

109TH CONGRESS
2D SESSION

S. 2326

To provide for immigration reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2006

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

A BILL

To provide for immigration reform, 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 “Welcoming Immigrants to a Secure Homeland Act of
6 2006” or “WISH Act of 2006”.

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—IMPROVING ENFORCEMENT

Subtitle A—Increased Enforcement Resources and Penalties

Sec. 101. Additional worksite enforcement and fraud detection agents.

- Sec. 102. Penalties for unauthorized employment and false claims of citizenship.
- Sec. 103. Penalties for misusing social security numbers or filing false information with the Social Security Administration.

Subtitle B—Information Integrity and Security

- Sec. 111. Social security cards.
- Sec. 112. Electronic information.

Subtitle C—Mandatory Electronic Employment Verification of All Workers in the United States

- Sec. 121. Employment eligibility verification system.
- Sec. 122. Good faith compliance.

TITLE II—NONIMMIGRANT GUEST WORKERS

- Sec. 201. Nonimmigrant guest worker category.
- Sec. 202. Guest worker program.
- Sec. 203. Special rule for Mexico.
- Sec. 204. Statutory construction.
- Sec. 205. Authorization of appropriations.

TITLE III—NONIMMIGRANT GUEST WORKER STATUS FOR UNAUTHORIZED ALIENS

- Sec. 301. Nonimmigrant guest worker status for unauthorized aliens.
- Sec. 302. Statutory construction.
- Sec. 303. Authorization of appropriations.

TITLE IV—EMPLOYMENT MANAGEMENT SYSTEM

- Sec. 401. Employment management system.
- Sec. 402. Labor investigations and penalties.

TITLE V—PROTECTION AGAINST IMMIGRATION FRAUD

- Sec. 501. Grants to support public education and training.

TITLE VI—HIGHLY EDUCATED AND SKILLED WORKERS

- Sec. 601. Removal of numerical limitations for nonimmigrants with advanced degrees.
- Sec. 602. Aliens not subject to numerical limitations on employment-based immigrants.
- Sec. 603. Off-campus work authorization for foreign students.
- Sec. 604. Temporary visas for graduating students.
- Sec. 605. Travel authorization.
- Sec. 606. Additional employees and technologies.

TITLE VII—TRAVEL RESTRICTIONS FOR TEMPORARY VISITORS

- Sec. 701. Travel restrictions.

TITLE VIII—TEMPORARY AGRICULTURAL WORKERS

- Sec. 801. Sense of the Senate on temporary agricultural workers.

1 **TITLE I—IMPROVING**
2 **ENFORCEMENT**
3 **Subtitle A—Increased Enforcement**
4 **Resources and Penalties**

5 **SEC. 101. ADDITIONAL WORKSITE ENFORCEMENT AND**
6 **FRAUD DETECTION AGENTS.**

7 (a) WORKSITE ENFORCEMENT.—During each of fis-
8 cal years 2007 through 2011, the Secretary of Homeland
9 Security shall, subject to the availability of appropriations
10 for such purpose, increase by not less than 2,000 the num-
11 ber of positions for investigators dedicated to enforcing
12 compliance with sections 274 and 274A of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1324 and 1324a) for
14 such fiscal year.

15 (b) FRAUD DETECTION.—During each of fiscal years
16 2007 through 2011, the Secretary of Homeland Security
17 shall, subject to the availability of appropriations for such
18 purpose, increase by not less than 1,000 the number of
19 positions for Immigration Enforcement Agents dedicated
20 to immigration fraud detection for such fiscal year.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated for each of fiscal years
23 2007 through 2011 such sums as may be necessary to
24 carry out this section.

1 **SEC. 102. PENALTIES FOR UNAUTHORIZED EMPLOYMENT**
 2 **AND FALSE CLAIMS OF CITIZENSHIP.**

3 Section 274A of the Immigration and Nationality Act
 4 (8 U.S.C. 1324a) is amended—

5 (1) in paragraphs (1)(A), (2), and (4) of sub-
 6 section (a), by striking “knowing” each place it ap-
 7 pears and inserting “if the person or entity knows
 8 or should have known”;

9 (2) in subsection (b)(2)—

10 (A) by striking “The individual” and in-
 11 serting the following:

12 “(A) IN GENERAL.—The individual”; and

13 (B) by adding at the end the following:

14 “(B) PENALTIES.—Any individual who
 15 falsely represents that the individual is a citizen
 16 or national of the United States, an alien law-
 17 fully admitted for permanent residence, or an
 18 alien who is authorized by the Attorney General
 19 or by the Secretary of Homeland Security to be
 20 hired, recruited, or referred for such employ-
 21 ment for purposes of obtaining employment
 22 shall, for each such violation, be subject to a
 23 fine of not more than \$5,000 and a term of im-
 24 prisonment not to exceed 3 years.”; and

25 (3) in subsection (f)(1), by striking “\$3,000”
 26 and inserting “\$5,000”.

1 **SEC. 103. PENALTIES FOR MISUSING SOCIAL SECURITY**
2 **NUMBERS OR FILING FALSE INFORMATION**
3 **WITH THE SOCIAL SECURITY ADMINISTRA-**
4 **TION.**

5 (a) MISUSE OF SOCIAL SECURITY NUMBERS.—

6 (1) IN GENERAL.—Section 208(a) of the Social
7 Security Act (42 U.S.C. 408(a)) is amended—

8 (A) in paragraph (7), by adding after sub-
9 paragraph (C) the following:

10 “(D) with intent to deceive, discloses, sells,
11 or transfers his own social security account
12 number, assigned to him by the Commissioner
13 of Social Security (in the exercise of the Com-
14 missioner’s authority under section 205(c)(2) to
15 establish and maintain records), to any person;
16 or;”;

17 (B) in paragraph (8), by adding “or” at
18 the end; and

19 (C) by inserting after paragraph (8) the
20 following:

21 “(9) without lawful authority, offers, for a fee,
22 to acquire for any individual, or to assist in acquir-
23 ing for any individual, an additional social security
24 account number or a number that purports to be a
25 Social Security account number;”.

1 (2) EFFECTIVE DATES.—Paragraphs (7)(D)
 2 and (9) of section 208(a) of the Social Security Act,
 3 as added by paragraph (1), shall apply with respect
 4 to each violation occurring after the date of the en-
 5 actment of this Act.

6 (b) REPORT ON ENFORCEMENT EFFORTS CON-
 7 CERNING EMPLOYERS FILING FALSE INFORMATION RE-
 8 TURNS.—The Commissioner of Internal Revenue and the
 9 Commissioner of Social Security shall submit an annual
 10 report to Congress on efforts taken to identify employers
 11 that file incorrect information returns and impose appro-
 12 priate penalties on such employers.

