

109TH CONGRESS
1ST SESSION

S. 2087

To amend the Immigration and Nationality Act to provide for the employment of foreign agricultural workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2005

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

A BILL

To amend the Immigration and Nationality Act to provide for the employment of foreign agricultural 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Agricultural Employment and Workforce Protection Act
6 of 2005”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BORDER SECURITY

Sec. 201. Definition.

Sec. 202. Admission of temporary H-2A workers.

Sec. 203. Legal assistance from the Legal Services Corporation.

Sec. 301. Admission of necessary agricultural workers.
Sec. 302. Effective date.

(a) IN GENERAL.—The Secretary of Homeland Security shall prepare and submit to Congress, at the earliest practicable date, a comprehensive plan to—

9 (2) effectively enforce the immigration laws of
10 the United States in the interior of the United
11 States.

- (1) detailed strategies;
- (2) time lines for implementation; and
- (3) cost estimates for such activities.

1 (c) INTERIM PLAN.—The mandates contained in this
2 title shall serve as an interim plan until Congress enacts
3 legislation to implement the comprehensive plan submitted
4 by the Secretary of Homeland Security under subsection
5 (a).

6 **SEC. 102. USE OF DEPARTMENT OF DEFENSE EQUIPMENT**
7 **FOR SURVEILLANCE OF INTERNATIONAL**
8 **LAND BORDERS OF THE UNITED STATES.**

9 (a) AVAILABILITY OF EQUIPMENT.—The Secretary
10 of Homeland Security, in collaboration with the Secretary
11 of Defense, shall develop and implement a plan to provide
12 military support to civilian law enforcement agencies, in-
13 cluding the use of unmanned aerial vehicles, other surveil-
14 lance equipment, and other equipment of the Department
15 of Defense, to assist the surveillance activities of the De-
16 partment of Homeland Security at and near the inter-
17 national land borders of the United States.

18 (b) REPORTS.—

19 (1) INITIAL REPORT.—Not later than 6 months
20 after the date of enactment of this Act, the Sec-
21 retary of Homeland Security and the Secretary of
22 Defense shall submit a joint report to Congress,
23 which describes the use of Department of Defense
24 equipment to assist the surveillance efforts of the

1 Department of Homeland Security and to support
2 the plan developed under subsection (a).

3 (2) ANNUAL REPORTS.—Not later than 1 year
4 after the date of enactment of this Act, and annually
5 thereafter until the Secretary of Homeland Security
6 can procure the equipment necessary to achieve
7 operational control of the international land borders
8 of the United States, the Secretary of Homeland Se-
9 curity and the Secretary of Defense shall submit
10 joint reports to Congress that describe—

11 (A) the types of equipment and other sup-
12 port utilized for border security; and

13 (B) the effectiveness of such equipment
14 and support.

15 (c) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as may be
17 necessary to carry out this section.

18 **SEC. 103. PORTS OF ENTRY.**

19 (a) CONSTRUCTION AUTHORIZED.—The Secretary of
20 Homeland Security may construct not more than 30 addi-
21 tional land ports of entry along the northern and southern
22 international land borders of the United States at loca-
23 tions to be determined by the Secretary if such construc-
24 tion will enhance the border security of the United States.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out subsection (a).

4 **SEC. 104. ADDITIONAL CUSTOMS AND BORDER PROTEC-**
5 **TION OFFICERS.**

6 In addition to the positions authorized by section
7 5202 of the Intelligence Reform and Terrorism Prevention
8 Act of 2004 (Public Law 108–458; 118 Stat. 3734), the
9 Secretary of Homeland Security shall, for each of the fis-
10 cal years between fiscal year 2007 and 2011, increase by
11 no less than 250 the number of positions for full-time ac-
12 tive duty Customs and Border Protection Officers.

13 **SEC. 105. INTERIOR ENFORCEMENT.**

14 (a) STATE AND LOCAL IMMIGRATION LAW ENFORCE-
15 MENT.—

16 (1) IN GENERAL.—Notwithstanding any other
17 provision of law, appropriately trained law enforce-
18 ment personnel of a State or a unit of local govern-
19 ment are authorized to investigate, identify, appre-
20 hend, arrest, detain, or transfer to Federal custody
21 aliens in the United States (including the transpor-
22 tation of such aliens across State lines to detention
23 centers), for the purpose of assisting in the enforce-
24 ment of the immigration laws of the United States

1 in the normal course of carrying out the law enforce-
 2 ment duties of such personnel.

3 (2) REIMBURSEMENT OF COSTS.—The Sec-
 4 retary of Homeland Security shall reimburse States
 5 and units of local government for all reasonable
 6 costs incurred by that State or local government to
 7 carry out the activities described in paragraph (1).

8 (b) FEDERAL CUSTODY OF ILLEGAL ALIENS APPRE-
 9 HENDED BY STATE OR LOCAL LAW ENFORCEMENT.—
 10 Title II of the Immigration and Nationality Act is amend-
 11 ed by adding after section 240C the following:

12 “TRANSFER OF ILLEGAL ALIENS FROM STATE TO
 13 FEDERAL CUSTODY

14 “SEC. 240D. (a) IN GENERAL.—If the head of a law
 15 enforcement entity of a State, or a political subdivision
 16 of a State, requests the Secretary of Homeland Security
 17 to take an illegal alien into Federal custody, the Secretary
 18 shall—

19 “(1) not later than 72 hours after such request
 20 is received from the State, take such alien into the
 21 custody of the Federal Government and incarcerate
 22 the alien; or

23 “(2) request the relevant State or local law en-
 24 forcement agency to temporarily detain or transport
 25 the illegal alien to a location for transfer to Federal
 26 custody.

1 “(b) DESIGNATED INCARCERATION FACILITY.—The
2 Secretary of Homeland Security shall designate not less
3 than 1 Federal, State, or local prison or jail or a private
4 contracted prison or detention facility within each State
5 as the central facility for that State to transfer custody
6 of criminal or illegal aliens to the Department of Home-
7 land Security.

8 “(c) REIMBURSEMENT TO STATES AND LOCAL GOV-
9 ERNMENTS.—The Department of Homeland Security shall
10 reimburse each State or a political subdivision of a State
11 for all reasonable expenses incurred by the State or polit-
12 ical subdivision in the detention and transportation of a
13 criminal or illegal alien.”.

14 (c) IMMIGRATION AND CUSTOMS ENFORCEMENT IN-
15 VESTIGATIVE PERSONNEL.—

16 (1) ADDITIONAL POSITIONS AUTHORIZED.—In
17 addition to the positions authorized by section 5203
18 of the Intelligence Reform and Terrorism Prevention
19 Act of 2004 (Public Law 108–458; 118 Stat. 3734),
20 the Secretary of Homeland Security shall, for each
21 of fiscal years 2007 through 2011, increase by not
22 less than 400 the number of investigative personnel
23 within the Department of Homeland Security re-
24 sponsible for investigating immigration status viola-
25 tions.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated for each of
3 fiscal years 2007 through 2011 such sums as may
4 be necessary to carry out this subsection.

5 (d) LISTING OF IMMIGRATION VIOLATORS IN THE
6 NATIONAL CRIME INFORMATION CENTER DATABASE.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of enactment of this Act, the Sec-
9 retary of Homeland Security shall provide the Na-
10 tional Crime Information Center of the Federal Bu-
11 reau of Investigation (referred to in this section as
12 the “NCIC”) with information related to—

13 (A) any alien against whom a final order
14 of removal has been issued;

15 (B) any alien who is subject to a voluntary
16 departure agreement that has become invalid
17 under section 240B(a)(2) of the Immigration
18 and Nationality Act (8 U.S.C. 1229c(a)(2));
19 and

20 (C) any alien whose visa has been revoked.

21 (2) REQUIREMENT TO PROVIDE AND USE IN-
22 FORMATION.—The information provided to the
23 NCIC under paragraph (1) shall be entered into the
24 Immigration Violators File of the NCIC database if
25 a name and date of birth are available for the indi-

vidual, regardless of whether the alien received notice of a final order of removal or the alien has already been removed.

(3) REMOVAL OF INFORMATION.—If an individual is granted cancellation of removal under section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b) or is granted permission to legally enter the United States after a voluntary departure under section 240B of such Act (8 U.S.C. 1229c), any information entered into the NCIC database in accordance with this subsection shall be promptly removed.

(e) INCREASING FEDERAL DETENTION SPACE.—

(1) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(A) IN GENERAL.—In addition to facilities being used for the detention of aliens as of the date of enactment of this Act, the Secretary of Homeland Security shall construct or acquire 20 detention facilities in the United States with sufficient capacity to detain a combined total of not less than 200,000 individuals at any time. Such facilities shall be used for aliens detained pending removal or a decision on removal of such aliens from the United States.

1 (B) DETERMINATION OF LOCATION.—The
2 location of each detention facility built or ac-
3 quired pursuant to this paragraph shall—

4 (i) be determined by the senior officer
5 responsible for detention and removal oper-
6 ations of the Department of Homeland Se-
7 curity, subject to the approval of the Sec-
8 retary of Homeland Security; and

9 (ii) enable the Department to in-
10 crease, to the maximum extent practicable,
11 the annual rate and level of removals of il-
12 legal aliens from the United States.

13 (C) USE OF INSTALLATIONS UNDER BASE
14 CLOSURE LAWS.—In acquiring detention facili-
15 ties under this paragraph, the Secretary of
16 Homeland Security shall consider the transfer
17 of appropriate portions of military installations
18 approved for closure or realignment under the
19 Defense Base Closure and Realignment Act of
20 1990 (part A of title XXIX of Public Law 101–
21 510; 10 U.S.C. 2687 note) for use in accord-
22 ance with subparagraph (A).

