

106TH CONGRESS
1ST SESSION

S. 1815

To provide for the adjustment of status of certain aliens who previously performed agricultural work in the United States to that of aliens who are lawfully admitted to the United States to perform that work.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 1999

Mr. GRAHAM (for himself and Mr. SMITH of Oregon) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the adjustment of status of certain aliens who previously performed agricultural work in the United States to that of aliens who are lawfully admitted to the United States to perform that work.

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 “Farmworker Adjust-
5 ment Act of 1999”.

6 **SEC. 2. AGRICULTURAL WORKERS.**

7 (a) NONIMMIGRANT STATUS.—

1 (1) IN GENERAL.—The Attorney General shall
2 adjust the status of an alien agricultural worker who
3 qualifies under this subsection to that of an alien
4 lawfully admitted for nonimmigrant status under
5 section 101(a)(15) of the Immigration and Nation-
6 ality Act if the Attorney General determines that the
7 following requirements are satisfied with respect to
8 the alien:

9 (A) PERFORMANCE OF AGRICULTURAL EM-
10 PLOYMENT IN THE UNITED STATES.—The alien
11 must establish that the alien has performed ag-
12 ricultural employment in the United States for
13 at least 880 hours or 150 work days, whichever
14 is lesser, during the 12-month period prior to
15 October 27, 1999.

16 (B) APPLICATION PERIOD.—The alien
17 must apply for such adjustment not later than
18 12 months after the effective date of this Act.

19 (C) ADMISSIBILITY.—

20 (i) IN GENERAL.—The alien must es-
21 tablish that the alien is otherwise admis-
22 sible to the United States under section
23 212 of the Immigration and Nationality
24 Act, except as otherwise provided under
25 subsection (d).

1 (ii) WAIVER OF INELIGIBILITY FOR
2 UNLAWFUL PRESENCE.—An alien who has
3 not previously been admitted to the United
4 States pursuant to this section, and who is
5 otherwise eligible for admission in accord-
6 ance with clause (i), shall not be deemed
7 inadmissible by virtue of section
8 212(a)(9)(B) of that Act.

9 (2) PERIOD OF VALIDITY OF NONIMMIGRANT
10 STATUS.—

11 (A) IN GENERAL.—The status granted in
12 paragraph (1) shall be valid for a period of not
13 to exceed 7 consecutive calendar years, except
14 that the alien may not be present in the United
15 States for more than an aggregate of 300 days
16 in any calendar year.

17 (B) EXCEPTION.—The 300-day-per-year
18 limitation in subparagraph (A) shall not apply
19 to any period of validity of the status of any
20 alien who—

21 (i) has established a permanent resi-
22 dence in the United States and has a
23 minor child who was born in the United
24 States prior to the date of enactment of

1 this Act who resides in the alien's house-
2 hold; and

3 (ii) performs agricultural employment
4 for not less than 240 days in a calendar
5 year.

6 (3) AUTHORIZED TRAVEL.—During the period
7 an alien is in lawful nonimmigrant status granted
8 under this subsection, the alien has the right to trav-
9 el abroad (including commutation from a residence
10 abroad).

11 (4) AUTHORIZED EMPLOYMENT.—During the
12 period an alien is in lawful nonimmigrant status
13 granted under this subsection, the alien shall be
14 granted authorization to engage in the performance
15 only of agricultural employment in the United States
16 and shall be provided an “employment authorized”
17 endorsement or other appropriate work permit, only
18 for the performance of such employment. A non-
19 immigrant alien under this subsection may perform
20 agricultural employment anywhere in the United
21 States.

22 (5) TERMINATION OF NONIMMIGRANT STA-
23 TUS.—Except as otherwise provided in paragraph
24 (2), the Attorney General shall terminate the status,
25 and bring proceedings under section 240 of the Im-

1 migration and Nationality Act to remove, any non-
2 immigrant alien under this subsection who failed
3 during 3 prior calendar years to perform 1,040
4 hours or 180 work days, whichever is lesser, of agri-
5 cultural services in any single calendar year.

6 (6) RECORD OF EMPLOYMENT.—Each employer
7 of a nonimmigrant agricultural worker whose status
8 is adjusted under this subsection shall—

9 (A) provide a written record of employ-
10 ment to the alien; and

11 (B) provide a copy of such record to the
12 Immigration and Naturalization Service.