13 **Subtitle B—Information Integrity** 14 **and Security**

15 **SEC. 111. SOCIAL SECURITY CARDS.**

16 (a) MACHINE-READABLE, TAMPER-RESISTANT
 17 CARDS.—

18 (1) ISSUANCE.—

19 (A) IN GENERAL.—Not later than 3
 20 months after the date of the enactment of this
 21 Act, the Commissioner of Social Security shall
 22 initiate a program to develop and issue ma-
 23 chine-readable, tamper-resistant social security
 24 cards.

(B) COMPLETION.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall—

(i) only issue machine-readable, tamper-resistant social security cards; and

(ii) begin a program to replace existing social security cards with machine-readable, tamper-resistant social security cards.

(2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended—

(A) by inserting “(i)” after “(G)”;

(B) by striking “The social security card shall be made of banknote paper,” and inserting the following:

“(ii) The social security card shall be machine-readable and tamper-resistant;”.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by paragraph (2).

(b) MULTIPLE CARDS.—Section 205(c)(2)(G) of such Act, as amended by subsection (a)(2), is further amended by adding at the end the following:

1 “(iii) The Commissioner of Social Security
 2 shall not issue a replacement social security
 3 card to any individual unless the Commissioner
 4 of Social Security determines that the purpose
 5 for requiring the issuance of the replacement
 6 document is legitimate.”.

7 (c) REPORT ON INCORPORATION OF BIOMETRIC
 8 IDENTIFIERS.—Not later than 6 months after the date of
 9 the enactment of this Act, the Commissioner of Social Se-
 10 curity, in cooperation with the Secretary of Homeland Se-
 11 curity, shall submit to Congress a report on the viability
 12 of using biometric authentication with employment au-
 13 thorization documents.

14 (d) EFFECTIVE DATE.—The amendments made by
 15 subsections (a)(2) and (b) shall take effect 1 year after
 16 the date of the enactment of this Act and shall only apply
 17 to social security cards issued after such date.

18 **SEC. 112. ELECTRONIC INFORMATION.**

19 (a) CONFIDENTIALITY.—

20 (1) ACCESS TO DATABASE.—No officer or em-
 21 ployee of any agency or department of the United
 22 States, other than individuals responsible for the en-
 23 forcement of immigration laws or for the evaluation
 24 of an employment verification program at the Social
 25 Security Administration, the Department of Home-

1 land Security, or the Department of Labor, may
2 have access to any information contained in a data-
3 base maintained pursuant to the Employment Eligi-
4 bility Verification System described in section 403 of
5 the Illegal Immigration Reform and Immigrant Re-
6 sponsibility Act of 1996 (division C of Public Law
7 104–208; 8 U.S.C. 1324a note), as amended by sec-
8 tion 121 of this Act.

9 (2) PROTECTION FROM UNAUTHORIZED DIS-
10 CLOSURE.—Information contained in a database
11 maintained pursuant to the Employment Eligibility
12 Verification System shall be adequately protected
13 against unauthorized disclosure for other purposes,
14 as provided in regulations established by the Com-
15 missioner of Social Security, in consultation with the
16 Secretary of Homeland Security and the Secretary
17 of Labor.

18 (b) IMPROVEMENTS TO INFORMATION INTEGRITY.—

19 (1) IN GENERAL.—The Commissioner of Social
20 Security shall identify the sources of false, incorrect,
21 or expired Social Security numbers and take steps to
22 eliminate such numbers from the Social Security
23 system.

24 (2) REPORT.—Not later than 6 months after
25 the date of the enactment of this Act, the Commis-

1 sioner of Social Security shall submit to Congress a
 2 report that—

3 (A) identifies the sources of false, incor-
 4 rect, or expired Social Security numbers;

5 (B) describes the actions carried out by the
 6 Commissioner to identify and eliminate the
 7 numbers described in paragraph (1); and

8 (C) describes the actions that the Commis-
 9 sioner plans to take to ensure the removal of
 10 the numbers described in paragraph (1) from
 11 the Social Security system during the 1-year
 12 period beginning on the date that the report is
 13 submitted.

14 **Subtitle C—Mandatory Electronic**
 15 **Employment Verification of All**
 16 **Workers in the United States**

17 **SEC. 121. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
 18 **TEM.**

19 (a) RENAMING OF BASIC PILOT PROGRAM.—Subtitle
 20 A of title IV of the Illegal Immigration Reform and Immi-
 21 grant Responsibility Act of 1996 (division C of Public Law
 22 104–208; 8 U.S.C. 1324a note) is amended—

23 (1) in section 401(c)(1), by striking “basic pilot
 24 program” and inserting “Employment Eligibility
 25 Verification System”; and

1 (2) in section 403(a), by striking “(a)” and all
2 that follows through “agrees to conform” and insert
3 the following:

4 “(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
5 TEM.—A person or other entity that participates in the
6 Employment Eligibility Verification System shall agree to
7 conform”.

8 (b) MANDATORY PARTICIPATION.—

9 (1) LARGE EMPLOYERS.—Beginning not later
10 than 2 years after the date of the enactment of this
11 Act and notwithstanding any other provision of law,
12 any person or other entity that hires 50 or more in-
13 dividuals for employment in the United States shall
14 participate in the Employment Eligibility
15 Verification System described in section 403 of the
16 Illegal Immigration Reform and Immigrant Respon-
17 sibility Act, as amended by subsection (a).

18 (2) MIDSIZED EMPLOYERS.—Beginning not
19 later than 4 years after the date of the enactment
20 of this Act and notwithstanding any other provision
21 of law, any person or other entity that hires 25 or
22 more individuals for employment in the United
23 States shall participate in such Employment Eligi-
24 bility Verification System.

1 (3) SMALL EMPLOYERS.—Beginning not later
2 than 6 years after the date of the enactment of this
3 Act and notwithstanding any other provision of law,
4 any person or other entity that hires 1 or more indi-
5 viduals for employment in the United States shall
6 participate in such Employment Eligibility
7 Verification System.

8 (4) PARTICIPATION OF EMPLOYERS NOT SUB-
9 JECT TO REQUIREMENT.—Nothing in this subsection
10 shall be construed to prevent any person or other en-
11 tity that is not required to participate in such Em-
12 ployment Eligibility Verification System under this
13 subsection from voluntarily participating in such
14 Employment Eligibility Verification System.

15 (5) CONFORMING AMENDMENT.—Section
16 402(a) of the Illegal Immigration Reform and Immi-
17 grant Responsibility Act of 1996 (division C of Pub-
18 lic Law 104–208; 8 U.S.C. 1324a note) is amended
19 in the second sentence by striking the comma after
20 “(e)” and inserting “or section 121(b) of the Wel-
21 coming Immigrants to a Secure Homeland Act of
22 2006,”.

