

109TH CONGRESS
1ST SESSION

H. R. 3857

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

SEPTEMBER 22, 2005

Mr. GOODLATTE (for himself, Mr. BERRY, Mrs. MUSGRAVE, Ms. FOXX, Mrs. JO ANN DAVIS of Virginia, Mr. CONAWAY, Mr. UPTON, Mr. SCHWARZ of Michigan, and Mr. ALEXANDER) 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Temporary Agricul-
5 tural Labor Reform Act of 2005”.

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

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

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 “SEC. 218. (a) APPLICATION.—An alien may not be
7 admitted as an H-2A worker unless the employer has filed
8 with the Secretary of Homeland Security a petition attest-
9 ing to the following:

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

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

23 “(3) NONDISPLACEMENT OF UNITED STATES
24 WORKERS.—The employer did not displace and will
25 not displace a United States worker employed by the
26 employer during the period of employment and dur-

1 ing a period of 30 days preceding the period of em-
2 ployment in the occupation at the place of employ-
3 ment for which the employer seeks approval to em-
4 ploy H-2A workers.

5 “(A) IN GENERAL.—The employer shall at-
6 test that the employer—

7 “(i) conducted adequate recruitment
8 in the area of intended employment before
9 filing the attestation; and

10 “(ii) was unsuccessful in locating
11 qualified United States workers for the job
12 opportunity for which the certification is
13 sought.

14 “(B) SATISFACTION OF RECRUITMENT.—
15 The adequate recruitment requirement under
16 subparagraph (A) is satisfied if the employer—

17 “(i) places a job order with America’s
18 Job Bank Program of the Department of
19 Labor; and

20 “(ii) places a Sunday advertisement in
21 a newspaper of general circulation.

22 “(C) ADVERTISEMENT CRITERIA.—The ad-
23 vertisement requirement under subparagraph
24 (B)(ii) is satisfied if the advertisement—

25 “(i) names the employer;

1 “(ii) directs applicants to report or
2 send resumes, as appropriate for the occu-
3 pation, to the employer;

4 “(iii) provides a description of the va-
5 cancy that is specific enough to apprise
6 United States workers of the job oppor-
7 tunity for which certification is sought;

8 “(iv) describes the geographic area
9 with enough specificity to apprise appli-
10 cants of any travel requirements and where
11 applicants will likely have to reside to per-
12 form the job;

13 “(v) states the rate of pay, which
14 must equal or exceed the wage paid for the
15 occupation in the area of intended employ-
16 ment; and

17 “(vi) offers wages, terms, and condi-
18 tions of employment, which are at least as
19 favorable as those offered to the alien.

20 “(4) OFFERS TO UNITED STATES WORKERS.—
21 The employer has offered or will offer the job for
22 which the nonimmigrant is, or the nonimmigrants
23 are, sought to any eligible United States worker who
24 applies and is equally or better qualified for the job

1 and who will be available at the time and place of
2 need.

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

12 “(6) REQUIREMENTS FOR PLACEMENT OF H-2A
13 WORKERS WITH OTHER EMPLOYERS.—A non-
14 immigrant who is admitted into the United States as
15 an H-2A worker may be transferred to another em-
16 ployer that has certified to the Secretary of Home-
17 land Security that it has filed an application under
18 this subsection and is in compliance with this sec-
19 tion. The Secretary of Homeland Security shall es-
20 tablish a process for the approval and reissuance of
21 visas for such transferred H-2A workers as nec-
22 essary

23 “(7) STRIKE OR LOCKOUT.—There is not a
24 strike or lockout in the course of a labor dispute
25 which, under regulations promulgated by the Sec-

1 retary of Labor, precludes the provision of the cer-
2 tification described in section 101(a)(15)(H)(ii)(a).

3 “(8) PREVIOUS VIOLATIONS.—The employer
4 has not, during the previous two-year period, em-
5 ployed H-2A workers and substantially violated a
6 material term or condition of approval with respect
7 to the employment of domestic or nonimmigrant
8 workers, as determined by the Secretary of Labor
9 after notice and opportunity for a hearing.

10 “(b) PUBLICATION.—The employer shall make avail-
11 able for public examination, within one working day after
12 the date on which a petition under this section is filed,
13 at the employer’s principal place of business or worksite,
14 a copy of each such petition (and such accompanying doc-
15 uments as are necessary).

16 “(c) LIST.—The Secretary of Homeland Security
17 shall compile, on a current basis, a list (by employer) of
18 the petitions filed under subsection (a). Such list shall in-
19 clude the wage rate, number of aliens sought, period of
20 intended employment, and date of need. The Secretary of
21 Homeland Security shall make such list available for pub-
22 lic examination in Washington, D.C.

