109TH CONGRESS
1ST SESSION

H. R. 4065

To amend the Immigration and Nationality Act to provide certain undocumented workers with temporary work visas.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 2005

Mr. OSBORNE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide certain undocumented workers with temporary work visas.

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 “Temporary Worker Registration and Visa Act of 2005”.

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SEC. 2. ISSUANCE OF TEMPORARY WORKER VISA FOR CERTAIN UNDOCUMENTED WORKER REGISTRANTS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by inserting after section 245A (8 U.S.C. 1255a) the following new section:

"SEC. 245B. ISSUANCE OF TEMPORARY WORKER VISA FOR CERTAIN UNDOCUMENTED WORKER REGISTRANTS.

"(a) REGISTRATION PROCESS FOR CERTAIN UNDOCUMENTED WORKERS.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall register under this subsection an alien if the alien demonstrates to the satisfaction of the Secretary that the alien meets the following requirements:

"(A) APPLICATION.—

"(i) IN GENERAL.—The alien applies for such registration in a form and manner specified by the Secretary during the registration period under clause (ii).

"(ii) REGISTRATION PERIOD.—The registration period under this clause shall be a 12-month period beginning on a date (not later than 180 days after the enact-
ment of this section) designated by the Secretary.

“(B) Continuous unlawful presence.—

“(i) In general.—The alien has been continuously unlawfully present in the United States from January 1, 2005, through the date the application under subparagraph (A) is filed.

“(ii) Unlawful presence not known.—The alien’s unlawful presence in the United States is not known to officials of the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security (as evidenced by documentary records) at any time prior to the alien’s application for registration under this subsection.

“(iii) Treatment of brief, casual, and innocent absences.—An alien shall not be considered to have failed to have maintained continuous physical presence in the United States for purposes of clause (i) by virtue of brief, casual, and innocent absences from the United States or a brief,
temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien

“(iv) No authorization of admission.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to register under this subsection.

“(C) Nonimmigrants.—

“(i) In general.—In the case of an alien who entered the United States as a nonimmigrant before the date specified in subparagraph (B)(i), the alien’s period of authorized stay as a nonimmigrant expired through the passage of time before such date.

“(ii) Exchange visitors.—If the alien was at any time a nonimmigrant exchange alien (as described in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.
“(D) ADMISSIBLE AS TEMPORARY WORKER.—The alien—

“(i) is admissible to the United States as an immigrant, except as otherwise provided under paragraph (3), and is not inadmissible under paragraph (2) or (3) of section 212(a) or deportable under paragraph (2)(A)(iii) or (4) of section 237(a);

“(ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States; and

“(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

“(E) BIOMETRIC IDENTIFIERS.—The alien provides the Secretary with such biometric identifiers as the Secretary may require for the issuance of a visa, in accordance with section 303(b)(1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732(b)(1)).
“(F) Registration fee.—The alien has paid such registration fee as the Secretary shall specify.

“(G) Abandonment of other applications for relief.—The alien has withdrawn or has otherwise abandoned or terminated any other application for relief from removal under any law, which may have been pending prior to the submission of the application under subparagraph (A), and the alien has permanently relinquished the opportunity subsequently to submit any other such application for relief.

“(H) Employment in the United States.—

“(i) In general.—Except as provided in clause (ii), the alien was employed on a full-time basis in the United States since the date specified in subparagraph (B)(i).

“(ii) Exception for spouses and minor children of registrants.—Clause (i) shall not apply in the case of an alien who is the spouse or minor child of an alien who is registered (or in the process of registering) under this subsection.
“(2) Benefits of registration.—

“(A) Work authorization.—

“(i) In general.—The Secretary shall authorize an alien who is registered under this subsection to engage in employment in the United States during the term of the alien’s registration and shall provide the alien with an ‘employment authorized’ endorsement or other appropriate document signifying authorization of employment.

“(ii) Granting upon prima facie showing of eligibility.—In the case of an alien who applies for registration under this subsection and who establishes a prima facie case of eligibility to be so registered, the Secretary shall provide such alien with the employment authorization described in clause (i) during the pendency of such application.

“(3) Waiver of certain grounds for removal.—

“(A) In general.—Except as provided in this paragraph, the provisions of subparagraphs (A) and (B) of subsection (d)(2) of section
245A shall apply to determinations of eligibility for registration under this subsection in the same manner as they apply to determinations of admissibility for purposes of such section.

“(B) MODIFICATION OF REFERENCE.—In applying subparagraph (A), any reference in section 245A(d)(2)(A) to section 212(a)(7)(A) is deemed a reference to section 212(a)(7)(B).

