL PAYMENT.—Any out-  
22 standing debt created by an election under  
23 clause (i), and any interest due under  
24 clause (ii), shall be considered delinquent  
25 if not paid in full 30 days after the end

1 of the alien's period of authorized stay as  
2 a nonimmigrant described in section  
3 101(a)(15)(H)(iv)(b).

4 “(3) USE OF FUNDS FOR ADMINISTERING PRO-  
5 GRAM.—

6 “(A) IN GENERAL.—There is established in  
7 the general fund of the Treasury a separate ac-  
8 count, which shall be known as the ‘H–4B Non-  
9 immigrant Applicant Account’. Notwithstanding  
10 any other section of this title, there shall be de-  
11 posited as offsetting receipts into the account  
12 all fees and penalties collected under this sub-  
13 section.

14 “(B) EXPENDITURE.—Amounts deposited  
15 into the H–4B Nonimmigrant Petitioner Ac-  
16 count shall remain available to the Secretary of  
17 Homeland Security until expended to carry out  
18 duties related to nonimmigrants described in  
19 section 101(a)(15)(H)(iv)(b).

20 “(c) ADMISSIONS.—Nothing in this section shall be  
21 construed as authorizing an alien to apply for admission  
22 to, or to be admitted to, the United States in order to  
23 apply for adjustment of status under this section.

24 “(d) STAY OF REMOVAL.—

1           “(1) IN GENERAL.—The Secretary of Homeland  
2           Security shall provide by regulation for an alien sub-  
3           ject to a final order of deportation or removal to  
4           seek a stay of such order based on the filing of an  
5           application under subsection (a).

6           “(2) DURING CERTAIN PROCEEDINGS.—Not-  
7           withstanding any provision of the Immigration and  
8           Nationality Act, the Secretary of Homeland Security  
9           shall not order any alien to be removed from the  
10          United States, if the alien is in exclusion, deporta-  
11          tion, or removal proceedings under any provision of  
12          such Act and has applied for adjustment of status  
13          under subsection (a), except where the Secretary has  
14          rendered a final administrative determination to  
15          deny the application.

16          “(e) PERIOD OF AUTHORIZED STAY.—In the case of  
17          a nonimmigrant described in section 101(a)(15)(H)(iv)(b),  
18          the period of authorized stay as such a nonimmigrant shall  
19          be 3 years. The Secretary of Homeland Security may not  
20          authorize a change from such nonimmigrant classification  
21          to any other immigrant or nonimmigrant classification  
22          until the termination of such 3-year period. Such period  
23          may not be extended except in the discretion of the Sec-  
24          retary and for a reasonable time solely in order to accom-  
25          modate the processing of an application for a change in

1 nonimmigrant status to that of a nonimmigrant under sec-  
2 tion 101(a)(15)(H)(iv)(a) pursuant to a petition described  
3 in section 218A(a).

4 “(f) REQUIRED USE OF EMPLOYMENT ELIGIBILITY  
5 CONFIRMATION SYSTEM.—

6 “(1) IN GENERAL.—It is unlawful for a person  
7 or other entity to hire for employment in the United  
8 States a nonimmigrant described in section  
9 101(a)(15)(H)(iv)(b) without—

10 “(A) using the employment eligibility con-  
11 firmation system established under section  
12 218A(j) to verify the nonimmigrant’s identity  
13 and employment authorization before the com-  
14 mencement of employment;

15 “(B) advising the nonimmigrant of any  
16 nonconfirmation with respect to the non-  
17 immigrant provided by such system; and

18 “(C) providing the nonimmigrant an op-  
19 portunity to correct the information in the sys-  
20 tem causing such nonconfirmation before revok-  
21 ing the offer of employment in order that the  
22 requirement of subparagraph (A) is satisfied  
23 before the commencement of employment.

24 “(2) CIVIL MONEY PENALTY.—If the Secretary  
25 of Labor finds, after notice and opportunity for a

1 hearing, a failure to meet a violation of paragraph  
 2 (1), the Secretary may impose a civil money penalty  
 3 in an amount not to exceed \$5,000 for each non-  
 4 immigrant with respect to whom such a violation oc-  
 5 curs.

6 “(g) EXTENSION OF H-4A LABOR PROTECTIONS TO  
 7 H-4B NONIMMIGRANTS.—A person or other entity em-  
 8 ploying a nonimmigrant described in section  
 9 101(a)(15)(H)(iv)(b) shall comply with the requirements  
 10 of clauses (ii) through (vi) of section 218A(a)(2) in the  
 11 same manner as an employer having an approved petition  
 12 described in section 218A(a). The Secretary of Labor ex-  
 13 clusively may exercise any enforcement authority granted  
 14 in the Fair Labor Standards Act of 1938 (29 U.S.C. 201  
 15 et seq.) to address a failure to meet a requirement of this  
 16 subsection.”.

17 (b) CLERICAL AMENDMENT.—The table of contents  
 18 for the Immigration and Nationality Act (8 U.S.C. 1101  
 19 et seq.) is amended by inserting after the item relating  
 20 to section 250 the following:

“Sec. 251. Adjustment of status to that of H-4B nonimmigrant.”.

21 **SEC. 5. INCREASED FUNDS FOR UNITED STATES EMPLOY-**  
 22 **MENT SERVICE.**

23 There are authorized to be appropriated to the Sec-  
 24 retary of Labor such additional sums as may be necessary  
 25 for fiscal year 2004 and subsequent fiscal years to permit



1 the United States Employment Service to assist State  
2 public employment services in meeting any increased de-  
3 mand for services by employers and persons seeking em-  
4 ployment engendered by the amendments made by this  
5 Act.

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