23 “(d) SPECIAL RULES FOR CONSIDERATION OF PETI-
24 TIONS.—The following rules shall apply in the case of the
25 filing and consideration of a petition under subsection (a):

1 “(1) DEADLINE FOR FILING APPLICATIONS.—

2 The Secretary of Homeland Security may not re-
3 quire that the petition be filed more than 28 days
4 before the first date the employer requires the labor
5 or services of the H-2A worker or workers.

6 “(2) ISSUANCE OF APPROVAL.—Unless the Sec-
7 retary of Homeland Security finds that the petition
8 is incomplete or obviously inaccurate, the Secretary
9 of Homeland Security shall provide a decision within
10 7 days of the date of the filing of the petition.

11 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

12 “(1) PERMITTING FILING BY AGRICULTURAL
13 ASSOCIATIONS.—A petition to hire an alien as a
14 temporary agricultural worker may be filed by an as-
15 sociation of agricultural producers which use agricul-
16 tural services.

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

23 “(3) TREATMENT OF VIOLATIONS.—

24 “(A) MEMBER’S VIOLATION DOES NOT
25 NECESSARILY DISQUALIFY ASSOCIATION OR

1 OTHER MEMBERS.—If an individual producer
2 member of a joint employer association is deter-
3 mined to have committed an act that is in viola-
4 tion of the conditions for approval with respect
5 to the member’s petition, the denial shall apply
6 only to that member of the association unless
7 the Secretary of Labor determines that the as-
8 sociation or other member participated in, had
9 knowledge of, or reason to know of, the viola-
10 tion.

11 “(B) ASSOCIATION’S VIOLATION DOES NOT
12 NECESSARILY DISQUALIFY MEMBERS.—

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

1 “(ii) If an association of agricultural
2 producers approved as a sole employer is
3 determined to have committed an act that
4 is in violation of the conditions for ap-
5 proval with respect to the association’s ap-
6 plication petition, no individual producer
7 member of such association may be the
8 beneficiary of the services of temporary
9 alien agricultural workers admitted under
10 this section in the commodity and occupa-
11 tion in which such aliens were employed by
12 the association which was denied approval
13 during the period such denial is in force,
14 unless such producer member employs such
15 aliens in the commodity and occupation in
16 question directly or through an association
17 which is a joint employer of such workers
18 with the producer member.

19 “(f) EXPEDITED ADMINISTRATIVE APPEALS OF CER-
20 TAIN DETERMINATIONS.—Regulations shall provide for an
21 expedited procedure for the review of a denial of approval
22 of an application under this section, or at the applicant’s
23 request, for a de novo administrative hearing respecting
24 the denial.

25 “(g) MISCELLANEOUS PROVISIONS.—

1 “(1) WITHHOLDING OF DOMESTIC WORKERS.—
2 No person or entity shall willfully and knowingly
3 withhold domestic workers prior to the arrival of H–
4 2A workers in order to force the hiring of domestic
5 workers under subsection (a)(5).

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

12 “(3) PREEMPTION OF STATE LAWS.—The pro-
13 visions of subsections (a) and (c) of section 214 and
14 the provisions of this section preempt any State or
15 local law regulating admissibility of nonimmigrant
16 workers.

17 “(4) FEES.—

18 “(A) IN GENERAL.—The Secretary of
19 Homeland Security may require, as a condition
20 of approving the petition, the payment of a fee
21 to recover the reasonable costs of processing pe-
22 titions.

23 “(B) AMOUNTS.—

24 “(i) EMPLOYER.—The fee for each
25 employer that receives a temporary alien

1 agricultural labor certification shall be
2 equal to \$100 plus \$10 for each job oppor-
3 tunity for H-2A workers certified, except
4 that the fee to an employer for each tem-
5 porary alien agricultural labor certification
6 received shall not exceed \$1,000.

7 “(ii) JOINT EMPLOYER ASSOCIA-
8 TION.—In the case of a joint employer as-
9 sociation that receives a temporary alien
10 agricultural labor certification, each em-
11 ployer-member receiving such certification
12 shall pay a fee equal to \$100 plus \$10 for
13 each job opportunity for H-2A workers
14 certified, except that the fee to an em-
15 ployer for each temporary alien agricul-
16 tural labor certification received shall not
17 exceed \$1,000. The joint employer associa-
18 tion shall not be charged a separate fee.

19 “(C) PAYMENTS.—The fees collected under
20 this paragraph shall be paid by check or money
21 order made payable to the ‘Department of
22 Homeland Security’. In the case of employers of
23 H-2A workers that are members of a joint em-
24 ployer association applying on their behalf, the
25 aggregate fees for all employers of H-2A work-

1 ers under the petition may be paid by one check
2 or money order.

3 “(h) FAILURES TO MEET CONDITIONS.—If the Sec-
4 retary of Labor finds, after notice and opportunity for a
5 hearing, a failure to meet a condition of subsection (a),
6 or a material misrepresentation of fact in a petition under
7 subsection (a)—

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

15 “(2) the Secretary of Homeland Security may
16 disqualify the employer from the employment of H-
17 2A workers for a period of 1 year.