13 (b) ADJUSTMENT TO PERMANENT RESIDENCE.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the Attorney General shall adjust the sta-
16 tus of any alien provided lawful nonimmigrant status
17 under subsection (a) to that of an alien lawfully ad-
18 mitted for permanent residence if the Attorney Gen-
19 eral determines that the following requirements are
20 satisfied:

21 (A) QUALIFYING YEARS.—The alien has
22 performed a minimum period of agricultural
23 employment in the United States in each of 5
24 calendar years during the period of validity of
25 the alien's adjustment to nonimmigrant status

1 pursuant to subsection (a). Qualifying years
2 under this subparagraph may include non-
3 consecutive years.

4 (B) MINIMUM PERIODS OF AGRICULTURAL
5 EMPLOYMENT.—

6 (i) IN GENERAL.—Except as provided
7 in clause (ii), the minimum period of agri-
8 cultural employment in any calendar year
9 is 1,040 hours or 180 work days, which-
10 ever is lesser.

11 (ii) EXCEPTION.—An alien described
12 in subsection (a)(2)(B) who remains in the
13 United States for more than 300 days in
14 a calendar year may only be credited with
15 satisfaction of the minimum period of agri-
16 cultural employment requirement for that
17 year if the alien performed agricultural
18 employment in the United States for at
19 least 240 work days that year.

20 (C) APPLICATION PERIOD.—The alien ap-
21 plies for adjustment of status not later than 6
22 months after completing the fifth year of quali-
23 fying employment in the United States.

24 (2) GROUNDS FOR DENIAL OF ADJUSTMENT OF
25 STATUS.—The Attorney General may deny adjust-

1 ment to nonimmigrant status and provide for termi-
2 nation of the nonimmigrant status granted such
3 alien under subsection (a) if—

4 (A) the Attorney General finds by a pre-
5 ponderance of the evidence that the adjustment
6 to nonimmigrant status was the result of fraud
7 or willful misrepresentation as set out in section
8 212(a)(6)(C)(i) of the Immigration and Nation-
9 ality Act, or

10 (B) the alien commits an act that (i)
11 makes the alien inadmissible to the United
12 States under section 212 of the Immigration
13 and Nationality Act, except as provided under
14 subsection (c)(2), or (ii) is convicted of a felony
15 or 3 or more misdemeanors committed in the
16 United States.

17 (3) TREATMENT OF ALIENS DEMONSTRATING
18 PRIMA FACIE CASE FOR ADJUSTMENT.—Any alien
19 who demonstrates a prima facie case of eligibility for
20 adjustment under this subsection in accordance with
21 regulations promulgated by the Attorney General,
22 shall be considered a temporary resident alien and,
23 pending adjudication of an application for perma-
24 nent resident status under this subsection—

1 (A) may remain in the United States and
2 shall be granted authorization to engage in any
3 employment in the United States; and

4 (B) shall become eligible for any assistance
5 or benefit to which a person granted lawful per-
6 manent resident status would be eligible on the
7 date of enactment of this Act.

8 (4) GROUNDS FOR REMOVAL.—Any non-
9 immigrant alien under subsection (a) who does not
10 apply for adjustment of status under this subsection
11 before the expiration of the application period de-
12 scribed in paragraph (1)(C) is deportable and may
13 be removed.

14 (5) NUMERICAL LIMITATION.—In any fiscal
15 year not more than 20 percent of the number of
16 aliens obtaining nonimmigrant status under sub-
17 section (a) may be granted adjustment of status
18 under this subsection. In granting such adjustment,
19 aliens having the greater number of work hours shall
20 be accorded priority. Any temporary resident alien
21 under paragraph (3) who does not receive adjust-
22 ment of status under this subsection in a fiscal year
23 by reason of the limitation in this paragraph may
24 continue to work in any employment, and shall be
25 credited with any additional hours of agricultural

1 employment performed for purposes of being ac-
2 corded priority for adjustment of status.