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENT.—Section 241(g)(1) of the Immigration and
25 Nationality Act (8 U.S.C. 1231(g)(1)) is amended

1 by striking “may expend” and inserting “shall ex-
 2 pend”.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated such sums
 5 as may be necessary to carry out this section.

6 **SEC. 106. EXPANDING CATEGORY OF INADMISSIBLE**
 7 **ALIENS.**

8 (a) CRIMINAL STREET GANGS.—Section 212(a)(2) of
 9 the Immigration and Nationality Act (8 U.S.C.
 10 1182(a)(2)) is amended by adding at the end the fol-
 11 lowing:

12 “(J) ALIENS WHO ARE MEMBERS OF
 13 CRIMINAL STREET GANGS.—Any alien who is a
 14 member of a criminal street gang (as defined in
 15 section 521(a) of title 18, United States Code)
 16 is inadmissible.”.

17 (b) DEPORTING CRIMINAL STREET GANG MEM-
 18 BERS.—Section 237(a)(2) of the Immigration and Nation-
 19 ality Act (8 U.S.C. 1227(a)(2)) is amended by adding at
 20 the end the following:

21 “(F) ALIENS WHO ARE MEMBERS OF
 22 CRIMINAL STREET GANGS.—Any alien who is a
 23 member of a criminal street gang (as defined in
 24 section 521(a) of title 18, United States Code)
 25 is deportable.”.

1 (c) CRIMINAL ALIENS.—Any alien convicted of a fel-
 2 ony or a misdemeanor in the United States is ineligible
 3 to receive a visa and ineligible to be admitted to the United
 4 States.

5 **TITLE II—TEMPORARY H-2A** 6 **WORKERS**

7 **SEC. 201. DEFINITION.**

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

11 (1) by striking “and including agricultural labor
 12 defined in section 3121(g) of the Internal Revenue
 13 Code of 1954” and inserting “, which shall include
 14 labor and services relating to commodities, livestock,
 15 dairy, forestry, landscaping, fishing, and the proc-
 16 essing of meat, poultry, and fish, and agricultural
 17 labor (as defined in section 3121(g) of the Internal
 18 Revenue Code of 1986),”; and

19 (2) by striking “, of a temporary or seasonal
 20 nature”.

21 **SEC. 202. ADMISSION OF TEMPORARY H-2A WORKERS.**

22 (a) PROCEDURE FOR ADMISSION.—

23 (1) IN GENERAL.—Section 218 of the Immigra-
 24 tion and Nationality Act (8 U.S.C. 1188) is amend-
 25 ed to read as follows:

1 “ADMISSION OF TEMPORARY H-2A WORKERS

2 “SEC. 218. (a) DEFINITIONS.—In this section and
3 section 218A:

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

12 “(2) DISPLACE.—In the case of a petition with
13 respect to an H-2A worker filed by an employer, the
14 employer ‘displaces’ a United States worker from a
15 job if the employer lays off the worker from a job
16 that is essentially equivalent to the job for which the
17 H-2A worker is sought. A job shall not be consid-
18 ered to be essentially equivalent to another job un-
19 less the job—

20 “(A) involves essentially the same respon-
21 sibilities as the other job;

22 “(B) was held by a United States worker
23 with substantially equivalent qualifications and
24 experience; and

1 “(C) is located in the same area of employ-
2 ment as the other job.

3 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
4 individual’ means an individual who is not an unau-
5 thorized alien (as defined in section 274A(h)(3))
6 with respect to the employment of the individual.

7 “(4) EMPLOYER.—The term ‘employer’ means
8 an employer who hires workers to perform agricul-
9 tural employment.

10 “(5) H-2A WORKER.—The term ‘H-2A worker’
11 means a nonimmigrant described in section
12 101(a)(15)(H)(ii)(a).

13 “(6) LAY OFF.—

14 “(A) IN GENERAL.—The term ‘lay off’—

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

1 “(ii) does not include any situation in
 2 which the worker is offered, as an alter-
 3 native to such loss of employment, a simi-
 4 lar employment opportunity with the same
 5 employer (or, in the case of a placement of
 6 a worker with another employer under sub-
 7 section (h)(2), with either employer de-
 8 scribed in such subsection) at equivalent or
 9 higher compensation and benefits than the
 10 position from which the employee was dis-
 11 charged, regardless of whether or not the
 12 employee accepts the offer.

13 “(B) CONSTRUCTION.—Nothing in this
 14 paragraph is intended to limit an employee’s
 15 rights under a collective bargaining agreement
 16 or other employment contract.

17 “(7) LEVEL II H-2A WORKER.—The term ‘Level
 18 II H-2A worker’ means a nonimmigrant described
 19 in section 101(a)(15)(H)(ii)(a) who—

20 “(A) has been employed as an H-2A work-
 21 er for at least 3 years;

22 “(B) has not violated a material term or
 23 condition of employment as an H-2A worker;

24 “(C) works in a supervisory capacity; and

1 “(D) meets minimum skill levels in the oc-
 2 cupation in which they are employed, as deter-
 3 mined, by regulation, by the Secretary of
 4 Labor, based on surveys conducted by State
 5 workforce agencies.

6 “(8) PREVAILING WAGE.—The term ‘prevailing
 7 wage’ means the wage rate that includes the 51st
 8 percentile of employees with similar experience and
 9 qualifications in the agricultural occupation in the
 10 area of intended employment, expressed in terms of
 11 the prevailing method of pay for the occupation in
 12 the area of intended employment.

13 “(9) UNITED STATES WORKER.—The term
 14 ‘United States worker’ means any worker who is a
 15 national of the United States, an alien lawfully ad-
 16 mitted for permanent residence, and any other alien
 17 authorized to work in the relevant job opportunity
 18 within the United States, except—

19 “(A) an alien admitted or otherwise pro-
 20 vided status under section 101(a)(15)(H)(ii)(a);
 21 and

22 “(B) an alien provided blue card status
 23 under section 218B.

24 “(b) APPLICATION.—An alien may not be admitted
 25 as an H-2A worker unless the employer has filed with the

1 Secretary of Homeland Security a petition attesting to the
2 following:

3 “(1) TEMPORARY WORK OR SERVICES.—

4 “(A) IN GENERAL.—The employer is seek-
5 ing to employ a specific number of agricultural
6 workers on a temporary basis and will provide
7 compensation to such workers at a specified
8 wage rate and under specified conditions.

9 “(B) SKILLED WORKERS.—If the worker is
10 a Level II H-2A worker, the employer will re-
11 cruit the worker separately and the attestation
12 will delineate separate wage rate and conditions
13 of employment for such worker.

14 “(C) DEFINITION.—For purposes of this
15 paragraph, a worker is employed on a tem-
16 porary basis if the employer intends to employ
17 the worker for an 11-month contract period.

18 “(2) BENEFITS, WAGES, AND WORKING CONDI-
19 TIONS.—The employer will provide, at a minimum,
20 the benefits, wages, and working conditions required
21 by subsection (k) to all workers employed in the jobs
22 for which the H-2A worker is sought and to all
23 other temporary workers in the same occupation at
24 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 of the H–
5 2A worker and during the 30-day period imme-
6 diately preceding such period of employment in the
7 occupation at the place of employment for which the
8 employer seeks approval to employ H–2A workers.

9 “(4) RECRUITMENT.—

10 “(A) IN GENERAL.—The employer—

11 “(i) conducted adequate recruitment
12 in the area of employment before filing the
13 attestation; and

14 “(ii) was unsuccessful in locating a
15 qualified United States worker for the job
16 opportunity for which the H–2A worker is
17 sought.

18 “(B) OTHER REQUIREMENTS.—The ade-
19 quate recruitment requirement under subpara-
20 graph (A) is satisfied if the employer places—

21 “(i) a job order with the America’s
22 Job Bank Program of the Department of
23 Labor; and

24 “(ii) a Sunday advertisement in a
25 newspaper of general circulation that is

1 likely to be patronized by a potential work-
2 er in the area of intended employment.

3 “(C) ADVERTISEMENT REQUIREMENT.—

4 The advertisement requirement under subpara-
5 graph (B)(ii) is satisfied if the advertisement—

6 “(i) names the employer;

7 “(ii) directs applicants to report or
8 send resumes, as appropriate for the occu-
9 pation, to the employer;

10 “(iii) provides a description of the va-
11 cancy that is specific enough to apprise
12 United States workers of the job oppor-
13 tunity for which certification is sought;

14 “(iv) describes the geographic area
15 with enough specificity to apprise appli-
16 cants of any travel requirements and where
17 applicants will likely have to reside to per-
18 form the job;

19 “(v) states the rate of pay, which
20 shall not be less than the wage paid for the
21 occupation in the area of intended employ-
22 ment; and

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

1 “(D) END OF RECRUITMENT REQUIRE-
2 MENT.—The requirement to recruit United
3 States workers shall terminate on the first day
4 of the contract period that work begins.

5 “(5) OFFERS TO UNITED STATES WORKERS.—
6 The employer has offered or will offer the job for
7 which the nonimmigrant is sought to any eligible
8 United States worker who—

9 “(A) applies;

10 “(B) is at least as qualified for the job as
11 the nonimmigrant; and

12 “(C) will be available at the time and place
13 of need.

14 “(6) PROVISION OF INSURANCE.—If the job for
15 which the H–2A worker is sought is not covered by
16 State workers’ compensation law, the employer will
17 provide, at no cost to the worker, insurance covering
18 injury and disease arising out of, and in the course
19 of, the worker’s employment, which will provide ben-
20 efits at least equal to those provided under the State
21 workers’ compensation law for comparable employ-
22 ment.

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 hiring of H-2A work-
2 ers.

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

10 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
11 ing day after the date on which a petition under this sec-
12 tion is filed, the employer shall make a copy of each such
13 petition (and any necessary accompanying documents)
14 available for public examination, at the employer’s prin-
15 cipal place of business or worksite.