18 “(i) WILLFUL FAILURES AND WILLFUL MISREPRE-
19 SENTATIONS.—If the Secretary of Labor finds, after no-
20 tice and opportunity for a hearing, a willful failure to meet
21 a material condition of subsection (a), or a willful mis-
22 representation of a material fact in application a petition
23 under subsection (a)—

24 “(1) the Secretary of Labor shall notify the
25 Secretary of Homeland Security of such finding and

1 may, in addition, impose such other administrative
2 remedies (including civil money penalties in an
3 amount not to exceed \$5,000 per violation) as the
4 Secretary of Labor determines to be appropriate;

5 “(2) the Secretary of Homeland Security may
6 disqualify the employer from the employment of H–
7 2A workers for a period of 2 years;

8 “(3) for a second violation, the Secretary of
9 Homeland Security may disqualify the employer
10 from the employment of H–2A workers for a period
11 of 5 years; and

12 “(4) for a third violation, the Secretary of
13 Homeland Security may permanently disqualify the
14 employer from the employment of H–2A workers.

15 “(j) DISPLACEMENT OF UNITED STATES WORK-
16 ERS.—If the Secretary of Labor finds, after notice and
17 opportunity for a hearing, a willful failure to meet a mate-
18 rial condition of subsection (a) or a willful misrepresenta-
19 tion of a material fact in a petition under subsection (a),
20 in the course of which failure or misrepresentation the em-
21 ployer displaced a United States worker employed by the
22 employer during the period of employment on the employ-
23 er’s petition under subsection (a) or during the period of
24 30 days preceding such period of employment—

1 “(1) the Secretary of Labor shall notify the
2 Secretary of Homeland Security of such finding and
3 may, in addition, impose such other administrative
4 remedies (including civil money penalties in an
5 amount not to exceed \$15,000 per violation) as the
6 Secretary of Labor determines to be appropriate;

7 “(2) the Secretary of Homeland Security may
8 disqualify the employer from the employment of H–
9 2A workers for a period of 5 years; and

10 “(3) for a second violation, the Secretary of
11 Homeland Security may permanently disqualify the
12 employer from the employment of H–2A workers.

13 “(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—
14 The Secretary of Labor shall not impose total civil money
15 penalties with respect to a petition under subsection (a)
16 in excess of \$90,000.

17 “(l) FAILURES TO PAY WAGES OR REQUIRED BENE-
18 FITS.—If the Secretary of Labor finds, after notice and
19 opportunity for a hearing, that the employer has failed to
20 pay the wages, or provide the housing allowance, transpor-
21 tation, subsistence reimbursement, or guarantee of em-
22 ployment required under subsection (a)(2), the Secretary
23 of Labor shall assess payment of back wages, or other re-
24 quired benefits, due any United States worker or H–2A
25 worker employed by the employer in the specific employ-

1 ment in question. The back wages or other required bene-
2 fits under subsection (a)(2) shall be equal to the difference
3 between the amount that should have been paid and the
4 amount that actually was paid to such worker.

5 “(m) MINIMUM BENEFITS, WAGES, AND WORKING
6 CONDITIONS.—

7 “(1) PREFERENTIAL TREATMENT OF ALIENS
8 PROHIBITED.—

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

18 “(B) INTERPRETATIONS AND DETERMINA-
19 TIONS.—While benefits, wages, and other terms
20 and conditions of employment specified in this
21 subsection are required to be provided in con-
22 nection with employment under this section,
23 every interpretation and determination made
24 under this Act or under any other law, regula-
25 tion, or interpretative provision regarding the

1 nature, scope, and timing of the provision of
2 these and any other benefits, wages, and other
3 terms and conditions of employment, must be
4 made in conformance with the governing prin-
5 ciples that the services of workers to their em-
6 ployers and the employment opportunities af-
7 forded to workers by their employers, including
8 those employment opportunities that require
9 United States workers or H-2A workers to
10 travel or relocate in order to accept or perform
11 employment, mutually benefit such workers, as
12 well as their families, and employers, principally
13 benefiting neither, and that employment oppor-
14 tunities within the United States further benefit
15 the United States economy as a whole and
16 should be encouraged.

17 “(2) REQUIRED WAGES.—

18 “(A) An employer applying for workers
19 under subsection (a) shall offer to pay, and
20 shall pay, all workers in the occupation for
21 which the employer has applied for workers, not
22 less than the prevailing wage.

23 “(B) In complying with subparagraph (A),
24 an employer may request and obtain a pre-

1 vailing wage determination from the State em-
2 ployment security agency.

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

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

18 “(E) No worker shall be paid less than the
19 greater of the prevailing wage or the applicable
20 State minimum wage.

