

108TH CONGRESS
1ST SESSION

H. R. 3604

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. GOODLATTE (for himself, Mr. STENHOLM, Mr. LUCAS of Oklahoma, Mr. GUTKNECHT, Mr. BLUNT, Mr. GALLEGLY, Mr. OSBORNE, Mr. BURNS, Mr. CHOCOLA, Mr. NETHERCUTT, Mr. SMITH of Michigan, Mr. KINGSTON, Mr. BARTLETT of Maryland, Mr. BROWN of South Carolina, Mr. UPTON, Mr. CAMP, Mr. YOUNG of Alaska, Mr. COLLINS, Mr. BAKER, Mrs. JO ANN DAVIS of Virginia, Mr. DUNCAN, Mr. FORBES, Mr. GARRETT of New Jersey, Mr. HERGER, Mr. HOEKSTRA, Mr. JANKLOW, Mr. JONES of North Carolina, Mr. KELLER, Mrs. MILLER of Michigan, Mr. OXLEY, Mr. SOUDER, Mr. TIBERI, and Mr. WICKER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Temporary Agricul-
3 tural Labor Reform Act of 2003”.

4 **SEC. 2. ADMISSION OF TEMPORARY H-2A WORKERS.**

5 (a) IN GENERAL.—Section 218 of the Immigration
6 and Nationality Act (8 U.S.C. 1188) is amended to read
7 as follows:

8 “ADMISSION OF TEMPORARY H-2A WORKERS

9 “SEC. 218. (a) APPLICATION.—No alien may be ad-
10 mitted as an H-2A worker (as defined in subsection
11 (x)(2)) unless the employer has filed with the Secretary
12 of Labor an application stating the following:

13 “(1) TEMPORARY OR SEASONAL LABOR OR
14 SERVICES.—The agricultural employment for which
15 the H-2A worker or workers is or are sought is tem-
16 porary or seasonal, the number of workers sought,
17 and the wage rate and conditions under which they
18 will be employed.

19 “(2) BENEFITS, WAGE, AND WORKING CONDI-
20 TIONS.—The employer will provide, at a minimum,
21 the benefits, wages, and working conditions required
22 by subsection (n) to all workers employed in the jobs
23 for which the H-2A worker or workers is or are
24 sought and to all other workers in the same occupa-
25 tion at the place of employment.

1 “(3) NONDISPLACEMENT OF UNITED STATES
2 WORKERS.—The employer did not displace and will
3 not displace a United States worker employed by the
4 employer during the period of employment and dur-
5 ing a period of 30 days preceding the period of em-
6 ployment in the occupation at the place of employ-
7 ment for which the employer seeks approval to em-
8 ploy H-2A workers.

9 “(4) POSITIVE RECRUITMENT.—The employer
10 has made positive recruitment efforts within a multi-
11 state region of traditional or expected labor supply.
12 The obligation to engage in positive recruitment
13 under this paragraph shall terminate on the date the
14 H-2A workers depart for the employer’s place of
15 employment.

16 “(5) OFFERS TO UNITED STATES WORKERS.—
17 The employer has offered or will offer the job for
18 which the nonimmigrant is, or the nonimmigrants
19 are, sought to any eligible United States worker who
20 applies and is equally or better qualified for the job
21 and who will be available at the time and place of
22 need.

23 “(6) 50 PERCENT RULE.—The employer will
24 provide employment to any qualified United States
25 worker who applies to the employer until 50 percent

1 of the period of the work contract under which the
2 H-2A worker who is in the job was hired has
3 elapsed.

4 “(7) PROVISION OF INSURANCE.—If the job for
5 which the nonimmigrant is, or the nonimmigrants
6 are, sought is not covered by State workers’ com-
7 pensation law, the employer will provide, at no cost
8 to the worker, insurance covering injury and disease
9 arising out of, and in the course of, the worker’s em-
10 ployment which will provide benefits at least equal to
11 those provided under the State workers’ compensa-
12 tion law for comparable employment.

13 “(8) REQUIREMENTS FOR PLACEMENT OF H-2A
14 WORKERS WITH OTHER EMPLOYERS.—The employer
15 will not place the nonimmigrant with another em-
16 ployer unless—

17 “(A) the nonimmigrant performs duties in
18 whole or in part at 1 or more work sites owned,
19 operated, or controlled by such other employer;

20 “(B) there are indicia of an employment
21 relationship between the nonimmigrant and
22 such other employer; and

23 “(C) the employer has inquired of the
24 other employer as to whether, and has no actual
25 knowledge or notice that, during the period of

1 employment and for a period of 30 days pre-
2 ceding the period of employment, the other em-
3 ployer has displaced or intends to displace a
4 United States worker employed by the other
5 employer in the occupation at the place of em-
6 ployment for which the employer seeks approval
7 to employ H-2A workers.

8 “(9) STRIKE OR LOCKOUT.—There is not a
9 strike or lockout in the course of a labor dispute
10 which, under regulations promulgated by the Sec-
11 retary of Labor, precludes the provision of the cer-
12 tification described in section 101(a)(15)(H)(ii)(a).

