

108TH CONGRESS  
1ST SESSION

# S. 1387

To amend the Immigration and Nationality Act to authorize the establishment of guest worker programs, to provide for the adjustment of status of certain aliens unlawfully present in the United States to the status of a nonimmigrant guest worker, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 10, 2003

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

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## A BILL

To amend the Immigration and Nationality Act to authorize the establishment of guest worker programs, to provide for the adjustment of status of certain aliens unlawfully present in the United States to the status of a nonimmigrant guest worker, 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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Border Security and Immigration Reform Act of 2003”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—AUTHORIZATION FOR ESTABLISHMENT OF GUEST  
WORKER PROGRAMS

Sec. 101. Guest worker programs.

Sec. 102. Employer applications and petitions for guest workers.

Sec. 103. New nonimmigrant guest worker categories.

Sec. 104. Prohibition on adjustment of status to permanent resident status.

Sec. 105. Guest worker investment accounts.

Sec. 106. Funding.

TITLE II—ADJUSTMENT OF STATUS OF CERTAIN UNLAWFULLY  
PRESENT ALIENS TO NONIMMIGRANT GUEST WORKER STATUS

Sec. 201. Adjustment of status.

Sec. 202. Enhanced civil penalties for employment of unauthorized aliens after termination date for adjustment of status.

**1 SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) GUEST WORKER.—The term “guest work-  
4 er” means an alien described in section  
5 101(a)(15)(W) of the Immigration and Nationality  
6 Act, as added by section 103 of this Act.

7 (2) GUEST WORKER PROGRAM.—The term  
8 “guest worker program” or the “program” means,  
9 with respect to a particular country or the workers  
10 of that country, the guest worker program estab-  
11 lished with that country.

12 (3) GUEST WORKER PROGRAM COUNTRY.—The  
13 term “guest worker program country” means a for-  
14 eign country that participates in a guest worker pro-  
15 gram.

1 **TITLE I—AUTHORIZATION FOR**  
2 **ESTABLISHMENT OF GUEST**  
3 **WORKER PROGRAMS**

4 **SEC. 101. GUEST WORKER PROGRAMS.**

5 The Immigration and Nationality Act (8 U.S.C. 1101  
6 *et seq.*) is amended by inserting after section 218 the fol-  
7 lowing:

8 **“SEC. 218A. GUEST WORKER PROGRAMS.**

9 “(a) ESTABLISHMENT.—The Secretary of Homeland  
10 Security and the Secretary of State shall jointly establish  
11 and administer a guest worker program with any eligible  
12 foreign country. A foreign country is eligible to participate  
13 in the program if the country has entered into an agree-  
14 ment with the United States in which the country under-  
15 takes—

16 “(1) to develop standards of eligibility for the  
17 enrollment in the program of workers who are na-  
18 tives of that country, subject to the grounds of ineli-  
19 gibility described in subsection (c);

20 “(2) to establish a procedure for the enrollment  
21 in the program of eligible workers;

22 “(3) to establish, in cooperation with United  
23 States employers, a training program in the country  
24 for such workers;

1           “(4) to establish procedures for providing  
2 health care;

3           “(5) to monitor, and share information with the  
4 United States regarding, the departure from, and re-  
5 turn to, the country of workers enrolled in the pro-  
6 gram of that country; and

7           “(6) to accept the return of those workers from  
8 the United States.

9           “(b) PROGRAM DESCRIPTION.—Each guest worker  
10 program with a foreign country shall consist of—

11           “(1) the placement of guest workers who are  
12 enrolled in the program by that country in job op-  
13 portunities in the United States;

14           “(2) the admission to the United States of the  
15 guest workers to fill those job opportunities, subject  
16 to the procedures described in section 218B;

17           “(3) the performance of work in the United  
18 States in those job opportunities on a seasonal or  
19 nonseasonal basis; and

20           “(4) the return of the guest worker to the guest  
21 worker program country before the expiration of the  
22 worker’s period of authorized stay in the United  
23 States.

24           “(c) INELIGIBILITY OF CERTAIN ALIENS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), and notwithstanding subsection (a)(1),  
3           the following aliens are not eligible to participate in  
4           a guest worker program:

5                   “(A) Any alien under 18 years of age, ex-  
6                   cept accompanying, or following to join, an  
7                   alien who is a nonseasonal guest worker.