21 “(3) REQUIREMENT TO PROVIDE HOUSING OR A
22 HOUSING ALLOWANCE.—

23 “(A) IN GENERAL.—An employer applying
24 for workers under subsection (a) shall offer to
25 provide housing at no cost to all workers in job

1 opportunities for which the employer has ap-
2 plied under that section and to all other work-
3 ers in the same occupation at the place of em-
4 ployment, whose place of residence is beyond
5 normal commuting distance.

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

20 “(C) CERTIFICATE OF INSPECTION.—Prior
21 to any occupation by a worker in housing de-
22 scribed in subparagraph (B), the employer shall
23 submit a certificate of inspection by an ap-
24 proved Federal or State agency to the Secretary
25 of Labor.

1 “(D) 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 “(E) 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 “(F) 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 (v) is satisfied. An employer who
20 provides a housing allowance to a worker
21 shall not be required to reserve housing ac-
22 commodation for the worker.

23 “(ii) ASSISTANCE TO LOCATE HOUS-
24 ING.—Upon the request of a worker seek-
25 ing assistance in locating housing, the em-

1 ployer shall make a good faith effort to as-
2 sist the worker in identifying and locating
3 housing in the area of intended employ-
4 ment.

5 “(iii) LIMITATION.—A housing allow-
6 ance may not be used for housing that is
7 owned or controlled by the employer. An
8 employer who offers a housing allowance to
9 a worker, or assists a worker in locating
10 housing which the worker occupies, pursu-
11 ant to this clause shall not be deemed a
12 housing provider under section 203 of the
13 Migrant and Seasonal Agricultural Worker
14 Protection Act (29 U.S.C. 1823) solely by
15 virtue of providing such housing allowance.

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

1 “(v) AMOUNT OF ALLOWANCE.—

2 “(I) NONMETROPOLITAN COUN-
3 TIES.—If the place of employment of
4 the workers provided an allowance
5 under this subparagraph is a non-
6 metropolitan county, the amount of
7 the housing allowance under this sub-
8 paragraph shall be equal to the state-
9 wide average fair market rental for
10 existing housing for nonmetropolitan
11 counties for the State, as established
12 by the Secretary of Housing and
13 Urban Development pursuant to sec-
14 tion 8(c) of the United States Hous-
15 ing Act of 1937 (42 U.S.C. 1437f(c)),
16 based on a 2-bedroom dwelling unit
17 and an assumption of 2 persons per
18 bedroom.

19 “(II) METROPOLITAN COUN-
20 TIES.—If the place of employment of
21 the workers provided an allowance
22 under this paragraph is in a metro-
23 politan county, the amount of the
24 housing allowance under this subpara-
25 graph shall be equal to the statewide

1 average fair market rental for existing
2 housing for metropolitan counties for
3 the State, as established by the Sec-
4 retary of Housing and Urban Devel-
5 opment pursuant to section 8(c) of
6 the United States Housing Act of
7 1937 (42 U.S.C. 1437f(c)), based on
8 a 2-bedroom dwelling unit and an as-
9 sumption of 2 persons per bedroom.

10 “(4) REIMBURSEMENT OF TRANSPORTATION.—

11 “(A) TO PLACE OF EMPLOYMENT.—

12 “(i) IN GENERAL.—A worker who
13 completes 50 percent of the period of em-
14 ployment of the job opportunity for which
15 the worker was hired, measured from the
16 worker’s first day of work in such employ-
17 ment, shall be reimbursed by the employer
18 for the cost of the worker’s transportation
19 and subsistence from the place from which
20 the worker was approved to enter the
21 United States to work for the employer (or
22 place of last employment, if the worker
23 traveled from such place) to the place of
24 employment by the employer.

1 “(ii) OTHER FEES.—The employer
2 shall not be required to reimburse visa,
3 passport, consular, or international
4 bordercrossing fees or any other fees asso-
5 ciated with the worker’s lawful admission
6 into the United States to perform employ-
7 ment that may be incurred by the worker.

8 “(iii) TIMELY REIMBURSEMENT.—Re-
9 imbursement to the worker of expenses for
10 the cost of the worker’s transportation and
11 subsistence to the place of employment
12 shall be considered timely if such reim-
13 bursement is made not later than the
14 worker’s first regular payday after the
15 worker completes 50 percent of the period
16 of employment of the job opportunity as
17 provided under this paragraph.

18 “(B) FROM PLACE OF EMPLOYMENT.—A
19 worker who completes the period of employment
20 for the job opportunity involved shall be reim-
21 bursed by the employer for the cost of the
22 worker’s transportation and subsistence from
23 the place of employment to the place from
24 which the worker, disregarding intervening em-
25 ployment, was approved to enter the United

1 States to work for the employer, or to the place
2 of next employment, if the worker has con-
3 tracted with a subsequent employer who has not
4 agreed to provide or pay for the worker's trans-
5 portation and subsistence to such subsequent
6 employer's place of employment.