13 “(10) PREVIOUS VIOLATIONS.—The employer
14 has not, during the previous two-year period, em-
15 ployed H-2A workers and substantially violated a
16 material term or condition of approval with respect
17 to the employment of domestic or nonimmigrant
18 workers, as determined by the Secretary of Labor
19 after notice and opportunity for a hearing.

20 “(b) STATEMENT OF LIABILITY.—The application
21 form shall include a clear statement explaining the liability
22 under this section of a employer who places an H-2A
23 worker with another employer if the other employer dis-
24 places a United States worker in violation of the condition
25 described in subsection (a)(8).

1 “(c) PUBLICATION.—The employer shall make avail-
2 able for public examination, within one working day after
3 the date on which an application under this paragraph is
4 filed, at the employer’s principal place of business or work-
5 site, a copy of each such application (and such accom-
6 panying documents as are necessary).

7 “(d) LIST.—The Secretary shall compile, on a cur-
8 rent basis, a list (by employer) of the applications filed
9 under subsection (a). Such list shall include the wage rate,
10 number of aliens sought, period of intended employment,
11 and date of need. The Secretary shall make such list avail-
12 able for public examination in Washington, DC.

13 “(e) SPECIAL RULES FOR CONSIDERATION OF AP-
14 PPLICATIONS.—The following rules shall apply in the case
15 of the filing and consideration of an application under sub-
16 section (a):

17 “(1) DEADLINE FOR FILING APPLICATIONS.—
18 The Secretary of Labor may not require that the ap-
19 plication be filed more than 45 days before the first
20 date the employer requires the labor or services of
21 the H–2A worker or workers.

22 “(2) REVIEW.—The Secretary of Labor shall
23 review such an application only for completeness and
24 obvious inaccuracies.

1 “(3) ISSUANCE OF APPROVAL.—Unless the Sec-
2 retary finds that the application is incomplete or ob-
3 viously inaccurate, the Secretary shall provide the
4 certification described in section
5 101(a)(15)(H)(ii)(a) within 7 days of the date of the
6 filing of the application.

7 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

8 “(1) PERMITTING FILING BY AGRICULTURAL
9 ASSOCIATIONS.—An application to import an alien
10 as a temporary agricultural worker may be filed by
11 an association of agricultural producers which use
12 agricultural services.

13 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
14 EMPLOYERS.—If an association is a joint or sole em-
15 ployer of temporary agricultural workers, such work-
16 ers may be transferred among its producer members
17 to perform agricultural services of a temporary or
18 seasonal nature for which the application was ap-
19 proved.

20 “(3) TREATMENT OF VIOLATIONS.—

21 “(A) MEMBER’S VIOLATION DOES NOT
22 NECESSARILY DISQUALIFY ASSOCIATION OR
23 OTHER MEMBERS.—If an individual producer
24 member of a joint employer association is deter-
25 mined to have committed an act that is in viola-

1 tion of the conditions for approval with respect
2 to the member’s application, the denial shall
3 apply only to that member of the association
4 unless the Secretary determines that the asso-
5 ciation or other member participated in, had
6 knowledge of, or reason to know of, the viola-
7 tion.

8 “(B) ASSOCIATION’S VIOLATION DOES NOT
9 NECESSARILY DISQUALIFY MEMBERS.—

10 “(i) If an association representing ag-
11 ricultural producers as a joint employer is
12 determined to have committed an act that
13 is in violation of the conditions for ap-
14 proval with respect to the association’s ap-
15 plication, the denial shall apply only to the
16 association and does not apply to any indi-
17 vidual producer member of the association
18 unless the Secretary determines that the
19 member participated in, had knowledge of,
20 or reason to know of, the violation.

21 “(ii) If an association of agricultural
22 producers approved as a sole employer is
23 determined to have committed an act that
24 is in violation of the conditions for ap-
25 proval with respect to the association’s ap-

1 plication, no individual producer member
2 of such association may be the beneficiary
3 of the services of temporary alien agricul-
4 tural workers admitted under this section
5 in the commodity and occupation in which
6 such aliens were employed by the associa-
7 tion which was denied approval during the
8 period such denial is in force, unless such
9 producer member employs such aliens in
10 the commodity and occupation in question
11 directly or through an association which is
12 a joint employer of such workers with the
13 producer member.

14 “(g) EXPEDITED ADMINISTRATIVE APPEALS OF
15 CERTAIN DETERMINATIONS.—Regulations shall provide
16 for an expedited procedure for the review of a denial of
17 approval under this section, or at the applicant’s request,
18 for a de novo administrative hearing respecting the denial.

19 “(h) MISCELLANEOUS PROVISIONS.—

20 “(1) WITHHOLDING OF DOMESTIC WORKERS.—
21 No person or entity shall willfully and knowingly
22 withhold domestic workers prior to the arrival of H-
23 2A workers in order to force the hiring of domestic
24 workers under subsection (a)(6).

1 “(2) ENDORSEMENT OF DOCUMENTS.—The
2 Secretary of Homeland Security shall provide for the
3 endorsement of entry and exit documents of non-
4 immigrants described in section 101(a)(15)(H)(ii)(a)
5 as may be necessary to carry out this section and
6 to provide notice for purposes of section 274A.