“(C) INAPPLICABILITY OF CERTAIN GROUNDS FOR SUBSEQUENT REMOVAL.—For purposes of obtaining the benefits described in this subsection, and for purposes of any other determination under the immigration laws of the United States, any ground for removal or denial of admission (including grounds under sections 212(a)(6)(A) and 212(a)(9)(B)) applicable to an alien registered under this subsection shall be disregarded if the ground is reflected in the records of the Department of Homeland Security or the Department of State on the date on which the alien first applied for such registration and if such ground is waived under this paragraph.

“(4) TERMINATION OF REGISTRATION.—
“(A) Expiration.—Except as provided in subparagraph (B), the period of registration of an alien under this section shall expire at the end of the 6-month period beginning on the date of the approval of such registration.

“(B) Termination of Registration.—The Secretary of Homeland Security shall provide for the termination of registration of an alien under this subsection—

“(i) if it appears to the Secretary that the alien was in fact not eligible for such registration; or

“(ii) if the alien commits an act that makes the alien inadmissible to the United States as a nonimmigrant under section 101(a)(15)(W).

“(b) Provision of Temporary Worker Visa.—

“(1) In General.—The Secretary of Homeland Security shall approve the issuance of a visa to an alien as a nonimmigrant described in section 101(a)(15)(W) if the alien—

“(A) is registered under subsection (a); and

“(B) makes application for such visa at an appropriate consular office outside the United
States in the alien’s country of nationality or, in the case of an alien having no nationality, in the alien’s country of last habitual residence outside the United States, not later than 6 months after the date of approval of such registration.

“(2) PERIOD OF AUTHORIZED ADMISSION.—

“(A) IN GENERAL.—Subject to subparagraph (B), the initial period of authorized admission as a nonimmigrant described in section 101(a)(15)(W) shall be 3 years.

“(B) EMPLOYMENT REQUIRED TO MAINTAIN STATUS.—

“(i) IN GENERAL.—An alien’s admission as a nonimmigrant under section 101(a)(15)(W), other than as the spouse or child of such a nonimmigrant, is conditioned upon continuous employment in the United States.

“(ii) SHORT BREAKS IN EMPLOYMENT PERMITTED WITH NOTICE.— An alien does not violate clause (i) if—

“(I) the break in employment does not exceed 30 days (or such longer period as the Secretary may
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provide based on extraordinary cir-
cumstances); and

“(II) the Secretary is provided
notice in a timely manner of the break
in employment and of the resumption
of employment.

“(C) EXTENSION.—

“(i) IN GENERAL.—The period of au-
thorized admission as a nonimmigrant
under section 101(a)(15)(W) may be ex-
tended by the Secretary in 3-year incre-
ments. The Secretary may not authorize
such extension for an alien if the alien vio-
lated subparagraph (B) for the previous
period of authorized admission.

“(ii) EXTENSION FEE.— The Sec-
retary shall impose a fee on applicants for
an extension under clause (i).

“(D) TERMINATION OF NONIMMIGRANT
STATUS.—The Secretary of Homeland Security
shall provide for the termination of non-
immigrant status granted an alien under this
subsection if it appears to the Secretary that
the alien was in fact not eligible for registration
under subsection (a).
“(c) Application of Certain Provisions.—

“(1) Confidentiality and False Statement.—The provisions of paragraphs (5) and (6) of subsection (c) of section 245A shall apply to applications for registration under subsection (a) in the same manner as they applied to applications for adjustment under section 245A.

“(2) Temporary Stay of Deportation.—The provisions of subsection (e)(1) of section 245A shall apply to aliens with respect to the application period and registration under subsection (a) in the same manner as they applied to the application period and applications for adjustment under subsection (a) of such section.

“(d) Construction.—

“(1) Limited Follow-to-Join Authority for Family Members.—Nothing in this section shall be construed as authorizing, in the case of an alien registered under subsection (a)—

“(A) the registration of any family member of such alien unless such family member meets the requirements for such registration; or

“(B) the issuance of a nonimmigrant visa under section 101(a)(15)(W) to such family
member unless such family member qualifies for such a visa.

“(2) Change in Nonimmigrant Classification; Adjustment of Status.—Nothing in this section shall be construed as prohibiting the change of nonimmigrant classification, or adjustment to lawful permanent resident status, of an alien who is a nonimmigrant described in section 101(a)(15)(W).”.

(b) New Nonimmigrant Visa Category.—Section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (U), by striking “or” at the end;

(2) in subparagraph (V), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(W) an alien who is coming temporarily to the United States to be employed in accordance with subsection (b) of section 245B, and the spouse and minor children of such alien if accompanying or following to join the alien and qualified under paragraph (1) of such subsection to be provided non-immigrant status under this subparagraph.”.

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(c) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 245A the following:

"Sec. 245B. Issuance of temporary worker visa for certain undocumented worker registrants."