7 “(C) LIMITATION.—

8 “(i) AMOUNT OF REIMBURSEMENT.—

9 Except as provided in clause (ii), the
10 amount of reimbursement provided under
11 subparagraph (A) or (B) to a worker or
12 alien shall not exceed the lesser of—

13 “(I) the actual cost to the worker

14 or alien of the transportation and sub-
15 sistence involved; or

16 “(II) the most economical and

17 reasonable common carrier transpor-
18 tation charges and subsistence costs
19 for the distance involved.

20 “(ii) DISTANCE TRAVELED.—No reim-

21 bursement under subparagraph (A) or (B)
22 shall be required if the distance traveled is
23 100 miles or less, or the worker is not re-
24 siding in employer-provided housing or

1 housing secured through an allowance as
2 provided in paragraph (1)(F).

3 “(D) EARLY TERMINATION.—If the worker
4 is laid off or employment is terminated for con-
5 tract impossibility (as described in paragraph
6 (5)(D)) before the anticipated ending date of
7 employment, the employer shall provide the
8 transportation and subsistence required by sub-
9 paragraph (B) and, notwithstanding whether
10 the worker has completed 50 percent of the pe-
11 riod of employment, shall provide the transpor-
12 tation reimbursement required by subparagraph
13 (A).

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

24 “(5) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least three-
4 fourths of the work days of the total period of
5 employment, beginning with the first work day
6 after the arrival of the worker at the place of
7 employment and ending on the expiration date
8 specified in the job offer. For purposes of this
9 subparagraph, the hourly equivalent means the
10 number of hours in the work days as stated in
11 the job offer and shall exclude the worker’s
12 Sabbath and Federal holidays. If the employer
13 affords the United States or H-2A worker less
14 employment than that required under this para-
15 graph, the employer shall pay such worker the
16 amount which the worker would have earned
17 had the worker, in fact, worked for the guaran-
18 teed number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
2 worker's Sabbath, or on Federal holidays) may
3 be counted by the employer in calculating
4 whether the period of guaranteed employment
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
7 TERMINATION FOR CAUSE.—If the worker vol-
8 untarily abandons employment before the end
9 of the contract period, or is terminated for
10 cause, the worker is not entitled to the three-
11 fourths guarantee described in subparagraph
12 (A).

13 “(D) CONTRACT IMPOSSIBILITY.—If, be-
14 fore the expiration of the period of employment
15 specified in the job offer, the services of the
16 worker are no longer required for reasons be-
17 yond the control of the employer due to any
18 form of natural disaster, including but not lim-
19 ited to a flood, hurricane, freeze, earthquake,
20 fire, drought, plant or animal disease or pest in-
21 festation, or regulatory drought, before the
22 guarantee in subparagraph (A) is fulfilled, the
23 employer may terminate the worker's employ-
24 ment. In the event of such termination, the em-
25 ployer shall fulfill the employment guarantee in

1 subparagraph (A) for the work days that have
2 elapsed from the first work day after the arrival
3 of the worker to the termination of employ-
4 ment. In such cases, the employer will make ef-
5 forts to transfer the United States worker to
6 other comparable employment acceptable to the
7 worker.

8 “(n) PETITIONING FOR ADMISSION.—An employer,
9 or an association acting as an agent or joint employer for
10 its members, that seeks the admission into the United
11 States of an H-2A worker must file a petition with the
12 Secretary of Homeland Security. The petition shall include
13 the attestations for the certification described in section
14 101(a)(15)(H)(ii)(a).

15 “(o) EXPEDITED ADJUDICATION BY THE SEC-
16 RETARY.—The Secretary of Homeland Security—

17 “(1) shall establish a procedure for expedited
18 adjudication of petitions filed under subsection (n);
19 and

20 “(2) not later than 7 working days after such
21 filing shall, by fax, cable, or other means assuring
22 expedited delivery transmit a copy of notice of action
23 on the petition—

24 “(A) to the petitioner; and

1 “(B) in the case of approved petitions, to
2 the appropriate immigration officer at the port
3 of entry or United States consulate (as the case
4 may be) where the petitioner has indicated that
5 the alien beneficiary (or beneficiaries) will apply
6 for a visa or admission to the United States.

7 “(p) DISQUALIFICATION.—

8 “(1) Subject to paragraph (2), an alien shall be
9 considered inadmissible to the United States and in-
10 eligible for nonimmigrant status under section
11 101(a)(15)(H)(ii)(a) if the alien has, at any time
12 during the past 5 years, violated a term or condition
13 of admission into the United States as a non-
14 immigrant, including overstaying the period of au-
15 thorized admission.