8                   “(B) Any alien who has been convicted of  
9                   a felony or 3 or more misdemeanors committed  
10                  in the United States.

11                  “(C) Any alien who was unlawfully present  
12                  in the United States.

13           “(2) EXCEPTION.—Notwithstanding paragraph  
14           (1), an alien may apply for admission to the United  
15           States under section 101(a)(15)(W) without regard  
16           to any previous period of unlawful presence in the  
17           United States if the alien applies for such admission  
18           not later than 1 year after the date of enactment of  
19           the Border Security and Immigration Reform Act of  
20           2003.

21           “(d) PERIODS OF AUTHORIZED STAY.—

22                   “(1) SEASONAL GUEST WORKERS.—The period  
23                   of authorized stay in the United States for a sea-  
24                   sonal guest worker shall not exceed 270 days in any  
25                   calendar year. The seasonal guest worker may re-

1 apply for admission to the United States in any sub-  
2 sequent calendar year.

3 “(2) NONSEASONAL GUEST WORKERS.—The pe-  
4 riod of authorized stay in the United States for a  
5 nonseasonal guest worker shall not exceed 12  
6 months, except that the period may, upon applica-  
7 tion, be extended by an additional period or periods  
8 of 12 months each and except that the total period  
9 of authorized stay may not exceed 36 months unless  
10 the alien returns to the guest worker program coun-  
11 try for a period of at least 6 months before readmis-  
12 sion to the United States.

13 “(e) WORK PERMITS.—During the period in which  
14 an alien is in lawful status under a guest worker program,  
15 the alien shall be granted authorization to engage in em-  
16 ployment in the United States in the job opportunity ap-  
17 proved under the program and be provided an appropriate  
18 work permit that includes a photograph of the guest work-  
19 er.

20 “(f) UNDOCUMENTED GUEST WORKERS.—An alien  
21 employed in the United States on the date of enactment  
22 of the Border Security and Immigration Reform Act of  
23 2003 who does not have proper documentation of author-  
24 ization to enter the United States shall be required to  
25 show evidence that the alien—

1           “(1) was in the United States on the date of  
2           enactment of the Border Security and Immigration  
3           Reform Act of 2003; and

4           “(2) is employed on the date on which the guest  
5           worker registers to participate in the guest worker  
6           program.

7           “(g) AUTHORIZED TRAVEL.—During the period an  
8           alien is in lawful nonimmigrant status granted under this  
9           section, the alien has the right to travel abroad.

10          “(h) ENTRY-EXIT INFORMATION.—The Secretary of  
11          Homeland Security, in cooperation with the Secretary of  
12          State and the governments of participating countries, shall  
13          establish and maintain a computer database to—

14                 “(1) monitor the entry into, and exit from, the  
15                 United States of guest workers;

16                 “(2) track employer compliance under the guest  
17                 worker program; and

18                 “(3) store past employment records of guest  
19                 workers to facilitate the return of those workers to  
20                 the same employer each year, if the employer and  
21                 guest worker so chooses.

22          “(i) ABSOLUTION FOR PAST ILLEGAL BEHAVIOR.—  
23          An alien who participates in a guest worker program shall  
24          be absolved of all liability for illegal behavior, as such be-  
25          havior pertains to the immigration status of the alien, that

1 occurred before the alien's participation in the guest work-  
2 er program.

3       “(j) LEGAL PERMANENT RESIDENT STATUS PRI-  
4 ORITY.—

5           “(1) IN GENERAL.—The Secretary of Homeland  
6 Security shall establish an evaluation system in ac-  
7 cordance with paragraph (2), that gives priority for  
8 adjustment of status to aliens who are applying for  
9 legal permanent residency, if the alien has partici-  
10 pated in the guest worker program and has worked  
11 in the United States for a continuous 3-year period.  
12 An alien guest worker can only apply for legal per-  
13 manent residency when that alien returns to the  
14 guest worker program country.

15           “(2) REQUIREMENTS.—The evaluation system  
16 established under paragraph (1) shall be a point sys-  
17 tem that rates an alien based on—

18           “(A) whether the alien has an employer  
19 sponsor;

20           “(B) whether the alien received promotions  
21 or pay increases during the alien's employment  
22 periods;

23           “(C) whether the alien paid taxes;

24           “(D) the proficiency of the alien in speak-  
25 ing English;

1                   “(E) the education of the alien; and

2                   “(F) whether the alien has refrained from  
3                   illegal activity.

