H. R. 248

To modify the requirements applicable to the admission into the United States of H–1C nonimmigrant registered nurses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2005

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To modify the requirements applicable to the admission into the United States of H–1C nonimmigrant registered nurses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rural and Urban Health Care Act of 2005”.

SEC. 2. REQUIREMENTS FOR ADMISSION OF H–1C NONIMMIGRANT NURSES.

(a) In General.—Section 212(m) of the Immigration and Nationality Act (8 U.S.C. 1182(m)) is amended to read as follows:
“(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(e), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

“(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

“(B) has passed the examination given by the Commission on Graduates of Foreign Nursing Schools or another appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

“(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility, except that, in the
case of an alien who is otherwise eligible to take the
State licensure examination after entering into the
United States, but who has not passed such exam-
ination before entering—

“(i) the alien may take such examination
not more than twice after entering, but the
alien’s status as a nonimmigrant under section
101(a)(15)(H)(i)(c) shall terminate, and the
alien shall be required to depart the United
States, if the alien does not pass such examina-
tion either the first or second time; and

“(ii) the failure of the alien to have ob-
tained a social security account number shall
not be deemed a ground of ineligibility to take
such examination.

“(2)(A) The attestation referred to in section
101(a)(15)(H)(i)(c), with respect to a facility for which
an alien will perform services, is an attestation as to the
following:

“(i) The employment of the alien will not ad-
versely affect the wages and working conditions of
registered nurses similarly employed by the facility.

“(ii) The alien will be paid the wage rate for
registered nurses similarly employed by the facility.
“(iii) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered staff nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

“(iv) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

“(v) The facility will not, with respect to any alien issued a visa or otherwise provided non-immigrant status under section 101(a)(15)(H)(i)(c)—

“(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or
“(II) transfer the place of employment of the alien from one worksite to another.

“(vi) The facility will not, with respect to any alien issued a visa or otherwise provided non-immigrant status under section 101(a)(15)(H)(i)(c), require the alien to pay a penalty (as determined under State law) for ceasing employment prior to a date agreed to by the alien and the facility.

“(B) A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

“(C) The Secretary shall review the attestation only for completeness and obvious inaccuracies. Unless the Secretary finds that the attestation is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(c) within 7 days of the date of the filing of the attestation.

“(D) Subject to subparagraph (F), an attestation under subparagraph (A)—

“(i) shall expire on the date that is the later of—

“(I) the end of the 3-year period beginning on the date of its filing with the Secretary; or

“(II) the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last
alien with respect to whose admission it was applied (in accordance with clause (ii)); and

“(ii) shall apply to petitions filed during the 3-year period beginning on the date of its filing with the Secretary if the facility states in each such petition that it continues to comply with the conditions in the attestation.

“(E) A facility may meet the requirements of this paragraph with respect to more than one registered nurse in a single attestation.

“(F)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities that have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility’s attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

“(ii) The Secretary shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility’s failure to meet conditions attested to or a facility’s misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appro-
priate by the Secretary, and other aggrieved parties as de-
determined under regulations of the Secretary). The Sec-
retary shall conduct an investigation under this clause if
there is reasonable cause to believe that a facility willfully
failed to meet conditions attested to. Subject to the time
limits established under this clause, this subparagraph
shall apply regardless of whether an attestation is expired
or unexpired at the time a complaint is filed.

“(iii) Under such process, the Secretary shall provide,
within 180 days after the date such a complaint is filed,
for a determination as to whether or not a basis exists
to make a finding described in clause (iv). If the Secretary
determines that such a basis exists, the Secretary shall
provide for notice of such determination to the interested
parties and an opportunity for a hearing on the complaint
within 60 days of the date of the determination.

“(iv) If the Secretary of Labor finds, after notice and
opportunity for a hearing, that a facility (for which an
attestation is made) has willfully failed to meet a condition
attested to or that there was a willful misrepresentation
of material fact in the attestation, the Secretary shall no-
tify the Attorney General of such finding and may, in ad-
dition, impose such other administrative remedies (includ-
ing civil monetary penalties in an amount not to exceed
$1,000 per nurse per violation, with the total penalty not
to exceed $10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

“(v) In addition to the sanctions provided for under clause (iv), if the Secretary finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(ii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

“(G)(i) The Secretary shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary’s duties under this subsection, but not exceeding $250.

“(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

“(iii) The collected fees in the fund shall be available to the Secretary, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs
described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

“(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be for an initial period not to exceed 3 years, and may be extended if the extension does not cause the total period of authorized admission as such a nonimmigrant to exceed 6 years.

“(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 195,000.

“(5) A facility that has filed a petition under section 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform nursing services for the facility—

“(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility; and

“(B) shall not interfere with the right of the nonimmigrant to join or organize a union.

“(6) For purposes of this subsection and section 101(a)(15)(H)(i)(c):

“(A) The term ‘facility’ includes a hospital, nursing home, skilled nursing facility, registry, clin-
ic, assisted-living center, and an employer who em-

ploys any registered nurse in a home setting.

“(B)(i) The term ‘lay off’ with respect to a

worker (for purposes of paragraph (2)(A)(iii))—

“(I) means to cause the worker’s loss of
employment, other than through a discharge for
inadequate performance, violation of workplace
rules, cause, voluntary departure, voluntary re-
tirement, or the expiration of a grant or con-
tract; but

“(II) does not include any situation in
which the worker’s offered, as an alternative to
such loss of employment, a similar employment
opportunity with the same employer at equiva-
lent or higher compensation and benefits than
the position from which the employee was dis-
charged, regardless of whether or not the em-
ployee accepts the offer.

“(ii) Nothing in this subparagraph is intended
to limit an employee’s or an employer’s rights under
a collective bargaining agreement or other employ-
ment contract.

“(C) The term ‘Secretary’ means the Secretary
of Labor.”.
(b) Regulations; Effective Date.—Not later than 90 days after the date of the enactment of this Act, regulations to carry out subsection (a) shall be promulgated by the Secretary of Labor, in consultation with the Secretary of Health and Human Services and the Attorney General. Notwithstanding the preceding sentence, the amendment made by subsection (a) shall take effect 90 days after the date of the enactment of this Act, regardless of whether such regulations are in effect on such date.

SEC. 3. INCREASE IN NUMBER OF WAIVERS OF TWO-YEAR FOREIGN RESIDENCE REQUIREMENT UPON REQUESTS BY STATE AGENCIES.