23 (c) AFFORDABILITY OF SYSTEM.—The Secretary of
24 Homeland Security shall work in cooperation with the Sec-
25 retary of Labor and the Commissioner of Social Security

1 to make such Employment Eligibility Verification System
2 affordable to any person or entity that hires individuals
3 for employment in the United States.

4 (d) ELECTRONIC FILING.—Any employer partici-
5 pating in such Employment Eligibility Verification System
6 may complete and allow for newly hired individuals to
7 complete employment verification documents electroni-
8 cally.

9 (e) REPORT ON IMPROVEMENT OF EMPLOYMENT
10 ELIGIBILITY VERIFICATION SYSTEM.—Not later than 1
11 year after the date of the enactment of this Act, the Sec-
12 retary of Homeland Security, in cooperation with the Sec-
13 retary of Labor and the Commissioner of Social Security,
14 shall submit to Congress a report on ways to improve such
15 Employment Eligibility Verification System.

16 (f) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 required to carry out such Employment Eligibility
19 Verification System in every State and to allow every em-
20 ployer in the United States to participate.

21 **SEC. 122. GOOD FAITH COMPLIANCE.**

22 Any employer that complies with the requirements of
23 this subtitle, the amendments made by this subtitle, and
24 title IV of the Illegal Immigration Reform and Immigrant
25 Responsibility Act of 1996 (8 U.S.C. 1324a note) has es-

1 tablished an affirmative defense that the employer has not
 2 violated the employment verification requirements under
 3 section 274A of the Immigration and Nationality Act (8
 4 U.S.C. 1324a).

5 **TITLE II—NONIMMIGRANT** 6 **GUEST WORKERS**

7 **SEC. 201. NONIMMIGRANT GUEST WORKER CATEGORY.**

8 (a) NEW GUEST WORKER CATEGORY.—Section
 9 101(a)(15) of the Immigration and Nationality Act (8
 10 U.S.C. 1101(a)(15)) is amended by adding at the end the
 11 following:

12 “(W) an alien having a residence in a for-
 13 eign country who is coming to the United
 14 States to perform labor or service and who
 15 meets the requirements of section 218A.”.

16 (b) TECHNICAL AMENDMENTS.—Section 101(a)(15)
 17 of the Immigration and Nationality Act (8 U.S.C.
 18 1101(a)(15)) is amended—

19 (1) in subparagraph (U)(iii), by striking “or”
 20 at the end; and

21 (2) in subparagraph (V)(ii)(II), by striking the
 22 period at the end and inserting a semicolon and
 23 “or”.

1 **SEC. 202. GUEST WORKER PROGRAM.**

2 (a) IN GENERAL.—Chapter 2 of title II of the Immi-
3 gration and Nationality Act (8 U.S.C. 1101 et seq.) is
4 amended by inserting after section 218 the following new
5 section:

6 **“SEC. 218A. GUEST WORKER PROGRAM.**

7 “(a) IN GENERAL.—The Secretary of Homeland Se-
8 curity may grant a temporary visa to a nonimmigrant de-
9 scribed in section 101(a)(15)(W) who demonstrates an in-
10 tent to perform labor or services in the United States and
11 who meets the requirements of this section.

12 “(b) REQUIREMENTS FOR ADMISSION.—In order to
13 be eligible for nonimmigrant status under section
14 101(a)(15)(W), an alien shall meet the following require-
15 ments:

16 “(1) ELIGIBILITY TO WORK.—The alien shall
17 establish that the alien is capable of performing the
18 labor or services required for an occupation under
19 section 101(a)(15)(W).

20 “(2) EVIDENCE OF EMPLOYMENT.—The alien
21 shall establish that the alien has a job offer from an
22 employer that utilizes the Employment Management
23 System described in section 218C.

24 “(3) APPLICATION FEE.—The alien shall pay a
25 \$250 visa issuance fee in addition to the cost of
26 processing and adjudicating such application. Noth-

1 ing in this paragraph shall be construed to affect
2 consular procedures for charging reciprocal fees.

3 “(4) MEDICAL EXAMINATION.—The alien shall
4 undergo a medical examination (including a deter-
5 mination of immunization status) at the alien’s ex-
6 pense, that conforms to generally accepted standards
7 of medical practice.

8 “(5) APPLICATION CONTENT AND WAIVER.—

9 “(A) APPLICATION FORM.—The Secretary
10 of Homeland Security shall create an applica-
11 tion form that an alien shall be required to
12 complete as a condition of being admitted as a
13 nonimmigrant under section 101(a)(15)(W).

14 “(B) CONTENT.—In addition to any other
15 information that the Secretary determines is re-
16 quired to determine an alien’s eligibility for ad-
17 mission as a nonimmigrant under section
18 101(a)(15)(W), the Secretary shall require an
19 alien to provide information concerning the
20 alien’s criminal history and gang membership,
21 immigration history, and involvement with
22 groups or individuals that have engaged in ter-
23 rorism, genocide, persecution, or who seek the
24 overthrow of the Government of the United
25 States.

1 “(C) WAIVER OF RIGHTS.—

2 “(i) AUTHORITY TO REQUEST.—The
3 Secretary may request that an alien in-
4 clude with the application a waiver of
5 rights that states that the alien, in ex-
6 change for the discretionary benefit of ad-
7 mission as a nonimmigrant under section
8 101(a)(15)(W), agrees to waive any
9 right—

10 “(I) to administrative or judicial
11 review or appeal of an immigration of-
12 ficer’s determination as to the alien’s
13 admissibility; or

14 “(II) to contest any removal ac-
15 tion, other than on the basis of an ap-
16 plication for asylum pursuant to the
17 provisions contained in section 208 or
18 241(b)(3), or under the Convention
19 Against Torture and Other Cruel, In-
20 human or Degrading Treatment or
21 Punishment, done at New York De-
22 cember 10, 1984, if such removal ac-
23 tion is initiated after the termination
24 of the alien’s period of authorized ad-

1 mission as a nonimmigrant under sec-
2 tion 101(a)(15)(W).

3 “(ii) REFUSAL TO WAIVE.—The Sec-
4 retary may not refuse to grant non-
5 immigrant status under section
6 101(a)(15)(W) because an alien does not
7 submit the waiver described in clause (i).