4                   “(k) DEFINITIONS.—In this section:

5                   “(1) EMPLOYER.—The term ‘employer’ means  
6                   any person or entity, including any farm labor con-  
7                   tractor and any agricultural association, that em-  
8                   ploys workers.

9                   “(2) GUEST WORKER.—The term ‘guest work-  
10                  er’ means an alien described in section  
11                  101(a)(15)(W).

12                  “(3) GUEST WORKER PROGRAM.—The term  
13                  ‘guest worker program’ or the ‘program’ means,  
14                  with respect to a particular country or the workers  
15                  of that country, the guest worker program estab-  
16                  lished with that country.

17                  “(4) GUEST WORKER PROGRAM COUNTRY.—  
18                  The term ‘guest worker program country’ means a  
19                  foreign country that participates in a guest worker  
20                  program.

21                  “(5) JOB OPPORTUNITY.—The term ‘job oppor-  
22                  tunity’ means a job opening for temporary full-time  
23                  employment at a place in the United States to which  
24                  United States workers can be referred.

1           “(6) NONSEASONAL GUEST WORKER.—The  
2 term ‘nonseasonal guest worker’ means an alien de-  
3 scribed in section 101(a)(15)(W)(ii).

4           “(7) SEASONAL GUEST WORKER.—The term  
5 ‘seasonal guest worker’ means an alien described in  
6 section 101(a)(15)(W)(i).”.

7 **SEC. 102. EMPLOYER APPLICATIONS AND PETITIONS FOR**  
8 **GUEST WORKERS.**

9           (a) APPLICATIONS.—The Immigration and Nation-  
10 ality Act is amended by inserting after section 218A, as  
11 added by section 101, the following:

12 **“SEC. 218B. EMPLOYER APPLICATIONS FOR GUEST WORK-**  
13 **ERS.**

14           “(a) APPLICATIONS TO THE SECRETARY.—

15           “(1) IN GENERAL.—No alien may be admitted  
16 to the United States as a guest worker, or otherwise  
17 provided status as a guest worker, unless the em-  
18 ployer has filed with the Secretary of Labor an ap-  
19 plication containing—

20           “(A) in the case of nonseasonal guest  
21 workers, a request for an attestation under  
22 paragraph (2);

23           “(B) the assurances described in sub-  
24 section (b);

1           “(C) a description of the nature and loca-  
2           tion of the work to be performed;

3           “(D) the anticipated period (expected be-  
4           ginning and ending dates) for which workers  
5           will be needed;

6           “(E) the wages to be paid; and

7           “(F) the method of transportation, if nec-  
8           essary.

9           “(2) LABOR ATTESTATION REQUIRED FOR  
10          GUEST WORKERS.—In the case of the employment of  
11          any guest worker, the United States employer shall  
12          apply to the Secretary of Labor for an attestation  
13          that—

14               “(A) there are not sufficient workers who  
15               are able, willing, and qualified, and who will be  
16               available at the time and place needed, to per-  
17               form the labor or services involved in the em-  
18               ployer’s petition to the Secretary of Homeland  
19               Security; and

20               “(B) the employment of the alien in such  
21               labor or services will not adversely affect the  
22               wages and working conditions of workers in the  
23               United States similarly employed.

24           “(3) ACCOMPANIED BY JOB OFFER.—Each ap-  
25          plication filed under paragraph (1) shall be accom-

1       panied by a copy of the job offer describing the  
2       wages and other terms and conditions of employ-  
3       ment and the bona fide occupational qualifications  
4       that must be possessed by a worker to be employed  
5       in the job opportunity in question.

6       “(b) ASSURANCES FOR INCLUSION IN APPLICA-  
7       TIONS.—The assurances referred to in subsection (a)(1)  
8       are the following:

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

16               “(2) ADVERTISING OF JOB OPPORTUNITIES.—  
17       Not later than 14 days prior to the date on which  
18       the employer desires to employ a guest worker in a  
19       temporary or seasonal job opportunity, the employer  
20       shall advertise the availability of the job opportuni-  
21       ties for which the employer is seeking workers in a  
22       publication in the local labor market that is likely to  
23       be patronized by potential workers seeking such  
24       jobs.

1           “(3) WAGE RATE.—No worker shall be paid  
2           less than the greater of the hourly wage prescribed  
3           under section 6(a)(1) of the Fair Labor Standards  
4           Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable  
5           State minimum wage. All wages will be paid in a  
6           timely manner and all payroll records will be main-  
7           tained accurately.