7 “(3) PREEMPTION OF STATE LAWS.—The pro-
8 visions of subsections (a) and (c) of section 214 and
9 the provisions of this section preempt any State or
10 local law regulating admissibility of nonimmigrant
11 workers.

12 “(4) FEES.—The Secretary of Labor may re-
13 quire by regulation, as a condition of approving the
14 application, the payment of a fee to recover the rea-
15 sonable costs of processing applications.

16 “(i) FAILURES TO MEET CONDITIONS.—If the Sec-
17 retary of Labor finds, after notice and opportunity for a
18 hearing, a failure to meet a condition of subsection (a),
19 or a material misrepresentation of fact in an application
20 under subsection (a)—

21 “(1) the Secretary of Labor shall notify the
22 Secretary of such finding and may, in addition, im-
23 pose such other administrative remedies (including
24 civil money penalties in an amount not to exceed

1 \$1,000 per violation) as the Secretary of Labor de-
2 termines to be appropriate; and

3 “(2) the Secretary may disqualify the employer
4 from the employment of H-2A workers for a period
5 of 1 year.

6 “(j) WILLFUL FAILURES AND WILLFUL MISREPRE-
7 SENTATIONS.—If the Secretary of Labor finds, after no-
8 tice and opportunity for hearing, a willful failure to meet
9 a condition of subsection (a), or a willful misrepresenta-
10 tion of a material fact in an application under subsection
11 (a), or a violation of subsection (h)(1)—

12 “(1) the Secretary of Labor shall notify the
13 Secretary of such finding and may, in addition, im-
14 pose such other administrative remedies (including
15 civil money penalties in an amount not to exceed
16 \$5,000 per violation) as the Secretary of Labor de-
17 termines to be appropriate;

18 “(2) the Secretary of Labor may seek appro-
19 priate legal or equitable relief to effectuate the pur-
20 poses of subsection (h)(1); and

21 “(3) the Secretary may disqualify the employer
22 from the employment of H-2A workers for a period
23 of 2 years.

24 “(k) DISPLACEMENT OF UNITED STATES WORK-
25 ERS.—If the Secretary of Labor finds, after notice and

1 opportunity for hearing, a willful failure to meet a condi-
2 tion of subsection (a) or a willful misrepresentation of a
3 material fact in an application under subsection (a), in
4 the course of which failure or misrepresentation the em-
5 ployer displaced a United States worker employed by the
6 employer during the period of employment on the employ-
7 er's application under subsection (a) or during the period
8 of 30 days preceding such period of employment—

9 “(1) the Secretary of Labor shall notify the
10 Secretary of such finding and may, in addition, im-
11 pose such other administrative remedies (including
12 civil money penalties in an amount not to exceed
13 \$15,000 per violation) as the Secretary of Labor de-
14 termines to be appropriate; and

15 “(2) the Secretary may disqualify the employer
16 from the employment of H-2A workers for a period
17 of 3 years.

18 “(1) LIMITATIONS ON CIVIL MONEY PENALTIES.—
19 The Secretary of Labor shall not impose total civil money
20 penalties with respect to an application under subsection
21 (a) in excess of \$90,000.

22 “(m) FAILURES TO PAY WAGES OR REQUIRED BEN-
23 EFITS.—If the Secretary of Labor finds, after notice and
24 opportunity for a hearing, that the employer has failed to
25 pay the wages, or provide the housing allowance, transpor-

1 tation, subsistence reimbursement, or guarantee of em-
2 ployment, required under subsection (a)(2) the Secretary
3 of Labor shall assess payment of back wages, or other re-
4 quired benefits, due any United States worker or H-2A
5 worker employed by the employer in the specific employ-
6 ment in question. The back wages or other required bene-
7 fits under section subsection (a)(2) shall be equal to the
8 difference between the amount that should have been paid
9 and the amount that actually was paid to such worker.

10 “(n) MINIMUM BENEFITS, WAGES, AND WORKING
11 CONDITIONS.—

12 “(1) PREFERENTIAL TREATMENT OF ALIENS
13 PROHIBITED.—Employers seeking to hire United
14 States workers shall offer the United States workers
15 no less than the same benefits, wages, and working
16 conditions that the employer is offering, intends to
17 offer, or will provide to H-2A workers. Conversely,
18 no job offer may impose on United States workers
19 any restrictions or obligations which will not be im-
20 posed on the employer’s H-2A workers.

21 “(2) REQUIRED WAGES.—

22 “(A) An employer applying for workers
23 under subsection (a) shall offer to pay, and
24 shall pay, all workers in the occupation for

1 which the employer has applied for workers, not
2 less than the prevailing wage.

3 “(B) In complying with subparagraph (A),
4 an employer may request and obtain a pre-
5 vailing wage determination from the State em-
6 ployment security agency.

7 “(C) In lieu of the procedure described in
8 subparagraph (B), an employer may rely on
9 other wage information, including a survey of
10 the prevailing wages of workers in the occupa-
11 tion in the area of intended employment that
12 has been conducted or funded by the employer
13 or a group of employers, that meets criteria
14 specified by the Secretary of Labor in regula-
15 tions.

