

108TH CONGRESS  
2D SESSION

# S. 2010

To strengthen national security and United States borders, reunify families, provide willing workers, and establish earned adjustment under the immigration laws of the United States.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 2004

Mr. HAGEL (for himself and Mr. DASCHLE) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To strengthen national security and United States borders, reunify families, provide willing workers, and establish earned adjustment under the immigration laws of the United States.

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 “Immigration Reform  
5        Act of 2004: Strengthening America’s National Security,  
6        Economy, and Families” or the “Immigration Reform Act  
7        of 2004”.

1                   **TITLE I— FAMILY**  
2                   **REUNIFICATION**

3   **SEC. 101. TREATMENT OF IMMEDIATE RELATIVES WITH RE-**  
4                   **SPECT TO THE FAMILY IMMIGRATION CAP.**

5           (a) EXEMPTION OF IMMEDIATE RELATIVES FROM  
6 FAMILY-SPONSORED IMMIGRANT CAP.—Section  
7 201(c)(1)(A) of the Immigration and Nationality Act (8  
8 U.S.C. 1151(c)(1)(A)) is amended by striking clauses (i),  
9 (ii), and (iii) and inserting the following:

10                   “(i) 480,000, minus;

11                   “(ii) the number computed under paragraph  
12 (3); plus

13                   “(iii) the number (if any) computed under para-  
14 graph (2).”.

15           (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
16 Section 201(c) of the Immigration and Nationality Act (8  
17 U.S.C. 1151(c)) is amended—

18                   (1) by striking paragraph (2); and

19                   (2) by redesignating paragraphs (3), (4), and

20                   (5) as paragraphs (2), (3), and (4), respectively.

1 **SEC. 102. RECLASSIFICATION OF SPOUSES AND MINOR**  
2 **CHILDREN OF LEGAL PERMANENT RESI-**  
3 **DENTS AS IMMEDIATE RELATIVES.**

4 (a) IMMEDIATE RELATIVES.—Section  
5 201(b)(2)(A)(i) of the Immigration and Nationality Act  
6 (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

7 (1) in the first sentence, by inserting “or the  
8 spouses and children of aliens lawfully admitted for  
9 permanent residence,” after “United States,”;

10 (2) in the second sentence—

11 (A) by inserting “or lawful permanent resi-  
12 dent” after “citizen” each place that term ap-  
13 pears; and

14 (B) by inserting “or lawful permanent resi-  
15 dent’s” after “citizen’s” each place that term  
16 appears;

17 (3) in the third sentence, by inserting “or the  
18 lawful permanent resident loses lawful permanent  
19 resident status” after “United States citizenship”;  
20 and

21 (4) by adding at the end the following: “A  
22 spouse or child, as defined in subparagraph (A), (B),  
23 (C), (D), or (E) of section 101(b)(1) shall be enti-  
24 tled to the same status, and the same order of con-  
25 sideration provided in the respective subsection, if  
26 accompanying or following to join the spouse or par-

1 ent. The same treatment shall apply to parents of  
2 citizens of the United States being entitled to the  
3 same status, and the same order of consideration  
4 provided in the respective subsection, if accom-  
5 panying or following to join their daughter or son.”.

6 (b) ALLOCATION OF IMMIGRANT VISAS.—Section  
7 203(a) of the Immigration and Nationality Act (8 U.S.C.  
8 1153(a)) is amended—

9 (1) in paragraph (1), by striking “23,400” and  
10 inserting “38,000”;

11 (2) by striking paragraph (2) and inserting the  
12 following:

13 “(2) UNMARRIED SONS AND UNMARRIED  
14 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—  
15 Qualified immigrants who are the unmarried sons or  
16 unmarried daughters (but are not the children) of  
17 an alien lawfully admitted for permanent residence  
18 shall be allocated visas in a number not to exceed  
19 60,000 plus the number (if any) by which such  
20 worldwide level exceeds 226,000, plus any visas not  
21 required for the class specified in paragraph (1).”;

22 (3) in paragraph (3), by striking “23,400” and  
23 inserting “38,000”; and

24 (4) in paragraph (4), by striking “65,000” and  
25 inserting “90,000”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) RULES FOR DETERMINING WHETHER CER-  
3 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section  
4 201(f) of the Immigration and Nationality Act (8  
5 U.S.C. 1151(f)) is amended—

6 (A) in paragraph (1), by striking “para-  
7 graphs (2) and (3),” and inserting “paragraph  
8 (2),”;

9 (B) by striking paragraph (2); and

10 (C) by redesignating paragraph (3) as  
11 paragraph (2).

12 (2) NUMERICAL LIMITATION TO ANY SINGLE  
13 FOREIGN STATE.—Section 202 of the Immigration  
14 and Nationality Act (8 U.S.C. 1152) is amended—

15 (A) in subsection (a)(4)—

16 (i) by striking subparagraphs (A) and  
17 (B);

18 (ii) by redesignating subparagraphs  
19 (C) and (D) as subparagraphs (A) and (B)  
20 respectively; and

21 (iii) in subparagraph (A), as so reded-  
22 icated, by striking “section 203(a)(2)(B)”  
23 and inserting “section 203(a)(2)”;

24 (B) in subsection (e), in the flush matter  
25 following paragraph (3), by striking “, or as

1 limiting the number of visas that may be issued  
2 under section 203(a)(2)(A) pursuant to sub-  
3 section (a)(4)(A)”.

4 (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-  
5 tion 203(h) of the Immigration and Nationality Act  
6 (8 U.S.C. 1153(h)) is amended—

7 (A) in paragraph (1)—

8 (i) in the matter preceding subpara-  
9 graph (A), by striking “subsections  
10 (a)(2)(A) and (d)” and inserting “sub-  
11 section (d)”;

12 (ii) in subparagraph (A), by striking  
13 “becomes available for such alien (or, in  
14 the case of subsection (d), the date on  
15 which an immigrant visa number became  
16 available for the alien’s parent),” and in-  
17 serting “became available for the alien’s  
18 parent,”; and

19 (iii) in subparagraph (B), by striking  
20 “applicable”;

21 (B) in paragraph (2), by striking “The pe-  
22 tition” and all that follows through the period  
23 and inserting “The petition described in this  
24 paragraph is a petition filed under section 204

1 for classification of the alien’s parent under  
2 subsection (a), (b), or (c).”; and

3 (C) in paragraph (3), by striking “sub-  
4 sections (a)(2)(A) and (d)” and inserting “sub-  
5 section (d)”.

6 (4) PROCEDURE FOR GRANTING IMMIGRANT  
7 STATUS.—Section 204 of the Immigration and Na-  
8 tionality Act (8 U.S.C. 1154) is amended—

9 (A) in subsection (a)(1)—

10 (i) in subparagraph (A)—

11 (I) in clause (iii)—

12 (aa) by inserting “or legal  
13 permanent resident” after “cit-  
14 izen” each place that term ap-  
15 pears; and

16 (bb) in subclause  
17 (II)(aa)(CC)(bbb), by inserting  
18 “or legal permanent resident”  
19 after “citizenship”;

20 (II) in clause (iv)—

21 (aa) by inserting “or legal  
22 permanent resident” after “cit-  
23 izen” each place that term ap-  
24 pears; and

1 (bb) by inserting “or legal  
2 permanent resident” after “citi-  
3 zenship”;

4 (III) in clause (v)(I), by inserting  
5 “or legal permanent resident”; and

6 (IV) in clause (vi)—

7 (aa) by inserting “or legal  
8 permanent resident status” after  
9 “renunciation of citizenship”;  
10 and

11 (bb) by inserting “or legal  
12 permanent resident” after “abus-  
13 er’s citizenship”;

14 (ii) by striking subparagraph (B);

15 (iii) by redesignating subparagraphs  
16 (C) through (J) as subparagraphs (B)  
17 through (I), respectively;

18 (iv) in subparagraph (B), as so redesi-  
19 gnated, by striking “subparagraph  
20 (A)(iii), (A)(iv), (B)(ii), or (B)(iii)” and in-  
21 sserting “clause (iii) or (iv) of subpara-  
22 graph (A)”;

23 (v) in subparagraph (I), as so redesi-  
24 gnated—

1 (I) by striking “or clause (ii) or  
2 (iii) of subparagraph (B)”;

3 (II) by striking “under subpara-  
4 graphs (C) and (D)” and inserting  
5 “under subparagraphs (B) and (C)”;

6 (B) by striking subsection (a)(2);

7 (C) in subsection (h), by striking “or a pe-  
8 tition filed under subsection (a)(1)(B)(ii)”;

9 (D) in subsection (j), by striking “sub-  
10 section (a)(1)(D)” and inserting “subsection  
11 (a)(1)(C)”.

12 **SEC. 103. EXCEPTIONS.**

13 Section 212(a)(9)(B)(iii) of the Immigration and Na-  
14 tionality Act (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by  
15 adding at the end the following:

16 “(V) SPOUSES AND CHILDREN  
17 OF LEGAL PERMANENT RESIDENTS OR  
18 CITIZENS OF THE UNITED STATES  
19 AND PARENTS OF UNITED STATES  
20 CITIZENS.—The provisions of this  
21 subparagraph or subparagraph  
22 (C)(i)(I) shall be waived for spouses  
23 and children of legal permanent resi-  
24 dents or citizens of the United States  
25 as well as parents of citizens of the

1 United States, as such terms are de-  
2 fined in section 201(b)(2)(A)(i), on  
3 whose behalf or who are derivative  
4 beneficiaries of a petition filed under  
5 section 203 on or before the date of  
6 introduction of the Immigration Re-  
7 form Act of 2004.”.

## 8 **TITLE II—WILLING WORKER** 9 **PROGRAM**

### 10 **SEC. 201. WILLING WORKERS.**

11 (a) H-2B WORKERS.—Section 101(a)(15)(H)(ii)(b)  
12 of the Immigration and Nationality Act (8 U.S.C.  
13 1101(a)(15)(H)(ii)(b)) is amended—

14 (1) by inserting “subject to section 212(t),” be-  
15 fore “having a residence”; and

16 (2) by striking “temporary service or labor”  
17 and inserting “short-term service or labor, lasting  
18 not more than 9 months”.

19 (b) H-2C WORKERS.—Section 101(a)(15)(H)(ii)(b)  
20 of the Immigration and Nationality Act (8 U.S.C.  
21 1101(a)(15)(H)(ii)(b)) is amended by striking “profes-  
22 sion; or” and inserting “profession, or (c) subject to sec-  
23 tion 212(t), who is coming temporarily to the United  
24 States to perform labor or services, other than those occu-  
25 pation classifications covered under the provisions of

1 clause (i)(b), (ii)(a), or (ii)(b) of this subparagraph or sub-  
2 paragraph (L), (O), or (P), for a United States employer,  
3 if United States workers qualified to perform such labor  
4 or service cannot be identified; or”.

5 **SEC. 202. RECRUITMENT OF UNITED STATES WORKERS.**

6 Section 212 of the Immigration and Nationality Act  
7 (8 U.S.C. 1182) is amended—

8 (1) by redesignating subsection (p), as added by  
9 section 1505(f) of Public Law 106–386 (114 Stat.  
10 1526) as subsection (s); and

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

12 “(t)(1) An employer that seeks to employ an alien  
13 described in clause (ii)(b) or (ii)(c) of section  
14 101(a)(15)(H) shall, with respect to an alien described in  
15 such clause (ii)(b), 14 days prior to filing an application  
16 under paragraph (3), and with respect to an alien de-  
17 scribed in such clause (ii)(c), 30 days prior to filing an  
18 application under paragraph (3), take the following steps  
19 to recruit United States workers for the position for which  
20 the nonimmigrant worker is sought:

21 “(A) Submit a copy of the job opportunity, in-  
22 cluding a description of the wages and other terms  
23 and conditions of employment, to the United States  
24 Employment Services within the Department of  
25 Labor (ES) which shall provide the employers with

1 an acknowledgement of receipt of the documentation  
2 provided to the ES in accordance with this subpara-  
3 graph.

4 “(B) Authorize the ES to post the job oppor-  
5 tunity on ‘America’s Job Bank’ and local job banks,  
6 and with unemployment agencies and other labor re-  
7 ferral and recruitment sources pertinent to the job  
8 in question.

