

105TH CONGRESS  
1ST SESSION

# S. 169

To amend the Immigration and Nationality Act with respect to the admission  
of temporary H-2A workers.

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IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

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

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## A BILL

To amend the Immigration and Nationality Act with respect  
to the admission of temporary H-2A workers.

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 “Agricultural Work  
5       Force Stability and Protection Act”.

6       **SEC. 2. CONSIDERATIONS IN THE APPROVAL OF H-2A PETI-**  
7       **TIONS.**

8       Section 218(a) (8 U.S.C. 1188(a)) of the Immigra-  
9       tion and Nationality Act is amended—

1 (1) by redesignating paragraph (2) as para-  
 2 graph (3); and

3 (2) by inserting after paragraph (1) the follow-  
 4 ing:

5 “(2) In considering an employer’s petition for  
 6 admission of H–2A aliens, the Attorney General  
 7 shall consider the certification decision of the Sec-  
 8 retary of Labor and shall consider any countervail-  
 9 ing evidence submitted by the employer with respect  
 10 to the nonavailability of United States workers and  
 11 the employer’s compliance with the requirements of  
 12 this section, and may consult with the Secretary of  
 13 Agriculture.”.

14 **SEC. 3. CONDITION FOR DENIAL OF LABOR CERTIFI-**  
 15 **CATION.**

16 Section 218(b)(4) (8 U.S.C. 1188(b)(4)) of the Immi-  
 17 gration and Nationality Act is amended to read as follows:

18 “(4) DETERMINATION BY THE SECRETARY.—

19 The Secretary determines that the employer has not  
 20 filed a job offer for the position to be filled by the  
 21 alien with the appropriate local office of the State  
 22 employment security agency having jurisdiction over  
 23 the area of intended employment, or with the State  
 24 office of such an agency if the alien will be employed  
 25 in an area within the jurisdiction of more than one

1 local office of such an agency, which meets the cri-  
2 teria of paragraph (5).

3 “(5) REQUIRED TERMS AND CONDITIONS OF  
4 EMPLOYMENT.—The Secretary determines that the  
5 employer’s job offer does not meet one or more of  
6 the following criteria:

7 “(A) REQUIRED RATE OF PAY.—The em-  
8 ployer has offered to pay H-2A aliens and all  
9 other workers in the occupation in the area of  
10 intended employment an adverse effect wage  
11 rate of not less than the median rate of pay for  
12 similarly employed workers in the area of in-  
13 tended employment.

14 “(B) PROVISION OF HOUSING.—

15 “(i) IN GENERAL.—The employer has  
16 offered to provide housing to H-2A aliens  
17 and those workers not reasonably able to  
18 return to their residence within the same  
19 day, without charge to the worker. The  
20 employer may, at the employer’s option,  
21 provide housing meeting applicable Federal  
22 standards for temporary labor camps, or  
23 provide rental or public accommodation  
24 type housing which meets applicable local  
25 or state standards for such housing.

1           “(ii) HOUSING ALLOWANCE AS ALTER-  
2           NATIVE.—In lieu of offering the housing  
3           required in clause (i), the employer may  
4           provide a reasonable housing allowance to  
5           workers not reasonably able to return to  
6           their place of residence within the same  
7           day, but only if the Secretary determines  
8           that housing is reasonably available within  
9           the approximate area of employment. An  
10          employer who offers a housing allowance  
11          pursuant to this subparagraph shall not be  
12          deemed to be a housing provider under sec-  
13          tion 203 of the Migrant and Seasonal Ag-  
14          ricultural Worker Protection Act (29  
15          U.S.C. 1823) merely by virtue of providing  
16          such housing allowance.

17          “(iii) SPECIAL HOUSING STANDARDS  
18          FOR SHORT DURATION EMPLOYMENT.—  
19          The Secretary shall promulgate special  
20          regulations permitting the provision of  
21          short-term temporary housing for workers  
22          employed in occupations in which employ-  
23          ment is expected to last 40 days or less.

1                   “(iv) TRANSITIONAL PERIOD FOR  
2                   PROVISION OF SPECIAL HOUSING STAND-  
3                   ARDS IN OTHER EMPLOYMENT.—For a pe-  
4                   riod of five years after the date of enact-  
5                   ment of this section, the Secretary shall  
6                   approve the provision of housing meeting  
7                   the standards described in clause (iii) in  
8                   occupations expected to last longer than 40  
9                   days in areas where available housing  
10                  meeting the criteria described in subpara-  
11                  graph (i) is found to be insufficient.