16 “(D) An employer who obtains such pre-
17 vailing wage determination, or who relies on a
18 qualifying survey of prevailing wages, and who
19 pays the wage determined to be prevailing, shall
20 be considered to have complied with the re-
21 quirement of subparagraph (A).

22 “(E) No worker shall be paid less than the
23 greater of the prevailing wage or the applicable
24 State minimum wage.

1 “(3) REQUIREMENT TO PROVIDE HOUSING OR A
2 HOUSING ALLOWANCE.—

3 “(A) IN GENERAL.—An employer applying
4 for workers under subsection (a) shall offer to
5 provide housing at no cost to all workers in job
6 opportunities for which the employer has ap-
7 plied under that section and to all other work-
8 ers in the same occupation at the place of em-
9 ployment, whose place of residence is beyond
10 normal commuting distance.

11 “(B) TYPE OF HOUSING.—In complying
12 with subparagraph (A), an employer may, at
13 the employer’s election, provide housing that
14 meets applicable Federal standards for tem-
15 porary labor camps or secure housing that
16 meets applicable local standards for rental or
17 public accommodation housing or other sub-
18 stantially similar class of habitation, or in the
19 absence of applicable local standards, State
20 standards for rental or public accommodation
21 housing or other substantially similar class of
22 habitation. In the absence of applicable local or
23 State standards, Federal temporary labor camp
24 standards shall apply.

1 “(C) WORKERS ENGAGED IN THE RANGE
2 PRODUCTION OF LIVESTOCK.—The Secretary of
3 Labor shall issue regulations that address the
4 specific requirements for the provision of hous-
5 ing to workers engaged in the range production
6 of livestock.

7 “(D) LIMITATION.—Nothing in this para-
8 graph shall be construed to require an employer
9 to provide or secure housing for persons who
10 were not entitled to such housing under the
11 temporary labor certification regulations in ef-
12 fect on June 1, 1986.

13 “(E) HOUSING ALLOWANCE AS ALTER-
14 NATIVE.—

15 “(i) IN GENERAL.—In lieu of offering
16 housing pursuant to subparagraph (A), the
17 employer may provide a reasonable housing
18 allowance, but only if the requirement of
19 clause (ii) is satisfied. Upon the request of
20 a worker seeking assistance in locating
21 housing, the employer shall [make a good
22 faith effort to] assist the worker in identi-
23 fying and locating housing in the area of
24 intended employment. An employer who of-
25 fers a housing allowance to a worker, or

1 assists a worker in locating housing which
2 the worker occupies, pursuant to this
3 clause shall not be deemed a housing pro-
4 vider under section 203 of the Migrant and
5 Seasonal Agricultural Worker Protection
6 Act (29 U.S.C. 1823) solely by virtue of
7 providing such housing allowance. How-
8 ever, no housing allowance may be used for
9 housing which is owned or controlled by
10 the employer.

11 “(ii) CERTIFICATION.—The require-
12 ment of this clause is satisfied if the Gov-
13 ernor of the State certifies to the Secretary
14 of Labor that there is adequate housing
15 available in the area of intended employ-
16 ment for migrant farm workers, and H-2A
17 workers, who are seeking temporary hous-
18 ing while employed at farm work. Such
19 certification shall expire after 3 years un-
20 less renewed by the Governor of the State.

21 “(iii) AMOUNT OF ALLOWANCE.—

22 “(I) NONMETROPOLITAN COUN-
23 TIES.—If the place of employment of
24 the workers provided an allowance
25 under this subparagraph is a non-

1 metropolitan county, the amount of
2 the housing allowance under this sub-
3 paragraph shall be equal to the state-
4 wide average fair market rental for
5 existing housing for nonmetropolitan
6 counties for the State, as established
7 by the Secretary of Housing and
8 Urban Development pursuant to sec-
9 tion 8(c) of the United States Hous-
10 ing Act of 1937 (42 U.S.C. 1437f(c)),
11 based on a 2-bedroom dwelling unit
12 and an assumption of 2 persons per
13 bedroom.

14 “(II) METROPOLITAN COUN-
15 TIES.—If the place of employment of
16 the workers provided an allowance
17 under this paragraph is in a metro-
18 politan county, the amount of the
19 housing allowance under this subpara-
20 graph shall be equal to the statewide
21 average fair market rental for existing
22 housing for metropolitan counties for
23 the State, as established by the Sec-
24 retary of Housing and Urban Devel-
25 opment pursuant to section 8(c) of

1 the United States Housing Act of
2 1937 (42 U.S.C. 1437f(c)), based on
3 a 2-bedroom dwelling unit and an as-
4 sumption of 2 persons per bedroom.

5 “(4) REIMBURSEMENT OF TRANSPORTATION.—

6 “(A) TO PLACE OF EMPLOYMENT.—A
7 worker shall be reimbursed by the employer for
8 the cost of the worker’s transportation and sub-
9 sistence from the place from which the worker
10 came to work for the employer (or place of last
11 employment, if the worker traveled from such
12 place) to the place of employment.