16 “(2) WAIVERS.—

17 “(A) IN GENERAL.—An alien outside the
18 United States, and seeking admission under
19 section 101(a)(15)(H)(ii)(a), shall not be
20 deemed inadmissible under such section by rea-
21 son of—

22 “(i) paragraph (1);

23 “(ii) section 212(a)(6)(c), only if such
24 alien has previously falsely represented
25 himself to be a citizen of the United States

1 for the purpose of agricultural employ-
2 ment; or

3 “(iii) section 212(a)(9)(B),
4 if the previous violation occurred on or before
5 the date of enactment of this Act.

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

15 “(q) PERIOD OF ADMISSION.—

16 “(1) IN GENERAL.—The alien shall be admitted
17 for a period of employment, not to exceed 10
18 months, that includes a period of not more than 7
19 days prior to the beginning of the period of employ-
20 ment (to be granted for the purpose of travel to the
21 work site) and a period of not more than 14 days
22 following the period of employment (to be granted
23 for the purpose of departure or extension based on
24 a subsequent offer of employment).

1 “(2) LIMITATION ON EMPLOYMENT.—An alien
2 is not authorized to be employed during the 14-day
3 period granted for the purpose of departure or ex-
4 tension except in the employment for which the alien
5 was previously authorized.

6 “(3) CONSTRUCTION.—Nothing in this sub-
7 section shall limit the authority of the Secretary of
8 Homeland Security to extend the stay of the alien
9 under any other provision of this Act.

10 “(r) ABANDONMENT OF EMPLOYMENT.—

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

18 “(2) REPORT BY EMPLOYER.—The employer
19 (or association acting as agent for the employer)
20 shall notify the Secretary of Homeland Security
21 within 7 days of an H-2A worker’s having pre-
22 maturely abandoned employment.

23 “(3) REMOVAL BY THE SECRETARY.—The Sec-
24 retary of Homeland Security shall promptly remove
25 from the United States any H-2A worker who vio-

1 lates any term or condition of the worker’s non-
2 immigrant status.

3 “(4) VOLUNTARY TERMINATION.—Notwith-
4 standing paragraph (1), an alien may voluntarily
5 terminate his or her employment if the alien prompt-
6 ly departs the United States upon termination of
7 such employment.

8 “(s) REPLACEMENT OF ALIEN.—

9 “(1) IN GENERAL.—Upon presentation of the
10 notice to the Secretary of Homeland Security re-
11 quired by subsection (q)(2), the Secretary of State
12 shall promptly issue a visa to, and the Secretary of
13 Homeland Security shall admit into the United
14 States, an eligible alien designated by the employer
15 to replace an H-2A worker who abandons or pre-
16 maturely terminates employment.

17 “(2) CONSTRUCTION.—Nothing in this sub-
18 section is intended to limit any preference required
19 to be accorded United States workers under any
20 other provision of this Act.

21 “(t) IDENTIFICATION DOCUMENT.—

22 “(1) IN GENERAL.—Each alien authorized to be
23 admitted under section 101(a)(15)(H)(ii)(a) shall be
24 provided an identification and employment eligibility
25 document to verify eligibility for employment in the

1 United States and verify such person's proper iden-
2 tity.

3 “(2) FORM.—

4 “(A) The document shall be in a form that
5 is resistant to counterfeiting and to tampering.

6 “(B) As soon as practicable, all documents
7 shall include a biometric identifier. The deter-
8 mination of a biometric identifier to be used for
9 such purposes shall take into account factors
10 such as efficiency, accuracy, the technology
11 available, economic considerations, and storage
12 requirements.

13 “(C) The document shall—

14 “(i) be compatible with other data-
15 bases of the Secretary of Homeland Secu-
16 rity for the purpose of excluding aliens
17 from benefits for which they are not eligi-
18 ble and determining whether the alien is
19 unlawfully present in the United States;
20 and

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

24 “(u) EXTENSION OF STAY OF H-2A ALIENS IN THE
25 UNITED STATES.—

1 “(1) EXTENSION OF STAY.—If an employer
2 seeks approval to employ an H-2A alien who is law-
3 fully present in the United States, the petition filed
4 by the employer or an association pursuant to sub-
5 section (n) shall request an extension of the alien’s
6 stay and, if applicable, a change in the alien’s em-
7 ployment.

8 “(2) LIMITATION ON FILING PETITION FOR EX-
9 TENSION OF STAY.—A petition may not be filed for
10 an extension of an alien’s stay for a period of more
11 than 10 months.

12 “(3) WORK AUTHORIZATION UPON FILING PE-
13 TITION FOR EXTENSION OF STAY.—

14 “(A) IN GENERAL.—An alien who is law-
15 fully present in the United States may com-
16 mence or continue the employment described in
17 a petition under paragraph (1) on the date on
18 which the petition is filed. The employer shall
19 provide a copy of the employer’s petition to the
20 alien, who shall keep the petition with the
21 alien’s identification and employment eligibility
22 document, as evidence that the petition has
23 been filed and that the alien is authorized to
24 work in the United States.