3 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

4 (1) TO WHOM MAY BE MADE.—

5 (A) WITHIN THE UNITED STATES.—The
6 Attorney General shall provide that—

7 (i) applications for adjustment of sta-
8 tus under subsection (a) may be filed—

9 (I) with the Attorney General; or

10 (II) with a qualified designated

11 entity (designated under paragraph

12 (2)), but only if the applicant consents

13 to the forwarding of the application to

14 the Attorney General; and

15 (ii) applications for adjustment of sta-
16 tus under subsection (b) shall be filed di-
17 rectly with the Attorney General.

18 (B) OUTSIDE THE UNITED STATES.—The
19 Attorney General, in cooperation with the Sec-
20 retary of State, shall provide a procedure
21 whereby an alien may apply for adjustment of
22 status under subsection (a) at an appropriate
23 consular office outside the United States. The
24 Attorney General shall prescribe regulations
25 setting forth procedures for notification of im-

1 migration officials by the alien before departing
2 the United States.

3 (C) TRAVEL DOCUMENTATION.—The At-
4 torney General shall provide each alien whose
5 status is adjusted under this section with a
6 counterfeit-resistant document of authorization
7 to enter or reenter the United States.

8 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
9 PPLICATIONS.—For purposes of receiving applications
10 under subsection (a), the Attorney General—

11 (A) shall designate qualified voluntary or-
12 ganizations and other qualified State, local,
13 community, farm labor organizations, and asso-
14 ciations of agricultural employers; and

15 (B) may designate such other persons as
16 the Attorney General determines are qualified
17 and have substantial experience, demonstrated
18 competence, and traditional long-term involve-
19 ment in the preparation and submittal of appli-
20 cations for adjustment of status under section
21 209 or 245 of the Immigration and Nationality
22 Act, Public Law 89–732, or Public Law 95–
23 145.

24 (3) PROOF OF ELIGIBILITY.—

1 (A) IN GENERAL.—An alien may establish
2 that the alien meets the requirement of sub-
3 section (a)(1)(A) through government employ-
4 ment records or records supplied by employers
5 or collective bargaining organizations. The At-
6 torney General shall establish special proce-
7 dures to properly credit work in cases in which
8 an alien was employed under an assumed name.

9 (B) DOCUMENTATION OF WORK HIS-
10 TORY.—(i) An alien applying for adjustment of
11 status under subsection (a)(1) has the burden
12 of proving by a preponderance of the evidence
13 that the alien has worked the requisite number
14 of hours (as required under subsection
15 (a)(1)(A)).

16 (ii) If an employer or farm labor con-
17 tractor employing such an alien has kept proper
18 and adequate records respecting such employ-
19 ment, the alien's burden of proof under clause
20 (i) may be met by securing timely production of
21 those records under regulations to be promul-
22 gated by the Attorney General.

23 (4) TREATMENT OF APPLICATIONS BY QUALI-
24 FIED DESIGNATED ENTITIES.—Each qualified des-
25 ignated entity must agree to forward to the Attorney

1 General applications filed with it in accordance with
2 paragraph (1)(A)(ii) but not to forward to the Attor-
3 ney General applications filed with it unless the ap-
4 plicant has consented to such forwarding. No such
5 entity may make a determination required by this
6 section to be made by the Attorney General. Upon
7 the request of the alien, a qualified designated entity
8 shall assist the alien in obtaining documentation of
9 the work history of the alien.

10 (5) LIMITATION ON ACCESS TO INFORMA-
11 TION.—Files and records prepared for purposes of
12 this section by qualified designated entities operating
13 under this section are confidential and the Attorney
14 General and the Service shall not have access to
15 such files or records relating to an alien without the
16 consent of the alien, except as allowed by a court
17 order issued pursuant to paragraph (6).

18 (6) CONFIDENTIALITY OF INFORMATION.—

19 (A) IN GENERAL.—Except as provided in
20 this paragraph, neither the Attorney General,
21 nor any other official or employee of the De-
22 partment of Justice, or bureau or agency there-
23 of, may—

24 (i) use the information furnished by
25 the applicant pursuant to an application

1 filed under this section, or the information
2 provided to the applicant by a person des-
3 ignated under paragraph (2)(B), for any
4 purpose other than to make a determina-
5 tion on the application, including a deter-
6 mination under subsection (b)(3), or for
7 enforcement of paragraph (7);

8 (ii) make any publication whereby the
9 information furnished by any particular in-
10 dividual can be identified; or

11 (iii) permit anyone other than the
12 sworn officers and employees of the De-
13 partment or bureau or agency or, with re-
14 spect to applications filed with a des-
15 ignated entity, that designated entity, to
16 examine individual applications.