9 “(C) Authorize the ES to notify the central of-  
10 fice of the State Federation of Labor in the State  
11 in which the job is located.

12 “(D) Post the availability of the job opportunity  
13 for which the employer is seeking a worker in con-  
14 spicuous locations at the place of employment for all  
15 employees to see.

16 “(E) Advertise, with respect to an alien de-  
17 scribed in such clause (ii)(b), for at least 3 consec-  
18 utive days, and for an alien described in such clause  
19 (ii)(c), for at least 10 consecutive days, the avail-  
20 ability of the job opportunity for which the employer  
21 is seeking a worker in a publication with the highest  
22 circulation in the labor market that is likely to be  
23 patronized by a potential worker.

24 “(F) Based on recommendations by the local  
25 job service, advertise the availability of the job op-

1 portunity in professional, trade, or ethnic publica-  
2 tions that are likely to be patronized by a potential  
3 worker.

4 “(2) An employer that seeks to employ an alien de-  
5 scribed in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)  
6 shall—

7 “(A) has offered the job to any United States  
8 worker who applies and is qualified for the job for  
9 which the nonimmigrant worker is sought and who  
10 is available at the time of need; and

11 “(B) be required to maintain, for at least 1  
12 year after the employment relationship is termi-  
13 nated, documentation of recruitment efforts and re-  
14 sponses received prior to the filing of the employer’s  
15 application with the Secretary of Labor, including  
16 resumes, applications, and if applicable, tests of  
17 United States workers who applied and were not  
18 hired for the job the employer seeks to fill with a  
19 nonimmigrant worker.”.

20 **SEC. 203. ADMISSION OF WILLING WORKERS.**

21 (a) APPLICATION TO THE SECRETARY OF LABOR.—  
22 Section 212(t) of the Immigration and Nationality Act (8  
23 U.S.C. 1182(t)), as added by section 202, is amended by  
24 adding after paragraph (2) the following:

1       “(3) An employer that seeks to fill a position with  
2 an alien described in clause (ii)(b) or (ii)(c) of section  
3 101(a)(15)(H), shall file with the Secretary of Labor an  
4 application attesting that—

5               “(A) the employer is offering and will offer dur-  
6 ing the period of authorized employment to aliens  
7 admitted or provided status as a nonimmigrant de-  
8 scribed in clause (ii)(b) or (ii)(c) of section  
9 101(a)(15)(H), wages that are at least—

10               “(i) the actual wage level paid by the em-  
11 ployer to all other individuals with similar expe-  
12 rience and qualifications for the specific em-  
13 ployment in question; or

14               “(ii) the prevailing wage level for the occu-  
15 pational classification in the area of employ-  
16 ment;

17 whichever is greater, based on the best information  
18 available at the time of the filing of the application,  
19 and for purposes of clause (ii) the prevailing wage  
20 level shall be, if the job opportunity is covered by a  
21 collective bargaining agreement between a union and  
22 the employer, the wage rate set forth in the collec-  
23 tive bargaining agreement, or if the job opportunity  
24 is not covered by a collective bargaining agreement  
25 between a union and the employer, and it is in an

1 occupation that is covered by a wage determination  
2 under the Davis-Bacon Act (40 U.S.C. 276a et seq.)  
3 or the Service Contract Act of 1965 (41 U.S.C. 351  
4 et seq.), the appropriate statutory wage determina-  
5 tion;

6 “(B) the employer will offer the same wages,  
7 benefits, and working conditions for such non-  
8 immigrant as those provided to United States work-  
9 ers similarly employed in the same occupation and  
10 the same place of employment;

11 “(C) there is not a strike, lockout, or labor dis-  
12 pute in the occupational classification at the place of  
13 employment (including any concerted activity to  
14 which section 7 of the Labor Management Relations  
15 Act (29 U.S.C. 157) applies);

16 “(D) the employer will abide by all applicable  
17 laws and regulations relating to the right of workers  
18 to join or organize a union;

19 “(E) the employer has provided notice of the  
20 filing of the application to the bargaining represent-  
21 ative, if any, of the employer’s employees in the oc-  
22 cupational classification at the place of employment  
23 or, if there is no such bargaining representative, has  
24 posted notice of the filing in conspicuous locations at  
25 the place of employment for all employees to see for

1 not less than 10 business days for an alien described  
2 in clause (ii)(b) of section 101(a)(15)(H) and for not  
3 less than 25 business days for an alien described in  
4 clause (ii)(c) of such section;

5 “(F) the employer (including its officers, rep-  
6 resentatives, agents, or attorneys) has not required  
7 the applicant to pay any fee or charge for preparing  
8 the application and submitting it to the Secretary of  
9 Labor, the Secretary of Homeland Security, or the  
10 Secretary of State;

11 “(G) the requirements for the job opportunity  
12 represent the employer’s actual minimum require-  
13 ments for that job and the employer will not hire  
14 nonimmigrant workers with less training or experi-  
15 ence;

16 “(H) the employer, within the 60 days prior to  
17 the filing of the application and the 60 days fol-  
18 lowing the filing, has not laid-off, and will not lay-  
19 off, any United States worker employed by the em-  
20 ployer in any similar position at the place of employ-  
21 ment;

22 “(I) the employer, prior to the filing of the ap-  
23 plication, has complied with the recruitment require-  
24 ments in accordance with paragraph (1); and

1           “(J) no job offer may impose on United States  
2 workers any restrictions or obligations that will not  
3 be imposed by an employer on a nonimmigrant  
4 worker described in clause (ii)(b) or (ii)(c) of section  
5 101(a)(15)(H).”.

6           (b) ACCOMPANIED BY JOB OFFER.—Section 212(t)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1182(t)), as amended by subsection (a), is further amend-  
9 ed by adding after paragraph (3) the following:

10          “(4) Each application filed under paragraph (3) shall  
11 be accompanied by—

12           “(A) a copy of the job offer describing the  
13 wages and other terms and conditions of employ-  
14 ment;

15           “(B) a statement of the minimum education,  
16 training, experience, and requirements for the job  
17 opportunity in question;

18           “(C) copies of the documentation submitted to  
19 the United States Employment Services within the  
20 Department of Labor (ES) to recruit United States  
21 workers in accordance with paragraph (1);

22           “(D) copies of the advertisements to recruit  
23 United States workers placed in publications in ac-  
24 cordance with paragraph (1); and

1           “(E) a copy of the acknowledgement of receipt  
2           provided to the employer by the ES in accordance  
3           with paragraph (1)(A).”.

4           (c) INCOMPLETE APPLICATIONS; RETENTION OF AP-  
5           PLICATION; FILING OF PETITION.—Section 212(t) of the  
6           Immigration and Nationality Act (8 U.S.C. 1182(t)), as  
7           amended by subsection (b), is further amended by adding  
8           after paragraph (4) the following:

9           “(5) The Secretary of Labor shall review the applica-  
10          tion and requisite documents filed in accordance with  
11          paragraphs (3) and (4) for completeness and accuracy and  
12          if deficiencies are found, the Secretary of Labor shall no-  
13          tify the employer and provide the employer with an oppor-  
14          tunity to address such deficiencies.

15          “(6) A copy of the application and requisite docu-  
16          ments filed with the Secretary of Labor in accordance with  
17          paragraphs (3) and (4) shall be retained by the employer  
18          in a public access file at the employer’s headquarters or  
19          principal place of employment of the alien for the duration  
20          of the employment relationship and for 1 year after the  
21          termination of that employment relationship.

22          “(7) Upon the approval of an application by the Sec-  
23          retary of Labor, an employer who seeks to employ an alien  
24          described in clause (ii)(b) or (ii)(c) of section  
25          101(a)(15)(H) shall file a petition as required under sec-

1 tion 214(c)(1) with the Bureau of Citizenship and Immi-  
2 gration Services within the Department of Homeland Se-  
3 curity.

4 “(8) Upon finalization of the visa processing, the Sec-  
5 retary of Homeland Security shall issue each alien who  
6 obtains legal status under clause (ii)(b) or (ii)(c) of section  
7 101(a)(15)(H) with a counterfeit-resistant visa and a doc-  
8 ument of authorization, both of which meet all the require-  
9 ments established by the Secretary of Homeland Security  
10 for travel documents and reflects the benefits and status  
11 set forth in this subsection.”.

12 **SEC. 204. WORKER PROTECTIONS.**

13 Section 212(t) of the Immigration and Nationality  
14 Act (8 U.S.C. 1182(t)), as amended by section 203, is fur-  
15 ther amended by adding after paragraph (7) the following:

16 “(8)(A) Nothing in this subsection shall be construed  
17 to limit the rights of an employee under a collective bar-  
18 gaining agreement or other employment contract.

19 “(B) An alien admitted or otherwise provided status  
20 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)  
21 shall not be denied any right or any remedy under Fed-  
22 eral, State, or local labor or employment law that is appli-  
23 cable to a United States worker employed in a similar po-  
24 sition with the employer because of the status of the alien  
25 as a nonimmigrant worker.

1       “(C) It shall be unlawful for an employer who has  
2 filed a petition for a nonimmigrant worker described in  
3 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) to intimi-  
4 date, threaten, restrain, coerce, blacklist, discharge, or in  
5 any other manner, discriminate against an employee (in-  
6 cluding a former employee) because the employee—

7               “(i) disclosed information, to the employer or to  
8 any other person, that the employee reasonably be-  
9 lieves evidences a violation of this subsection or any  
10 rule or regulation pertaining to this subsection; or

11               “(ii) because the employee cooperates or seeks  
12 to cooperate in a government investigation or other  
13 proceeding concerning the employer’s compliance  
14 with the requirements of this subsection or any rule  
15 or regulation pertaining to this subsection.

16       “(D) The Secretary of Labor and the Secretary of  
17 Homeland Security shall establish a process under which  
18 a nonimmigrant worker described in clause (ii)(b) or  
19 (ii)(c) of section 101(a)(15)(H) who files a complaint re-  
20 garding a violation of this subsection, or any other rule  
21 or regulation pertaining to this subsection and is otherwise  
22 eligible to remain and work in the United States may be  
23 allowed to seek other appropriate employment in the  
24 United States for a period not to exceed the maximum

1 period of stay authorized for that nonimmigrant classifica-  
2 tion.

3       “(E)(i) The Secretary of Labor and the Special  
4 Counsel of the Office of Special Counsel for Immigration-  
5 Related Unfair Employment Practices within the Depart-  
6 ment of Justice (referred to in this paragraph as the ‘Spe-  
7 cial Counsel’) shall jointly prescribe a process for the re-  
8 ceipt, investigation, and disposition of complaints respect-  
9 ing a petitioner’s failure to meet a condition specified in  
10 the application submitted under paragraph (3), or a peti-  
11 tioner’s misrepresentation of a material fact in an applica-  
12 tion submitted under paragraph (3). The Secretary of  
13 Labor and the Special Counsel shall provide for coordi-  
14 nated enforcement that ensures that the investigation and  
15 hearing process for a complaint under this subparagraph  
16 is the same whether conducted by the Secretary of Labor  
17 or the Special Counsel.

18       “(ii) A complaint may be filed under this subpara-  
19 graph with either the Secretary of Labor or the Special  
20 Counsel by an aggrieved person or organization (including  
21 bargaining representatives). The complaint shall be in  
22 writing under oath and penalty of perjury, and shall con-  
23 tain such information and be in such form as the Sec-  
24 retary of Labor or the Special Counsel requires. No inves-  
25 tigation or hearing shall be conducted on a complaint con-

1 cerning such a failure or misrepresentation unless the  
2 complaint was filed not later than 12 months after the  
3 date on which the failure or misrepresentation became  
4 known or should have become known by the complainant.  
5 The Secretary of Labor and the Special Counsel shall  
6 jointly conduct an investigation under this clause if there  
7 is reasonable basis to believe that such a failure or mis-  
8 representation has occurred.

9       “(iii) The process established under clause (i) shall  
10 provide that, not later than 30 days after a complaint is  
11 filed, a determination of whether or not a reasonable basis  
12 exists to find a violation shall be made.