1 “(B) APPROVAL.—Upon approval of a pe-
2 tition for an extension of stay or change in the
3 alien’s authorized employment, the Secretary of
4 Homeland Security shall provide a new or up-
5 dated employment eligibility document to the
6 alien indicating the new validity date, after
7 which the alien is not required to retain a copy
8 of the petition.

9 “(C) DEFINITION.—In this paragraph, the
10 term ‘file’ means sending the petition by cer-
11 tified mail via the United States Postal Service,
12 return receipt requested, or delivered by guar-
13 anteed commercial delivery which will provide
14 the employer with a documented acknowledg-
15 ment of the date of receipt of the petition.

16 “(4) LIMITATION ON AN INDIVIDUAL’S STAY IN
17 STATUS.—

18 “(A) MAXIMUM PERIOD.—The maximum
19 continuous period of authorized status as an
20 H-2A worker (including any extensions) is 20
21 months.

22 “(B) REQUIREMENT TO REMAIN OUTSIDE
23 THE UNITED STATES.—

24 “(i) IN GENERAL.—Subject to clause
25 (ii), in the case of an alien outside the

1 United States whose period of authorized
2 status as an H-2A worker (including any
3 extensions) has expired, the alien may not
4 again apply for admission to the United
5 States as an H-2A worker unless the alien
6 has remained outside the United States for
7 a continuous period equal to at least $\frac{1}{5}$
8 the duration of the alien's previous period
9 of authorized status as an H-2A worker
10 (including any extensions).

11 “(ii) EXCEPTION.—Clause (i) shall
12 not apply in the case of an alien if the
13 alien's period of authorized status as an
14 H-2A worker (including any extensions)
15 was for a period of not more than 10
16 months and such alien has been outside
17 the United States for at least 2 months
18 during the 12 months preceding the date
19 the alien again is applying for admission to
20 the United States as an H-2A worker.

21 “(v) SPECIAL RULE FOR ALIENS EMPLOYED AS
22 SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—
23 Notwithstanding any other provision of this section, an
24 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
25 ployment as a shepherd, goatherder, or dairy worker—

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

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

5 “(w) DEFINITIONS.—For purposes of this section:

6 “(1) AREA OF EMPLOYMENT.—The term ‘area
7 of employment’ means the area within normal com-
8 muting distance of the worksite or physical location
9 where the work of the H-2A worker is or will be
10 performed. If such worksite or location is within a
11 Metropolitan Statistical Area, any place within such
12 area is deemed to be within the area of employment.

13 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible
14 individual’ means, with respect to employment, an
15 individual who is not an unauthorized alien (as de-
16 fined in section 274A(h)(3)) with respect to that em-
17 ployment.

18 “(3) DISPLACE.—In the case of a petition with
19 respect to one or more H-2A workers by an em-
20 ployer, the employer is considered to ‘displace’ a
21 United States worker from a job if the employer lays
22 off the worker from a job that is essentially the
23 equivalent of the job for which the H-2A worker or
24 workers is or are sought. A job shall not be consid-
25 ered to be essentially equivalent of another job un-

1 less it involves essentially the same responsibilities,
2 was held by a United States worker with substan-
3 tially equivalent qualifications and experience, and is
4 located in the same area of employment as the other
5 job.

6 “(4) H-2A WORKER.—The term ‘H-2A worker’
7 means a nonimmigrant described in section
8 101(a)(15)(H)(ii)(a).

9 “(5) LAYS OFF.—

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

12 “(i) means to cause the worker’s loss
13 of employment, other than through a dis-
14 charge for inadequate performance, viola-
15 tion of workplace rules, cause, voluntary
16 departure, voluntary retirement, or the ex-
17 piration of a grant or contract (other than
18 a temporary employment contract entered
19 into in order to evade a condition described
20 in paragraph (3) or (7) of subsection (a);
21 but

22 “(ii) does not include any situation in
23 which the worker is offered, as an alter-
24 native to such loss of employment, a simi-
25 lar employment opportunity with the same

1 employer (or, in the case of a placement of
2 a worker with another employer under sub-
3 section (a)(7), with either employer de-
4 scribed in such subsection) at equivalent or
5 higher compensation and benefits than the
6 position from which the employee was dis-
7 charged, regardless of whether or not the
8 employee accepts the offer.

9 “(B) CONSTRUCTION.—Nothing in this
10 paragraph is intended to limit an employee’s
11 rights under a collective bargaining agreement
12 or other employment contract.

13 “(6) PREVAILING WAGE.—The term ‘prevailing
14 wage’ means, with respect to an agricultural occupa-
15 tion in an area of intended employment, the rate of
16 wages that includes the 51st percentile of employees
17 with similar experience and qualifications in the ag-
18 ricultural occupation in the area of intended employ-
19 ment, expressed in terms of the prevailing method of
20 pay for the occupation in the area of intended em-
21 ployment.