8 “(D) KNOWLEDGE.—The Secretary of
9 Homeland Security shall require an alien to in-
10 clude with the application a signed certification
11 in which the alien certifies that the alien has
12 read and understood all of the questions and
13 statements on the application form, and that
14 the alien certifies under penalty of perjury
15 under the laws of the United States that the
16 application, and any evidence submitted with it,
17 are all true and correct, and that the applicant
18 authorizes the release of any information con-
19 tained in the application and any attached evi-
20 dence for law enforcement purposes.

21 “(c) IMPLEMENTATION AND APPLICATION TIME PE-
22 RIODS.—The Secretary of Homeland Security shall ensure
23 that the application process is secure and incorporates
24 antifraud protection.

25 “(d) ADMISSIBILITY.—

1 “(1) IN GENERAL.—In determining an alien’s
2 admissibility as a nonimmigrant under section
3 101(a)(15)(W)—

4 “(A) the Secretary of Homeland Security
5 may waive paragraphs (5), (6)(A), (7), or
6 (9)(B) or (C) of section 212(a) for conduct that
7 occurred on a date prior to the date of the en-
8 actment of the Welcoming Immigrants to a Se-
9 cure Homeland Act of 2006;

10 “(B) the Secretary of Homeland Security
11 may not waive—

12 “(i) subparagraph (A), (B), (C), (E),
13 (G), (H), or (I) of section 212(a)(2) (relat-
14 ing to criminals);

15 “(ii) section 212(a)(3) (relating to se-
16 curity and related grounds); or

17 “(iii) subparagraphs (A), (C), or (D)
18 of section 212(a)(10) (relating to polyg-
19 amists, child abductors, and illegal voters);
20 and

21 “(C) for conduct that occurred prior to the
22 date that the Welcoming Immigrants to a Se-
23 cure Homeland Act of 2006 was introduced in
24 the Senate, the Secretary of Homeland Security
25 may waive the application of any provision of

1 section 212(a) not listed in subparagraph (B)
2 on behalf of an individual alien for humani-
3 tarian purposes, to ensure family unity, or when
4 such waiver is otherwise in the public interest.

5 “(2) CONSTRUCTION.—No provision in para-
6 graph (1) shall be construed as affecting the author-
7 ity of the Secretary of Homeland Security to waive
8 the provisions of section 212(a) under any other pro-
9 vision of law.

10 “(3) WAIVER FEE.—An alien who is granted a
11 waiver under subparagraph (1) shall pay a \$100 fee
12 upon approval of the alien’s visa application.

13 “(4) RENEWAL OF AUTHORIZED ADMISSION
14 AND SUBSEQUENT ADMISSIONS.—Notwithstanding
15 paragraph (1), an alien seeking renewal of author-
16 ized admission or subsequent admission as a non-
17 immigrant under section 101(a)(15)(W) shall estab-
18 lish that the alien is not inadmissible under section
19 212(a).

20 “(e) BACKGROUND CHECKS.—The Secretary of
21 Homeland Security shall not admit, and shall not issue
22 a visa to, an alien seeking admission under section
23 101(a)(15)(W) until all appropriate background checks,
24 including any that the Secretary, in the Secretary’s discre-
25 tion, may require, have been completed.

1 “(f) DURATION.—

2 “(1) INITIAL ADMITTANCE.—An alien may be
3 admitted as a nonimmigrant under section
4 101(a)(15)(W) for a period of 3 years.

5 “(2) SUBSEQUENT ADMITTANCE.—

6 “(A) ADDITIONAL PERIODS.—The period
7 described in paragraph (1) may be extended for
8 2 additional 3-year periods if the alien estab-
9 lishes that the alien is employed by an employer
10 that utilizes the Employment Management Sys-
11 tem described in section 218C.

12 “(B) RENEWAL APPLICATION.—An alien
13 admitted as a nonimmigrant under section
14 101(a)(15)(W) who is seeking an additional pe-
15 riod of admittance shall submit a renewal appli-
16 cation no more than 90 days and no less than
17 45 days before the end of the alien’s 3-year pe-
18 riod of admissibility under such section. Such
19 application shall include evidence of the alien’s
20 employment with an employer that utilizes the
21 Employment Management System described in
22 section 218C.

23 “(C) FEE.—An alien shall submit a fee of
24 \$100 along with the renewal application de-
25 scribed in subparagraph (B).

1 “(3) REQUIREMENT TO RETURN HOME.—Un-
2 less an alien is granted a change of status pursuant
3 to section 245 (as described in subsection (l)), an
4 alien admitted as a nonimmigrant under section
5 101(a)(15)(W) shall, upon the expiration of a period
6 of authorized admittance, leave the United States
7 and be ineligible to reenter as an alien under section
8 101(a)(15)(W) or receive any other immigration re-
9 lief or benefit under this Act or any other law, with
10 the exception of section 208 or 241(b)(3) or the
11 Convention Against Torture and Other Cruel, Inhu-
12 man or Degrading Treatment or Punishment, done
13 at New York December 10, 1984, until the alien has
14 resided continuously in the alien’s home country for
15 a period of not less than 3 years.

16 “(g) STANDARDS FOR DOCUMENTATION.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security shall ensure that the documents issued to
19 provide evidence of nonimmigrant status under sec-
20 tion 101(a)(15)(W) are machine-readable and tam-
21 per-resistant, and allow for biometric authentication.
22 The Secretary of Homeland Security is authorized to
23 incorporate integrated-circuit technology into such
24 documents.

1 “(2) CONSULTATION.—The Secretary of Home-
2 land Security shall consult with the head of the Fo-
3 rensic Document Laboratory and such other Federal
4 agencies as may be appropriate in designing the doc-
5 ument.

6 “(3) USE OF DOCUMENTATION.—The document
7 may serve as a travel, entry, and work authorization
8 document during the period that the document is
9 valid.

10 “(h) FAILURE TO DEPART.—

11 “(1) INADMISSIBILITY FOR FAILURE TO DE-
12 PART.—Subject to paragraph (2), an alien admitted
13 as a nonimmigrant under section 101(a)(15)(W)
14 who fails to depart the United States prior to the
15 date that is 10 days after the date that the alien’s
16 authorized period of admission under this section
17 ends is not eligible for and may not receive any im-
18 migration relief or benefit under this Act or any
19 other law for a period of 10 years.

20 “(2) EXCEPTION.—The prohibition in para-
21 graph (1) may not be applied to prohibit the admis-
22 sion of an alien under section 208 or 241(b)(3), or
23 the Convention Against Torture and Other Cruel,
24 Inhuman or Degrading Treatment or Punishment,
25 done at New York December 10, 1984.