13 “(B) FROM PLACE OF EMPLOYMENT.—A
14 worker who completes the period of employment
15 for the job opportunity involved shall be reim-
16 bursed by the employer for the cost of the
17 worker’s transportation and subsistence from
18 the place of employment to the place from
19 which the worker, disregarding intervening em-
20 ployment, came to work for the employer, or to
21 the place of next employment, if the worker has
22 contracted with a subsequent employer who has
23 not agreed to provide or pay for the worker’s
24 transportation and subsistence to such subse-
25 quent employer’s place of employment.

1 “(C) LIMITATION.—

2 “(i) AMOUNT OF REIMBURSEMENT.—

3 Except as provided in clause (ii), the
4 amount of reimbursement provided under
5 subparagraph (A) or (B) to a worker or
6 alien shall not exceed the lesser of—

7 “(I) the actual cost to the worker
8 or alien of the transportation and sub-
9 sistence involved; or

10 “(II) the most economical and
11 reasonable common carrier transpor-
12 tation charges and subsistence costs
13 for the distance involved.

14 “(ii) DISTANCE TRAVELED.—No reim-
15 bursement under subparagraph (A) or (B)
16 shall be required if the distance traveled is
17 100 miles or less, or the worker is not re-
18 siding in employer-provided housing or
19 housing secured through an allowance as
20 provided in paragraph (1)(G).

21 “(D) EARLY TERMINATION.—If the worker
22 is laid off or employment is terminated for con-
23 tract impossibility (as described in paragraph
24 (5)(D)) before the anticipated ending date of
25 employment, the employer shall provide the

1 transportation and subsistence required by sub-
2 paragraph (B) and, notwithstanding whether
3 the worker has completed 50 percent of the pe-
4 riod of employment, shall provide the transpor-
5 tation reimbursement required by subparagraph
6 (A).

7 “(E) TRANSPORTATION BETWEEN LIVING
8 QUARTERS AND WORK SITE.—The employer
9 shall provide transportation between the work-
10 er’s living quarters (i.e., housing provided by
11 the employer pursuant to paragraph (1), includ-
12 ing housing provided through a housing allow-
13 ance) and the employer’s work site without cost
14 to the worker, and such transportation will be
15 in accordance with applicable laws and regula-
16 tions.

17 “(5) GUARANTEE OF EMPLOYMENT.—

18 “(A) OFFER TO WORKER.—The employer
19 shall guarantee to offer the worker employment
20 for the hourly equivalent of at least three-
21 fourths of the work days of the total period of
22 employment, beginning with the first work day
23 after the arrival of the worker at the place of
24 employment and ending on the expiration date
25 specified in the job offer. For purposes of this

1 subparagraph, the hourly equivalent means the
2 number of hours in the work days as stated in
3 the job offer and shall exclude the worker's
4 Sabbath and Federal holidays. If the employer
5 affords the United States or H-2A worker less
6 employment than that required under this para-
7 graph, the employer shall pay such worker the
8 amount which the worker would have earned
9 had the worker, in fact, worked for the guaran-
10 teed number of hours.

11 “(B) FAILURE TO WORK.—Any hours
12 which the worker fails to work, up to a max-
13 imum of the number of hours specified in the
14 job offer for a work day, when the worker has
15 been offered an opportunity to do so, and all
16 hours of work actually performed (including vol-
17 untary work in excess of the number of hours
18 specified in the job offer in a work day, on the
19 worker's Sabbath, or on Federal holidays) may
20 be counted by the employer in calculating
21 whether the period of guaranteed employment
22 has been met.

23 “(C) ABANDONMENT OF EMPLOYMENT,
24 TERMINATION FOR CAUSE.—If the worker vol-
25 untarily abandons employment before the end

1 of the contract period, or is terminated for
2 cause, the worker is not entitled to the ‘three-
3 fourths guarantee described in subparagraph
4 (A).

5 “(D) CONTRACT IMPOSSIBILITY.—If, be-
6 fore the expiration of the period of employment
7 specified in the job offer, the services of the
8 worker are no longer required for reasons be-
9 yond the control of the employer due to any
10 form of natural disaster, including but not lim-
11 ited to a flood, hurricane, freeze, earthquake,
12 fire, drought, plant or animal disease or pest in-
13 festation, or regulatory drought, before the
14 guarantee in subparagraph (A) is fulfilled, the
15 employer may terminate the worker’s employ-
16 ment. In the event of such termination, the em-
17 ployer shall fulfill the employment guarantee in
18 subparagraph (A) for the work days that have
19 elapsed from the first work day after the arrival
20 of the worker to the termination of employ-
21 ment. In such cases, the employer will make ef-
22 forts to transfer the United States worker to
23 other comparable employment acceptable to the
24 worker.

1 “(o) PETITIONING FOR ADMISSION.—An employer,
2 or an association acting as an agent or joint employer for
3 its members, that seeks the admission into the United
4 States of an H–2A worker must file a petition with the
5 Secretary. The petition shall be accompanied by the cer-
6 tification described in section 101(a)(15)(H)(ii)(a).