13       “(iv) If the Secretary of Labor or the Special Coun-  
14 sel, after receiving a complaint under this subparagraph,  
15 determines after an investigation that a reasonable basis  
16 exists under clause (iii), the Secretary of Labor or the  
17 Special Counsel, as the case may be, may require the par-  
18 ties to submit the issues to conciliation pursuant to a pro-  
19 cess jointly prescribed by the Secretary of Labor and the  
20 Special Counsel. Such process shall remain confidential  
21 and may not be made public by the Secretary of Labor,  
22 the Special Counsel, their officers or employees, or either  
23 of the parties or their representatives. The conciliation pe-  
24 riod shall be 60 days. If there is a determination that  
25 there is a reasonable likelihood that the complaint may

1 be resolved through conciliation, the conciliation process  
2 may be extended up to 2 additional periods of 30 days  
3 each.

4       “(v) If the complaint is not resolved through concilia-  
5 tion, then not later than 30 days after a determination  
6 is made, the Secretary of Labor or the Special Counsel,  
7 as the case may be, shall issue a notice to the interested  
8 parties that provides an opportunity for a hearing on the  
9 complaint, in accordance with section 556 of title 5,  
10 United States Code.

11       “(vi) If, on the basis of an investigation of a com-  
12 plaint under this subparagraph, it is determined that a  
13 reasonable basis does not exist the Secretary of Labor or  
14 the Special Counsel, as the case may be, shall issue a no-  
15 tice to the interested parties and offer either party an op-  
16 portunity to appeal the determination of the Secretary of  
17 Labor or the Special Counsel. The appeal will provide for  
18 a hearing on the complaint, in accordance with section 556  
19 of title 5, United States Code.

20       “(vii) If after receipt of a complaint in accordance  
21 with this subparagraph, no determination is issued within  
22 30 days of whether a reasonable basis exists to find a vio-  
23 lation, the interested or aggrieved party or their represent-  
24 ative may request a hearing on the matter in accordance  
25 with section 556 of title 5, United States Code, by filing

1 the request directly with the Office of the Chief Adminis-  
2 trative Hearing Officer.

3       “(viii) If either party disagrees with the determina-  
4 tion by the Secretary of Labor or the Special Counsel, they  
5 may appeal the decision to the Office of the Chief Admin-  
6 istrative Hearing Officer, and if either party disagrees  
7 with the determination by the Office of the Chief Adminis-  
8 trative Hearing Officer, they may appeal the decision to  
9 an administrative law judge.

10       “(ix) If at any stage there is a determination that  
11 there was a failure to meet a requirement of paragraph  
12 (3), or a misrepresentation of a material fact in an appli-  
13 cation—

14               “(I) the Secretary of Labor, Special Counsel,  
15 Office of the Chief Administrative Hearing Officer,  
16 or administrative law judge, as the case may be,  
17 shall notify the Secretary of Homeland Security of  
18 such findings, and may award such equitable relief  
19 as the party making the determination deems appro-  
20 priate and impose administrative remedies, including  
21 civil monetary penalties not to exceed \$2,500 per  
22 violation; and

23               “(II) the Secretary of Homeland Security shall  
24 not approve petitions filed by that employer under

1 section 214(c) for a period of at least 1 year for  
2 aliens to be employed by the employer.

3 “(x) The Secretary of Homeland Security may con-  
4 tinue to accept from an employer and approve a petition  
5 that is subject to clause (ix)(II) if the employer shows to  
6 the satisfaction of the Secretary that the act or omission  
7 giving rise to such action was in good faith and that the  
8 employer had reasonable grounds for believing that the  
9 employer’s act or omission was not a violation. A non-im-  
10 migrant worker covered by the application shall remain  
11 entitled to equitable relief notwithstanding any such find-  
12 ing of good faith.

13 “(xi) If at any stage there is a determination that  
14 there was a willful failure to meet a requirement of para-  
15 graph (3), or a willful misrepresentation of a material fact  
16 in an application—

17 “(I) the Secretary of Labor, Special Counsel,  
18 Office of the Chief Administrative Hearing Officer,  
19 or administrative law judge, as the case may be,  
20 shall notify the Secretary of Homeland Security of  
21 such findings, and may award such equitable relief  
22 as the party making the determination deems appro-  
23 priate and may impose administrative remedies, in-  
24 cluding civil monetary penalties in an amount not to  
25 exceed \$7,500 per violation; and

1           “(II) the Secretary of Homeland Security shall  
2           not approve petitions filed with respect to that em-  
3           ployer under section 214(c) during a period of at  
4           least 2 years for aliens to be employed by the em-  
5           ployer.

6           “(xii) If at any stage there is a determination that  
7           there was a willful failure to meet a requirement of para-  
8           graph (3), or a willful misrepresentation of material fact  
9           in an application, in the course of which failure or mis-  
10          representation the employer displaced a United States  
11          worker employed by the employer within the period begin-  
12          ning 60 days before and ending 60 days after the date  
13          of filing of any visa petition supported by the applica-  
14          tion—

15           “(I) the Secretary of Labor, Special Counsel,  
16          Office of the Chief Administrative Hearing Officer,  
17          or administrative law judge, as the case may be,  
18          shall notify the Secretary of Homeland Security of  
19          such findings, and may award such equitable relief  
20          as the party making the determination deems appro-  
21          priate and may impose administrative remedies, in-  
22          cluding civil monetary penalties in an amount not to  
23          exceed \$35,000 per violation; and

24           “(II) the Secretary of Homeland Security shall  
25          not approve petitions filed with respect to that em-

1        ployer under section 214(c) during a period of at  
2        least 3 years for aliens to be employed by the em-  
3        ployer.

4        “(F) The Secretary of Labor and Special Counsel  
5        shall have the authority to initiate and pursue investiga-  
6        tions and audits of employers, whether upon complaint or  
7        otherwise, in order to ensure that employers are not vio-  
8        lating the rights guaranteed under this subsection to non-  
9        immigrant workers described in clause (ii)(b) or (ii)(c) of  
10       section 101(a)(15)(H).”.

11       **SEC. 205. NOTIFICATION OF EMPLOYEE RIGHTS.**

12       Section 214(c), of the Immigration and Nationality  
13       Act (8 U.S.C. 1184(c)) is amended by adding at the end  
14       the following:

15                “(11) An employer that employs an alien de-  
16        scribed in clause (ii)(b) or (ii)(c) of section  
17        101(a)(15)(H) shall provide such alien with the  
18        same notification of the alien’s rights and remedies  
19        under Federal, State, and local laws that the em-  
20        ployer is required to provide to United States work-  
21        ers and, upon request of the United States worker,  
22        make available to United States employees a copy of  
23        the attested application submitted by the employer  
24        regarding that alien to the Secretary of Labor and

1 the application by the employer regarding that alien  
2 submitted to the Secretary of Homeland Security.”.

3 **SEC. 206. PORTABILITY.**

4 Section 212(t) of the Immigration and Nationality  
5 Act (8 U.S.C. 1182(t)), as amended by section 204, is fur-  
6 ther amended by adding after paragraph (8) the following:

7 “(9)(A) Except as provided in subparagraph (C), any  
8 alien admitted or otherwise provided status as a non-  
9 immigrant described in section 101(a)(15)(H)(ii)(c) may  
10 change employers only after the alien has been employed  
11 by the petitioning employer for at least 3 months from  
12 the date of admission or the date such status was other-  
13 wise acquired.

14 “(B) Except as provided in subparagraph (C), any  
15 alien admitted or otherwise provided status as a non-  
16 immigrant described in section 101(a)(15)(H)(ii)(b) shall  
17 be prohibited from changing employers after the alien has  
18 been employed by the petitioning employer.

19 “(C) The 3-month employment requirement in sub-  
20 paragraph (A) may be waived (without loss of status dur-  
21 ing the period of the waiver) for a nonimmigrant described  
22 in section 101(a)(15)(H)(ii)(c) and the employment re-  
23 quirement in subparagraph (B) may be waived (without  
24 loss of status during the period of the waiver) for a non-

1 immigrant described in section 101(a)(15)(H)(ii)(b) in cir-  
2 cumstances where—

3           “(i) the alien began and continued the employ-  
4 ment in good faith but the employer violated a term  
5 or condition of sponsorship of the alien under this  
6 Act or violated any other law or regulation relating  
7 to the employment of the alien; or

8           “(ii) the personal circumstances of the alien  
9 changed so as to require a change of employer, in-  
10 cluding family, medical, or humanitarian reasons, a  
11 disability, or other factor rendering the alien unable  
12 to perform the job.

13           “(D) If a waiver under subparagraph (C) is sought,  
14 the application shall be accompanied by such evidence to  
15 warrant the approval of such waiver.

16           “(E) A nonimmigrant alien admitted or otherwise  
17 provided status as a nonimmigrant described in clause  
18 (ii)(b) or (ii)(c) of section 101(a)(15)(H) may accept new  
19 employment with a new employer upon the filing by the  
20 new employer of a new application on behalf of such alien  
21 as provided under paragraph (3). Employment authoriza-  
22 tion shall continue until the new petition is adjudicated.  
23 If the new petition is denied, the alien’s right to work as  
24 established by this subsection shall cease. The alien’s right  
25 to work, if any, established by any other provision of law,

1 shall not be affected by the denial of such new applica-  
2 tion.”.

3 **SEC. 207. SPOUSES AND CHILDREN OF WILLING WORKERS.**

4 Section 212(t) of the Immigration and Nationality  
5 Act (8 U.S.C. 1182(t)), as amended by section 206, is fur-  
6 ther amended by adding after paragraph (9) the following:

7 “(10) A spouse or child of a nonimmigrant worker  
8 described in clause (ii)(b) or (ii)(c) of section  
9 101(a)(15)(H) shall be eligible for derivative status by ac-  
10 companying or following to join the alien.”.

11 **SEC. 208. PETITIONS BY EMPLOYER GROUPS AND UNIONS.**

12 Section 214(c)(1) of the Immigration and Nationality  
13 Act (8 U.S.C. 1184(c)(1)) is amended—

14 (1) by inserting after the first sentence the fol-  
15 lowing: “In the case of an alien or aliens described  
16 in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H),  
17 the petition may be filed by an associated or affili-  
18 ated group of employers that have multiple openings  
19 for similar employment on behalf of the individual  
20 employers or by a union or union consortium. The  
21 petition, if approved, will be valid for employment in  
22 the described positions for the member employers,  
23 the union, or union consortium, provided the em-  
24 ploying entity has complied with all applicable re-

1       cruitment requirements and paid the requisite peti-  
2       tion fees.”; and

3               (2) by adding at the end the following: “Noth-  
4       ing in this paragraph shall be construed to permit  
5       a recruiting entity or job shop to petition for an  
6       alien described in clause (ii)(b) or (ii)(c) of section  
7       101(a)(15)(H).”.

8       **SEC. 209. PROCESSING TIME FOR PETITIONS.**

9       Section 214(c) of the Immigration and Nationality  
10      Act (8 U.S.C. 1184(c)), as amended by section 205, is  
11      further amended by adding at the end the following:

12             “(12) The Secretary of Labor shall review the appli-  
13      cation filed under section 212(t)(3) for completeness and  
14      accuracy and issue a determination with regard to the ap-  
15      plication not later than 21 days after the date on which  
16      the application was filed.

17             “(13) The Secretary of Homeland Security shall es-  
18      tablish a process for reviewing and completing adjudica-  
19      tions upon petitions filed under this subsection with re-  
20      spect to nonimmigrant workers described in clause (ii)(b)  
21      or (ii)(c) of section 101(a)(15)(H) and derivative applica-  
22      tions associated with these petitions, not later than 60  
23      days after the completed petition has been filed.”.

1 **SEC. 210. TERMS OF ADMISSION.**

2 Section 214(g) of the Immigration and Nationality  
3 Act (8 U.S.C. 1184(g)) is amended by adding at the end  
4 the following:

5 “(8) In the case of a nonimmigrant described in sec-  
6 tion 101(a)(15)(H)(ii)(b), the initial period of authorized  
7 admission shall be for not more than 9 months from the  
8 date of application for admission in such status in any  
9 1-year period. No nonimmigrant described in such section  
10 may be admitted for a total period that exceeds 36 months  
11 in a 4-year period.