1 “(i) FAMILY MEMBERS.—

2 “(1) IN GENERAL.—The spouse or child of an
3 alien admitted as a nonimmigrant under section
4 101(a)(15)(W) may be admitted to the United
5 States—

6 “(A) as a nonimmigrant for the same
7 amount of time, and on the same terms and
8 conditions, as the alien admitted as a non-
9 immigrant under section 101(a)(15)(W); or

10 “(B) under any other provision of law, if
11 such family member is otherwise eligible for ad-
12 mission.

13 “(2) APPLICATION FEE.—The spouse or child
14 of an alien admitted as a nonimmigrant under sec-
15 tion 101(a)(15)(W) who is seeking to be admitted
16 pursuant to this subsection shall submit, in addition
17 to any other fee authorized by law, an additional fee
18 of \$100.

19 “(j) TRAVEL OUTSIDE THE UNITED STATES.—

20 “(1) IN GENERAL.—An alien admitted as a
21 nonimmigrant under section 101(a)(15)(W) and the
22 spouse or child of such alien admitted pursuant to
23 subsection (i)—

24 “(A) may travel outside of the United
25 States; and

1 “(B) may be readmitted to the United
2 States without having to obtain a new visa if
3 the period of authorized admission under sec-
4 tion 101(a)(15)(W) has not expired.

5 “(2) EFFECT ON PERIOD OF AUTHORIZED AD-
6 MISSION.—Time spent outside the United States
7 under paragraph (1) may not extend the period of
8 authorized admission in the United States permitted
9 for an alien admitted under section 101(a)(15)(W)
10 or for the spouse or child of such alien admitted
11 under subsection (i).

12 “(k) EMPLOYMENT.—

13 “(1) PORTABILITY.—An alien admitted as a
14 nonimmigrant under section 101(a)(15)(W) may be
15 employed by any United States employer that uti-
16 lizes the Employment Management System described
17 in section 218C.

18 “(2) CONTINUOUS EMPLOYMENT.—

19 “(A) REQUIREMENT FOR EMPLOYMENT.—

20 An alien admitted under section 101(a)(15)(W)
21 shall be employed while in the United States.

22 An alien who fails to be employed for 30 con-
23 secutive days is ineligible for employment in the
24 United States unless the alien departs the
25 United States and thereafter provides evidence

1 of an offer of employment with any United
2 States employer that utilizes the Employment
3 Management System described in section 218C.

4 “(B) WAIVER.—The Secretary of Home-
5 land Security may, in the Secretary’s sole and
6 unreviewable discretion, waive the application of
7 subparagraph (A) for an alien and authorize
8 the alien for employment without requiring the
9 alien to depart the United States.

10 “(I) ADJUSTMENT OF STATUS TO LAWFUL PERMA-
11 NENT RESIDENT.—

12 “(1) ELIGIBILITY.—An alien admitted as a
13 nonimmigrant under section 101(a)(15)(W) shall be
14 eligible for an adjustment of status pursuant to sec-
15 tion 245 after such alien has completed a period of
16 employment in the United States of not less than 6
17 years.

18 “(2) FAMILY ELIGIBILITY.—The spouse or child
19 of an alien granted an adjustment of status as de-
20 scribed in paragraph (1) shall be eligible as a deriva-
21 tive beneficiary for adjustment of status.

22 “(m) NUMERICAL LIMIT.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 the Secretary of Homeland Security may not admit

1 more than 500,000 aliens as nonimmigrants pursu-
2 ant to section 101(a)(15)(W) during a fiscal year.

3 “(2) AUTHORITY TO INCREASE LIMITATION.—

4 The Secretary of Homeland Security may waive the
5 numerical limitation described in paragraph (1) for
6 a fiscal year if the Secretary determines that busi-
7 nesses in the United States would benefit from such
8 waiver.”.

9 (b) INITIAL RECEIPT OF APPLICATIONS.—The Sec-
10 retary of Homeland Security shall begin accepting applica-
11 tions for nonimmigrant status under section
12 101(a)(15)(W) of the Immigration and Nationality Act,
13 as added by section 201, not later than 6 months after
14 the date of the enactment of this Act.

15 (c) CONFORMING AMENDMENT.—Section 248(1) of
16 the Immigration and Nationality Act (8 U.S.C. 1258(1))
17 is amended by striking “or (S)” and inserting “(S), or
18 (W)”.

19 **SEC. 203. SPECIAL RULE FOR MEXICO.**

20 (a) IN GENERAL.—No alien who is a citizen or na-
21 tional of Mexico shall be eligible for status as a non-
22 immigrant under section 101(a)(15)(W) of the Immigra-
23 tion and Nationality Act, as added by section 201, a
24 change of status under section 218B of the Immigration
25 and Nationality Act, as added by section 301, an exemp-

tion from numerical limitations under section 201(b)(1)(F) of the Immigration and Nationality Act, as added by section 602, or for an immigration benefit described in section 603, 604, or 605 until the date that Government of Mexico enters into a bilateral agreement with the Government of the United States, as described in subsection (b).

(b) REQUIREMENTS FOR BILATERAL AGREEMENT.—

The bilateral agreement referred to in subsection (a) shall require the Government of Mexico—

(1) to accept the return of a citizen or national of Mexico who is ordered removed from the United States not later than 5 days after such order is issued;

(2) to cooperate with the Government of the United States—

(A) to identify, track, and reduce—

(i) gang membership and violence in the United States and Mexico;

(ii) human trafficking and smuggling between the United States and Mexico; and

(iii) drug trafficking and smuggling between the United States and Mexico; and

1 (B) to control illegal immigration from
2 Mexico into the United States;

3 (3) to provide the Government of the United
4 States with—

5 (A) the passport information and criminal
6 record of any citizen or national of Mexico who
7 is seeking admission to the United States or is
8 present in the United States; and

9 (B) admission and entry data maintained
10 by the Government of Mexico to facilitate the
11 entry-exit data systems maintained by the
12 United States; and

13 (4) to carry out activities to educate citizens
14 and nationals of Mexico regarding eligibility for sta-
15 tus as a nonimmigrant under section 101(a)(15)(W)
16 of the Immigration and Nationality Act, as added by
17 section 201, or a change of status under section
18 218B of the Immigration and Nationality Act, as
19 added by section 301 of this Act, to ensure that
20 such citizens and nationals are not exploited while
21 working in the United States.

22 (c) ANNUAL REPORT.—Not later than 180 days after
23 the date of the enactment of this Act, and annually there-
24 after, the Secretary of Homeland Security shall submit to
25 Congress a report on the bilateral agreement described in

1 this section and the activities of the Government of Mexico
 2 to carry out such agreement.

3 **SEC. 204. STATUTORY CONSTRUCTION.**

4 Nothing in this title, or any amendment made by this
 5 title, shall be construed to create any substantive or proce-
 6 dural right or benefit that is legally enforceable by any
 7 party against the United States or its agencies or officers
 8 or any other person.