7 “(p) EXPEDITED ADJUDICATION BY THE SEC-
8 RETARY.—The Secretary shall establish a procedure for
9 expedited adjudication of petitions filed under subsection
10 (o) and within 7 working days shall, by fax, cable, or other
11 means assuring expedited delivery, transmit a copy of no-
12 tice of action on the petition to the petitioner and, in the
13 case of approved petitions, to the appropriate immigration
14 officer at the port of entry or United States consulate (as
15 the case may be) where the petitioner has indicated that
16 the alien beneficiary (or beneficiaries) will apply for a visa
17 or admission to the United States.

18 “(q) DISQUALIFICATION.—

19 “(1) Subject to paragraph (2), an alien shall be
20 considered inadmissible to the United States and in-
21 eligible for nonimmigrant status under section
22 101(a)(15)(H)(ii)(a) if the alien has, at any time
23 during the past 5 years, violated a term or condition
24 of admission into the United States as a non-

1 immigrant, including overstaying the period of au-
2 thorized admission.

3 “(2) WAIVERS.—

4 “(A) IN GENERAL.—An alien outside the
5 United States, and seeking admission under
6 section 101(a)(15)(H)(ii)(a) shall not be
7 deemed inadmissible under such section by rea-
8 son of paragraph (1) or section 212(a)(9)(B). A
9 waiver under this subparagraph may be granted
10 only once to an individual alien.

11 “(B) LIMITATION.—In any case in which
12 an alien is admitted to the United States upon
13 having a ground of inadmissibility waived under
14 subparagraph (A), such waiver shall be consid-
15 ered to remain in effect unless the alien again
16 violates a material provision of this section or
17 otherwise violates a term or condition of admis-
18 sion into the United States as a nonimmigrant,
19 in which case such waiver shall terminate.

20 “(r) PERIOD OF ADMISSION.—

21 “(1) IN GENERAL.—The alien shall be admitted
22 for the period of employment in the application
23 under subsection (a), not to exceed 10 months, sup-
24 plemented by a period of up to 1 week before the be-
25 ginning of the period of employment (to be granted

1 for the purpose of travel to the work site) and a pe-
2 riod of 14 days following the period of employment
3 (to be granted for the purpose of departure or exten-
4 sion based on a subsequent offer of employment), ex-
5 cept that—

6 “(A) the alien is not authorized to be em-
7 ployed during such 14-day period except in the
8 employment for which the alien was previously
9 authorized; and

10 “(B) the total period of employment, in-
11 cluding such 14-day period, may not exceed 10
12 months.

13 “(2) CONSTRUCTION.—Nothing in this sub-
14 section shall limit the authority of the Secretary to
15 extend the stay of the alien under any other provi-
16 sion of this Act.

17 “(s) ABANDONMENT OF EMPLOYMENT.—

18 “(1) IN GENERAL.—An alien admitted or pro-
19 vided status under section 101(a)(15)(H)(ii)(a) who
20 abandons the employment which was the basis for
21 such admission or status shall be considered to have
22 failed to maintain nonimmigrant status as an H-2A
23 worker and shall depart the United States or be sub-
24 ject to removal under section 237(a)(1)(C)(i).

1 “(2) REPORT BY EMPLOYER.—The employer
2 (or association acting as agent for the employer)
3 shall notify the Secretary within 7 days of an H–2A
4 worker’s having prematurely abandoned employ-
5 ment.

6 “(3) REMOVAL BY THE SECRETARY.—The Sec-
7 retary shall promptly remove from the United States
8 any H–2A worker who violates any term or condi-
9 tion of the worker’s nonimmigrant status.

10 “(4) VOLUNTARY TERMINATION.—Notwith-
11 standing paragraph (1), an alien may voluntarily
12 terminate his or her employment if the alien prompt-
13 ly departs the United States upon termination of
14 such employment.

15 “(t) REPLACEMENT OF ALIEN.—

16 “(1) IN GENERAL.—Upon presentation of the
17 notice to the Secretary required by subsection (q)(2),
18 the Secretary of State shall promptly issue a visa to,
19 and the Secretary shall admit into the United
20 States, an eligible alien designated by the employer
21 to replace an H–2A worker—

22 “(A) who abandons or prematurely termi-
23 nates employment; or

24 “(B) whose employment is terminated
25 after a United States worker is employed pur-

1 suant to subsection (a)(6), if the United States
2 worker voluntarily departs before the end of the
3 period of intended employment or if the employ-
4 ment termination is for a lawful job-related rea-
5 son.

6 “(2) CONSTRUCTION.—Nothing in this sub-
7 section is intended to limit any preference required
8 to be accorded United States workers under any
9 other provision of this Act.

10 “(u) IDENTIFICATION DOCUMENT.—

11 “(1) IN GENERAL.—Each alien authorized to be
12 admitted under section 101(a)(15)(H)(ii)(a) shall be
13 provided an identification and employment eligibility
14 document to verify eligibility for employment in the
15 United States and verify such person’s proper iden-
16 tity.