8           “(4) PROVISION OF INSURANCE.—If the job op-  
9           portunity is not covered by the State workers’ com-  
10          pensation law, the employer will provide, at no cost  
11          to the worker, insurance covering injury and disease  
12          arising out of, and in the course of, the worker’s em-  
13          ployment which will provide benefits at least equal to  
14          those provided under the State’s workers’ compensa-  
15          tion law for comparable employment.

16          “(5) VEHICLE OPERATIONS.—The employer will  
17          comply with all general vehicle safety obligations and  
18          provide vehicle insurance coverage for the guest  
19          worker.

20          “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
21          OF EMPLOYER MEMBERS.—An association may file an ap-  
22          plication under subsection (a) on behalf of 1 or more of  
23          its employer members that the association certifies in its  
24          application has or have agreed in writing to comply with  
25          the requirements of this section and section 218A.

1 “(d) REVIEW AND APPROVAL OF APPLICATIONS.—

2 “(1) RESPONSIBILITY OF EMPLOYERS.—The  
3 employer shall make available for public examina-  
4 tion, within 1 working day after the date on which  
5 an application under subsection (a) is filed, at the  
6 principal place of business or work site of the em-  
7 ployer, a copy of each such application (and such ac-  
8 companying documents as are necessary).

9 “(2) RESPONSIBILITY OF THE SECRETARY.—

10 “(A) COMPILATION OF LIST.—The Sec-  
11 retary of Labor shall compile, on a current  
12 basis, a list (by employer and by occupational  
13 classification) of the applications filed under  
14 this subsection. Such list shall include the wage  
15 rate, number of workers sought, period of in-  
16 tended employment, and date of need. The Sec-  
17 retary of Labor shall make such list available  
18 for examination in the District of Columbia.

19 “(B) REVIEW OF APPLICATIONS.—The  
20 Secretary of Labor shall review such an applica-  
21 tion only for completeness and obvious inac-  
22 curacies. Unless the Secretary of Labor finds  
23 that the application is incomplete or obviously  
24 inaccurate, the Secretary of Labor shall certify  
25 that the intending employer has filed with the

1 Secretary of Labor an application as described  
2 in subsection (a). Such certification shall be  
3 provided within 14 days of the filing of the ap-  
4 plication.

5 “(C) REPORT TO EMPLOYER.—Not later  
6 than 7 days before the employer requires work  
7 to commence, the Secretary of Labor shall  
8 transmit a report to the employer containing  
9 the name, contact information, and specific  
10 work permit information of each guest worker  
11 who has been authorized to perform the work  
12 sought by the employer. Upon receipt of a re-  
13 port, the employer shall present a work contract  
14 to the guest worker for signature. By signing a  
15 work contract under the guest worker program,  
16 a guest worker undertakes to comply with all  
17 United States laws, and the employer under-  
18 takes to permit access to the workplace by ap-  
19 propriate officials of the Department of Labor.

20 “(e) VIOLATIONS OF EMPLOYER ATTESTATION.—

21 “(1) IN GENERAL.—

22 “(A) RESPONSIBILITY OF THE SECRETARY  
23 OF LABOR.—The Secretary of Labor shall be  
24 responsible for applying United States wage  
25 and hour laws within the guest worker program

1 and normal requirements for safe working con-  
2 ditions.

3 “(B) PENALTIES.—Any United States em-  
4 ployer who violates any law or regulation relat-  
5 ing to the matters described in subparagraph  
6 (A) shall be subject to—

7 “(i) the same penalties that would  
8 apply if the employees of the employer  
9 were United States citizens; and

10 “(ii) debarment from the guest worker  
11 program for up to 10 years.

12 “(C) APPLICATION OF DEBARMENT PEN-  
13 ALTY.—A 10-year debarment shall be imposed  
14 for employers found to be in violation on 3  
15 counts within 3 consecutive years, excluding  
16 multiple employee complaints filed at one time,  
17 except that, if multiple employee violations are  
18 found and the practice continues into the next  
19 30 days, resulting in additional employee com-  
20 plaints, such a violation shall be counted toward  
21 the 3-count limitation. For purposes of this  
22 paragraph, violations include unfair wages, un-  
23 reasonable work hours and blacklisting.