16 “(d) LIST.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security shall maintain a list of the petitions filed
19 under subsection (b), which shall—

20 “(A) be sorted by employer; and

21 “(B) include the number of H-2A workers
22 sought, the wage rate, the period of intended
23 employment, and the date of need for each
24 alien.

1 “(2) AVAILABILITY.—The Secretary of Home-
2 land Security shall, at least monthly, submit a copy
3 of the list described in paragraph (1) to the Sec-
4 retary of Labor, who shall make the list available for
5 public examination.

6 “(e) PETITIONING FOR ADMISSION.—

7 “(1) IN GENERAL.—An employer, or an asso-
8 ciation acting as an agent or joint employer for its
9 members, that seeks the admission into the United
10 States of an H-2A worker shall file with the Sec-
11 retary of Homeland Security a petition that includes
12 the attestations described in subsection (b).

13 “(2) CONSIDERATION OF PETITIONS.—For each
14 petition filed and considered under this subsection—

15 “(A) the Secretary of Homeland Security
16 may not require such petition to be filed more
17 than 28 days before the first date the employer
18 requires the labor or services of the H-2A
19 worker; and

20 “(B) unless the Secretary of Homeland Se-
21 curity determines that the petition is incomplete
22 or obviously inaccurate, the Secretary, not later
23 than 7 days after the date on which such peti-
24 tion was filed, shall either approve or deny the
25 petition.

1 “(3) EXPEDITED ADJUDICATION.—The Sec-
2 retary of Homeland Security shall—

3 “(A) establish a procedure for expedited
4 adjudication of petitions filed under this sub-
5 section; and

6 “(B) not later than 7 working days after
7 such filing, transmit, by fax, cable, or other
8 means assuring expedited delivery, a copy of no-
9 tice of action on the petition—

10 “(i) in the case of approved petitions,
11 to the petitioner, the Secretary of Labor,
12 and to the appropriate immigration officer
13 at the port of entry or United States con-
14 sulate where the petitioner has indicated
15 that the alien beneficiary or beneficiaries
16 will apply for a visa or admission to the
17 United States;

18 “(ii) in the case of denied petitions, to
19 the petitioner, including reasons for the de-
20 nial and instructions on how to appeal
21 such denial.

22 “(4) PETITION AGREEMENTS.—By filing an H-
23 2A petition, a petitioner and each employer consents
24 to allow access to the site where the labor is being

1 performed for the purpose of determining compli-
2 ance with H-2A requirements.

3 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

4 “(1) PERMITTING FILING BY AGRICULTURAL
5 ASSOCIATIONS.—A petition to hire an alien as a
6 temporary agricultural worker may be filed by an as-
7 sociation of agricultural employers which use agri-
8 cultural services.

9 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
10 EMPLOYERS.—If an association is a joint or sole em-
11 ployer of temporary agricultural workers, such work-
12 ers may be transferred among its members to per-
13 form agricultural services of a temporary nature for
14 which the petition was approved.

15 “(3) STATEMENT OF LIABILITY.—The petition
16 shall include a clear statement explaining the liabil-
17 ity under this section of an employer who places an
18 H-2A worker with another employer authorized to
19 employ H-2A workers if the other employer dis-
20 places a United States worker in violation of this
21 section.

22 “(4) TREATMENT OF VIOLATIONS.—

23 “(A) INDIVIDUAL MEMBER.—If an indi-
24 vidual member of a joint employer association
25 violates any condition for approval with respect

1 to the member's petition, the Secretary of
2 Homeland Security shall deny such petition
3 only with respect to that member of the associa-
4 tion unless the Secretary of Labor determines
5 that the association or other member partici-
6 pated in, had knowledge of, or had reason to
7 know of the violation.

8 “(B) ASSOCIATION OF AGRICULTURAL EM-
9 PLOYERS.—

10 “(i) JOINT EMPLOYER.—If an associa-
11 tion representing agricultural employers as
12 a joint employer violates any condition for
13 approval with respect to the association's
14 petition, the Secretary of Homeland Secu-
15 rity shall deny such petition only with re-
16 spect to the association and may not apply
17 the denial to any individual member of the
18 association, unless the Secretary of Labor
19 determines that the member participated
20 in, had knowledge of, or had reason to
21 know of the violation.

22 “(ii) SOLE EMPLOYER.—If an associa-
23 tion of agricultural employers approved as
24 a sole employer violates any condition for
25 approval with respect to the association's

1 petition, no individual member of such as-
 2 sociation may be the beneficiary of the
 3 services of temporary alien agricultural
 4 workers admitted under this section in the
 5 occupation in which such aliens were em-
 6 ployed by the association which was denied
 7 approval during the period such denial is
 8 in force, unless such member employs such
 9 aliens in the occupation in question di-
 10 rectly or through an association which is a
 11 joint employer of such workers with the
 12 member.

13 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
 14 Secretary of Homeland Security shall issue regulations to
 15 provide for an expedited procedure—

16 “(1) for the review of a denial of a petition
 17 under this section by the Secretary; or

18 “(2) at the applicant’s request, for a de novo
 19 administrative hearing respecting the denial.

20 “(h) MISCELLANEOUS PROVISIONS.—

21 “(1) REQUIREMENTS FOR PLACEMENT OF H-2A
 22 WORKERS WITH OTHER EMPLOYERS.—A non-
 23 immigrant who is admitted into the United States as
 24 an H-2A worker may be transferred to another em-
 25 ployer that has attested to the Secretary of Home-

1 land Security that the employer has filed a petition
 2 under this section and is in compliance with this sec-
 3 tion. The Secretary of Homeland Security and the
 4 Secretary of State shall issue regulations to establish
 5 a process for the approval and reissuance of visas
 6 for transferred H-2A workers, as necessary.

7 “(2) ENDORSEMENT OF DOCUMENTS.—The
 8 Secretary of Homeland Security shall provide for the
 9 endorsement of entry and exit documents of H-2A
 10 workers as may be necessary to carry out this sec-
 11 tion and to provide notice for purposes of section
 12 274A.

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

18 “(4) FEES.—

19 “(A) IN GENERAL.—The Secretary of
 20 Homeland Security may require, as a condition
 21 of approving the petition, the payment of a fee,
 22 in accordance with subparagraph (B), to re-
 23 cover the reasonable cost of processing peti-
 24 tions.

25 “(B) FEE BY TYPE OF EMPLOYEE.—

1 “(i) SINGLE EMPLOYER.—An em-
 2 ployer whose petition for temporary alien
 3 agricultural workers is approved shall, for
 4 each approved petition, pay a fee that—

5 “(I) subject to subclause (II), is
 6 equal to \$100 plus \$10 for each ap-
 7 proved H–2A worker; and

8 “(II) does not exceed \$1,000.

9 “(ii) ASSOCIATION.—Each employer-
 10 member of a joint employer association
 11 whose petition for temporary agricultural
 12 aliens is approved shall, for each such ap-
 13 proved petition, pay a fee that—

14 “(I) subject to subclause (II), is
 15 equal to \$100 plus \$10 for each ap-
 16 proved H–2A worker; and

17 “(II) does not exceed \$1,000.

18 “(iii) LIMITATION ON ASSOCIATION
 19 FEES.—A joint employer association under
 20 clause (ii) shall not be charged a separate
 21 fee.

22 “(C) METHOD OF PAYMENT.—The fees
 23 collected under this paragraph shall be paid by
 24 check or money order to the Department of
 25 Homeland Security. In the case of employers of

1 H-2A workers that are members of a joint em-
2 ployer association applying on their behalf, the
3 aggregate fees for all employers of H-2A work-
4 ers under the petition may be paid by 1 check
5 or money order.

6 “(D) INCREASE IN FEES.—For calendar
7 year 2007 and each subsequent calendar year,
8 the dollar amounts in subparagraph (B) may be
9 increased by an amount equal to—

10 “(i) such dollar amount; multiplied by

11 “(ii) the percentage by which the av-
12 erage of the Consumer Price Index for all
13 urban consumers (United States city aver-
14 age) for the 12-month period ending with
15 August of the preceding calendar year ex-
16 ceeds such average for the 12-month pe-
17 riod ending with August 2005.

18 “(5) EMPLOYMENT VERIFICATION PROGRAM.—

19 “(A) IN GENERAL.—Not later than 12
20 months after the date of enactment of this
21 paragraph, the Secretary of Homeland Security
22 shall establish a mandatory employment
23 verification program for all employers of H-2A
24 workers to verify the eligibility of all individuals
25 hired by each such employer, including those

1 who present an H-2A visa to work in the
2 United States.

3 “(B) EMPLOYER COMPLIANCE.—Each em-
4 ployer of an H-2A worker shall comply with the
5 requirements promulgated by the Secretary of
6 Homeland Security to verify the identity and
7 employment eligibility of all individuals hired.

8 “(C) REGULATIONS.—In carrying out the
9 program under this paragraph, the Secretary of
10 Homeland Security shall promulgate regulations
11 to require each employer to verify the employ-
12 ment eligibility of each employee hired
13 through—

14 “(i) a secure Internet site;

15 “(ii) a machine capable of reading the
16 H-2A visa, which shall serve as the identi-
17 fication and employment eligibility docu-
18 ment for each H-2A alien; or

19 “(iii) a toll-free telephone number to
20 check the accuracy of any social security
21 number presented to the employer.

22 “(6) EMPLOYER-BASED APPLICATION FOR PER-
23 MANENT RESIDENCE.—

24 “(A) IN GENERAL.—The employer of a
25 Level II H-2A worker who has been employed

1 in such status for not less than 5 years may file
2 an application for an employment-based adjust-
3 ment of status under section 245(k) for such
4 worker.