17 (B) CRIME.—Whoever knowingly uses,
18 publishes, or permits information to be exam-
19 ined in violation of this paragraph shall be fined
20 not more than \$10,000.

21 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
22 PPLICATIONS.—

23 (A) CRIMINAL PENALTY.—Whoever—

24 (i) files an application for adjustment
25 of status under this section and knowingly

1 and willfully falsifies, conceals, or covers
2 up a material fact or makes any false, fic-
3 titious, or fraudulent statements or rep-
4 resentations, or makes or uses any false
5 writing or document knowing the same to
6 contain any false, fictitious, or fraudulent
7 statement or entry, or

8 (ii) creates or supplies a false writing
9 or document for use in making such an ap-
10 plication,

11 shall be fined in accordance with title 18,
12 United States Code, or imprisoned not more
13 than five years, or both.

14 (B) EXCLUSION.—An alien who is con-
15 victed of a crime under subparagraph (A) shall
16 be considered to be inadmissible to the United
17 States on the ground described in section
18 212(a)(6)(C)(i) of the Immigration and Nation-
19 ality Act.

20 (d) WAIVER OF NUMERICAL LIMITATIONS AND CER-
21 TAIN GROUNDS FOR INADMISSIBILITY.—

22 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

23 The numerical limitations of sections 201 and 202
24 of the Immigration and Nationality Act shall not

1 apply to the adjustment of aliens to lawful perma-
2 nent resident status under this section.

3 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
4 MISSIBILITY.—In the determination of an alien’s ad-
5 missibility under subsection (a)(1)(D), the following
6 provisions of section 212(a) of the Immigration and
7 Nationality Act shall not apply:

8 (A) GROUNDS OF EXCLUSION NOT APPLI-
9 CABLE.—The provisions of paragraphs (5) and
10 (7)(A) of section 212(a) of the Immigration and
11 Nationality Act shall not apply.

12 (B) WAIVER OF OTHER GROUNDS.—

13 (i) IN GENERAL.—Except as provided
14 in clause (ii), the Attorney General may
15 waive any other provision of section 212(a)
16 of that Act in the case of individual aliens
17 for humanitarian purposes, to assure fam-
18 ily unity, or when it is otherwise in the
19 public interest.

20 (ii) GROUNDS THAT MAY NOT BE
21 WAIVED.—The following provisions of sec-
22 tion 212(a) of that Act may not be waived
23 by the Attorney General under clause (i):

24 (I) Paragraph (2) (A) and (B)
25 (relating to criminals).

1 (II) Paragraph (4) (relating to
2 aliens likely to become public
3 charges).

4 (III) Paragraph (2)(C) (relating
5 to drug offenses), except for so much
6 of such paragraph as relates to a sin-
7 gle offense of simple possession of 30
8 grams or less of marijuana.

9 (IV) Paragraph (3) (relating to
10 security and related grounds), other
11 than subparagraph (E) thereof.

12 (C) SPECIAL RULE FOR DETERMINA-
13 TION OF PUBLIC CHARGE.—An alien is not
14 ineligible for adjustment of status under
15 this section due to being inadmissible
16 under section 212(a)(4) of that Act if the
17 alien demonstrates a history of employ-
18 ment in the United States evidencing self-
19 support without reliance on public cash as-
20 sistance.

21 (e) TEMPORARY STAY OF REMOVAL AND WORK AU-
22 THORIZATION FOR CERTAIN APPLICANTS.—

23 (1) BEFORE APPLICATION PERIOD.—The Attor-
24 ney General shall provide that in the case of an alien
25 who is apprehended before the beginning of the ap-

1 plication period described in subsection (a)(1) and
 2 who can establish a nonfrivolous case of eligibility to
 3 have his status adjusted under subsection (a) (but
 4 for the fact that he may not apply for such adjust-
 5 ment until the beginning of such period), until the
 6 alien has had the opportunity during the first 30
 7 days of the application period to complete the filing
 8 of an application for adjustment, the alien—

9 (A) may not be removed, and

10 (B) shall be granted authorization to en-
 11 gage in agricultural employment in the United
 12 States and be provided an “employment author-
 13 ized” endorsement or other appropriate work
 14 permit for such purpose.