9 **SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated such sums
 11 as may be necessary for facilities, personnel (including
 12 consular officers), training, technology and processing nec-
 13 essary to carry out the amendments made by this title.

14 **TITLE III—NONIMMIGRANT**
 15 **GUEST WORKER STATUS FOR**
 16 **UNAUTHORIZED ALIENS**

17 **SEC. 301. NONIMMIGRANT GUEST WORKER STATUS FOR**
 18 **UNAUTHORIZED ALIENS.**

19 (a) IN GENERAL.—The Immigration and Nationality
 20 Act (8 U.S.C. 1101 et seq.) is amended by inserting after
 21 section 218A, as added by section 202, the following new
 22 section:

1 **“SEC. 218B. CHANGE OF STATUS OF UNAUTHORIZED**
2 **ALIENS.**

3 “(a) IN GENERAL.—The Secretary of Homeland Se-
4 curity shall grant nonimmigrant status under section
5 101(a)(15)(W) to an alien who is in the United States
6 illegally if such alien meets the requirements of this sec-
7 tion.

8 “(b) GENERAL REQUIREMENTS.—An alien may be el-
9 igible for a change of status under this section if the alien
10 meets the following requirements:

11 “(1) PRESENCE.—An alien must establish that
12 the alien was physically present in the United States
13 prior to the date of introduction of the Welcoming
14 Immigrants to a Secure Homeland Act of 2006 in
15 the Senate and was not legally present in the United
16 States under any classification set forth in section
17 101(a)(15) on that date.

18 “(2) EMPLOYMENT.—An alien must establish
19 that the alien was employed in the United States
20 prior to the date of introduction of such Act in the
21 Senate, and has not been unemployed in the United
22 States for 30 or more consecutive days since that
23 date.

24 “(3) MEDICAL EXAMINATION.—An alien shall,
25 at the alien’s expense, undergo a medical examina-
26 tion (including a determination of immunization sta-

1 tus) that conforms to generally accepted professional
2 standards of medical practice.

3 “(c) APPLICATION CONTENT AND WAIVER.—

4 “(1) APPLICATION FORM.—The Secretary of
5 Homeland Security shall create an application form
6 that an alien shall be required to complete as a con-
7 dition of obtaining a change of status under this sec-
8 tion.

9 “(2) CONTENT.—In addition to any other infor-
10 mation that the Secretary determines is required to
11 determine an alien’s eligibility for a change of status
12 under this section, the Secretary shall require that
13 the alien—

14 “(A) provide answers to questions con-
15 cerning the alien’s criminal history and gang
16 membership, immigration history, and involve-
17 ment with groups or individuals that have en-
18 gaged in terrorism, genocide, persecution, or
19 who seek the overthrow of the Government of
20 the United States;

21 “(B) provide any Social Security account
22 number or card in the possession of the alien or
23 relied upon by the alien; and

24 “(C) provide any false or fraudulent docu-
25 ments in the alien’s possession.

1 “(3) WAIVER OF RIGHTS.—

2 “(A) AUTHORITY TO REQUEST.—The Sec-
3 retary may request that an alien include with
4 the application a waiver of rights that states
5 that the alien, in exchange for the discretionary
6 benefit of obtaining a change of status under
7 this section, agrees to waive any right—

8 “(i) to administrative or judicial re-
9 view or appeal of an immigration officer’s
10 determination as to the alien’s admissi-
11 bility; or

12 “(ii) to contest any removal action,
13 other than on the basis of an application
14 for asylum pursuant to the provisions con-
15 tained in section 208 or 241(b)(3), or
16 under the Convention Against Torture and
17 Other Cruel, Inhuman or Degrading Treat-
18 ment or Punishment, done at New York
19 December 10, 1984, if such removal action
20 is initiated after the termination of the
21 alien’s period of authorized admission as a
22 nonimmigrant under section
23 101(a)(15)(W).

24 “(B) REFUSAL TO WAIVE.—The Secretary
25 may not refuse to grant nonimmigrant status

1 under section 101(a)(15)(W) because an alien
2 does not submit the waiver described in sub-
3 paragraph (A).

4 “(C) KNOWLEDGE.—The Secretary of
5 Homeland Security shall require an alien to in-
6 clude with the application a signed certification
7 in which the alien certifies that the alien has
8 read and understood all of the questions, state-
9 ments, and terms of the application form, and
10 that the alien certifies under penalty of perjury
11 under the laws of the United States that the
12 application, and any evidence submitted with it,
13 are all true and correct, and that the applicant
14 authorizes the release of any information con-
15 tained in the application and any attached evi-
16 dence for law enforcement purposes.

17 “(4) APPLICATION FEE AND FINES.—

18 “(A) REQUIREMENT TO PAY.—An alien
19 applying for a change of status under this sec-
20 tion shall pay—

21 “(i) a \$250 visa issuance fee in addi-
22 tion to the cost of processing and adjudi-
23 cating such application; and

24 “(ii) a fine of \$1000.

1 “(B) CONSTRUCTION.—Nothing in this
2 paragraph shall be construed to affect consular
3 procedures for charging reciprocal fees.

4 “(d) ADMISSIBILITY.—

5 “(1) IN GENERAL.—In determining an alien’s
6 eligibility for a change of status under this section—

7 “(A) the alien shall establish that the
8 alien—

9 “(i) except as provided as in subpara-
10 graph (B), is admissible to the United
11 States; and

12 “(ii) has not assisted in the persecu-
13 tion of any person or persons on account
14 of race, religion, nationality, membership
15 in a particular social group, or political
16 opinion;

17 “(B) paragraphs (5), (6)(A), and (7) of
18 section 212(a) shall not apply to the admissi-
19 bility of such alien;

20 “(C) the Secretary of Homeland Security
21 may waive any other provision of section
22 212(a), or a ground of ineligibility under para-
23 graph (4), in the case of individual aliens for
24 humanitarian purposes, to assure family unity,
25 or when it is otherwise in the public interest.

1 “(2) WAIVER FEE.—An alien who is granted a
2 waiver under subparagraph (C) shall pay a \$100 fee
3 upon approval of the alien’s visa application.

4 “(e) INELIGIBLE.—An alien is ineligible for the
5 change of status provided by this section if the alien—

6 “(1) is subject to a final order or removal under
7 section 240;

8 “(2) failed to depart the United States during
9 the period of a voluntary departure order under sec-
10 tion 240B;

11 “(3) has been issued a Notice to Appear under
12 section 239, unless the sole acts of conduct alleged
13 to be in violation of the law are that the alien is re-
14 movable under section 237(a)(1)(C) or is inadmis-
15 sible under section 212(a)(6)(A);

16 “(4) fails to comply with any request for infor-
17 mation made by the Secretary of Homeland Secu-
18 rity;

19 “(5) commits an act that makes the alien re-
20 movable from the United States.

