

109TH CONGRESS
1ST SESSION

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.

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 “Rural and Urban
5 Health Care Act of 2005”.

6 **SEC. 2. REQUIREMENTS FOR ADMISSION OF H-1C NON-**
7 **IMMIGRANT NURSES.**

8 (a) IN GENERAL.—Section 212(m) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1182(m)) is amended
10 to read as follows:

1 “(m)(1) The qualifications referred to in section
2 101(a)(15)(H)(i)(c), with respect to an alien who is com-
3 ing to the United States to perform nursing services for
4 a facility, are that the alien—

5 “(A) has obtained a full and unrestricted li-
6 cense to practice professional nursing in the country
7 where the alien obtained nursing education or has
8 received nursing education in the United States or
9 Canada;

10 “(B) has passed the examination given by the
11 Commission on Graduates of Foreign Nursing
12 Schools or another appropriate examination (recog-
13 nized in regulations promulgated in consultation
14 with the Secretary of Health and Human Services)
15 or has a full and unrestricted license under State
16 law to practice professional nursing in the State of
17 intended employment; and

18 “(C) is fully qualified and eligible under the
19 laws (including such temporary or interim licensing
20 requirements which authorize the nurse to be em-
21 ployed) governing the place of intended employment
22 to engage in the practice of professional nursing as
23 a registered nurse immediately upon admission to
24 the United States and is authorized under such laws
25 to be employed by the facility, except that, in the

1 case of an alien who is otherwise eligible to take the
2 State licensure examination after entering into the
3 United States, but who has not passed such exam-
4 ination before entering—

5 “(i) the alien may take such examination
6 not more than twice after entering, but the
7 alien’s status as a nonimmigrant under section
8 101(a)(15)(H)(i)(c) shall terminate, and the
9 alien shall be required to depart the United
10 States, if the alien does not pass such examina-
11 tion either the first or second time; and

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

16 “(2)(A) The attestation referred to in section
17 101(a)(15)(H)(i)(c), with respect to a facility for which
18 an alien will perform services, is an attestation as to the
19 following:

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

23 “(ii) The alien will be paid the wage rate for
24 registered nurses similarly employed by the facility.

1 “(iii) There is not a strike or lockout in the
2 course of a labor dispute, the facility did not lay off
3 and will not lay off a registered staff nurse employed
4 by the facility within the period beginning 90 days
5 before and ending 90 days after the date of filing of
6 any visa petition, and the employment of such an
7 alien is not intended or designed to influence an
8 election for a bargaining representative for reg-
9 istered nurses of the facility.

10 “(iv) At the time of the filing of the petition for
11 registered nurses under section 101(a)(15)(H)(i)(c),
12 notice of the filing has been provided by the facility
13 to the bargaining representative of the registered
14 nurses at the facility or, where there is no such bar-
15 gaining representative, notice of the filing has been
16 provided to the registered nurses employed at the fa-
17 cility through posting in conspicuous locations.

18 “(v) The facility will not, with respect to any
19 alien issued a visa or otherwise provided non-
20 immigrant status under section
21 101(a)(15)(H)(i)(c)—

22 “(I) authorize the alien to perform nursing
23 services at any worksite other than a worksite
24 controlled by the facility; or

1 “(II) transfer the place of employment of
2 the alien from one worksite to another.

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

9 “(B) A copy of the attestation shall be provided, with-
10 in 30 days of the date of filing, to registered nurses em-
11 ployed at the facility on the date of filing.

12 “(C) The Secretary shall review the attestation only
13 for completeness and obvious inaccuracies. Unless the Sec-
14 retary finds that the attestation is incomplete or obviously
15 inaccurate, the Secretary shall provide the certification de-
16 scribed in section 101(a)(15)(H)(i)(c) within 7 days of the
17 date of the filing of the attestation.

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

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

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

24 “(II) the end of the period of admission
25 under section 101(a)(15)(H)(i)(c) of the last

1 alien with respect to whose admission it was ap-
2 plied (in accordance with clause (ii)); and

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

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

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

19 “(ii) The Secretary shall establish a process, includ-
20 ing reasonable time limits, for the receipt, investigation,
21 and disposition of complaints respecting a facility’s failure
22 to meet conditions attested to or a facility’s misrepresenta-
23 tion of a material fact in an attestation. Complaints may
24 be filed by any aggrieved person or organization (including
25 bargaining representatives, associations deemed appro-

1 puate by the Secretary, and other aggrieved parties as de-
2 termined under regulations of the Secretary). The Sec-
3 retary shall conduct an investigation under this clause if
4 there is reasonable cause to believe that a facility willfully
5 failed to meet conditions attested to. Subject to the time
6 limits established under this clause, this subparagraph
7 shall apply regardless of whether an attestation is expired
8 or unexpired at the time a complaint is filed.

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

17 “(iv) If the Secretary of Labor finds, after notice and
18 opportunity for a hearing, that a facility (for which an
19 attestation is made) has willfully failed to meet a condition
20 attested to or that there was a willful misrepresentation
21 of material fact in the attestation, the Secretary shall no-
22 tify the Attorney General of such finding and may, in ad-
23 dition, impose such other administrative remedies (includ-
24 ing civil monetary penalties in an amount not to exceed
25 \$1,000 per nurse per violation, with the total penalty not

1 to exceed \$10,000 per violation) as the Secretary deter-
2 mines to be appropriate. Upon receipt of such notice, the
3 Attorney General shall not approve petitions filed with re-
4 spect to a facility during a period of at least one year for
5 nurses to be employed by the facility.

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

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

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

22 “(iii) The collected fees in the fund shall be available
23 to the Secretary, to the extent and in such amounts as
24 may be provided in appropriations Acts, to cover the costs

1 described in clause (i), in addition to any other funds that
2 are available to the Secretary to cover such costs.

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

8 “(4) The total number of nonimmigrant visas issued
9 pursuant to petitions granted under section
10 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed
11 195,000.

12 “(5) A facility that has filed a petition under section
13 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform
14 nursing services for the facility—

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

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

21 “(6) For purposes of this subsection and section
22 101(a)(15)(H)(i)(c):

23 “(A) The term ‘facility’ includes a hospital,
24 nursing home, skilled nursing facility, registry, clin-

1 ie, assisted-living center, and an employer who em-
2 ploys any registered nurse in a home setting.

3 “(B)(i) The term ‘lay off’ with respect to a
4 worker (for purposes of paragraph (2)(A)(iii))—

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

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

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

23 “(C) The term ‘Secretary’ means the Secretary
24 of Labor.”.

1 (b) REGULATIONS; EFFECTIVE DATE.—Not later
2 than 90 days after the date of the enactment of this Act,
3 regulations to carry out subsection (a) shall be promul-
4 gated by the Secretary of Labor, in consultation with the
5 Secretary of Health and Human Services and the Attorney
6 General. Notwithstanding the preceding sentence, the
7 amendment made by subsection (a) shall take effect 90
8 days after the date of the enactment of this Act, regardless
9 of whether such regulations are in effect on such date.

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

13 Section 214(l)(1)(B) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1184(l)(1)(B)) is amended by striking
15 “30;” and inserting “40;”.

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