12 “(9) In the case of a nonimmigrant described in sec-  
13 tion 101(a)(15)(H)(ii)(c), the initial period of authorized  
14 admission shall be for not more than 2 years. The em-  
15 ployer may petition for extensions of such status for an  
16 additional period of not more than 2 years. No non-  
17 immigrant described in such section shall be admitted for  
18 a total period that exceeds 4 years.

19 “(10)(A) The limitations contained in paragraphs (8)  
20 and (9) with respect to the duration of authorized stay  
21 shall not apply to any nonimmigrant alien previously  
22 issued a visa or otherwise provided nonimmigrant status  
23 under section 101(a)(15)(H)(ii)(c) on whose behalf a peti-  
24 tion has been filed under section 204(b) to accord the alien  
25 immigrant status under section 203(b), or an application  
26 for adjustment of status has been filed under section 245

1 to accord the alien status under section 203(b), if 365  
2 days or more have elapsed since—

3 “(i) the filing of a labor certification application  
4 on behalf of the alien (if such certification is re-  
5 quired for the alien to obtain status under section  
6 203(b)); or

7 “(ii) the filing of the petition under section  
8 204(a).

9 “(B) The Secretary of Homeland Security shall ex-  
10 tend the stay of an alien who qualifies for an exemption  
11 under subparagraph (A) in 1-year increments until such  
12 time as a final decision is made—

13 “(i) to deny the application described in sub-  
14 paragraph (A)(i), or, in a case in which such appli-  
15 cation is granted, to deny a petition described in  
16 subparagraph (A)(ii) filed on behalf of the alien pur-  
17 suant to such grant;

18 “(ii) to deny the petition described in subpara-  
19 graph (A)(ii); or

20 “(iii) to grant or deny the alien’s application for  
21 an immigrant visa or for adjustment of status to  
22 that of an alien lawfully admitted for permanent res-  
23 idence.”.

1 **SEC. 211. NUMBER OF VISAS ISSUED.**

2 Section 214(g)(1)(B) of the Immigration and Nation-  
3 ality Act (8 U.S.C. 1184(g)(1)(B)) is amended to read as  
4 follows:

5 “(B)(i) under section 101(a)(15)(H)(ii)(c)  
6 may not exceed 250,000 in each of the 5 fiscal  
7 years following the fiscal year in which the final  
8 regulations implementing the amendments  
9 made by title II of the Immigration Reform Act  
10 of 2004 are published; and

11 “(ii) under section 101(a)(15)(H)(ii)(b)  
12 may not exceed 100,000 in each of the 5 fiscal  
13 years following the fiscal year in which the final  
14 regulations implementing the amendments  
15 made by title II of the Immigration Reform Act  
16 of 2004 are published, and may not exceed  
17 66,000 in each fiscal year thereafter.”.

18 **SEC. 212. IMMIGRATION STUDY COMMISSION.**

19 (a) ESTABLISHMENT.—On the date that is 3 years  
20 after the date of enactment of this Act, there shall be es-  
21 tablished a commission, to be known as the Immigration  
22 Study Commission (referred to in this section as the  
23 “Commission”) to review the impact of this Act on the  
24 national security of the United States, the national econ-  
25 omy, and families, and to make recommendations to Con-  
26 gress.

1 (b) MEMBERSHIP.—

2 (1) IN GENERAL.—The Commission shall be  
3 composed of 12 members, of which—

4 (A) 3 members shall be appointed by the  
5 majority leader of the Senate;

6 (B) 3 members shall be appointed by the  
7 minority leader of the Senate;

8 (C) 3 members shall be appointed by the  
9 Speaker of the House of Representatives; and

10 (D) 3 members shall be appointed by the  
11 minority leader of the House of Representa-  
12 tives.

13 (2) QUALIFICATIONS.—The Commission mem-  
14 bers shall represent the public and private sectors  
15 and have expertise in areas that would best inform  
16 the work of the Commission, including national secu-  
17 rity experts, economists, sociologists, worker rep-  
18 resentatives, business representatives, and immigra-  
19 tion lawyers.

20 (3) CHAIRPERSON.—The chairperson of the  
21 Commission shall be a Commission member agreed  
22 upon by the majority and minority leaders of the  
23 Senate, and the Speaker and the minority leader of  
24 the House of Representatives.

1           (4) COMPENSATION AND EXPENSES.—The  
2 members of the Commission shall not receive com-  
3 pensation for the performance of services for the  
4 Commission, but shall be allowed travel expenses, in-  
5 cluding per diem in lieu of subsistence, at rates au-  
6 thorized for employees of agencies under subchapter  
7 I of chapter 57 of title 5, United States Code, while  
8 away from their homes or regular places of business  
9 in the performance of services for the Commission.

10           (5) TERMS.—Each member shall be appointed  
11 for the life of the Commission. Any vacancy shall be  
12 filled by whomever initially appointed the member of  
13 that seat.

14           (c) ADMINISTRATIVE PROVISIONS.—

15           (1) LOCATION.—The Commission shall be lo-  
16 cated in a facility maintained by the Bureau of Citi-  
17 zenship and Immigration Services.

18           (2) DETAIL OF GOVERNMENT EMPLOYEES.—  
19 Any Federal Government employee may be detailed  
20 to the Commission without reimbursement, and such  
21 detail shall be without interruption or loss of civil  
22 service status or privilege.

23           (3) INFORMATION FROM FEDERAL AGENCIES.—  
24 The Commission may secure directly from any Fed-  
25 eral department or agency such information as the

1 Commission considers necessary to carry out the  
2 provisions of this section. Upon request of the Com-  
3 mission, the head of such department or agency  
4 shall furnish such information to the Commission.

5 (4) HEARINGS.—The Commission may hold  
6 such hearings, sit and act at such times and places,  
7 take such testimony, and receive such evidence as  
8 the Commission considers advisable to carry out the  
9 objectives of this section, except that, to the extent  
10 possible, the Commission shall use existing data and  
11 research.

12 (5) POSTAL SERVICES.—The Commission may  
13 use the United States mails in the same manner and  
14 under the same conditions as other departments and  
15 agencies of the Federal Government.

16 (d) REPORT.—Not later than 1 year after all of the  
17 members are appointed to the Commission, the Commis-  
18 sion shall submit to Congress a preliminary report that  
19 summarizes the directions of the Commission and initial  
20 recommendations. Not later than 2 years after the Com-  
21 mission members are appointed, the Commission shall  
22 submit to Congress a report that summarizes the findings  
23 of the Commission and make such recommendations as  
24 are consistent with this Act.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Bureau of Citi-  
3 zenship and Immigration Services such sums as may be  
4 necessary to carry out this section.

5 **SEC. 213. CHANGE OF STATUS.**

6 Section 212(t) of the Immigration and Nationality  
7 Act (8 U.S.C. 1182(t)), as amended by section 207, is fur-  
8 ther amended by adding after paragraph (10) the fol-  
9 lowing:

10 “(11) An alien admitted as a nonimmigrant or other-  
11 wise provided status under clause (ii)(b) or (ii)(c) of sec-  
12 tion 101(a)(15)(H) shall be eligible to obtain a change of  
13 status to another immigrant or nonimmigrant classifica-  
14 tion that the alien may be eligible for.”.

15 **SEC. 214. ADJUSTMENT OF STATUS TO LAWFUL PERMA-  
16 NENT RESIDENT.**

17 (a) EMPLOYMENT-BASED IMMIGRANT VISAS.—Sec-  
18 tion 212(t) of the Immigration and Nationality Act (8  
19 U.S.C. 1182(t)), as amended by section 213, is further  
20 amended by adding after paragraph (11) the following:

21 “(12)(A) Nonimmigrant aliens admitted or otherwise  
22 provided status under clause (ii)(b) or (ii)(c) of section  
23 101(a)(15)(H) shall be eligible for an employment-based  
24 immigrant visa pursuant to section 203(b)(3) and adjust-  
25 ment of status pursuant to section 245.

1       “(B) Pursuant to subparagraph (A), for purposes of  
2 adjustment of status under section 245(a) or issuance of  
3 an immigrant visa under section 203(b)(3), employment-  
4 based immigrant visas shall be made available, without re-  
5 gard to any numerical limitation imposed by section 201  
6 or 202, to an alien having nonimmigrant status described  
7 in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) upon  
8 the filing of a petition for such a visa by—

9               “(i) the employer or any collective bargaining  
10 agent of the alien; or

11               “(ii) the alien, provided the alien has been em-  
12 ployed under such nonimmigrant status for at least  
13 3 years.

14       “(C) The spouse or child of an alien granted status  
15 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)  
16 shall be eligible as a derivative beneficiary for an immi-  
17 grant visa and adjustment of status.”.

18       (b) DUAL INTENT.—Section 214(h) of the Immigra-  
19 tion and Nationality Act (8 U.S.C. 1184(h)) is amended  
20 by inserting “(H)(ii)(b), (H)(ii)(c),” after “(H)(i),”.

21 **SEC. 215. GROUNDS OF INADMISSIBILITY.**

22       Section 212(t) of the Immigration and Nationality  
23 Act (8 U.S.C. 1182(t)), as amended by section 214(a),  
24 is further amended by adding after paragraph (12) the  
25 following:

1       “(13) In determining the admissibility of an alien  
2 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H),  
3 violations of grounds of inadmissibility described in para-  
4 graphs (5), (6)(A), (6)(B), (6)(C), (6)(G), (7), (9), and  
5 (10)(B) of section 212(a) committed prior to the applica-  
6 tion under such section, or the approval of a change of  
7 status to a classification under such section shall not apply  
8 if the violation was committed before the date of introduc-  
9 tion of the Immigration Reform Act of 2004.”.

10 **SEC. 216. PETITION FEES.**

11       Section 212(t) of the Immigration and Nationality  
12 Act (8 U.S.C. 1182(t)), as amended by section 215, is fur-  
13 ther amended by adding after paragraph (13) the fol-  
14 lowing:

15       “(14)(A) An employer filing a petition for an alien  
16 described in section 101(a)(15)(H)(ii)(c) shall be required  
17 to pay a filing fee for each alien, based on the cost of  
18 carrying out the processing duties under this subsection,  
19 and a secondary fee of—

20               “(i) \$250, in the case of an employer employing  
21       25 employees or less;

22               “(ii) \$500, in the case of an employer employ-  
23       ing between 26 and 150 employees;

24               “(iii) \$750, in the case of an employer employ-  
25       ing between 151 and 500 employees; or

1           “(iv) \$1,000, in the case of an employer em-  
2           ploying more than 500 employees.

3           “(B) An employer filing a petition for an alien de-  
4           scribed in section 101(a)(15)(H)(ii)(b) shall be required  
5           to pay a filing fee for each alien, based on the costs of  
6           carrying out the processing duties under this subsection,  
7           and a secondary fee of—

8           “(i) \$125, in the case of an employer employing  
9           25 employees or less;

10           “(ii) \$250, in the case of an employer employ-  
11           ing between 26 and 150 employees;

12           “(iii) \$375, in the case of an employer employ-  
13           ing between 151 and 500 employees; or

14           “(iv) \$500, in the case of an employer employ-  
15           ing more than 500 employees.

16           “(C) The fees collected under this paragraph shall be  
17           deposited into accounts within the Department of Home-  
18           land Security, the Department of Labor, and the Depart-  
19           ment of State, and allocated such that—

20           “(i) 15 percent of the amounts received shall be  
21           made available to the Department of Homeland Se-  
22           curity until expended to carry out the requirements  
23           related to processing petitions filed by employers for  
24           aliens described in clause (ii)(b) or (ii)(c) of section  
25           101(a)(15)(H);

1           “(ii) 20 percent of the amounts received shall  
2 be made available to the Department of Labor until  
3 expended to—

4           “(I) carry out the requirements related to  
5 processing attestations filed by employers for  
6 aliens described in clause (ii)(b) or (ii)(c) of  
7 section 101(a)(15)(H); and

8           “(II) increase the funds available to the  
9 United States Employment Services to assist  
10 State employment service agencies in respond-  
11 ing to employers and employees contacting such  
12 agencies as a result of paragraph (1);

13           “(iii) 15 percent of the amounts received shall  
14 be made available to the Department of State until  
15 expended to carry out the requirements related to  
16 processing applications for visas by aliens under  
17 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H);

18           “(iv) 20 percent of the amounts received shall  
19 be made available for the performance of functions  
20 under section 212(t)(8)(F) as the Secretary of  
21 Labor and the Special Counsel of the Office of the  
22 Special Counsel for Immigration-Related Unfair  
23 Employment Practices within the Department of  
24 Justice may agree; and

1           “(v) 30 percent of the amounts received shall be  
2           made available to the Department of Homeland Se-  
3           curity for implementation of border security meas-  
4           ures.”.