5 “(B) EFFECT OF APPLICATION.—A Level
6 II H-2A worker for whom an application is
7 filed under subparagraph (A) may continue to
8 be employed in such status until—

9 “(i) such application has been adjudicated; or
10

11 “(ii) such worker has violated any
12 provision of this section.

13 “(i) FAILURE TO MEET CONDITIONS.—

14 “(1) IN GENERAL.—The Secretary of Labor
15 shall be responsible for conducting investigations
16 and random audits of employer work sites to ensure
17 compliance with the requirements of the H-2A pro-
18 gram and all other requirements under this Act. All
19 monetary fines levied against violating employers
20 shall be paid to the Department of Labor and used
21 to enhance the Department of Labor’s investigatory
22 and auditing power.

23 “(2) PENALTIES FOR FAILURE TO MEET CONDI-
24 TIONS.—If the Secretary of Labor finds, after notice
25 and opportunity for a hearing, a failure to meet any

1 condition under subsection (b), or a material mis-
2 representation of fact in a petition under subsection
3 (b)—

4 “(A) the Secretary of Labor—

5 “(i) shall notify the Secretary of
6 Homeland Security of such finding; and

7 “(ii) may impose such other adminis-
8 trative remedies, including civil money pen-
9 alties in an amount not to exceed \$1,000
10 per violation, as the Secretary of Labor de-
11 termines to be appropriate; and

12 “(B) the Secretary of Homeland Security
13 may disqualify the employer from the employ-
14 ment of H-2A workers for a period of 1 year.

15 “(3) PENALTIES FOR WILLFUL FAILURE.—If
16 the Secretary of Labor finds, after notice and oppor-
17 tunity for a hearing, a willful failure to meet a mate-
18 rial condition of subsection (b) or a willful misrepre-
19 sentation of a material fact in a petition under sub-
20 section (b)—

21 “(A) the Secretary of Labor—

22 “(i) shall notify the Secretary of
23 Homeland Security of such finding; and

24 “(ii) may impose such other adminis-
25 trative remedies, including civil money pen-

alties in an amount not to exceed \$5,000
per violation, as the Secretary of Labor de-
termines to be appropriate; and

“(B) the Secretary of Homeland Security
may—

“(i) disqualify the employer from the
employment of H–2A workers for a period
of 2 years;

“(ii) for a second violation, disqualify
the employer from the employment of H–
2A workers for a period of 5 years; and

“(iii) for a third violation, perma-
nently disqualify the employer from the
employment of H–2A workers.

“(4) PENALTIES FOR DISPLACEMENT OF
UNITED STATES WORKERS.—If the Secretary of
Labor finds, after notice and opportunity for a hear-
ing, a willful failure to meet a material condition of
subsection (b) or a willful misrepresentation of a
material fact in a petition under subsection (b), in
the course of which failure or misrepresentation the
employer displaced a United States worker employed
by the employer during the period of employment on
the employer’s petition under subsection (b), or dur-

1 ing the period of 30 days preceding such period of
2 employment—

3 “(A) the Secretary of Labor—

4 “(i) shall notify the Secretary of
5 Homeland Security of such finding; and

6 “(ii) may impose such other adminis-
7 trative remedies, including civil money pen-
8 alties in an amount not to exceed \$15,000
9 per violation, as the Secretary of Labor de-
10 termines to be appropriate; and

11 “(B) the Secretary of Homeland Security
12 may—

13 “(i) disqualify the employer from the
14 employment of H-2A workers for a period
15 of 5 years; and

16 “(ii) for a second violation, perma-
17 nently disqualify the employer from the
18 employment of H-2A workers.

19 “(5) LIMITATIONS ON CIVIL MONEY PEN-
20 ALTIES.—The Secretary of Labor may not impose
21 total civil money penalties with respect to a petition
22 under subsection (b) in excess of \$90,000.

23 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
24 FITS.—

1 “(1) IN GENERAL.—The Secretary of Labor
2 shall be responsible for conducting investigations
3 and random audits of employer work sites to ensure
4 compliance with the requirements of the H–2A pro-
5 gram.

6 “(2) ASSESSMENT.—If the Secretary of Labor
7 finds, after notice and opportunity for a hearing,
8 that the employer has failed to pay the wages or
9 provide the housing allowance, transportation, sub-
10 sistence reimbursement, or guarantee of employment
11 attested by the employer under subsection (b)(2),
12 the Secretary of Labor shall assess payment of back
13 wages, or other required benefits, due any United
14 States worker or H–2A worker employed by the em-
15 ployer in the specific employment in question.

16 “(3) AMOUNT.—The back wages or other re-
17 quired benefits described in paragraph (2)—

18 “(A) shall be equal to the difference be-
19 tween the amount that should have been paid
20 and the amount that was paid to such worker;
21 and

22 “(B) shall be distributed to the worker to
23 whom such wages are due.

24 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
25 CONDITIONS.—

1 “(1) PREFERENTIAL TREATMENT OF ALIENS
2 PROHIBITED.—

3 “(A) IN GENERAL.—Each employer seek-
4 ing to hire United States workers shall offer
5 such workers not less than the same benefits,
6 wages, and working conditions that the em-
7 ployer is offering, intends to offer, or will pro-
8 vide to H-2A workers. No job offer may impose
9 on United States workers any restrictions or
10 obligations which will not be imposed on the
11 employer’s H-2A workers. The benefits, wages,
12 and other terms and conditions of employment
13 described in this subsection shall be provided in
14 connection with employment under this section.

15 “(B) INTERPRETATION.—Every interpreta-
16 tion and determination made under this section
17 or under any other law, regulation, or interpre-
18 tative provision regarding the nature, scope,
19 and timing of the provision of these and any
20 other benefits, wages, and other terms and con-
21 ditions of employment shall be made so that—

22 “(i) the services of workers to their
23 employers and the employment opportuni-
24 ties afforded to workers by the employers,
25 including those employment opportunities

1 that require United States workers or H–
 2 2A workers to travel or relocate in order to
 3 accept or perform employment—

4 “(I) mutually benefit such work-
 5 ers, as well as their families, and em-
 6 ployers; and

7 “(II) principally benefit neither
 8 employer nor employee; and

9 “(ii) employment opportunities within
 10 the United States benefit the United
 11 States economy.

12 “(2) REQUIRED WAGES.—

13 “(A) IN GENERAL.—Each employer apply-
 14 ing for workers under subsection (b) shall pay
 15 not less than the greater of—

16 “(i) the prevailing wage to all workers
 17 in the occupation for which the employer
 18 has applied for workers; or

19 “(ii) the applicable State minimum
 20 wage.

21 “(B) WAGES FOR LEVEL II H–2A WORK-
 22 ERS.—Each employer applying for Level II H–
 23 2A workers under subsection (b) shall pay such
 24 workers not less than the prevailing wage, as
 25 determined by the Secretary of Labor.

1 “(C) DETERMINATION OF WAGES.—An
 2 employer seeking to comply with subparagraph
 3 (A) may—

4 “(i) request and obtain a prevailing
 5 wage determination from the State employ-
 6 ment agency; or

7 “(ii) rely on other wage information,
 8 including a survey of the prevailing wages
 9 of workers in the occupation in the area of
 10 employment that has been conducted or
 11 funded by the employer or a group of em-
 12 ployers, using the methodology used by the
 13 Secretary of Labor to establish Occupa-
 14 tional Employment and Wage estimate,
 15 and any other criteria specified in regula-
 16 tions issued by the Secretary of Labor.

17 “(D) COMPLIANCE.—An employer shall be
 18 considered to have complied with the require-
 19 ment under subparagraph (A) if the employer—

20 “(i)(I) obtains a prevailing wage de-
 21 termination under subparagraph (C)(i); or

22 “(II) relies on a qualifying survey of
 23 prevailing wages; and

24 “(ii) pays such prevailing wage.

25 “(3) HOUSING REQUIREMENT.—

1 “(A) IN GENERAL.—Except as provided
 2 under subparagraph (F), each employer apply-
 3 ing for workers under subsection (b) shall offer
 4 to provide housing at no cost to—

5 “(i) all workers in job opportunities
 6 for which the employer has applied under
 7 subsection (b); and

8 “(ii) all other workers in the same oc-
 9 cupation at the same place of employment,
 10 whose place of residence is beyond normal
 11 commuting distance.

12 “(B) COMPLIANCE.—An employer meets
 13 the requirement under subparagraph (A) if the
 14 employer—

15 “(i) provides the workers with housing
 16 that meets applicable Federal standards
 17 for temporary labor camps; or

18 “(ii) secures housing for the workers
 19 that—

20 “(I) meets applicable local stand-
 21 ards for rental or public accommoda-
 22 tion housing, or other substantially
 23 similar class of habitation; or

24 “(II) in the absence of applicable
 25 local standards, meets State stand-

1 ards for rental or public accommoda-
2 tion housing or other substantially
3 similar class of habitation.

4 “(C) INSPECTION.—The employer may re-
5 quest a certificate of inspection by an approved
6 Federal or State agency to the Secretary of
7 Labor not later than 28 days before a worker
8 is scheduled to occupy housing described in sub-
9 paragraph (B). Such an inspection, and any
10 necessary follow up, including at least 1 follow
11 up visit, shall be performed by the Wage and
12 Hour Division of the Department of Labor in
13 a timely manner not later than 28 days after
14 such a request.

15 “(D) RULEMAKING.—The Secretary of
16 Labor shall issue regulations that address the
17 specific requirements for the provision of hous-
18 ing to workers engaged in the range production
19 of livestock.

20 “(E) CONSTRUCTION.—Nothing in this
21 paragraph shall be construed to require an em-
22 ployer to provide or secure housing for persons
23 who were not entitled to such housing under the
24 temporary labor certification regulations in ef-
25 fect on June 1, 1986.