12                  “(v) PREEMPTION OF STATE AND  
13                  LOCAL STANDARDS.—The standards de-  
14                  scribed in clauses (ii) and (iii) shall pre-  
15                  empt any State and local standards gov-  
16                  erning the provision of temporary housing  
17                  to agricultural workers.

18                  “(C) REIMBURSEMENT OF TRANSPOR-  
19                  TATION COSTS.—The employer has offered to  
20                  reimburse H-2A aliens and workers recruited  
21                  from beyond normal commuting distance the  
22                  most economical common carrier transportation  
23                  charge and reasonable subsistence from the  
24                  place from which the worker comes to work for

1 the employer, (but not more than the most eco-  
2 nomical common carrier transportation charge  
3 from the worker's normal place of residence) if  
4 the worker completes 50 percent of the antici-  
5 pated period of employment. If the worker re-  
6 cruited from beyond normal commuting dis-  
7 tance completes the period of employment, the  
8 employer will provide or pay for the worker's  
9 transportation and reasonable subsistence to  
10 the worker's next place of employment, or to  
11 the worker's normal place of residence, which-  
12 ever is less.

13 “(D) GUARANTEE OF EMPLOYMENT.—The  
14 employer has offered to guarantee the worker  
15 employment for at least three-fourths of the  
16 workdays of the employer's actual period of em-  
17 ployment in the occupation. Workers who aban-  
18 don their employment or are terminated for  
19 cause shall forfeit this guarantee.

20 “(6) PREFERENCE FOR UNITED STATES WORK-  
21 ERS.—The employer has not assured on the applica-  
22 tion that the employer will provide employment to all  
23 qualified United States workers who apply to the  
24 employer and assure that they will be available at

1 the time and place needed until the time the employ-  
 2 er's foreign workers depart for the employer's place  
 3 of employment (but not sooner than 5 days before  
 4 the date workers are needed), and will give pref-  
 5 erence in employment to United States workers who  
 6 are immediately available to fill job opportunities  
 7 that become available after the date work in the oc-  
 8 cupation begins.”.

9 **SEC. 4. SPECIAL RULES APPLICABLE TO THE ISSUANCE OF**  
 10 **LABOR CERTIFICATIONS.**

11 Section 218(c) (8 U.S.C. 1188(c)) of the Immigration  
 12 and Nationality Act is amended to read as follows:

13 “(c) SPECIAL RULES APPLICABLE TO THE ISSUANCE  
 14 OF LABOR CERTIFICATIONS.—The following rules shall  
 15 apply to the issuance of labor certifications by the Sec-  
 16 retary under this section:

17 “(1) DEADLINE FOR FILING APPLICATIONS.—

18 The Secretary may not require that the application  
 19 be filed more than 40 days before the first date the  
 20 employer requires the labor or services of the H-2A  
 21 worker.

22 “(2) NOTICE WITHIN SEVEN DAYS OF DEFI-  
 23 CIENCIES.—

24 “(A) The employer shall be notified in  
 25 writing within seven calendar days of the date

of filing, if the application does not meet the criteria described in subsection (b) for approval.

“(B) If the application does not meet such criteria, the notice shall specify the specific deficiencies of the application and the Secretary shall provide an opportunity for the prompt re-submission of a modified application.

“(3) ISSUANCE OF CERTIFICATION.—

“(A) The Secretary shall provide to the employer, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1)—

“(i) with respect to paragraph (a)(1)(A) if the employer’s application meets the criteria described in subsection (b), or a statement of the specific reasons why such certification cannot be made, and

“(ii) with respect to subsection (a)(1)(B), to the extent that the employer does not actually have, or has not been provided with the names, addresses and Social Security numbers of workers referred to the employer who are able, willing and qualified and have indicated they



1 will be available at the time and place  
2 needed to perform such labor or services  
3 on the terms and conditions of the job  
4 offer approved by the Secretary. For each  
5 worker referred, the Secretary shall also  
6 provide the employer with information suf-  
7 ficient to permit the employer to contact  
8 the referred worker for the purpose of re-  
9 confirming the worker's availability for  
10 work at the time and place needed.