24 “(2) PROCESS FOR COMPLAINANTS TO OBTAIN  
25 OTHER EMPLOYMENT.—The Secretary of Labor and

1 the Secretary of Homeland Security shall establish a  
2 process under which a guest worker who files a com-  
3 plaint regarding an employer who intimidates,  
4 threatens, restrains, coerces, blacklists, discharges,  
5 or in any other manner discriminates against an em-  
6 ployee because the employee has disclosed informa-  
7 tion indicating an employer violation of the guest  
8 worker program to enable the employee to seek other  
9 appropriate employment in the United States for a  
10 period not to exceed the maximum period of stay au-  
11 thorized by the original permit.

12 “(3) ADJUDICATION PROCESS FOR DISPUTE  
13 CLAIMS.—The Secretary of Homeland Security shall  
14 develop a streamlined adjudication process for proc-  
15 essing dispute claims. The guest worker shall imme-  
16 diately be reassigned, and the adjudication process  
17 shall be limited to 30 days. If the United States em-  
18 ployer is not found in violation of the program re-  
19 quirements, a new guest worker shall be assigned to  
20 the employer not later than 15 days after the end  
21 of the adjudication proceedings.

22 “(f) ABSOLUTION FOR PAST ILLEGAL BEHAVIOR.—  
23 An employer who participates in a guest worker program  
24 shall be absolved of all liability for illegal behavior, as such  
25 behavior pertains to the immigration status of employees,

1 that occurred before the employer’s participation in the  
2 guest worker program.

3 “(g) DEFINITIONS.—In this section:

4 “(1) EMPLOYER.—The term ‘employer’ means  
5 any person or entity, including any farm labor con-  
6 tractor and any agricultural association, that em-  
7 ploys workers.

8 “(2) GUEST WORKER.—The term ‘guest work-  
9 er’ means an alien described in section  
10 101(a)(15)(W).

11 “(3) GUEST WORKER PROGRAM.—The term  
12 ‘guest worker program’ or the ‘program’ means,  
13 with respect to a particular country or the workers  
14 of that country, the guest worker program estab-  
15 lished with that country.

16 “(4) GUEST WORKER PROGRAM COUNTRY.—  
17 The term ‘guest worker program country’ means a  
18 foreign country that participates in a guest worker  
19 program.

20 “(5) JOB OPPORTUNITY.—The term ‘job oppor-  
21 tunity’ means a job opening for temporary full-time  
22 employment at a place in the United States to which  
23 United States workers can be referred.

1           “(6) NONSEASONAL GUEST WORKER.—The  
2 term ‘nonseasonal guest worker’ means an alien de-  
3 scribed in section 101(a)(15)(W)(ii).

4           “(7) SEASONAL GUEST WORKER.—The term  
5 ‘seasonal guest worker’ means an alien described in  
6 section 101(a)(15)(W)(i).”.

7           (b) PETITIONS.—Section 214(c)(1) of the Immigra-  
8 tion and Nationality Act (8 U.S.C. 1184(c)(1)) is amend-  
9 ed in the first sentence by striking “or (P)(i)” and insert-  
10 ing “(P)(i), or (W)”.

11 **SEC. 103. NEW NONIMMIGRANT GUEST WORKER CAT-**  
12 **EGORIES.**

13           Section 101(a)(15) of the Immigration and Nation-  
14 ality Act (8 U.S.C. 1101(a)(15)) is amended by adding  
15 at the end the following:

16           “(W)(i) an alien having a residence in a guest  
17 worker program country who is coming temporarily  
18 to the United States as a seasonal guest worker  
19 under section 218A, and with respect to whom the  
20 Secretary of Labor determines and certifies to the  
21 Secretary of Homeland Security that the intending  
22 employer has filed with the Secretary of Labor an  
23 application under section 218B(b); or

24           “(ii) an alien having a residence in a guest  
25 worker program country who is coming temporarily

1 to the United States as a nonseasonal guest worker  
2 under section 218A with respect to whom the Sec-  
3 retary of Labor has approved a certification under  
4 section 218B(a), and the alien spouse and minor  
5 children of any such alien specified in this clause if  
6 accompanying or following to join the principal alien  
7 and if the principal alien has a level of income equal  
8 to or greater than 125 percent of the Federal pov-  
9 erty line (as defined in section 213A(h)).”.