1 “(F) HOUSING ALLOWANCE.—

2 “(i) AUTHORITY.—If the Governor of
3 a State certifies to the Secretary of Labor
4 that there is adequate housing available in
5 the area of intended employment for mi-
6 grant farm workers, and H-2A workers,
7 who are seeking temporary housing while
8 employed in agricultural work, an employer
9 in such State may, in lieu of offering hous-
10 ing pursuant to subparagraph (A), provide
11 a reasonable housing allowance. An em-
12 ployer who provides a housing allowance to
13 a worker shall not be required to reserve
14 housing accommodations for the worker.

15 “(ii) ASSISTANCE IN LOCATING HOUS-
16 ING.—Upon the request of a worker seek-
17 ing assistance in locating housing, an em-
18 ployer providing a housing allowance under
19 clause (i) shall make a good faith effort to
20 assist the worker in identifying and locat-
21 ing housing in the area of intended em-
22 ployment.

23 “(iii) LIMITATION.—A housing allow-
24 ance may not be used for housing that is
25 owned or controlled by the employer. An

1 employer who offers a housing allowance to
2 a worker, or assists a worker in locating
3 housing which the worker occupies, pursu-
4 ant to this clause shall not be deemed a
5 housing provider under section 203 of the
6 Migrant and Seasonal Agricultural Worker
7 Protect Act (29 U.S.C. 1823) solely by vir-
8 tue of providing such housing allowance.

9 “(iv) OTHER REQUIREMENTS.—

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

1 and an assumption of 2 persons per
2 bedroom.

3 “(II) METROPOLITAN COUNTY.—

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

19 “(v) INFORMATION.—If the employer
20 provides a housing allowance to H-2A em-
21 ployees, the employer shall provide a list to
22 the Secretary of Homeland Security and
23 the Secretary of Labor of the names and
24 local addresses of such workers.

1 “(4) REIMBURSEMENT OF TRANSPORTATION
2 COSTS.—

3 “(A) REQUIREMENT FOR REIMBURSE-
4 MENT.—A worker who completes 50 percent of
5 the period of employment of the job for which
6 the worker was hired, beginning on the first
7 day of such employment, shall be reimbursed by
8 the employer for the cost of the worker’s trans-
9 portation and subsistence from—

10 “(i) the place from which the worker
11 was approved to enter the United States to
12 the location at which the work for the em-
13 ployer is performed; or

14 “(ii) if the worker traveled from a
15 place in the United States at which the
16 worker was last employed, from such place
17 of last employment to the location at which
18 the work for the employer is performed.

19 “(B) TIMING OF REIMBURSEMENT.—Reim-
20 bursement to the worker of expenses for the
21 cost of the worker’s transportation and subsist-
22 ence to the place of employment under subpara-
23 graph (A) shall be considered timely if such re-
24 imbursement is made not later than the work-
25 er’s first regular payday after a worker com-

1 completes 50 percent of the period of employment
2 of the job opportunity as provided under this
3 paragraph.

4 “(C) ADDITIONAL REIMBURSEMENT.—A
5 worker who completes the period of employment
6 for the job opportunity involved shall be reim-
7 bursed by the employer for the cost of the
8 worker’s transportation and subsistence from
9 the work site to the place where the worker was
10 approved to enter the United States to work for
11 the employer. If the worker has contracted with
12 a subsequent employer, the previous and subse-
13 quent employer shall share the cost of the work-
14 er’s transportation and subsistence from work
15 site to work site.

16 “(D) AMOUNT OF REIMBURSEMENT.—The
17 amount of reimbursement provided to a worker
18 or alien under this paragraph shall be equal to
19 the lesser of—

20 “(i) the actual cost to the worker or
21 alien of the transportation and subsistence
22 involved; or

23 “(ii) the most economical and reason-
24 able common carrier transportation

1 charges and subsistence costs for the dis-
2 tance involved.

3 “(E) REIMBURSEMENT FOR LAID OFF
4 WORKERS.—If the worker is laid off or employ-
5 ment is terminated for contract impossibility
6 (as described in paragraph (5)(D)) before the
7 anticipated ending date of employment, the em-
8 ployer shall provide—

9 “(i) the transportation and subsist-
10 ence required under subparagraph (C); and

11 “(ii) notwithstanding whether the
12 worker has completed 50 percent of the pe-
13 riod of employment, the transportation re-
14 imbursement required under subparagraph
15 (A).

16 “(F) TRANSPORTATION.—The employer
17 shall provide transportation between the work-
18 er’s living quarters and the employer’s work site
19 without cost to the worker in accordance with
20 applicable laws and regulations.

21 “(G) CONSTRUCTION.—Nothing in this
22 paragraph shall be construed to require an em-
23 ployer to reimburse visa, passport, consular, or
24 international border-crossing fees incurred by
25 the worker or any other fees associated with the

1 worker's lawful admission into the United
2 States to perform employment.

3 “(5) EMPLOYMENT GUARANTEE.—

4 “(A) IN GENERAL.—

5 “(i) REQUIREMENT.—Each employer
6 applying for workers under subsection (b)
7 shall guarantee to offer the worker employ-
8 ment for the hourly equivalent of not less
9 than 75 percent of the work hours during
10 the total anticipated period of employment,
11 beginning with the first work day after the
12 arrival of the worker at the place of em-
13 ployment and ending on the expiration
14 date specified in the job offer.

15 “(ii) FAILURE TO MEET GUAR-
16 ANTEE.—If the employer affords the
17 United States worker or the H-2A worker
18 less employment than that required under
19 this subparagraph, the employer shall pay
20 such worker the amount which the worker
21 would have earned if the worker had
22 worked for the guaranteed number of
23 hours.

24 “(iii) PERIOD OF EMPLOYMENT.—For
25 purposes of this subparagraph, the term

1 ‘period of employment’ means the total
2 number of anticipated work hours and
3 work days described in the job offer and
4 shall exclude the worker’s Sabbath and
5 Federal holidays.

6 “(B) CALCULATION OF HOURS.—Any
7 hours which the worker fails to work, up to a
8 maximum of the number of hours specified in
9 the job offer for a work day, when the worker
10 has been offered an opportunity to do so, and
11 all hours of work actually performed (including
12 voluntary work in excess of the number of
13 hours specified in the job offer in a work day,
14 on the worker’s Sabbath, or on Federal holi-
15 days) may be counted by the employer in calcu-
16 lating whether the period of guaranteed employ-
17 ment has been met.

18 “(C) LIMITATION.—If the worker volun-
19 tarily abandons employment before the end of
20 the contract period, or is terminated for cause,
21 the worker is not entitled to the 75 percent
22 guarantee described in subparagraph (A).

23 “(D) TERMINATION OF EMPLOYMENT.—

24 “(i) IN GENERAL.—If, before the expi-
25 ration of the period of employment speci-

1 fied in the job offer, the services of the
 2 worker are no longer required due to any
 3 form of natural disaster, including flood,
 4 hurricane, freeze, earthquake, fire,
 5 drought, plant or animal disease, pest in-
 6 festation, regulatory action, or any other
 7 reason beyond the control of the employer
 8 before the employment guarantee in sub-
 9 paragraph (A) is fulfilled, the employer
 10 may terminate the worker’s employment.

11 “(ii) REQUIREMENTS.—If a worker’s
 12 employment is terminated under clause (i),
 13 the employer shall—

14 “(I) fulfill the employment guar-
 15 antee in subparagraph (A) for the
 16 work days that have elapsed during
 17 the period beginning on the first work
 18 day after the arrival of the worker
 19 and ending on the date on which such
 20 employment is terminated; and

21 “(II) make efforts to transfer the
 22 United States worker to other com-
 23 parable employment acceptable to the
 24 worker.

25 “(l) DISQUALIFICATION.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
 2 an alien shall be considered inadmissible to the
 3 United States and ineligible for nonimmigrant status
 4 under section 101(a)(15)(H)(ii)(a) if the alien has,
 5 at any time during the previous 5 years, violated a
 6 term or condition of admission into the United
 7 States as a nonimmigrant, including overstaying the
 8 period of authorized admission.

9 “(2) WAIVERS.—

10 “(A) IN GENERAL.—An alien seeking ad-
 11 mission under section 101(a)(15)(H)(ii)(a)
 12 while outside of the United States shall not be
 13 deemed inadmissible under such section by rea-
 14 son of—

15 “(i) paragraph (1);

16 “(ii) section 212(a)(6)(C), if such
 17 alien has previously falsely represented
 18 himself or herself to be a citizen of the
 19 United States for the purpose of agricul-
 20 tural employment; or

21 “(iii) section 212(a)(9)(B), unless
 22 such alien was deported from the United
 23 States.

24 “(B) EFFECTIVE PERIOD OF WAIVER.—If
 25 an alien is admitted to the United States as a

1 result of a waiver under subparagraph (A),
2 such waiver shall remain in effect until the
3 alien subsequently violates—

4 “(i) a material provision of this sec-
5 tion; or

6 “(ii) a term or condition of admission
7 into the United States as a nonimmigrant.

8 “(m) PERIOD OF ADMISSION.—

9 “(1) IN GENERAL.—An H-2A alien shall be ad-
10 mitted for an 11-month period of employment, ex-
11 cluding—

12 “(A) a period of not more than 7 days be-
13 fore the beginning of the period of employment
14 for the purpose of travel to the work site; and

15 “(B) a period of not more than 14 days
16 after the period of employment for the purpose
17 of departure or extension based on a subse-
18 quent offer of employment.

19 “(2) EMPLOYMENT LIMITATION.—An alien may
20 not be employed during the 14-day period described
21 in paragraph (1)(B) except in the employment for
22 which the alien was previously authorized.