5 **SEC. 217. TERMINATION OF H-2C TEMPORARY WORKER PRO-**  
6 **GRAM.**

7           Section 212(t) of the Immigration and Nationality  
8 Act (8 U.S.C. 1182(t)), as amended by section 216, is fur-  
9 ther amended by adding after paragraph (14) the fol-  
10 lowing:

11           “(15) The temporary worker program for aliens de-  
12 scribed in section 101(a)(15)(H)(ii)(c) shall terminate at  
13 the end of the fiscal year that is 5 years after the fiscal  
14 year in which the final regulations implementing the  
15 amendments made by title II of the Immigration Reform  
16 Act of 2004 are published. Congress shall review the tem-  
17 porary worker program before the expiration of the pro-  
18 gram based on the findings and recommendations sub-  
19 mitted by the Immigration Study Commission under sec-  
20 tion 212(d) of the Immigration Reform Act of 2004.”.

21 **SEC. 218. DEFINITIONS.**

22           Section 212(t) of the Immigration and Nationality  
23 Act (8 U.S.C. 1182(t)), as amended by section 217, is fur-  
24 ther amended by adding after paragraph (15) the fol-  
25 lowing:

1 “(16) In this subsection:

2 “(A) The term ‘employer’ means any person or  
3 entity that employs workers in labor or services that  
4 are not agricultural, and shall not include recruiting  
5 entities or job shops.

6 “(B) The term ‘job opportunity’ means a job  
7 opening for temporary full-time or part-time employ-  
8 ment at a place in the United States to which  
9 United States workers can be referred.

10 “(C)(i) The term ‘lays off’, with respect to a  
11 worker—

12 “(I) means to cause the worker’s loss of  
13 employment, other than through a discharge for  
14 inadequate performance, violation of workplace  
15 rules, cause, voluntary departure, voluntary re-  
16 tirement, contract impossibility, termination of  
17 the position or company, temporary layoffs due  
18 to weather, markets, or other temporary condi-  
19 tions; but

20 “(II) does not include any situation in  
21 which the worker is offered, as an alternative to  
22 such loss of employment, a similar employment  
23 opportunity with the same employer at equiva-  
24 lent or higher compensation and benefits than  
25 the position from which the employee was dis-

1 charged, regardless of whether or not the em-  
2 ployee accepts the offer.

3 “(ii) Nothing in this subparagraph is intended  
4 to limit an employee’s rights under a collective bar-  
5 gaining agreement or other employment contract.

6 “(D) The term ‘United States worker’ means  
7 any worker, whether a United States citizen or na-  
8 tional, a lawfully admitted permanent resident alien,  
9 or any other alien, who is authorized to work in the  
10 job opportunity within the United States, except an  
11 alien admitted or otherwise provided status under  
12 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”.

13 **SEC. 219. COLLECTIVE BARGAINING AGREEMENTS.**

14 Notwithstanding any other provision of law, the fact  
15 that an individual holds a visa as a nonimmigrant worker  
16 described in clause (ii)(b) or (ii)(c) of section  
17 101(a)(15)(H) of the Immigration and Nationality Act (8  
18 U.S.C. 1101(a)(15)(H)) shall not render that individual  
19 ineligible to qualify as an employee under the National  
20 Labor Relations Act (29 U.S.C. 151 et seq.) or to be pro-  
21 tected under section 7 of that Act (29 U.S.C. 157).

22 **SEC. 220. REPORT ON WAGE DETERMINATION.**

23 Not later than 2 years after the date of enactment  
24 of this Act, the Bureau of Labor Statistics shall prepare  
25 and transmit to the Committees on Health, Education,

1 Labor and Pensions and the Judiciary in the Senate and  
2 the Committees on Education and the Workforce and the  
3 Judiciary in the House of Representatives, a report that  
4 addresses—

5 (1) whether the employment of workers de-  
6 scribed in clause (ii)(b) or (ii)(c) of section  
7 101(a)(15)(H) of the Immigration and Nationality  
8 Act (8 U.S.C. 1101(a)(15)(H)) in the United States  
9 workforce has impacted United States worker wages;

10 (2) whether any changes should be made for a  
11 future wage system, based on, inter alia, an exam-  
12 ination of the Occupational Employment System  
13 survey, its calculation of wage data based on skill  
14 and experience levels, difference among types of em-  
15 ployers (specifically for-profit and nonprofit, and  
16 government and nongovernment);

17 (3) whether use of private, independent wage  
18 surveys would provide accurate and reliable criteria  
19 to determine wage rates; and

20 (4) any other recommendations that are war-  
21 ranted.

22 **SEC. 221. INELIGIBILITY FOR CERTAIN NONIMMIGRANT**  
23 **STATUS.**

24 (a) **BAR TO FUTURE VISAS FOR CONDITION VIOLA-**  
25 **TIONS.**—Any alien who has status pursuant to section

1 245B of the Immigration and Nationality Act, as added  
2 by title III, or clause (ii)(b) or (ii)(c) of section  
3 101(a)(15)(H) of the Immigration and Nationality Act (8  
4 U.S.C. 1101(a)(15)(H)), shall not be eligible in the future  
5 for such nonimmigrant status if the alien violates any  
6 term or condition of such status.

7 (b) ALIENS UNLAWFULLY PRESENT.—Any alien who  
8 enters the United States after the date of enactment of  
9 this Act without being admitted or paroled shall be ineli-  
10 gible for nonimmigrant status under clause (ii)(b) or  
11 (ii)(c) of section 101(a)(15)(H) of the Immigration and  
12 Nationality Act (8 U.S.C. 1101(a)(15)(H)).

13 **SEC. 222. INVESTIGATIONS BY DEPARTMENT OF HOME-**  
14 **LAND SECURITY DURING LABOR DISPUTES.**

15 (a) IN GENERAL.—When information is received by  
16 the Department of Homeland Security concerning the em-  
17 ployment of undocumented or unauthorized aliens, consid-  
18 eration should be given to whether the information is  
19 being provided to interfere with the rights of employees  
20 to—

- 21 (1) form, join, or assist labor organizations or  
22 to exercise their rights not to do so;  
23 (2) be paid minimum wages and overtime;  
24 (3) have safe work places;

1           (4) receive compensation for work related inju-  
2       ries;

3           (5) be free from discrimination based on race,  
4       gender, age, national origin, religion, or handicap; or

5           (6) retaliate against employees for seeking to  
6       vindicate these rights.

7       (b) DETERMINATION OF LABOR DISPUTE.—When-  
8       ever information received from any source creates a sus-  
9       picion that an immigration enforcement action might in-  
10      volve the Department of Homeland Security in a labor dis-  
11      pute, a reasonable attempt should be made by Department  
12      of Homeland Security enforcement officers to determine  
13      whether a labor dispute is in progress. The information  
14      officer at the regional office of the National Labor Rela-  
15      tions Board can supply status information on unfair labor  
16      practice charges or union election or decertification peti-  
17      tions that are pending involving most private sector, non-  
18      agricultural employers. Wage and hour information can be  
19      obtained from the Wage and Hour Division of the Depart-  
20      ment of Labor or the State labor department.

21      (c) RELEVANT QUESTIONS FOR INFORMANT.—In  
22      order to protect the Department of Homeland Security  
23      from unknowingly becoming involved in a labor dispute,  
24      persons who provide information to the Department of

1 Homeland Security about the employer or employees in-  
2 volved in the dispute should be asked—

3 (1) their names;

4 (2) whether there is a labor dispute in progress  
5 at the worksite;

6 (3) whether the person is or was employed at  
7 the worksite in question (or by a union representing  
8 workers at the worksite);

9 (4) if applicable, whether the person is or was  
10 employed in a supervisory or managerial capacity or  
11 is related to anyone who is;

12 (5) how the person came to know that the sub-  
13 jects lacked legal authorization to work, as well as  
14 the source and reliability of the information con-  
15 cerning the subject's status;

16 (6) whether the person had or is having a dis-  
17 pute with the employer or the subjects of the infor-  
18 mation; and

19 (7) if the subjects of the information have  
20 raised complaints or grievances about hours, work-  
21 ing conditions, discriminatory practices, or union  
22 representation or actions, or whether the subjects  
23 have filed workers' compensation claims.

24 (d) BICE REVIEW.—There is no prohibition for en-  
25 forcing the Immigration and Nationality Act (8 U.S.C.

1 1101 et seq.), even when there may be a labor dispute  
2 in progress, however, where it appears that information  
3 may have been provided in order to interfere with or to  
4 retaliate against employees for exercising their rights, no  
5 action should be taken on this information without review  
6 and approval by the Bureau of Immigration and Customs  
7 Enforcement.

8 (e) ENFORCEMENT ACTION.—When enforcement ac-  
9 tion is taken by the Department of Homeland Security  
10 and the Department determines that there is a labor dis-  
11 pute in progress, or that information was provided to the  
12 Department of Homeland Security to retaliate against em-  
13 ployees for exercising their employment rights, the lead  
14 immigration officer in charge of the Department of Home-  
15 land Security enforcement team at the worksite must en-  
16 sure, to the extent possible, that any aliens who are ar-  
17 rested or detained and are necessary for the prosecution  
18 of any violations are not removed from the country with-  
19 out notifying the appropriate law enforcement agency that  
20 has jurisdiction over the violations.

21 (f) INTERVIEWS.—Any arrangements for aliens to be  
22 held or interviewed by investigators or attorneys for the  
23 Department of Labor, the State labor department, the Na-  
24 tional Labor Relations Board, or any other agencies or

1 entities that enforce labor or employment laws will be de-  
2 termined on a case-by-case basis.

3 **SEC. 223. PROTECTION OF WITNESSES.**

4 Chapter 8 of title II of the Immigration and Nation-  
5 ality Act (8 U.S.C. 1151 et seq.) is amended by adding  
6 after section 280 the following:

7 “STAY OF REMOVAL

8 “SEC. 280A. (a) An alien against whom removal pro-  
9 ceedings have been initiated pursuant to chapter 4, who  
10 has filed a workplace claim or who is a material witness  
11 in any pending or anticipated proceeding involving a work-  
12 place claim, shall be entitled to a stay of removal and to  
13 an employment authorized endorsement unless the De-  
14 partment of Labor established by a preponderance of the  
15 evidence in proceedings before the immigration judge pre-  
16 siding over that alien’s removal hearing—

17 “(1) that—

18 “(A) the Department of Homeland Secu-  
19 rity initiated the alien’s removal proceeding for  
20 wholly independent reasons and not in any re-  
21 spect based on, or as a result of, any informa-  
22 tion provided to or obtained by the Department  
23 of Homeland Security from the alien’s em-  
24 ployer, from any outside source, including any  
25 anonymous source, or as a result of the filing  
26 or prosecution of the workplace claim; and

1           “(B) the workplace claim was filed with a  
2           bad faith intent to delay or avoid the alien’s re-  
3           moval; or

4           “(2) that the alien has engaged in criminal con-  
5           duct or is a threat to the national security of the  
6           United States.

7           “(b) Any stay of removal or work authorization  
8           issued pursuant to subsection (a) shall remain valid and  
9           in effect at least during the pendency of the proceedings  
10          concerning such workplace claim. The Secretary of Home-  
11          land Security shall extend such relief for a period of not  
12          longer than 3 additional years upon determining that—

13                 “(1) such relief would enable the alien asserting  
14                 the workplace claim to be made whole;

15                 “(2) the deterrent goals of any statute under-  
16                 lying the workplace claim would thereby be served;  
17                 or

18                 “(3) such extension would otherwise further the  
19                 interests of justice.