10 **SEC. 104. PROHIBITION ON ADJUSTMENT OF STATUS TO**  
11 **PERMANENT RESIDENT STATUS.**

12 (a) **ADJUSTMENT OF STATUS.**—Section 245(c) of the  
13 Immigration and Nationality Act (8 U.S.C. 1255(c)) is  
14 amended—

15 (1) by striking “or” at the end of paragraph  
16 (7); and

17 (2) by striking the period at the end of para-  
18 graph (8) and inserting the following: “; or (9) any  
19 alien who is employed in a guest worker program  
20 under section 218A for less than 3 years or who has  
21 violated the terms of such a program.”.

22 (b) **TOTAL NUMBER OF LEGAL PERMANENT RESI-**  
23 **DENT APPLICANTS.**—The Secretary of Homeland Security  
24 may annually adjust the total number of aliens whose sta-  
25 tus may be adjusted to that of an alien lawfully admitted

1 for permanent residence based on economic determina-  
2 tions made by the Secretary of Labor and the number of  
3 participants in the guest worker program established by  
4 this title.

5 **SEC. 105. GUEST WORKER INVESTMENT ACCOUNTS.**

6 (a) IN GENERAL.—Section 201 of the Social Security  
7 Act (42 U.S.C. 401) is amended by adding at the end the  
8 following:

9 “(n)(1) Notwithstanding any other provision of this  
10 section, the Secretary of the Treasury shall transfer at  
11 least quarterly from the Federal Old-Age and Survivors  
12 Insurance Trust Fund and the Federal Disability Insur-  
13 ance Trust Fund 100 percent of the guest worker taxes  
14 to the Guest Worker Investment Fund for deposit in a  
15 guest worker investment account for each guest worker  
16 as specified in section 253.

17 “(2) For purposes of this subsection—

18 “(A) the term ‘guest worker taxes’ means that  
19 portion of the amounts appropriated to the Federal  
20 Old-Age and Survivors Insurance Trust Fund and  
21 the Federal Disability Insurance Trust Fund under  
22 this section and properly attributable to the wages  
23 (as defined in section 3121 of the Internal Revenue  
24 Code of 1986) and self-employment income (as de-  
25 fined in section 1402 of such Code) of guest workers

1 as determined by the Commissioner of Social Secu-  
2 rity; and

3 “(B) the term ‘guest worker’ has the meaning  
4 given such term by section 218A(k) of the Immigra-  
5 tion and Nationality Act.”.

6 (b) GUEST WORKER INVESTMENT ACCOUNTS.—Title  
7 II of the Social Security Act (42 U.S.C. 401 et seq.) is  
8 amended—

9 (1) by inserting before section 201 the fol-  
10 lowing:

11 “PART A—SOCIAL SECURITY”;

12 and

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

14 “PART B—GUEST WORKER INVESTMENT ACCOUNTS

15 “DEFINITIONS

16 “SEC. 251. For purposes of this part:

17 “(1) GUEST WORKER.—The term ‘guest work-  
18 er’ has the meaning given such term by section  
19 218A(k) of the Immigration and Nationality Act.

20 “(2) COVERED EMPLOYER.—The term ‘covered  
21 employer’ means, for any calendar year, any person  
22 on whom an excise tax is imposed under section  
23 3111 of the Internal Revenue Code of 1986 with re-  
24 spect to having an individual in the person’s employ

1 to whom wages are paid by such person during such  
2 calendar year.

3 “(3) GUEST WORKER INVESTMENT ACCOUNT.—

4 The term ‘guest worker investment account’ means  
5 an account for a guest worker which is administered  
6 by the Secretary through the Guest Worker Invest-  
7 ment Fund.

8 “(4) GUEST WORKER INVESTMENT FUND.—The

9 term ‘Guest Worker Investment Fund’ means the  
10 fund established under section 253.

11 “(5) SECRETARY.—The term ‘Secretary’ means

12 the Secretary of the Treasury.

13 “GUEST WORKER INVESTMENT ACCOUNTS

14 “SEC. 252. (a) IN GENERAL.—A guest worker invest-

15 ment account shall be established by the Secretary in the

16 Guest Worker Investment Fund for each individual not

17 later than 10 business days after the covered employer of

18 such individual submits a W-4 form (or any successor

19 form) identifying such individual as a guest worker.

20 “(b) TIME ACCOUNT TAKES EFFECT.—A guest

21 worker investment account established under subsection

22 (a) shall take effect with respect to the first pay period

23 beginning more than 14 days after the date of such estab-

24 lishment.

