

108TH CONGRESS
1ST SESSION

S. 1461

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

IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, JULY 21), 2003

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

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—

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

10 and

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

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

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

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

15 “ADMISSION OF TEMPORARY H-4A WORKERS

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

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

23 “(A) \$1000, in the case of an employer
24 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 U.S. WORKERS.—In order to satisfy the recruit-
17 ment requirements of this subsection, the employer
18 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 the 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 if
25 not paid in full 30 days after the end of

1 the alien’s period of authorized stay as a
2 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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