21 “(f) IMPLEMENTATION AND APPLICATION TIME PE-
22 RIODS.—

23 “(1) IN GENERAL.—The Secretary of Homeland
24 Security shall ensure that the application process for

1 an adjustment of status under this section is secure
2 and incorporates antifraud protection.

3 “(2) APPLICATION.—An alien must submit an
4 initial application for a change of status under this
5 section not later than 3 years after the date of the
6 enactment of the Welcoming Immigrants to a Secure
7 Homeland Act of 2006. An alien that fails to comply
8 with this requirement is ineligible for a change of
9 status under this section.

10 “(3) COMPLETION OF PROCESSING.—The Sec-
11 retary of Homeland Security shall ensure that all
12 applications for a change of status under this section
13 are processed not later than 3 years after the date
14 of the application.

15 “(4) LOCATION.—An alien applying for a
16 change of status under this section need not depart
17 the United States in order to apply for such a
18 change of status.

19 “(g) FAILURE TO ACT.—An alien unlawfully in the
20 United States who fails to apply for a change of status
21 pursuant to this section or fails to depart from the United
22 States prior to the date that is 6 years after the date of
23 the enactment of the Welcoming Immigrants to a Secure
24 Homeland Act of 2006 is not eligible and may not apply
25 for or receive any immigration relief or benefit under this

1 Act or any other law, with the exception of section 208
2 or 241(b)(3) or the Convention Against Torture and Other
3 Cruel, Inhuman or Degrading Treatment or Punishment,
4 done at New York December 10, 1984.

5 “(h) SECURITY AND LAW ENFORCEMENT BACK-
6 GROUND CHECKS.—

7 “(1) BIOMETRIC DATA.—An alien may not be
8 granted a change of status under this section unless
9 the alien submits biometric data in accordance with
10 procedures established by the Secretary of Home-
11 land Security.

12 “(2) BACKGROUND CHECKS.—The Secretary of
13 Homeland Security may not grant a change of sta-
14 tus under this section until all appropriate back-
15 ground checks, including any that the Secretary, in
16 the Secretary’s discretion may require, are com-
17 pleted to the satisfaction of the Secretary of Home-
18 land Security.

19 “(i) DURATION, EXTENSION, AND REENTRY.—

20 “(1) DURATION AND EXTENSION.—The period
21 of authorized admission for an alien granted a
22 change of status under this section shall be 3 years,
23 and may be extended for 2 additional 3-year periods
24 if the alien establishes that the alien has a job with

1 an employer that utilizes the Employment Manage-
2 ment System described in section 218C.

3 “(2) APPLICATION FOR EXTENSION.—

4 “(A) IN GENERAL.—An alien granted a
5 change of status for a 3-year period under this
6 section who is seeking an extension of such sta-
7 tus shall submit an application for such exten-
8 sion no more than 90 days and no less than 45
9 days before the end of such 3-year period. The
10 application shall provide evidence of employ-
11 ment with an employer that utilizes the Em-
12 ployment Management System described in sec-
13 tion 218C.

14 “(B) FEE.—An alien who submits an ap-
15 plication for an extension described in subpara-
16 graph (A), shall pay a \$100 fee with such appli-
17 cation.

18 “(3) REENTRY.—Unless an alien is granted a
19 change of status or adjustment of status pursuant to
20 subsection (n), an alien granted a change of status
21 pursuant to this section shall, upon the expiration of
22 the time period for authorized admission under this
23 section, leave the United States and be ineligible to
24 reenter the United States as a nonimmigrant under
25 section 101(a)(15)(W), or receive any other immi-

1 gration relief or benefit under this Act or any other
2 law, with the exception of section 208 or 241(b)(3)
3 or the Convention Against Torture and Other Cruel,
4 Inhuman or Degrading Treatment or Punishment,
5 done at New York December 10, 1984, until the
6 alien has resided continuously in the alien's home
7 country for a period of not less than 3 years.

8 “(j) STANDARDS FOR DOCUMENTATION.—

9 “(1) IN GENERAL.—The Secretary of Homeland
10 Security shall ensure that the document issued to
11 provide evidence of status under this section shall be
12 machine-readable, tamper-resistant, and allow for bi-
13 ometric authentication. The Secretary of Homeland
14 Security is authorized to incorporate integrated-cir-
15 cuit technology into the document.

16 “(2) CONSULTATION.—The Secretary of Home-
17 land Security shall consult with the head of the Fo-
18 rensic Document Laboratory and such other Federal
19 agencies as may be appropriate in designing the doc-
20 ument.

21 “(3) USE OF DOCUMENT.—The document may
22 serve as a travel, entry, and work authorization doc-
23 ument during the period of its validity.

24 “(k) FAILURE TO DEPART.—

1 “(1) INADMISSABILITY FOR FAILURE TO DE-
 2 PART.—Subject to paragraph (2), an alien who fails
 3 to depart the United States prior to the date that
 4 is 10 days after the date that the alien’s authorized
 5 period of admission under this section ends is not el-
 6 igible for and may not apply for or receive any im-
 7 migration relief or benefit under this Act or any
 8 other law for a period of 10 years.

9 “(2) EXCEPTION.—The prohibition in para-
 10 graph (1) may not be applied to prohibit the admis-
 11 sion of an alien under section 208 or 241(b)(3) of
 12 the Convention Against Torture and Other Cruel,
 13 Inhuman or Degrading Treatment or Punishment,
 14 done at New York, December 10, 1984.

15 “(1) TRAVEL OUTSIDE THE UNITED STATES.—

16 “(1) IN GENERAL.—An alien granted a change
 17 of status under this section and the spouse or child
 18 of such alien admitted pursuant to subsection (o)—

19 “(A) may travel outside of the United
 20 States; and

21 “(B) may be readmitted without having to
 22 obtain a new visa if the period of authorized ad-
 23 mission under this section has not expired.

24 “(2) EFFECT ON PERIOD OF AUTHORIZED AD-
 25 MISSION.—Time spent outside the United States

1 under paragraph (1) may not extend the period of
2 authorized admission in the United States permitted
3 for an alien under this section or for the spouse or
4 child of such alien admitted under subsection (o).

5 “(m) EMPLOYMENT.—

6 “(1) IN GENERAL.—An alien granted a change
7 of status under this section shall be employed by an
8 employer that utilizes the Employment Management
9 System described in section 218C not more than 3
10 months after the date the alien applies for a change
11 of status under this section.