11 “(B) If, at the time the Secretary deter-  
12 mines that the employer's job offer meets the  
13 criteria described in subsection (b) there are al-  
14 ready unfilled job opportunities in the occupa-  
15 tion and area of intended employment for which  
16 the employer is seeking workers, the Secretary  
17 shall provide the certification at the same time  
18 the Secretary approves the employer's job  
19 offer.”.

20 **SEC. 5. EXPEDITED APPEALS OF CERTAIN DETERMINA-**  
21 **TIONS.**

22 Section 218(e) (8 U.S.C 1188(e)) of the Immigration  
23 and Nationality Act is amended to read as follows:

24 “(e) EXPEDITED APPEALS OF CERTAIN DETERMINA-  
25 TIONS.—The Secretary shall provide by regulation for an

1 expedited procedure for the review of the nonapproval of  
 2 an employer’s job offer pursuant to subsection (c)(2) and  
 3 of the denial of certification in whole or in part pursuant  
 4 to subsection (c)(3) or, at the applicant’s request, a de  
 5 novo administrative hearing respecting the nonapproval or  
 6 denial.”.

7 **SEC. 6. PROCEDURES FOR THE CONSIDERATION OF H-2A**  
 8 **PETITIONS.**

9 Section 218 of the Immigration and Nationality Act  
 10 (8 U.S.C. 1188) is amended—

11 (1) by redesignating subsections (f) through (i)  
 12 as subsections (g) through (j), respectively; and

13 (2) by adding the following after subsection (e):

14 “(f) PROCEDURES FOR THE CONSIDERATION OF H–  
 15 2A PETITIONS.—The following procedures shall apply to  
 16 the consideration of petitions by the Attorney General  
 17 under this section:

18 “(1) EXPEDITED PROCESSING OF PETITIONS.—

19 The Attorney General shall provide an expedited  
 20 procedure for the adjudication of petitions filed  
 21 under this section, and the notification of visa-issu-  
 22 ing consulates where aliens seeking admission under  
 23 this section will apply for visas and/or ports of entry  
 24 where aliens will seek admission under this section

1 within 15 calendar days from the date such petition  
2 is filed by the employer.

3 “(2) EXPEDITED AMENDMENTS TO PETI-  
4 TIONS.—The Attorney General shall provide an ex-  
5 pedited procedure for the amendment of petitions to  
6 increase the number of workers on or after five days  
7 before the employers date of need for the labor or  
8 services involved in the petition to replace referred  
9 workers whose continued availability for work at the  
10 time and place needed under the terms of the ap-  
11 proved job offer can not be confirmed and to replace  
12 referred workers who fail to report for work on the  
13 date of need and replace referred workers who aban-  
14 don their employment or are terminated for cause,  
15 and for which replacement workers are not imme-  
16 diately available pursuant to subsection (b)(6).”.

17 **SEC. 7. LIMITATION ON EMPLOYER LIABILITY.**

18 Section 218(g) (8 U.S.C. 1188(g)) of the Immigra-  
19 tion and Nationality Act is amended—

20 (1) by redesignating paragraph (2) as para-  
21 graph (2)(A); and

22 (2) by inserting after paragraph (2)(A) the fol-  
23 lowing:

1           “(B) No employer shall be subject to any liabil-  
 2           ity or punishment on the basis of an employment ac-  
 3           tion or practice by such employer that conforms with  
 4           the terms and conditions of a job offer approved by  
 5           the Secretary pursuant to this section, unless and  
 6           until the employer has been notified that such cer-  
 7           tification has been amended or invalidated by a final  
 8           order of the Secretary or of a court of competent ju-  
 9           risdiction.”.

10 **SEC. 8. LIMITATION ON JUDICIAL REMEDIES.**

11           Section 218(h) of the Immigration and Nationality  
 12 Act (8 U.S.C. 1188(h)) is amended by adding at the end  
 13 thereof the following:

14           “(3) No court of the United States shall have  
 15           jurisdiction to issue any restraining order or tem-  
 16           porary or permanent injunction preventing or delay-  
 17           ing the issuance by the Secretary of a certification  
 18           pursuant to this section, or the approval by the At-  
 19           torney General of a petition to import an alien as an  
 20           H-2A worker, or the actual importation of any such  
 21           alien as an H-2A worker following such approval by  
 22           the Attorney General.”.

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