20          “(c) In this section—

21                 “(1) the term ‘workplace claim’ shall include  
22                 any claim, charge, complaint, or grievance filed with  
23                 or submitted to the employer, a Federal or State  
24                 agency or court, or an arbitrator, to challenge an  
25                 employer’s alleged civil or criminal violation of any

1 legal or administrative rule or requirement affecting  
2 the terms or conditions of its workers' employment  
3 or the hiring or firing of its workers; and

4 “(2) the term ‘material witness’ means an indi-  
5 vidual who presents an affidavit from an attorney  
6 prosecuting or defending the workplace claim or  
7 from the presiding officer overseeing the workplace  
8 claim attesting that, to the best of the affiant’s  
9 knowledge and belief, reasonable cause exists to be-  
10 lieve that the testimony of the individual will be cru-  
11 cial to the outcome of the workplace claim.

12 “CONFIDENTIALITY OF IMMIGRATION INFORMATION  
13 OBTAINED DURING ADMINISTRATIVE PROCEEDINGS

14 “SEC. 280B. (a) No officer or employee, including  
15 any former officer or employee, of any Federal or State  
16 administrative agency with jurisdiction over any employ-  
17 er’s workplace shall disclose to the Department of Home-  
18 land Security, or cause to be published in a manner that  
19 discloses to the Department of Homeland Security, any  
20 information concerning the immigration status of any  
21 worker obtained by that officer or employee in connection  
22 with the official duties of that officer or employee, and  
23 the Department of Homeland Security shall not, in any  
24 enforcement action or removal proceeding, use or rely  
25 upon, in whole or in part, any information so obtained.

1 “(b) Any person who knowingly uses, publishes, or  
 2 permits information to be used in violation of subsection  
 3 (a) shall be fined not more than \$10,000.”.

4 **SEC. 224. DOCUMENT FRAUD.**

5 Section 274C(d)(3) of the Immigration and Nation-  
 6 ality Act (8 U.S.C. 1324c(d)(3)) is amended by inserting  
 7 before “In applying this subsection” the following: “The  
 8 civil penalties set forth in subparagraphs (A) and (B) shall  
 9 be tripled in the case of any commercial enterprise that  
 10 commits any violation of subsection (a) principally for  
 11 commercial advantage or financial gain.”.

12 **TITLE III—ACCESS TO EARNED**  
 13 **ADJUSTMENT**

14 **SEC. 301. ADJUSTMENT OF STATUS.**

15 (a) IN GENERAL.—Chapter 5 of title II of the Immi-  
 16 gration and Nationality Act (8 U.S.C. 1255 et seq.) is  
 17 amended by inserting after section 245A the following:

18 “ACCESS TO EARNED ADJUSTMENT

19 “SEC. 245B. Access to earned adjustment.

20 “(a) ADJUSTMENT OF STATUS.—

21 “(1) PRINCIPAL ALIENS.—Notwithstanding any  
 22 other provision of law, the Secretary of Homeland  
 23 Security shall adjust to the status of an alien law-  
 24 fully admitted for permanent residence, an alien who  
 25 satisfies the following requirements:

1           “(A) APPLICATION.—The alien shall file  
2 an application establishing eligibility for adjust-  
3 ment of status and pay the fine required under  
4 subsection (m) and any additional amounts  
5 owed under that subsection.

6           “(B) CONTINUOUS PHYSICAL PRESENCE.—

7           “(i) IN GENERAL.—The alien shall es-  
8 tablish that the alien—

9           “(I) was physically present in the  
10 United States for at least 5 years pre-  
11 ceding the date of introduction of the  
12 Immigration Reform Act of 2004;

13           “(II) was not legally present on  
14 the date of introduction of the Immi-  
15 gration Reform Act of 2004; and

16           “(III) has not departed from the  
17 United States except for brief, casual,  
18 and innocent departures.

19           “(ii) LEGALLY PRESENT.—For pur-  
20 poses of this subparagraph, an alien who  
21 has violated any conditions of his or her  
22 visa shall not be considered to be legally  
23 present in the United States.

24           “(C) ADMISSIBLE UNDER IMMIGRATION  
25 LAWS.—The alien shall establish that the alien

1 is not inadmissible under section 212(a) except  
2 for any provision of that section that is waived  
3 under subsection (b) of this section.

4 “(D) EMPLOYMENT IN UNITED STATES.—

5 “(i) IN GENERAL.—The alien shall  
6 have been employed in the United States,  
7 in the aggregate, for—

8 “(I) at least 3 of the 5 years im-  
9 mediately preceding the date on which  
10 the Immigration Reform Act of 2004  
11 was introduced; and

12 “(II) at least 1 year following the  
13 date of enactment of such Act.

14 “(ii) EXCEPTIONS.—The employment  
15 requirements in clause (i) shall not apply  
16 to an individual who is under 20 years of  
17 age on the date of introduction of the Im-  
18 migration Reform Act of 2004, and the  
19 employment requirement in clause (i)(II)  
20 shall be reduced for an individual who can-  
21 not demonstrate employment based on a  
22 physical or mental disability or as a result  
23 of pregnancy.

24 “(iii) PORTABILITY.—An alien shall  
25 not be required to complete the employ-

1                   ment requirements in clause (i) with the  
2                   same employer.

3                   “(iv) EVIDENCE OF EMPLOYMENT.—

4                   “(I) CONCLUSIVE DOCUMENTS.—

5                   For purposes of satisfying the require-  
6                   ments in clause (i), the alien shall  
7                   submit at least 2 of the following doc-  
8                   uments for each period of employ-  
9                   ment, which shall be considered con-  
10                  clusive evidence of such employment:

11                  “(aa) Records maintained by  
12                  the Social Security Administra-  
13                  tion.

14                  “(bb) Records maintained by  
15                  an employer, such as pay stubs,  
16                  time sheets, or employment work  
17                  verification.

18                  “(cc) Records maintained by  
19                  the Internal Revenue Service.

20                  “(dd) Records maintained  
21                  by a union or day labor center.

22                  “(ee) Records maintained by  
23                  any other government agency,  
24                  such as worker compensation

1 records, disability records, or  
2 business licensing records.

3 “(II) OTHER DOCUMENTS.—

4 Aliens unable to submit documents  
5 described in subclause (I) shall submit  
6 at least 3 other types of reliable docu-  
7 ments, including sworn declarations,  
8 for each period of employment to sat-  
9 isfy the requirement in clause (i).

10 “(III) INTENT OF CONGRESS.—It

11 is the intent of Congress that the re-  
12 quirement in clause (i) be interpreted  
13 and implemented in a manner that  
14 recognizes and takes into account the  
15 difficulties encountered by aliens in  
16 obtaining evidence of employment due  
17 to the undocumented status of the  
18 alien.

19 “(v) BURDEN OF PROOF.—An alien

20 applying for adjustment of status under  
21 this subsection has the burden of proving  
22 by a preponderance of the evidence that  
23 the alien has satisfied the employment re-  
24 quirements in clause (i). An alien may sat-  
25 isfy such burden of proof by producing suf-

1           sufficient evidence to show the extent of that  
2           employment as a matter of just and rea-  
3           sonable inference. Once the burden is met,  
4           the burden shall shift to the Secretary of  
5           Homeland Security to disprove the alien’s  
6           evidence with a showing which negates the  
7           reasonableness of the inference to be  
8           drawn from the evidence.

9           “(E) PAYMENT OF INCOME TAXES.—Not  
10          later than the date on which status is adjusted  
11          under this subsection, the alien shall establish  
12          the payment of all Federal income taxes owed  
13          for employment during the period of employ-  
14          ment required under subparagraph (D)(i). The  
15          alien may satisfy such requirement by estab-  
16          lishing that—

17                 “(i) no such tax liability exists;

18                 “(ii) all outstanding liabilities have  
19                 been met; or

20                 “(iii) the alien has entered into an  
21                 agreement for payment of all outstanding  
22                 liabilities with the Internal Revenue Serv-  
23                 ice.

24          “(F) BASIC CITIZENSHIP SKILLS.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), the alien shall dem-  
3           onstrate that the alien either—

4                   “(I) meets the requirements of  
5                   section 312(a) (relating to minimal  
6                   understanding of ordinary English  
7                   and a knowledge and understanding  
8                   of the history and government of the  
9                   United States); or

10                   “(II) is satisfactorily pursuing a  
11                   course of study, recognized by the  
12                   Secretary of Homeland Security, to  
13                   achieve such understanding of English  
14                   and the history and government of the  
15                   United States.

16           “(ii) EXCEPTIONS.—

17                   “(I) MANDATORY.—The require-  
18                   ments of clause (i) shall not apply to  
19                   any person who is unable to comply  
20                   with those requirements because of a  
21                   physical or developmental disability or  
22                   mental impairment.

23                   “(II) DISCRETIONARY.—The Sec-  
24                   retary of Homeland Security may  
25                   waive all or part of the requirements

1 of clause (i) in the case of an alien  
2 who is 65 years of age or older as of  
3 the date of the filing of the applica-  
4 tion for adjustment of status.

5 “(G) SECURITY AND LAW ENFORCEMENT  
6 CLEARANCES.—The alien shall submit finger-  
7 prints in accordance with procedures estab-  
8 lished by the Secretary of Homeland Security.  
9 Such fingerprints shall be submitted to relevant  
10 Federal agencies to be checked against existing  
11 databases for information relating to criminal,  
12 national security, or other law enforcement ac-  
13 tions that would render the alien ineligible for  
14 adjustment of status under this subsection. The  
15 relevant Federal agencies shall work to ensure  
16 that such clearances are completed within 90  
17 days of the submission of fingerprints. An ap-  
18 peal of a security clearance determination by  
19 the Secretary of Homeland Security shall be  
20 processed through the Department of Home-  
21 land Security.

22 “(H) MILITARY SELECTIVE SERVICE.—The  
23 alien shall establish that if the alien is within  
24 the age period required under the Military Se-  
25 lective Service Act (50 U.S.C. App. 451 et

1 seq.), that such alien has registered under that  
2 Act.

3 “(2) SPOUSES AND CHILDREN.—

4 “(A) IN GENERAL.—

5 “(i) ADJUSTMENT OF STATUS.—Not-  
6 withstanding any other provision of law,  
7 the Secretary of Homeland Security shall,  
8 if otherwise eligible under subparagraph  
9 (B), adjust the status to that of a lawful  
10 permanent resident for—

11 “(I) the spouse, or child who was  
12 under 21 years of age on the date of  
13 enactment of the Immigration Reform  
14 Act of 2004, of an alien who adjusts  
15 status or is eligible to adjust status to  
16 that of a permanent resident under  
17 paragraph (1); or

18 “(II) an alien who, within 5  
19 years preceding the date of enactment  
20 of the Immigration Reform Act of  
21 2004, was the spouse or child of an  
22 alien who adjusts status to that of a  
23 permanent resident under paragraph  
24 (1), if—

1                   “(aa) the termination of the  
2                   qualifying relationship was con-  
3                   nected to domestic violence; or

4                   “(bb) the spouse or child  
5                   has been battered or subjected to  
6                   extreme cruelty by the spouse or  
7                   parent who adjusts status or is  
8                   eligible to adjust status to that of  
9                   a permanent resident under para-  
10                  graph (1).

11                  “(ii) APPLICATION OF OTHER LAW.—  
12                  In acting on applications filed under this  
13                  paragraph with respect to aliens who have  
14                  been battered or subjected to extreme cru-  
15                  elty, the Secretary of Homeland Security  
16                  shall apply the provisions of section  
17                  204(a)(1)(J) and the protections, prohibi-  
18                  tions, and penalties under section 384 of  
19                  the Illegal Immigration Reform and Immi-  
20                  grant Responsibility Act of 1996 (8 U.S.C.  
21                  1367).

22                  “(B) GROUNDS OF INADMISSIBILITY NOT  
23                  APPLICABLE.—In establishing admissibility to  
24                  the United States, the spouse or child described  
25                  in subparagraph (A) shall establish that they

1 are not inadmissible under section 212(a), ex-  
2 cept for any provision of that section that is  
3 waived under subsection (b) of this section.