25 “(c) GUEST WORKER’S PROPERTY RIGHT IN GUEST

26 WORKER INVESTMENT ACCOUNT.—The guest worker in-

1 vestment account established for a guest worker is the sole  
2 property of the worker.

3 “GUEST WORKER INVESTMENT FUND

4 “SEC. 253. (a) IN GENERAL.—There is created on  
5 the books of the Treasury of the United States a trust  
6 fund to be known as the ‘Guest Worker Investment Fund’  
7 to be administered by the Secretary. Such Fund shall con-  
8 sist of the assets transferred under section 201(n) to each  
9 guest worker investment account established under section  
10 252 and the income earned under subsection (e) and cred-  
11 ited to such account.

12 “(b) NOTICE OF CONTRIBUTIONS.—The full amount  
13 of a guest worker’s investment account transfers shall be  
14 shown on such worker’s W-2 tax statement, as provided  
15 in section 6051(a)(12) of the Internal Revenue Code of  
16 1986.

17 “(c) INVESTMENT EARNINGS REPORT.—

18 “(1) IN GENERAL.—At least annually, the  
19 Guest Worker Investment Fund shall provide to  
20 each guest worker with a guest worker investment  
21 account managed by the Fund a guest worker in-  
22 vestment status report. Such report may be trans-  
23 mitted electronically upon the agreement of the  
24 guest worker under the terms and conditions estab-  
25 lished by the Secretary.

1           “(2) CONTENTS OF REPORT.—The guest work-  
2           er investment status report, with respect to a guest  
3           worker investment account, shall provide the fol-  
4           lowing information:

5                   “(A) The total amounts transferred under  
6                   section 201(n) in the last quarter, the last year,  
7                   and since the account was established.

8                   “(B) The amount and rate of income  
9                   earned under subsection (e) for each period de-  
10                  scribed in subparagraph (A).

11           “(d) MAXIMUM ADMINISTRATIVE FEE.—The Guest  
12           Worker Investment Fund shall charge each guest worker  
13           in the Fund a single, uniform annual administrative fee  
14           not to exceed 0.3 percent of the value of the assets in-  
15           vested in the worker’s account.

16           “(e) INVESTMENT DUTIES OF SECRETARY.—The  
17           Secretary shall establish policies for the investment and  
18           management of guest worker investment accounts, includ-  
19           ing policies that shall provide for prudent Federal Govern-  
20           ment investment instruments suitable for accumulating  
21           funds.

22           “GUEST WORKER INVESTMENT ACCOUNT DISTRIBUTIONS  
23           “SEC. 254. (a) DATE OF DISTRIBUTION.—Except as  
24           provided in subsections (b) and (c), a distribution of the  
25           balance in a guest worker investment account may only  
26           be made on or after the date the worker permanently

1 leaves the guest worker program established under section  
2 218A of the Immigration and Nationality Act and returns  
3 to the worker's home country.

4 “(b) DISTRIBUTION IN THE EVENT OF DEATH.—If  
5 the guest worker dies before the date determined under  
6 subsection (a), the balance in the worker's account shall  
7 be distributed to the worker's estate under rules estab-  
8 lished by the Secretary.”.

9 (c) GUEST WORKER INVESTMENT ACCOUNT TRANS-  
10 FERS SHOWN ON W-2'S.—

11 (1) IN GENERAL.—Section 6051(a) of the In-  
12 ternal Revenue Code of 1986 (relating to receipts  
13 for employees) is amended by striking “and” at the  
14 end of paragraph (10), by striking the period at the  
15 end of paragraph (11) and inserting “, and”, and in-  
16 serting after paragraph (11) the following:

17 “(12) in the case of a guest worker (as defined  
18 in section 251(1) of the Social Security Act), of the  
19 amount shown pursuant to paragraph (6), the total  
20 amount transferred to such worker's guest worker  
21 investment account under section 201(n) of such  
22 Act.”.

23 (2) CONFORMING AMENDMENTS.—

1 (A) Section 6051(a)(6) of such Code is  
2 amended by inserting “and paid as tax under  
3 section 3111” after “section 3101”.

4 (B) Section 6051(c) of such Code is  
5 amended by inserting “and paid as tax under  
6 section 3111” after “section 3101”.