17 “(2) REQUIREMENTS.—No identification and
18 employment eligibility document may be issued
19 which does not meet the following requirements:

20 “(A) The document shall be capable of re-
21 liably determining whether—

22 “(i) the individual with the identifica-
23 tion and employment eligibility document
24 whose eligibility is being verified is in fact
25 eligible for employment;

1 “(ii) the individual whose eligibility is
2 being verified is claiming the identity of
3 another person; and

4 “(iii) the individual whose eligibility is
5 being verified is authorized to be admitted
6 into, and employed in, the United States
7 as an H-2A worker.

8 “(B) The document shall be in a form that
9 is resistant to counterfeiting and to tampering.

10 “(C) The document shall—

11 “(i) be compatible with other data-
12 bases of the Secretary for the purpose of
13 excluding aliens from benefits for which
14 they are not eligible and determining
15 whether the alien is unlawfully present in
16 the United States; and

17 “(ii) be compatible with law enforce-
18 ment databases to determine if the alien
19 has been convicted of criminal offenses.

20 “(v) EXTENSION OF STAY OF H-2A ALIENS IN THE
21 UNITED STATES.—

22 “(1) EXTENSION OF STAY.—If an employer
23 seeks approval to employ an H-2A alien who is law-
24 fully present in the United States, the petition filed
25 by the employer or an association pursuant to sub-

1 section (o) shall request an extension of the alien's
2 stay and a change in the alien's employment.

3 “(2) LIMITATION ON FILING PETITION FOR EX-
4 TENSION OF STAY.—A petition may not be filed for
5 an extension of an alien's stay—

6 “(A) for a period of more than 10 months;
7 or

8 “(B) to a date that is more than 2 years
9 after the date of the alien's last admission to
10 the United States under this section.

11 “(3) WORK AUTHORIZATION UPON FILING PE-
12 TITION FOR EXTENSION OF STAY.—In the case of an
13 alien who is lawfully present in the United States,
14 the alien is authorized to commence the employment
15 described in a petition under paragraph (1) on the
16 date on which the petition is filed. For purposes of
17 the preceding sentence, the term ‘file’ means sending
18 the petition by certified mail via the United States
19 Postal Service, return receipt requested, or delivered
20 by guaranteed commercial delivery which will provide
21 the employer with a documented acknowledgment of
22 the date of receipt of the petition. The employer
23 shall provide a copy of the employer's petition to the
24 alien, who shall keep the petition with the alien's
25 identification and employment eligibility document

1 as evidence that the petition has been filed and that
2 the alien is authorized to work in the United States.
3 Upon approval of a petition for an extension of stay
4 or change in the alien’s authorized employment, the
5 Secretary shall provide a new or updated employ-
6 ment eligibility document to the alien indicating the
7 new validity date, after which the alien is not re-
8 quired to retain a copy of the petition.

9 “(4) LIMITATION ON AN INDIVIDUAL’S STAY IN
10 STATUS.—

11 “(A) MAXIMUM PERIOD.—The maximum
12 continuous period of authorized status as an
13 H–2A worker (including any extensions) is 2
14 years.

15 “(B) REQUIREMENT TO REMAIN OUTSIDE
16 THE UNITED STATES.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), in the case of an alien outside the
19 United States whose period of authorized
20 status as an H–2A worker (including any
21 extensions) has expired, the alien may not
22 again apply for admission to the United
23 States as an H–2A worker unless the alien
24 has remained outside the United States for
25 a continuous period equal to at least $\frac{1}{5}$

1 the duration of the alien’s previous period
2 of authorized status as an H–2A worker
3 (including any extensions).

4 “(ii) EXCEPTION.—Clause (i) shall
5 not apply in the case of an alien if the
6 alien’s period of authorized status as an
7 H–2A worker (including any extensions)
8 was for a period of not more than 10
9 months and such alien has been outside
10 the United States for at least 2 months
11 during the 12 months preceding the date
12 the alien again is applying for admission to
13 the United States as an H–2A worker.

14 “(w) SPECIAL RULES FOR ALIENS EMPLOYED AS
15 SHEEPHERDERS.—Notwithstanding any other provision
16 of this section, aliens admitted under section
17 101(a)(15)(H)(ii)(a) for employment as shepherders—

18 “(1) may be admitted for a period of 12
19 months; and

20 “(2) shall not be subject to the requirements of
21 subsection (v)(4)(B).

22 “(x) DEFINITIONS.—For purposes of this section:

23 “(1) AREA OF EMPLOYMENT.—The term ‘area
24 of employment’ means the area within normal com-
25 muting distance of the worksite or physical location

1 where the work of the H-2A worker is or will be
2 performed. If such worksite or location is within a
3 Metropolitan Statistical Area, any place within such
4 area is deemed to be within the area of employment.

5 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible
6 individual’ means, with respect to employment, an
7 individual who is not an unauthorized alien (as de-
8 fined in section 274A(h)(3)) with respect to that em-
9 ployment.

10 “(3) DISPLACE.—In the case of an application
11 with respect to one or more H-2A workers by an
12 employer, the employer is considered to ‘displace’ a
13 United States worker from a job if the employer lays
14 off the worker from a job that is essentially the
15 equivalent of the job for which the H-2A worker or
16 workers is or are sought. A job shall not be consid-
17 ered to be essentially equivalent of another job un-
18 less it involves essentially the same responsibilities,
19 was held by a United States worker with substan-
20 tially equivalent qualifications and experience, and is
21 located in the same area of employment as the other
22 job.