23 “(3) CONSTRUCTION.—Nothing in this sub-
24 section shall limit the authority of the Secretary of

1 Homeland Security to extend the stay of an alien
2 under any other provision of this Act.

3 “(n) ABANDONMENT OF EMPLOYMENT.—

4 “(1) IN GENERAL.—An alien admitted or pro-
5 vided status under section 101(a)(15)(H)(ii)(a) who
6 abandons the employment which was the basis for
7 such admission or status—

8 “(A) shall have failed to maintain non-
9 immigrant status as an H-2A worker; and

10 “(B) shall depart the United States or be
11 subject to removal under section
12 237(a)(1)(C)(i).

13 “(2) REPORT BY EMPLOYER.—Not later than
14 24 hours after the premature abandonment of em-
15 ployment by an H-2A worker, the employer or asso-
16 ciation acting as an agent for the employer shall no-
17 tify the Secretary of Homeland Security of such
18 abandonment.

19 “(3) REMOVAL.—The Secretary of Homeland
20 Security shall ensure the prompt removal from the
21 United States of any H-2A worker who violates any
22 term or condition of the worker’s nonimmigrant sta-
23 tus.

24 “(4) VOLUNTARY TERMINATION.—Notwith-
25 standing paragraph (1), an alien may voluntarily

1 terminate the alien's employment if the alien
2 promptly departs the United States upon termi-
3 nation of such employment.

4 “(o) REPLACEMENT OF ALIEN.—

5 “(1) IN GENERAL.—Upon notification under
6 subsection (n)(2)—

7 “(A) the Secretary of State shall promptly
8 issue a visa to an eligible alien designated by
9 the employer to replace an H-2A worker who
10 abandons or prematurely terminates employ-
11 ment; and

12 “(B) the Secretary of Homeland Security
13 shall admit such alien into the United States.

14 “(2) CONSTRUCTION.—Nothing in this sub-
15 section shall limit any preference for which United
16 States workers are eligible under this Act.

17 “(p) IDENTIFICATION DOCUMENT.—

18 “(1) IN GENERAL.—The Secretary of Homeland
19 Security shall provide each alien authorized to be an
20 H-2A worker with a single machine-readable, tam-
21 per-resistant, and counterfeit-resistant document
22 that—

23 “(A) authorizes the alien's entry into the
24 United States;

1 “(B) serves, for the appropriate period, as
2 an employment eligibility document; and

3 “(C) verifies the identity of the alien
4 through the use of at least 1 biometric identi-
5 fier.

6 “(2) REQUIREMENTS.—The document required
7 for all aliens authorized to be an H–2A worker—

8 “(A) shall be capable of reliably deter-
9 mining whether—

10 “(i) the individual with the document
11 is in fact eligible for employment as an H-
12 2A worker;

13 “(ii) the individual with the document
14 is not claiming the identity of another per-
15 son; and

16 “(iii) the individual with the document
17 is authorized to be admitted into the
18 United States; and

19 “(B) shall be compatible with—

20 “(i) other databases of the Secretary
21 of Homeland Security to prevent an alien
22 from obtaining benefits for which the alien
23 is not eligible and determining whether the
24 alien is unlawfully present in the United
25 States; and

1 “(ii) law enforcement databases to de-
2 termine if the alien has been convicted of
3 criminal offenses.

4 “(q) EXTENSION OF STAY OF H-2A WORKERS IN
5 THE UNITED STATES.—

6 “(1) EXTENSION OF STAY.—

7 “(A) AUTHORITY.—An employer may peti-
8 tion to extend an H-2A worker’s stay for up to
9 2 consecutive contract periods before the alien
10 is required to return to the alien’s country of
11 nationality or country of last residence.

12 “(B) REQUEST AN EXTENSION.—If an em-
13 ployer seeks to employ, or continue to employ,
14 an H-2A worker who is lawfully present in the
15 United States, the employer or association shall
16 request an extension of the alien’s stay not later
17 than 14 days before the expiration of the period
18 of authorized employment.

19 “(C) LIMITATIONS.—An extension of stay
20 under this subsection—

21 “(i) may only commence upon the ter-
22 mination of the H-2A worker’s contract
23 with an employer;

1 “(ii) may be effective immediately fol-
2 lowing the termination of a prior contract;
3 and

4 “(iii) may not exceed 11 months, ex-
5 cluding the 14-day period provided for
6 travel or extension due to subsequent em-
7 ployment.

8 “(D) RETURN TO FOREIGN COUNTRY.—

9 “(i) REQUIREMENT TO RETURN.—At
10 the conclusion of 3 contract periods au-
11 thorized under this section, the alien so
12 employed may not be employed in the
13 United States as an H-2A worker until
14 the alien has returned to the alien’s coun-
15 try of nationality or country of last resi-
16 dence for a period of not less than 6
17 months.

18 “(ii) REENTRY.—The alien may be-
19 come eligible for reentry into the United
20 States as an H-2A worker after working
21 in the United States for 2 contract periods
22 and remaining the alien’s country of na-
23 tionality or country of last residence for
24 not less than 4 months. The alien may also
25 be eligible for re-entry to the United States

1 as an H-2A worker after working in the
2 United States for 1 contract period and re-
3 maining in the alien's country of nation-
4 ality or country of last residence for not
5 less than 2 months.

6 “(2) WORK AUTHORIZATION.—

7 “(A) IN GENERAL.—An alien who is law-
8 fully present in the United States on the date
9 of the filing of a petition to extend the stay of
10 the alien may commence or continue the em-
11 ployment described in a petition under para-
12 graph (1). The employer shall provide a copy of
13 the employer's petition for extension of stay to
14 the alien. The alien shall keep the petition with
15 the alien's identification and employment eligi-
16 bility document as evidence that the petition
17 has been filed and that the alien is authorized
18 to work in the United States.

19 “(B) EMPLOYMENT ELIGIBILITY DOCU-
20 MENT.—Upon approval of a petition for an ex-
21 tension of stay or change in the alien's author-
22 ized employment, the Secretary of Homeland
23 Security shall provide a new or updated employ-
24 ment eligibility document to the alien indicating

1 the new validity date, after which the alien is
2 not required to retain a copy of the petition.

3 “(C) FILE DEFINED.—In this paragraph,
4 the term ‘file’ means sending the petition by
5 certified mail via the United States Postal Serv-
6 ice, return receipt requested, or delivering by
7 guaranteed commercial delivery which will pro-
8 vide the employer with a documented acknowl-
9 edgment of the date of receipt of the petition
10 for an extension of stay.

11 “(r) SPECIAL RULE FOR ALIENS EMPLOYED AS
12 LIVESTOCK WORKERS.—Notwithstanding any other provi-
13 sion of this section, an alien admitted as an H–2A worker
14 for employment as a shepherd, goatherder, livestock
15 worker, or dairy worker may be admitted for a period of
16 up to 2 years.

17 “ADMISSION OF CROSS-BORDER H–2AA WORKERS

18 “SEC. 218A. (a) DEFINITION.—In this section, the
19 term ‘H–2AA worker’ means a nonimmigrant described
20 in section 101(a)(15)(H)(ii)(a) who participates in the
21 cross-border worker program established under this sec-
22 tion.

23 “(b) INCORPORATION BY REFERENCE.—

24 “(1) IN GENERAL.—Except as specifically pro-
25 vided under paragraph (2), the provisions under sec-
26 tion 218 shall apply to H–2AA workers.

1 “(2) EXCEPTIONS.—The provisions under sub-
 2 sections (b)(1)(B), (k)(2)(B), (k)(3), (k)(4) (except
 3 for subparagraph (G)), and (r) of section 218 shall
 4 not apply to H-2AA workers.

5 “(c) MANDATORY ENTRY AND EXIT.—An H-2AA
 6 worker who complies with the provisions of this section—

7 “(1) may enter the United States each sched-
 8 uled work day, in accordance with regulations pro-
 9 mulgated by the Secretary of Homeland Security;
 10 and

11 “(2) shall exit the United States before the end
 12 of each day of such entrance.”.

13 (2) CLERICAL AMENDMENT.—The table of con-
 14 tents of the Immigration and Nationality Act is add-
 15 ing after the item relating to section 218 the fol-
 16 lowing:

“Sec. 218A. Admission of cross-border H-2AA workers.”.

17 (b) RULEMAKING.—

18 (1) ISSUANCE OF VISAS.—Not later than 180
 19 days after the date of enactment of this Act, the
 20 Secretary of State shall promulgate regulations, in
 21 accordance with the notice and comment provisions
 22 of section 553 of title 5, United States Code, to pro-
 23 vide for uniform procedures for the issuance of visas
 24 by United States consulates and consular officials to
 25 nonimmigrants described in section

1 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
 2 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

3 (2) H-2AA BORDER CROSSINGS.—The Sec-
 4 retary of Homeland Security shall promulgate regu-
 5 lations to establish a process for workers authorized
 6 to work in the United States under section 218A of
 7 the Immigration and Nationality Act, as added by
 8 subsection (a), to ensure that such workers expedi-
 9 tiously enter and exit the United States during each
 10 work day.

11 (c) EFFECTIVE DATE.—The amendment made by
 12 this section shall take effect on the date that is 180 days
 13 after the date of enactment of this Act.

14 **SEC. 203. LEGAL ASSISTANCE FROM THE LEGAL SERVICES**
 15 **CORPORATION.**

16 Section 504 of the Migrant and Seasonal Agricultural
 17 Worker Protection Act (29 U.S.C. 1854) is amended—

18 (1) by striking subsection (b) and inserting the
 19 following:

20 “(b) LEGAL ASSISTANCE.—(1) Upon application by
 21 a complainant and in such circumstances as the court may
 22 deem just, the court may appoint an attorney for such
 23 complainant and may authorize the commencement of the
 24 action.

1 “(2) The Legal Services Corporation may not provide
2 legal assistance for or on behalf of any alien, and may
3 not provide financial assistance to any person or entity
4 that provides legal assistance for or on behalf of any alien,
5 unless the alien—

6 “(A) is described in subsection (a); and

7 “(B) is present in the United States at the time
8 the legal assistance is provided.