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

24 “(A) is a citizen or national of the United
25 States; or

1 “(B) is an alien who is lawfully admitted
2 for permanent residence, is admitted as a ref-
3 ugee under section 207, is granted asylum
4 under section 208, or is an immigrant otherwise
5 authorized, by this Act or by the Secretary of
6 Homeland Security, to be employed.”.

7 (b) CONFORMING AMENDMENT.—Section
8 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended—

10 (1) by striking “temporarily” and inserting “on
11 a temporary or seasonal basis”; and

12 (2) by striking “of a temporary or seasonal na-
13 ture” and inserting “and with respect to whom the
14 intending employer has filed with the Secretary
15 under section 218(a)”.

16 (c) REGULATIONS.—Not later than 180 days after
17 the date of the enactment of this Act, the Secretary of
18 Homeland Security shall promulgate regulations, in ac-
19 cordance with the notice and comment provisions of sec-
20 tion 553 of title 5, United States Code, to provide for the
21 uniform procedures for the issuance of visas to non-
22 immigrants described in section 101(a)(15)(H)(ii)(a) of
23 the Immigration and Nationality Act (8 U.S.C
24 1101(a)(15)(H)(ii)(a)) by visa-issuing United States con-
25 sulates and consular officers.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date that is 180 days
3 after the date of the enactment of this Act.

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

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

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

11 “(a) IN GENERAL.—The Secretary of Agriculture
12 may make grants, not to exceed \$1,000,000 annually, to
13 employers of H-2A workers for the purpose of reimburs-
14 ing the employers for the amounts paid to H-2A workers
15 under section 218(m)(4)(B) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1188)) (as amended by the ‘Tem-
17 porary Agricultural Labor Reform Act of 2005’) if, before
18 the expiration of the period of employment specified in the
19 job offer, the services of the worker are no longer required
20 for reasons beyond the control of the employer due to any
21 form of natural disaster, including but not limited to a
22 flood, hurricane, freeze, earthquake, fire, drought, plant
23 or animal disease or pest infestation, or regulatory
24 drought.

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

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

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

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

12 “ The Secretary shall establish an H-2A Worker Pro-
13 gram Ombudsman within the Office of Agriculture Labor
14 Affairs, Office of the Chief Economist, U.S. Department
15 of Agriculture. The H-2A Ombudsman shall help resolve
16 disputes and other conflicts between contracted H-2A
17 workers and their employers, other than alleged violations
18 of conditions required under section 218(a) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1188(a)).”.

20 **SEC. 5. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
21 **SERVICES CORPORATION.**

22 (a) IN GENERAL.—Section 305 of the Immigrant Re-
23 form and Control Act of 1986 (8 U.S.C. 1101 note) is
24 amended—

1 (1) by striking “A nonimmigrant” and inserting
2 “(a) IN GENERAL.—A nonimmigrant”; and

3 (2) by adding at the end the following:

4 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
5 poration may not provide legal assistance for or on behalf
6 of any alien, and may not provide financial assistance to
7 any person or entity that provides legal assistance for or
8 on behalf of any alien, unless the alien—

9 “(1) is present in the United States at the time
10 the legal assistance is provided; and

11 “(2) is an alien to whom subsection (a) ap-
12 plies.”.

13 (b) MEDIATION.—Section 305 of the Immigrant Re-
14 form and Control Act of 1986 (8 U.S.C. 1101 note), as
15 amended by subsection (a), is further amended by adding
16 at the end the following:

17 “(c) REQUIRED MEDIATION.—The Legal Services
18 Corporation may not bring a civil action for damages on
19 behalf of a nonimmigrant described in section
20 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
21 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90
22 days prior to bringing the action a request has been made
23 to the Federal Mediation and Conciliation Service to assist
24 the parties in reaching a satisfactory resolution of all

1 issues involving all parties to the dispute and mediation
2 has been attempted.”.

3 (c) CONDITION FOR ENTRY ONTO PROPERTY FOR
4 LEGAL SERVICES CORPORATION REPRESENTATION.—

5 Section 305 of the Immigrant Reform and Control Act
6 of 1986 (8 U.S.C. 1101 note), as amended by subsection
7 (b), is further amended by adding at the end the following:

8 “(d) CONDITION FOR ENTRY ONTO EMPLOYER’S
9 PROPERTY FOR LEGAL SERVICES CORPORATION REP-
10 RESENTATION.—No employer of a nonimmigrant having
11 status under section 101(a)(15)(H)(ii)(a) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))
13 shall be required to permit any recipient of a grant or con-
14 tract under section 1007 of the Legal Services Corpora-
15 tion Act (42 U.S.C. 2996f), or any employee of such a
16 recipient, to enter upon the employer’s property, unless
17 such recipient or employee has a pre-arranged appoint-
18 ment with a specific nonimmigrant having such status.”.

○