4 “(C) SECURITY AND LAW ENFORCEMENT  
5 CLEARANCE.—The spouse or child, if that child  
6 is 14 years of age or older, described in sub-  
7 paragraph (A) shall submit fingerprints in ac-  
8 cordance with procedures established by the  
9 Secretary of Homeland Security. Such finger-  
10 prints shall be submitted to relevant Federal  
11 agencies to be checked against existing data-  
12 bases for information relating to criminal, na-  
13 tional security, or other law enforcement actions  
14 that would render the alien ineligible for adjust-  
15 ment of status under this subsection. The rel-  
16 evant Federal agencies shall work to ensure  
17 that such clearances are completed within 90  
18 days of the submission of fingerprints. An ap-  
19 peal of a denial by the Secretary of Homeland  
20 Security shall be processed through the Depart-  
21 ment of Homeland Security.

22 “(3) NONAPPLICABILITY OF NUMERICAL LIM-  
23 TATIONS.—When an alien is granted lawful perma-  
24 nent resident status under this subsection, the num-

1       ber of immigrant visas authorized to be issued under  
2       any provision of this Act shall not be reduced.

3       “(b) GROUNDS OF INADMISSIBILITY.—In the deter-  
4 mination of an alien’s admissibility under paragraphs  
5 (1)(C) and (2) of subsection (a), the following shall apply:

6               “(A) GROUNDS THAT MAY NOT BE  
7               WAIVED.—The following provisions of section  
8               212(a) may not be waived by the Secretary of  
9               Homeland Security under subparagraph (C)(i)  
10              of this subsection:

11               “(i) Paragraph (1) (relating to  
12               health).

13               “(ii) Paragraph (2) (relating to crimi-  
14               nals).

15               “(iii) Paragraph (3) (relating to secu-  
16               rity and related grounds).

17               “(iv) Subparagraphs (A) and (C) of  
18               paragraph (10) (relating to polygamists  
19               and child abductors).

20               “(B) GROUNDS OF INADMISSIBILITY NOT  
21               APPLICABLE.—The provisions of paragraphs  
22               (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7),  
23               (9), and (10)(B) of section 212(a) shall not  
24               apply to an alien who is applying for adjust-  
25               ment of status under subsection (a).

1 “(C) WAIVER OF OTHER GROUNDS.—

2 “(i) IN GENERAL.—Except as pro-  
3 vided in subparagraph (A), the Secretary  
4 of Homeland Security may waive any pro-  
5 vision of section 212(a) in the case of indi-  
6 vidual aliens for humanitarian purposes, to  
7 ensure family unity, or when it is otherwise  
8 in the public interest.

9 “(ii) CONSTRUCTION.—Nothing in  
10 this subparagraph shall be construed as af-  
11 fecting the authority of the Secretary of  
12 Homeland Security, other than under this  
13 subparagraph, to waive the provisions of  
14 section 212(a).

15 “(D) SPECIAL RULE FOR DETERMINATION  
16 OF PUBLIC CHARGE.—An alien is not ineligible  
17 for adjustment of status under subsection (a)  
18 by reason of a ground of inadmissibility under  
19 section 212(a)(4) if the alien establishes a his-  
20 tory of employment in the United States evi-  
21 dencing self-support without public cash assist-  
22 ance.

23 “(E) SPECIAL RULE FOR INDIVIDUALS  
24 WHERE THERE IS NO COMMERCIAL PURPOSE.—  
25 An alien is not ineligible for adjustment of sta-

1           tus under subsection (a) by reason of a ground  
2           of inadmissibility under section 212(a)(6)(E) if  
3           the alien establishes that the action referred to  
4           in that section was taken for humanitarian pur-  
5           poses, to ensure family unity, or was otherwise  
6           in the public interest.

7           “(F) APPLICABILITY OF OTHER PROVI-  
8           SIONS.—Section 241(a)(5) and section 240B(d)  
9           shall not apply with respect to an alien who is  
10          applying for adjustment of status under sub-  
11          section (a).

12          “(c) TREATMENT OF APPLICANTS.—

13           “(1) IN GENERAL.—An alien who files an appli-  
14          cation under subsection (a)(1)(A) for adjustment of  
15          status, including a spouse or child who files for ad-  
16          justment of status under subsection (b)—

17           “(A) shall be granted employment author-  
18          ization pending final adjudication of the alien’s  
19          application for adjustment of status;

20           “(B) shall be granted permission to travel  
21          abroad pursuant to regulation pending final ad-  
22          judication of the alien’s application for adjust-  
23          ment of status;

24           “(C) shall not be detained, determined in-  
25          admissible or deportable, or removed pending

1 final adjudication of the alien’s application for  
2 adjustment of status, unless the alien commits  
3 an act which renders the alien ineligible for  
4 such adjustment of status; and

5 “(D) shall not be considered an unauthor-  
6 ized alien as defined in section 274A(h)(3) until  
7 such time as employment authorization under  
8 subparagraph (A) is denied.

9 “(2) DOCUMENT OF AUTHORIZATION.—The  
10 Secretary of Homeland Security shall provide each  
11 alien described in paragraph (1) with a counterfeit-  
12 resistant document of authorization that meets all  
13 current requirements established by the Secretary of  
14 Homeland Security for travel documents and reflects  
15 the benefits and status set forth in subparagraphs  
16 (A) through (D) of paragraph (1).

17 “(3) SECURITY AND LAW ENFORCEMENT  
18 CLEARANCE.—Before an alien is granted employ-  
19 ment authorization or permission to travel under  
20 paragraph (1), the alien shall be required to undergo  
21 a name check against existing databases for infor-  
22 mation relating to criminal, national security, or  
23 other law enforcement actions. The relevant Federal  
24 agencies shall work to ensure that such name checks

1 are completed not later than 90 days after the date  
2 on which the name check is requested.

3 “(4) TERMINATION OF PROCEEDINGS.—An  
4 alien in removal proceedings who establishes prima  
5 facie eligibility for adjustment of status under sub-  
6 section (a) shall be entitled to termination of the  
7 proceedings pending the outcome of the alien’s appli-  
8 cation, unless the removal proceedings are based on  
9 criminal or national security grounds.

10 “(d) APPREHENSION BEFORE APPLICATION PE-  
11 RIOD.— The Secretary of Homeland Security shall provide  
12 that in the case of an alien who is apprehended before  
13 the beginning of the application period described in sub-  
14 section (a) and who can establish prima facie eligibility  
15 to have the alien’s status adjusted under that subsection  
16 (but for the fact that the alien may not apply for such  
17 adjustment until the beginning of such period), until the  
18 alien has had the opportunity during the first 180 days  
19 of the application period to complete the filing of an appli-  
20 cation for adjustment, the alien may not be removed from  
21 the United States unless the alien is removed on the basis  
22 that the alien has engaged in criminal conduct or is a  
23 threat to the national security of the United States.

24 “(e) CONFIDENTIALITY OF INFORMATION.—

1           “(1) IN GENERAL.—Except as otherwise pro-  
2           vided in this section, no Federal agency or bureau,  
3           nor any officer or employee of such agency or bu-  
4           reau, may—

5                   “(A) use the information furnished by the  
6                   applicant pursuant to an application filed under  
7                   paragraph (1) or (2) of subsection (a) for any  
8                   purpose other than to make a determination on  
9                   the application;

10                   “(B) make any publication through which  
11                   the information furnished by any particular ap-  
12                   plicant can be identified; or

13                   “(C) permit anyone other than the sworn  
14                   officers and employees of such agency, bureau,  
15                   or approved entity, as approved by the Sec-  
16                   retary of Homeland Security, to examine indi-  
17                   vidual applications that have been filed.

18           “(2) REQUIRED DISCLOSURES.—The Secretary  
19           of Homeland Security and the Secretary of State  
20           shall provide the information furnished pursuant to  
21           an application filed under paragraph (1) or (2) of  
22           subsection (a), and any other information derived  
23           from such furnished information, to a duly recog-  
24           nized law enforcement entity in connection with a  
25           criminal investigation or prosecution or a national

1 security investigation or prosecution, in each in-  
2 stance about an individual suspect or group of sus-  
3 pects, when such information is requested in writing  
4 by such entity.

5 “(3) CRIMINAL PENALTY.—Any person who  
6 knowingly uses, publishes, or permits information to  
7 be examined in violation of this subsection shall be  
8 fined not more than \$10,000.

9 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
10 CATIONS.—

11 “(1) CRIMINAL PENALTY.—

12 “(A) VIOLATION.—It shall be unlawful for  
13 any person to—

14 “(i) file or assist in filing an applica-  
15 tion for adjustment of status under this  
16 section and knowingly and willfully falsify,  
17 conceal, or cover up a material fact or  
18 make any false, fictitious, or fraudulent  
19 statements or representations, or make or  
20 use any false writing or document knowing  
21 the same to contain any false, fictitious, or  
22 fraudulent statement or entry; or

23 “(ii) create or supply a false writing  
24 or document for use in making such an ap-  
25 plication.

1           “(B) PENALTY.—Any person who violates  
2           subparagraph (A) shall be fined in accordance  
3           with title 18, United States Code, or imprisoned  
4           not more than 5 years, or both.

5           “(2) INADMISSIBILITY.—An alien who is con-  
6           victed of a crime under paragraph (1) shall be con-  
7           sidered to be inadmissible to the United States.

8           “(3) EXCEPTION.—Notwithstanding paragraphs  
9           (1) and (2), any alien or other entity (including an  
10          employer or union) that submits an employment  
11          record that contains incorrect data that the alien  
12          used in order to obtain such employment, shall not  
13          have violated this subsection.

14          “(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For  
15          purposes of section 403 of the Personal Responsibility and  
16          Work Opportunity Reconciliation Act of 1996 (8 U.S.C.  
17          1613), an alien whose status has been adjusted in accord-  
18          ance with subsection (a) shall not be eligible for any Fed-  
19          eral means-tested public benefit unless the alien meets the  
20          alien eligibility criteria for such benefit under title IV of  
21          such Act (8 U.S.C. 1601 et seq.).

22          “(h) RELATIONSHIPS OF APPLICATION TO CERTAIN  
23          ORDERS.—

24                 “(1) IN GENERAL.—An alien who is present in  
25                 the United States and has been ordered excluded,

1       deported, removed, or to depart voluntarily from the  
2       United States under any provision of this Act may,  
3       notwithstanding such order, apply for adjustment of  
4       status under subsection (a). Such an alien shall not  
5       be required, as a condition of submitting or granting  
6       such application, to file a separate motion to reopen,  
7       reconsider, or vacate the exclusion, deportation, re-  
8       moval or voluntary departure order. If the Secretary  
9       of Homeland Security grants the application, the  
10       order shall be canceled. If the Secretary of Home-  
11       land Security renders a final administrative decision  
12       to deny the application, such order shall be effective  
13       and enforceable. Nothing in this paragraph shall af-  
14       fect the review or stay of removal under subsection  
15       (j).

16               “(2) STAY OF REMOVAL.—The filing of an ap-  
17       plication described in paragraph (1) shall stay the  
18       removal or detainment of the alien pending final ad-  
19       judication of the application, unless the removal or  
20       detainment of the alien is based on criminal or na-  
21       tional security grounds.

22               “(i) APPLICATION OF OTHER IMMIGRATION AND NA-  
23       TIONALITY ACT PROVISIONS.—Nothing in this section  
24       shall preclude an alien who may be eligible to be granted  
25       adjustment of status under subsection (a) from seeking

1 such status under any other provision of law for which  
2 the alien may be eligible.

3 “(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

4 “(1) IN GENERAL.—Except as provided in this  
5 subsection, there shall be no administrative or judi-  
6 cial review of a determination respecting an applica-  
7 tion for adjustment of status under subsection (a).

8 “(2) ADMINISTRATIVE REVIEW.—

9 “(A) SINGLE LEVEL OF ADMINISTRATIVE  
10 APPELLATE REVIEW.—The Secretary of Home-  
11 land Security shall establish an appellate au-  
12 thority to provide for a single level of adminis-  
13 trative appellate review of a determination re-  
14 specting an application for adjustment of status  
15 under subsection (a).

16 “(B) STANDARD FOR REVIEW.—Adminis-  
17 trative appellate review referred to in subpara-  
18 graph (A) shall be based solely upon the admin-  
19 istrative record established at the time of the  
20 determination on the application and upon the  
21 presentation of additional or newly discovered  
22 evidence during the time of the pending appeal.