9 “(3)(A) No party may bring a civil action for dam-
10 ages or other complaint on behalf of a nonimmigrant de-
11 scribed in section 101(a)(15)(H)(ii)(a) of the Immigration
12 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) un-
13 less—

14 “(i) the party makes a request to the Federal
15 Mediation and Conciliation Service or an equivalent
16 State program (as defined by the Secretary of
17 Labor) not later than 90 days before bringing the
18 action to assist the parties in reaching a satisfactory
19 resolution of all issues involving parties to the dis-
20 pute; and

21 “(ii) the parties to the dispute have attempted,
22 in good faith, mediation or other non-binding dis-
23 pute resolution of all issues involving all such par-
24 ties.

1 “(B) If the mediator finds that an agricultural em-
2 ployer, agricultural association, or farm labor contractor
3 has corrected a violation of the Migrant and Seasonal Ag-
4 ricultural Worker Protection Act (29 U.S.C. 1854) or of
5 a regulation under such Act not later than 14 days after
6 the date on which such agricultural employer, agricultural
7 association, or farm labor contractor was notified in writ-
8 ing of such violation, no action may be brought under such
9 Act with respect to such violation.

10 “(C) Any settlement reached through the mediation
11 process described in subparagraph (A) shall preclude any
12 right of action arising out of the same facts between the
13 parties in any Federal or State court or administrative
14 proceeding.

15 “(4) An employer of a nonimmigrant described in sec-
16 tion 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) shall not be re-
18 quired to permit any recipient of grants or contracts under
19 section 1007 of the Legal Services Corporation Act (42
20 U.S.C. 2996f), or any employee of such recipient, to enter
21 upon the employer’s property unless such recipient or em-
22 ployee has a prearranged appointment with a particular
23 worker.

24 “(5) The employer of a nonimmigrant described in
25 section 101(a)(15)(H)(ii)(a) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) shall post
2 the contact information of the Legal Services Corporation
3 in the dwelling and at the work site of each nonimmigrant
4 employee.

5 “(6) There are authorized to be appropriated for each
6 fiscal year such sums as may be necessary to carry out
7 this subsection.”; and

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

9 “(g)(1) If a defendant prevails in an action under this
10 section in which the plaintiff is represented by an attorney
11 who is employed by the Legal Services Corporation or any
12 entity receiving funds from the Legal Services Corpora-
13 tion, such entity or the Legal Services Corporation shall
14 award to the prevailing defendant fees and other expenses
15 incurred by the defendant in connection with the action.

16 “(2) As used in this subsection, the term ‘fees and
17 other expenses’ has the meaning given the term in section
18 504(b)(1)(A) of title 5, United States Code.

19 “(3) The court shall take whatever steps necessary,
20 including the imposition of sanctions, to ensure compli-
21 ance with this subsection.”.

TITLE III—BLUE CARD PROGRAM

SEC. 301. ADMISSION OF NECESSARY AGRICULTURAL WORKERS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218A, as added by section 202, the following:

“BLUE CARD PROGRAM

“SEC. 218B. (a) DEFINITIONS.—As used in this section—

“(1) the term ‘agricultural employment’ means any service or activity that is considered agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)), and labor and services relating to commodities, livestock, dairy, forestry, landscaping, fishing, and the processing of meat, poultry, and fish;

“(2) the term ‘blue card status’ means the status of an alien who has been—

“(A) lawfully admitted for a temporary period for agricultural employment under subsection (b); and

1 “(B) issued a tamper-resistant, machine-
2 readable document that—

3 “(i) serves as the alien’s visa, employ-
4 ment authorization, and travel documenta-
5 tion; and

6 “(ii) contains such biometrics as are
7 required by the Secretary;

8 “(3) the term ‘employer’ means any person or
9 entity, including any farm labor contractor and any
10 agricultural association, that employs workers in ag-
11 ricultural employment;

12 “(4) the term ‘Secretary’ means the Secretary
13 of Homeland Security; and

14 “(5) the term ‘United States worker’ means
15 any worker, including a national of the United
16 States, a lawfully admitted permanent resident alien,
17 and any other alien authorized to work in the rel-
18 evant job opportunity within the United States, ex-
19 cept—

20 “(A) an alien admitted or otherwise pro-
21 vided status under section 101(a)(15)(H)(ii)(a);

22 “(B) an alien admitted or otherwise pro-
23 vided status as an H-2AA worker; and

24 “(C) an alien provided status under this
25 section.

1 “(b) BLUE CARD PROGRAM.—

2 “(1) IN GENERAL.—Notwithstanding any other
3 provision of law, the Secretary may confer blue card
4 status upon an alien who qualifies under this sub-
5 section if, not later than 6 months after the date of
6 enactment of this section, the petitioning employer
7 attests and the Secretary determines that the
8 alien—

9 “(A) performed at least 1600 hours of ag-
10 ricultural employment in the United States for
11 that employer during 2005;

12 “(B) except as otherwise provided under
13 paragraph (2), is otherwise admissible to the
14 United States under section 212; and

15 “(C) has never been convicted of a felony
16 or a misdemeanor in the United States.

17 “(2) DETERMINATION.—In determining an
18 alien’s eligibility for Blue Card status, the Secretary
19 shall—

20 “(A) conduct a background investigation of
21 the alien, including a review of evidence sub-
22 mitted by the petitioning employer in support of
23 the attestation that the alien meets the min-
24 imum work requirements; and

1 “(B) interview the alien and require the
2 alien to answer questions concerning the
3 alien’s—

4 “(i) physical and mental health;

5 “(ii) criminal history and gang mem-
6 bership;

7 “(iii) immigration history;

8 “(iv) involvement with groups or indi-
9 viduals that have engaged in terrorism,
10 genocide, persecution, or who seek the
11 overthrow of the United States govern-
12 ment;

13 “(v) voter registration history;

14 “(vi) claims to United States citizen-
15 ship; and

16 “(vii) tax history.

17 “(3) WAIVER OF CERTAIN GROUNDS FOR INAD-
18 MISSIBILITY.—In determining an alien’s eligibility
19 for blue card status under paragraph (1)(C)—

20 “(A) the provisions of paragraphs (5),
21 (6)(A), (7)(A), and (9)(B) of section 212(a)
22 shall not apply;

23 “(B) the provisions of section 212(a)(6)(C)
24 shall not apply with respect to prior or current
25 agricultural employment; and

1 “(C) the Secretary may not waive para-
2 graph (1),(2), or (3) of section 212(a) unless
3 such waiver is permitted under another provi-
4 sion of law.

5 “(4) PETITIONS.—

6 “(A) IN GENERAL.—An employer seeking
7 blue card status under this section for an alien
8 employee shall file a named petition for blue
9 card status with the Secretary.

10 “(B) EMPLOYER PETITION.—An employer
11 filing a petition under subparagraph (A) shall—

12 “(i) pay a registration fee of \$3,000;

13 “(ii) pay a processing fee to cover the
14 actual costs incurred in adjudicating the
15 petition;

16 “(iii) include an affidavit signed by
17 the beneficiary of the petition—

18 “(I) that certifies, under penalty
19 of perjury under the laws of the
20 United States, that the application
21 and any evidence submitted with it is
22 true and correct and that authorizes
23 the release of any information con-
24 tained in the petition and attached

1 evidence for law enforcement pur-
2 poses; and

3 “(II) that includes a waiver of
4 rights that explains to the alien that,
5 in exchange for the discretionary ben-
6 efit of Blue Card status, the alien
7 agrees to waive any right to adminis-
8 trative or judicial review or appeal of
9 a determination by the Department of
10 Homeland Security regarding the
11 alien’s eligibility for Blue Card status;
12 and

13 “(iv) provide an attestation, valid for
14 not less than 60 days, that the employer—

15 “(I) conducted adequate recruit-
16 ment in the area of intended employ-
17 ment before filing the petition; and

18 “(II) was unsuccessful in locating
19 qualified United States workers for
20 the job opportunity for which the cer-
21 tification is sought.

22 “(C) ADEQUATE RECRUITMENT.—

23 “(i) MINIMUM REQUIREMENT.—The
24 adequate recruitment requirement under

1 subparagraph (B)(iii) is satisfied if the em-
2 ployer—

3 “(I) places a job order with the
4 America’s Job Bank Program of the
5 Department of Labor; and

6 “(II) places a Sunday advertise-
7 ment in a newspaper of general cir-
8 culation that is likely to be patronized
9 by a potential worker in the area of
10 intended employment.

11 “(ii) ADVERTISEMENT REQUIRE-
12 MENT.—An advertisement under clause
13 (i)(II) shall—

14 “(I) name the employer;

15 “(II) direct applicants to report
16 or send resumes, as appropriate for
17 the occupation, to the employer;

18 “(III) provide a description of
19 the vacancy that is specific enough to
20 apprise United States workers of the
21 job opportunity for which certification
22 is sought;

23 “(IV) describe the geographic
24 area with enough specificity to apprise
25 applicants of any travel requirements

1 and where applicants will likely have
2 to reside to perform the job;

3 “(V) state the rate of pay, which
4 must equal or exceed the wage paid to
5 the H-2A employees in the occupation
6 in the area of intended employment;
7 and

8 “(VI) offer wages, terms, and
9 conditions of employment, which are
10 at least as favorable as those offered
11 to the alien.

12 “(D) ADJUDICATION OF PETITIONS.—The
13 Secretary of Homeland Security shall ensure
14 that—

15 “(i) the petitioning process is secure
16 and incorporates anti-fraud protections;
17 and

18 “(ii) all petitions for Blue Card status
19 are processed not later than 12 months
20 after the date of enactment of this section.