7 **SEC. 106. FUNDING.**

8 Funds appropriated to the Secretary of Labor for the  
9 United States Employment Service shall be available to  
10 pay the costs of the Department of Labor in carrying out  
11 its responsibilities under sections 218A and 218B of the  
12 Immigration and Nationality Act, as added by sections  
13 101 and 102 of this Act.

14 **TITLE II—ADJUSTMENT OF STA-**  
15 **TUS OF CERTAIN UNLAW-**  
16 **FULLY PRESENT ALIENS TO**  
17 **NONIMMIGRANT GUEST**  
18 **WORKER STATUS**

19 **SEC. 201. ADJUSTMENT OF STATUS.**

20 (a) IN GENERAL.—The Secretary of Homeland Secu-  
21 rity shall adjust the status of an alien unlawfully present  
22 in the United States as of the date of enactment of this  
23 Act to that of an alien admitted to the United States as  
24 a nonimmigrant guest worker under section  
25 101(a)(15)(W) of the Immigration and Nationality Act,

1 as added by section 103 of this Act, if the Secretary of  
2 Homeland Security is satisfied that the following require-  
3 ments are satisfied with respect to the alien:

4 (1) APPLICATION PERIOD.—The alien must  
5 apply for such adjustment not later than 12 months  
6 after the date of enactment of this Act.

7 (2) ADMISSIBILITY.—The alien must establish  
8 that the alien is otherwise admissible to the United  
9 States under section 101(a)(15)(W) of the Immigra-  
10 tion and Nationality Act, as added by section 103 of  
11 this Act.

12 (3) ATTESTATION BY UNITED STATES EM-  
13 PLOYER.—A United States employer must file an at-  
14 testation with the Secretary of Labor that the alien  
15 is employed by the United States employer.

16 (b) TREATMENT AS NONIMMIGRANT “W” WORK-  
17 ERS.—All requirements applicable to aliens admitted to  
18 the United States under section 101(a)(15)(W) of the Im-  
19 migration and Nationality Act, as added by section 103  
20 of this Act, shall apply to aliens receiving adjustment of  
21 status under this section, except that—

22 (1) the country of the alien’s birth shall be con-  
23 sidered the guest worker program country; and

24 (2) the attestation described in subsection  
25 (a)(3) shall substitute for an application by the

1 United States employer under section 218B of the  
2 Immigration and Nationality Act, as added by sec-  
3 tion 102.

4 **SEC. 202. ENHANCED CIVIL PENALTIES FOR EMPLOYMENT**  
5 **OF UNAUTHORIZED ALIENS AFTER TERMI-**  
6 **NATION DATE FOR ADJUSTMENT OF STATUS.**

7 (a) IN GENERAL.—In addition to such civil penalties  
8 as may be imposed for the employment of unauthorized  
9 aliens under section 274 of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1324), the Secretary of Homeland Se-  
11 curity, after notice and an opportunity to be heard, shall  
12 issue an order imposing a civil penalty upon any United  
13 States employer that knowingly employs an unauthorized  
14 alien after the expiration of the application period for ad-  
15 justment of status under section 201(a).

16 (b) CEASE AND DESIST ORDER WITH CIVIL MONEY  
17 PENALTY FOR HIRING UNAUTHORIZED ALIENS.—With  
18 respect to a violation of subsection (a), the order under  
19 that subsection shall require the United States employer  
20 to cease and desist from such violations and to pay a civil  
21 penalty in an amount of—

22 (1) not less than \$500 and not more than  
23 \$2,500 for each unauthorized alien with respect to  
24 whom a violation occurred;

1           (2) not less than \$2,000 and not more than  
2           \$5,000 for each such alien in the case of a United  
3           States employer previously subject to 1 order under  
4           subsection (a);

5           (3) not less than \$4,000 and not more than  
6           \$10,000 for each such alien in the case of a United  
7           States employer previously subject to 2 orders under  
8           subsection (a), plus debarment from the guest work-  
9           er program for a period of 5 years; and

10          (4) not less than \$10,000 for each such alien  
11          in the case of a United States employer previously  
12          subject to 3 orders under subsection (a), plus per-  
13          manent debarment from the guest worker program.

14          (c) EFFECT ON GUEST WORKER OF HIRING BY  
15          DEBARRED EMPLOYER.—Any guest worker employed by  
16          a United States employer that is debarred from participa-  
17          tion in the guest worker program shall be granted a new  
18          work contract and shall be entitled to remain in the  
19          United States for the period of stay authorized with re-  
20          spect to the original work contract.

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