15 (2) DURING APPLICATION PERIOD.—The Attor-
 16 ney General shall provide that in the case of an alien
 17 who presents a nonfrivolous application for adjust-
 18 ment of status under subsection (a) during the ap-
 19 plication period, including an alien who files such an
 20 application within 30 days of the alien’s apprehen-
 21 sion, and until a final determination on the applica-
 22 tion has been made in accordance with this section,
 23 the alien—

24 (A) may not be removed, and

1 (B) shall be granted authorization to en-
2 gage in agricultural employment in the United
3 States and be provided an “employment author-
4 ized” endorsement or other appropriate work
5 permit for such purpose.

6 (3) PROHIBITION.—No application fees col-
7 lected by the Service pursuant to this subsection
8 may be used by the Service to offset the costs of the
9 agricultural worker adjustment program under this
10 Act until the Service implements the program con-
11 sistent with the statutory mandate as follows:

12 (A) During the application period de-
13 scribed in subsection (a)(1)(A) the Service may
14 grant nonimmigrant admission to the United
15 States, work authorization, and provide an
16 “employment authorized” endorsement or other
17 appropriate work permit to any alien who pre-
18 sents a preliminary application for adjustment
19 of status under subsection (a) at a designated
20 port of entry on the southern land border. An
21 alien who does not enter through a port of
22 entry is subject to deportation and removal as
23 otherwise provided in this Act.

24 (B) During the application period de-
25 scribed in subsection (a)(1)(A) any alien who

1 has filed an application for adjustment of status
 2 within the United States as provided in sub-
 3 section (b)(1)(A) is subject to paragraph (2) of
 4 this subsection.

5 (C) A preliminary application is defined as
 6 a fully completed and signed application with
 7 fee and photographs which contains specific in-
 8 formation concerning the performance of quali-
 9 fying employment in the United States and the
 10 documentary evidence which the applicant in-
 11 tends to submit as proof of such employment.
 12 The applicant must be otherwise admissible to
 13 the United States and must establish to the
 14 satisfaction of the examining officer during an
 15 interview that his or her claim to eligibility for
 16 agriculture worker status is credible.

17 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

18 (1) ADMINISTRATIVE AND JUDICIAL REVIEW.—

19 There shall be no administrative or judicial review of
 20 a determination respecting an application for adjust-
 21 ment of status under this section except in accord-
 22 ance with this subsection.

23 (2) ADMINISTRATIVE REVIEW.—

24 (A) SINGLE LEVEL OF ADMINISTRATIVE

25 APPELLATE REVIEW.—The Attorney General

1 shall establish an appellate authority to provide
2 for a single level of administrative appellate re-
3 view of such a determination.

4 (B) STANDARD FOR REVIEW.—Such ad-
5 ministrative appellate review shall be based
6 solely upon the administrative record estab-
7 lished at the time of the determination on the
8 application and upon such additional or newly
9 discovered evidence as may not have been avail-
10 able at the time of the determination.

11 (3) JUDICIAL REVIEW.—

12 (A) LIMITATION TO REVIEW OF EXCLU-
13 SION OR DEPORTATION.—There shall be judicial
14 review of such a denial only in the judicial re-
15 view of an order of removal under section 242
16 of the Immigration and Nationality Act.

17 (B) STANDARD FOR JUDICIAL REVIEW.—
18 Such judicial review shall be based solely upon
19 the administrative record established at the
20 time of the review by the appellate authority
21 and the findings of fact and determinations
22 contained in such record shall be conclusive un-
23 less the applicant can establish abuse of discre-
24 tion or that the findings are directly contrary to

1 clear and convincing facts contained in the
2 record considered as a whole.

3 (g) DISSEMINATION OF INFORMATION ON ADJUST-
4 MENT PROGRAM.—Beginning not later than the date des-
5 ignated by the Attorney General under subsection
6 (a)(1)(A), the Attorney General, in cooperation with quali-
7 fied designated entities, shall broadly disseminate informa-
8 tion respecting the benefits which aliens may receive under
9 this section and the requirements to obtain such benefits.

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