21 “(E) NOTIFICATION OF ADJUDICATION.—
22 The Secretary shall provide notification of an
23 adjudication of a petition filed for an alien to
24 the alien and to the employer who filed such pe-
25 tition.

1 “(F) EFFECT OF DENIAL.—If the Sec-
2 retary denies a petition filed for an alien, such
3 alien shall return to the country of the alien’s
4 nationality or last residence outside the United
5 States.

6 “(5) BLUE CARD STATUS.—

7 “(A) BLUE CARD.—

8 “(i) ALL-IN-ONE CARD.—The Sec-
9 retary, in conjunction with the Secretary of
10 State, shall develop a single machine-read-
11 able, tamper-resistant document that—

12 “(I) authorizes the alien’s entry
13 into the United States;

14 “(II) serves, during the period an
15 alien is in blue card status, as an em-
16 ployment authorized endorsement or
17 other appropriate work permit for ag-
18 ricultural employment; and

19 “(III) serves as an entry and exit
20 document to be used in conjunction
21 with a proper visa or as a visa and as
22 other appropriate travel and entry
23 documentation using biometric identi-
24 fiers that meet the biometric identifier

standards jointly established by the
Secretary of State and the Secretary.

“(ii) BIOMETRICS.—

“(I) SUBMISSION OF IDENTIFI-
FIERS.—After a petition is filed by an
employer and receipt of such petition
is confirmed by the Secretary, the
alien, in order to further adjudicate
the petition, shall submit 2 biometric
identifiers (such as a fingerprint and
a digital photograph), as required by
the Secretary, to an application sup-
port center, which the Secretary shall
establish in each State.

“(II) PROCESS.—The Secretary
shall prescribe a process for the sub-
mission of a biometric identifier to be
incorporated electronically into an em-
ployer’s prior electronic filing of a pe-
tition. The Secretary shall prescribe
an alternative process for employers
to file a petition in a manner other
than electronic filing, as needed.

“(B) DOCUMENT REQUIREMENTS.—The
Secretary shall issue a blue card that is—

1 “(i) capable of reliably determining if
2 the individual with the blue card whose eli-
3 gibility is being verified is—

4 “(I) eligible for employment;

5 “(II) claiming the identity of an-
6 other person; and

7 “(III) authorized to be admitted;
8 and

9 “(ii) compatible with—

10 “(I) other databases maintained
11 by the Secretary to exclude aliens
12 from benefits for which the aliens are
13 not eligible and determine whether the
14 alien is unlawfully present in the
15 United States; and

16 “(II) law enforcement databases
17 to determine if the alien has been con-
18 victed of criminal offenses.

19 “(C) AUTHORIZED TRAVEL.—

20 “(i) IN GENERAL.—An alien may
21 make brief visits outside the United States
22 during the period in which the alien is in
23 blue card status, in accordance with such
24 regulations as are established by the Sec-

1 retary, in conjunction with the Secretary of
2 State.

3 “(ii) READMISSION.—An alien may be
4 readmitted to the United States after a
5 visit described in clause (i) without having
6 to obtain a visa if the alien presents the
7 alien’s blue card document.

8 “(iii) EFFECT OF TRAVEL.—Such pe-
9 riods of time spent outside the United
10 States shall not cause the period of blue
11 card status in the United States to be ex-
12 tended.

13 “(D) PORTABILITY.—

14 “(i) IN GENERAL.—During the period
15 in which an alien is in blue card status, the
16 alien issued a blue card may accept new
17 employment upon the Secretary’s receipt of
18 a petition filed by an employer on behalf of
19 the alien. Employment authorization shall
20 continue for such alien until such petition
21 is adjudicated.

22 “(ii) EFFECT OF DENIAL.—If a peti-
23 tion filed under clause (i) is denied and the
24 alien has ceased employment with the pre-
25 vious employer, the authorization under

1 clause (i) shall terminate and the alien
2 shall be required to return to the country
3 of the alien's nationality or last residence.

4 “(iii) FEE.—A fee may be required by
5 the Secretary to cover the actual costs in-
6 curred in adjudicating a petition under this
7 subparagraph. No other fee may be re-
8 quired under this subparagraph.

9 “(E) ANNUAL CHECK IN.—The employer
10 of an alien in blue card status who has been
11 employed for 1 year in blue card status shall
12 confirm the alien's continued status with the
13 Secretary electronically or in writing. Such con-
14 firmation will not require a further labor attes-
15 tation.

16 “(F) TERMINATION OF BLUE CARD STA-
17 TUS.—The Secretary may terminate the blue
18 card status of an alien upon a determination by
19 the Secretary that—

20 “(i) without the appropriate waiver,
21 the granting of blue card status was the
22 result of fraud or willful misrepresentation
23 (as described in section 212(a)(6)(C)(i);

1 “(ii) the alien is convicted of a felony
2 or a misdemeanor committed in the United
3 States; or

4 “(iii) the alien is deportable or inad-
5 missible under any other provision of this
6 Act.

7 “(6) PERIOD OF AUTHORIZED ADMISSION.—

8 “(A) IN GENERAL.—An alien may be
9 granted blue card status for a period not to ex-
10 ceed 2 years.

11 “(B) RETURN TO COUNTRY.—At the end
12 of the period referred to in subparagraph (A),
13 the alien shall return to the country of nation-
14 ality or last residence.

15 “(C) ELIGIBILITY FOR NONIMMIGRANT
16 VISA.—Upon returning to the country of na-
17 tionality or last residence under subparagraph
18 (B), the alien may apply for an H-2A visa, an
19 H-2AA visa, or any other nonimmigrant visa.

20 “(D) REPORTING REQUIREMENT.—Not
21 later than 24 hours after an alien with blue
22 card status ceases to be employed by an em-
23 ployer, such employer shall notify the Secretary
24 of such cessation of employment. The Secretary

1 shall provide electronic means for making such
2 notification.

3 “(E) LOSS OF EMPLOYMENT.—

4 “(i) IN GENERAL.—The blue card sta-
5 tus of an alien shall terminate if the alien
6 is not employed for 60 or more consecutive
7 days.

8 “(ii) RETURN TO COUNTRY.—An alien
9 whose period of authorized admission ter-
10 minates under clause (i) shall return to the
11 country of the alien’s nationality or last
12 residence.

13 “(7) GROUNDS FOR ELIGIBILITY.—

14 “(A) BAR TO FUTURE VISAS FOR CONDI-
15 TION VIOLATIONS.—If an alien having blue card
16 status violates any term or condition of such
17 status, the alien shall not be eligible for such
18 status or for future immigrant and non-immi-
19 grant status, as determined by the Secretary.

20 “(B) ALIENS IN H-2A STATUS.—Any alien
21 in lawful H-2A status between January 1,
22 2005 and December 31, 2006 shall be ineligible
23 for blue card status.

24 “(8) BAR OF CHANGE OR ADJUSTMENT OF STA-
25 TUS.—

1 “(A) IN GENERAL.—An alien having blue
2 card status shall not be eligible to change or
3 adjust status in the United States.

4 “(B) LOSS OF ELIGIBILITY.—An alien hav-
5 ing blue card status shall lose eligibility for
6 such status if the alien—

7 “(i) files a petition to adjust status to
8 legal permanent residence in the United
9 States; or

10 “(ii) requests a consular processing
11 for an immigrant or non-immigrant visa
12 outside the United States.

13 “(9) JUDICIAL REVIEW.—There shall be no ju-
14 dicial review of a denial of blue card status.

15 “(c) SAFE HARBOR.—

16 “(1) SAFE HARBOR FOR ALIEN.—An alien for
17 whom a nonfrivolous petition is filed under this sec-
18 tion—

19 “(A) shall be granted employment author-
20 ization pending final adjudication of the peti-
21 tion;

22 “(B) may not be detained, determined in-
23 admissible, or deportable, or removed pending
24 final adjudication of the petition for blue card
25 status, unless the alien commits an act which

1 renders the alien ineligible for such blue card
2 status; and

3 “(C) may not be considered an unauthor-
4 ized alien (as defined in section 274(h)(3)) if
5 the alien is in possession of a copy of a petition
6 for status until such petition is adjudicated.

7 “(2) SAFE HARBOR FOR EMPLOYER.—

8 “(A) TAX LIABILITY.—An employer that
9 files a petition for blue card status for an alien
10 shall not be subject to civil and criminal tax li-
11 ability relating directly to the employment of
12 such alien.

13 “(B) EMPLOYMENT RECORDS.—An em-
14 ployer that provides unauthorized aliens with
15 copies of employment records or other evidence
16 of employment pursuant to the petition shall
17 not be subject to civil and criminal liability pur-
18 suant to section 274A for employing such au-
19 thorized aliens.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 of the Immigration and Nationality Act is amended by in-
22 serting after the item relating to section 218A, as added
23 by section 202, the following:

“Sec. 218B. Blue card program.”.

24 (c) PENALTIES FOR FALSE STATEMENTS.—Section
25 1546 of title 18, United States Code, is amended—

1 (1) by redesignating subsection (c) as sub-
2 section (d); and

3 (2) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) Any person, including the alien who is the bene-
6 ficiary of a petition, who—

7 “(1) files a petition under section 218B(b)(3) of
8 the Immigration and Nationality Act; and

9 “(2)(A) knowingly and willfully falsifies, con-
10 ceals, or covers up a material fact related to such a
11 petition;

12 “(B) makes any false, fictitious, or fraudulent
13 statements or representations, or makes or uses any
14 false writing or document knowing the same to con-
15 tain any false, fictitious, or fraudulent statement or
16 entry related to such a petition; or

17 “(C) creates or supplies a false writing or docu-
18 ment for use in making such a petition,

19 shall be fined in accordance with this title, imprisoned not
20 more than 5 years, or both.”.

21 **SEC. 302. EFFECTIVE DATE.**

22 This title shall take effect on the date that is 6
23 months after the date of enactment of this Act.

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