23 “(4) H-2A WORKER.—The term ‘H-2A worker’
24 means a nonimmigrant described in section
25 101(a)(15)(H)(ii)(a).

1 “(5) LAYS OFF.—

2 “(A) IN GENERAL.—The term ‘lays off’,
3 with respect to a worker—

4 “(i) means to cause the worker’s loss
5 of employment, other than through a dis-
6 charge for inadequate performance, viola-
7 tion of workplace rules, cause, voluntary
8 departure, voluntary retirement, or the ex-
9 piration of a grant or contract (other than
10 a temporary employment contract entered
11 into in order to evade a condition described
12 in paragraph (3) or (8) of subsection (a);
13 but

14 “(ii) does not include any situation in
15 which the worker is offered, as an alter-
16 native to such loss of employment, a simi-
17 lar employment opportunity with the same
18 employer (or, in the case of a placement of
19 a worker with another employer under sub-
20 section (a)(8), with either employer de-
21 scribed in such subsection) at equivalent or
22 higher compensation and benefits than the
23 position from which the employee was dis-
24 charged, regardless of whether or not the
25 employee accepts the offer.

1 “(B) CONSTRUCTION.—Nothing in this
2 paragraph is intended to limit an employee’s
3 rights under a collective bargaining agreement
4 or other employment contract.

5 “(6) PREVAILING WAGE.—The term ‘prevailing
6 wage’ means, with respect to an agricultural occupa-
7 tion in an area of intended employment, the rate of
8 wages that includes the 51st percentile of employees
9 with similar experience and qualifications in the ag-
10 ricultural occupation in the area of intended employ-
11 ment, expressed in terms of the prevailing method of
12 pay for the occupation in the area of intended em-
13 ployment.

14 “(7) UNITED STATES WORKER.—The term
15 ‘United States worker’ means an employee who—

16 “(A) is a citizen or national of the United
17 States; or

18 “(B) is an alien who is lawfully admitted
19 for permanent residence, is admitted as a ref-
20 ugee under section 207, is granted asylum
21 under section 208, or is an immigrant otherwise
22 authorized, by this Act or by the Secretary of
23 Homeland Security, to be employed.”.

24 (b) CONFORMING AMENDMENT.—Section
25 101(a)(15)(H)(ii)(a) of the Immigration and Nationality

1 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-
2 ing “seasonal nature, or (b)” and inserting “seasonal na-
3 ture, and with respect to whom the Secretary of Labor
4 determines and certifies to the Secretary of Homeland Se-
5 curity that the intending employer has filed with the Sec-
6 retary an application under section 218(a), or (b)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date that is 180 days
9 after the date of the enactment of this Act.

10 **SEC. 3. EMERGENCY GRANTS TO ASSIST EMPLOYERS WITH**
11 **H-2A TRANSPORTATION COSTS.**

12 Subtitle D of the Consolidated Farm and Rural De-
13 velopment Act (7 U.S.C. 1981 et seq.) is amended by add-
14 ing at the end the following:

15 **“SEC. 379E. EMERGENCY GRANTS TO ASSIST EMPLOYERS**
16 **WITH H-2A TRANSPORTATION COSTS.**

17 “(a) IN GENERAL.—The Secretary of Agriculture
18 may make grants, not to exceed \$1,000,000 annually, to
19 employers of H-2A workers for the purpose of reimburs-
20 ing the employers for the amounts paid to H-2A workers
21 under section 218(n)(4)(B) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1188) if, before the expiration of
23 the period of employment specified in the job offer, the
24 services of the worker are no longer required for reasons
25 beyond the control of the employer due to any form of

1 natural disaster, including but not limited to a flood, hur-
2 ricane, freeze, earthquake, fire, drought, plant or animal
3 disease or pest infestation, or regulatory drought.

4 “(b) FUNDING.—The grants described in subsection
5 (a) shall be made out of the funds, facilities and authori-
6 ties of the Commodity Credit Corporation to the extent
7 that such funds are provided in advance through an appro-
8 priations act.”.

9 **SEC. 4. ESTABLISHMENT OF H-2A OMBUDSMAN.**

10 Subtitle D of the Consolidated Farm and Rural De-
11 velopment Act (7 U.S.C. 1981 et seq.), as amended by
12 section 3 of this Act, is amended by adding at the end
13 the following:

14 **“SEC. 379F. ESTABLISHMENT OF H-2A OMBUDSMAN.**

15 “OMBUDSMAN.—The Secretary shall establish an H-
16 2A Worker Program Ombudsman within the Office of Ag-
17 riculture Labor Affairs, Office of the Chief Economist,
18 U.S. Department of Agriculture. The H-2A Ombudsman
19 shall help resolve disputes and other conflicts between con-
20 tracted H-2A workers and their employers, other than al-
21 leged violations of conditions required under section
22 218(a) of the Immigration and Nationality Act (8 U.S.C.
23 1188(a)).”.

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