23 “(3) JUDICIAL REVIEW.—

24 “(A) DIRECT REVIEW.—A person whose  
25 application for adjustment of status under sub-

1 section (a) is denied after administrative appel-  
2 late review under paragraph (2) may seek re-  
3 view of such denial, in accordance with chapter  
4 7 of title 5, United States Code, before the  
5 United States district court for the district in  
6 which the person resides.

7 “(B) REVIEW AFTER REMOVAL PRO-  
8 CEEDINGS.—There shall be judicial review in  
9 the Federal courts of appeal of the denial of an  
10 application for adjustment of status under sub-  
11 section (a) in conjunction with judicial review of  
12 an order of removal, deportation, or exclusion,  
13 but only if the validity of the denial has not  
14 been upheld in a prior judicial proceeding under  
15 subparagraph (A). Notwithstanding any other  
16 provision of law, the standard for review of  
17 such a denial shall be governed by subpara-  
18 graph (C).

19 “(C) STANDARD FOR JUDICIAL REVIEW.—  
20 Judicial review of a denial of an application  
21 under this section shall be based solely upon the  
22 administrative record established at the time of  
23 the review. The findings of fact and other de-  
24 terminations contained in the record shall be  
25 conclusive unless the applicant can establish

1           abuse of discretion or that the findings are di-  
2           rectly contrary to clear and convincing facts  
3           contained in the record, considered as a whole.

4           “(4) STAY OF REMOVAL.—Aliens seeking ad-  
5           ministrative or judicial review under this subsection  
6           shall not be removed from the United States until a  
7           final decision is rendered establishing ineligibility  
8           under this section, unless such removal is based on  
9           criminal or national security grounds.

10          “(k) DISSEMINATION OF INFORMATION ON ADJUST-  
11          MENT PROGRAM.—During the 12 months following the  
12          issuance of final regulations in accordance with subsection  
13          (o), the Secretary of Homeland Security, in cooperation  
14          with approved entities, approved by the Secretary of  
15          Homeland Security, shall broadly disseminate information  
16          respecting adjustment of status under this section and the  
17          requirements to be satisfied to obtain such status. The  
18          Secretary of Homeland Security shall also disseminate in-  
19          formation to employers and labor unions to advise them  
20          of the rights and protections available to them and to  
21          workers who file applications under this section. Such in-  
22          formation shall be broadly disseminated, in the languages  
23          spoken by the top 15 source countries of the aliens who  
24          would qualify for adjustment of status under this section,

1 including to television, radio, and print media such aliens  
2 would have access to.

3 “(l) EMPLOYER PROTECTIONS.—

4 “(1) IMMIGRATION STATUS OF ALIEN.—Em-  
5 ployers of aliens applying for adjustment of status  
6 under this section shall not be subject to civil and  
7 criminal tax liability relating directly to the employ-  
8 ment of such alien.

9 “(2) PROVISION OF EMPLOYMENT RECORDS.—

10 Employers that provide unauthorized aliens with  
11 copies of employment records or other evidence of  
12 employment pursuant to an application for adjust-  
13 ment of status under this section or any other appli-  
14 cation or petition pursuant to other provisions of the  
15 immigration laws, shall not be subject to civil and  
16 criminal liability pursuant to section 274A for em-  
17 ploying such unauthorized aliens.

18 “(3) APPLICABILITY OF OTHER LAW.—Nothing  
19 in this subsection shall be used to shield an employer  
20 from liability pursuant to section 274B or any other  
21 labor and employment law provisions.

22 “(m) AUTHORIZATION OF FUNDS; FINES.—

23 “(1) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to the De-  
25 partment of Homeland Security such sums as are

1 necessary to commence the processing of applica-  
2 tions filed under this section.

3 “(2) FINE.—An alien who files an application  
4 under this section shall pay a fine commensurate  
5 with levels charged by the Department of Homeland  
6 Security for other applications for adjustment of sta-  
7 tus.

8 “(3) ADDITIONAL AMOUNTS OWED.—Prior to  
9 the adjudication of an application for adjustment of  
10 status filed under this section, the alien shall pay an  
11 amount equaling \$1,000, but such amount shall not  
12 be required from an alien under the age of 18.

13 “(4) USE OF AMOUNTS COLLECTED.—The Sec-  
14 retary of Homeland Security shall deposit payments  
15 received under this subsection in the Immigration  
16 Examinations Fee Account, and these payments in  
17 such account shall be available, without fiscal year  
18 limitation, such that—

19 “(A) 60 percent of such funds shall be  
20 available to the Department of Homeland Secu-  
21 rity for implementing and processing applica-  
22 tions under this section; and

23 “(B) 40 percent of such funds shall be  
24 available to the Department of Homeland Secu-  
25 rity and the Department of State to cover ad-

1           ministrative and other expenses incurred in con-  
2           nection with the review of applications filed by  
3           immediate relatives as a result of the amend-  
4           ments made by title I of the Immigration Re-  
5           form Act of 2004.

6           “(n) TRANSITIONAL WORKERS.—

7           “(1) ELIGIBILITY FOR TRANSITIONAL WORKER  
8           STATUS.—Any alien who is physically present in the  
9           United States on the date of introduction of the Im-  
10          migration Reform Act of 2004 who seeks to adjust  
11          status under this section but does not satisfy the re-  
12          quirements of subparagraph (B) or (D) of sub-  
13          section (a)(1) shall be eligible—

14                 “(A) to apply for transitional worker sta-  
15                 tus, which shall have a duration period of not  
16                 more than 3 years from the date of issuance of  
17                 the transitional worker card, without having to  
18                 depart the United States; and

19                 “(B) be granted employment authorization  
20                 and permission to travel abroad for a period of  
21                 not more than 3 years from the date of  
22                 issuance of the transitional worker card.

23           “(2) DOCUMENT OF AUTHORIZATION.—The  
24           Secretary of Homeland Security shall issue each  
25           alien described in paragraph (1) with a counterfeit-

1 resistant document of authorization that meets all  
2 requirements established by the Secretary of Home-  
3 land Security for travel documents and reflects the  
4 benefits and status set forth in paragraph (1)(B).

5 “(3) SECURITY AND LAW ENFORCEMENT  
6 CLEARANCE.—Before an alien described in para-  
7 graph (1) is granted employment authorization or  
8 permission to travel abroad, such alien shall be re-  
9 quired to undergo a name check against existing  
10 databases for information relating to criminal, secu-  
11 rity, and other law enforcement actions. The rel-  
12 evant Federal agencies shall work to ensure that  
13 such name checks are completed as expeditiously as  
14 possible.

15 “(4) ELIGIBILITY FOR ADJUSTMENT OF STA-  
16 TUS.—An alien shall be eligible for adjustment of  
17 status to that of a lawful permanent resident under  
18 this subsection if the alien—

19 “(A) has applied for transitional worker  
20 status under paragraph (1);

21 “(B) is lawfully employed in the United  
22 States in the aggregate for—

23 “(i) more than 2 but less than 3 of  
24 the 5 years immediately preceding the date

1           on which the Immigration Reform Act of  
2           2004 was introduced; and

3                   “(ii) at least 2 years following the  
4           date of enactment of that Act; and

5                   “(C) was present in the United States on  
6           and after the date of introduction of that Act  
7           (without regard to any brief, casual, and inno-  
8           cent departures from the United States).

9           “(5) EXCEPTIONS.—The employment require-  
10          ments in paragraph (4)(B) shall not apply to an in-  
11          dividual who is under 20 years of age on the date  
12          on which the Immigration Reform Act of 2004 was  
13          introduced, and the employment requirement in  
14          paragraph (4)(B)(ii) shall be reduced for an indi-  
15          vidual who cannot demonstrate employment based  
16          on a physical or mental disability or as a result of  
17          pregnancy.

18                   “(6) PORTABILITY.—An alien shall not be re-  
19          quired to complete the employment requirements in  
20          paragraph (4) with the same employer.

21                   “(7) ADJUSTMENT OF STATUS.—An alien who  
22          meets the requirements of paragraph (4) and applies  
23          for adjustment of status to that of a lawful perma-  
24          nent resident under this subsection shall be required  
25          to comply with the requirements of subparagraphs

1 (C), (E), (F), (G), and (H) of subsection (a)(1). In  
2 adjudicating such an application, the Secretary of  
3 Homeland Security shall determine the admissibility  
4 of the alien in accordance with subsection (b).

5 “(8) SPOUSES AND CHILDREN.—

6 “(A) ADJUSTMENT OF STATUS.—Notwith-  
7 standing any other provision of law, the Sec-  
8 retary of Homeland Security shall, if otherwise  
9 eligible under subsection (b), adjust the status  
10 to that of a lawful permanent resident or pro-  
11 vide an immigrant visa to—

12 “(i) the spouse or child of an alien  
13 who adjusts status or is eligible to adjust  
14 status to that of a lawful permanent resi-  
15 dent under this subsection; or

16 “(ii) an alien who was the spouse or  
17 child of an alien who adjusts status to that  
18 of a lawful permanent resident under this  
19 subsection, if—

20 “(I) the termination of the quali-  
21 fying relationship was connected to  
22 domestic violence; or

23 “(II) the spouse or child has  
24 been battered or subjected to extreme  
25 cruelty by the spouse or parent who

1                   adjusts status to that of a lawful per-  
2                   manent resident under this sub-  
3                   section.

4                   “(B) DOCUMENT OF AUTHORIZATION.—  
5                   The Secretary of Homeland Security shall issue  
6                   each alien described in subparagraph (A) with  
7                   a counterfeit-resistant document of authoriza-  
8                   tion that meets all requirements established by  
9                   the Secretary of Homeland Security for travel  
10                  documents and reflects the status set forth in  
11                  that subparagraph.

12                  “(C) APPLICATION OF OTHER LAW.—In  
13                  acting on applications filed under this sub-  
14                  section with respect to aliens who have been  
15                  battered or subjected to extreme cruelty, the  
16                  Secretary of Homeland Security shall apply the  
17                  provisions of section 204(a)(1)(J) and the pro-  
18                  tections, prohibitions, and penalties under sec-  
19                  tion 384 of the Illegal Immigration Reform and  
20                  Immigrant Responsibility Act of 1996 (8 U.S.C.  
21                  1367).

22                  “(9) NONAPPLICABILITY OF NUMERICAL LIM-  
23                  TATIONS.—When an alien is granted legal perma-  
24                  nent resident status under this subsection, the num-

1       ber of immigrant visas authorized to be issued under  
2       any provision of this Act shall not be reduced.

3           “(10) TERMINATION OF AUTHORITY.—No ac-  
4       tion may be taken under this subsection in the case  
5       of an alien who submits an application for transi-  
6       tional worker status under paragraph (1) more than  
7       3 years after the date on which final regulations im-  
8       plementing this section take effect.

9           “(o) ISSUANCE OF REGULATIONS.—Not later than  
10      120 days after the date of enactment of the Immigration  
11      Act of 2004, the Secretary of Homeland Security shall  
12      issue regulations to implement this section.”.

13          (b) TABLE OF CONTENTS.—The table of contents for  
14      the Immigration and Nationality Act (8 U.S.C. 1101 et  
15      seq.) is amended by inserting after the item relating to  
16      section 245A the following:

        “245B. Access to Earned Adjustment.”.

17      **SEC. 302. CORRECTION OF SOCIAL SECURITY RECORDS.**

18          Section 208(d)(1) of the Social Security Act (42  
19      U.S.C. 408(d)(1)) is amended—

20              (1) in subparagraph (B), by striking “or” at  
21      the end of clause (ii);

22              (2) in subparagraph (C), by inserting “or” at  
23      the end;

24              (3) by inserting after subparagraph (C) the fol-  
25      lowing:

1           “(D) whose status is adjusted to that of  
2           lawful permanent resident under section 245B  
3           of the Immigration and Nationality Act,”; and  
4           (4) by striking “1990.” and inserting “1990, or  
5           in the case of an alien described in subparagraph  
6           (D), if such conduct is alleged to have occurred prior  
7           to the date on which the alien became lawfully ad-  
8           mitted for temporary residence.

○