12 “(2) LIABILITY FOR PENALTIES OR FEES.—The
13 employer of an alien granted a change of status
14 under this section shall not be liable for any civil or
15 criminal penalties or fees for hiring the alien prior
16 to such change of status if the employer begins to
17 utilize such Employment Management System pur-
18 suant to this subsection.

19 “(3) PORTABILITY.—An alien may be employed
20 by any other United States employer who utilizes the
21 Employment Management System established by
22 section 218C.

23 “(4) CONTINUOUS EMPLOYMENT.—

24 “(A) REQUIREMENT FOR EMPLOYMENT.—

25 An alien granted a change of status under this

1 section who fails to be employed for 30 consecu-
2 tive days is ineligible for reentry or employment
3 in the United States unless the alien departs
4 the United States and is admitted for reentry
5 under a provision of this Act or any other pro-
6 vision of law.

7 “(B) WAIVER.—The Secretary of Home-
8 land Security may, in the Secretary’s sole and
9 unreviewable discretion, waive the application of
10 subparagraph (A) for an alien and authorize
11 the alien for employment without requiring the
12 alien to depart the United States.

13 “(n) LIMITATION ON CHANGE OF STATUS OR AD-
14 JUSTMENT OF STATUS.—

15 “(1) IN GENERAL.—An alien described in para-
16 graph (2) may apply for a visa, an adjustment of
17 status, or other immigration benefit, other than for
18 adjustment of status to lawful permanent resident,
19 after the alien has resided lawfully in the United
20 States pursuant to a change of status granted as de-
21 scribed in this section for a period of not less than
22 5 years, but such application shall not be granted
23 until the alien has returned to the alien’s home
24 country.

1 “(2) REQUIREMENTS TO APPLY.—An alien de-
2 scribed in this paragraph is an alien who—

3 “(A) has been granted a change of status
4 under this section; and

5 “(B) during the 5-year period ending on
6 the date of the enactment of the Welcoming Im-
7 migrants to a Secure Homeland Act of 2006—

8 “(i) was physically present in the
9 United States; and

10 “(ii) unemployed for no more than 30
11 consecutive days.

12 “(o) FAMILY MEMBERS.—

13 “(1) IN GENERAL.—The spouse or child of an
14 alien admitted as a nonimmigrant under this section
15 may be admitted to the United States—

16 “(A) as a nonimmigrant for the same
17 amount of time, and on the same terms and
18 conditions, as the alien granted a change of sta-
19 tus under this section; or

20 “(B) under any other provision of law, if
21 such family member is otherwise eligible for ad-
22 mission.

23 “(2) APPLICATION FEE.—The spouse or child
24 of an alien admitted under this section who is seek-
25 ing to be admitted pursuant to this subsection shall

1 submit, in addition to any other fee authorized by
2 law, an additional fee of \$100.

3 “(p) NUMERICAL LIMIT.—There shall be no numer-
4 ical limitation on the number of aliens granted a change
5 of status under this section.

6 “(q) PENALTIES FOR FALSE STATEMENTS.—

7 “(1) CRIMINAL PENALTY.—

8 “(A) VIOLATION.—It shall be unlawful for
9 any person—

10 “(i) to file or assist in filing an appli-
11 cation for a change of status under this
12 section and knowingly or willfully falsify,
13 misrepresent, conceal, or cover up a mate-
14 rial fact or make any false, fictitious, or
15 fraudulent statements or representations,
16 or make or use any false writing or docu-
17 ment knowing the same to contain any
18 false, fictitious, or fraudulent statement or
19 entry; or

20 “(ii) to create or supply a false writ-
21 ing or document for use in making such an
22 application.

23 “(B) PENALTY.—Any person who violates
24 subparagraph (A) shall be fined in accordance

1 with title 18, United States Code, imprisoned
2 not more than 5 years, or both.

3 “(2) INADMISSIBILITY.—An alien who is con-
4 victed of a crime under paragraph (1) shall be con-
5 sidered to be inadmissible to the United States on
6 the ground described in section 212(a)(6)(C)(i).”.

7 (b) INITIAL RECEIPT OF APPLICATIONS.—The Sec-
8 retary of Homeland Security shall begin accepting applica-
9 tions for a change of status under section 218B of the
10 Immigration and Nationality Act, as added by subsection
11 (a), not later than 6 months after the date of the enact-
12 ment of this Act.

13 **SEC. 302. STATUTORY CONSTRUCTION.**

14 Nothing in this title, or any amendment made by this
15 title, shall be construed to create any substantive or proce-
16 dural right or benefit that is legally enforceable by any
17 party against the United States or its agencies or officers
18 or any other person.

19 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

20 There is authorized to be appropriated such sums as
21 may be necessary for facilities, personnel (including con-
22 sular officers), training, technology, and processing nec-
23 essary to carry out the amendments made by this title.

TITLE IV—EMPLOYMENT MANAGEMENT SYSTEM

SEC. 401. EMPLOYMENT MANAGEMENT SYSTEM.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 218B, as added by section 301, the following new section:

“SEC. 218C. EMPLOYMENT MANAGEMENT SYSTEM.

“(a) ESTABLISHMENT.—

“(1) PURPOSE.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of State, and the Commissioner of Social Security, shall develop and implement a program to authorize, manage, and track the employment of aliens described in section 218A or 218B.

“(2) SCHEDULE.—The program required by subsection (a) shall commence prior to any alien being admitted as a nonimmigrant under section 101(a)(15)(W) pursuant to section 218A or granted a change of status under section 218B.

“(3) REQUIREMENTS.—The program required by this subsection shall—

“(A) enable an employer seeking to hire an alien described in section 218A or 218B to apply for authorization to employ such alien;

1 “(B) be interoperable with Social Security
2 databases and shall provide a means of imme-
3 diately verifying the identity and employment
4 authorization of an alien described in section
5 218A or 218B;

6 “(C) require an employer to utilize readers,
7 scanners, or other affordable technology at the
8 location of employment or at a nearby Federal
9 facility to transmit the biometric and biographic
10 information contained in the alien’s evidence of
11 status to the Secretary of Homeland Security;

12 “(D) require an employer that employs an
13 alien described in section 218A or 218B to no-
14 tify the Secretary not more than 5 business
15 days after the date of the termination of the
16 alien’s employment and prohibit such an em-
17 ployer from hiring another such alien for such
18 employment until the employer provides such
19 notice; and

20 “(E) collects sufficient information from
21 employers to enable the Secretary of Homeland
22 Security to identify—

23 “(i) whether an alien described in sec-
24 tion 218A or 218B is employed;

1 “(ii) an employer who has hired an
2 alien described in section 218A or 218B;

3 “(iii) the number of aliens described
4 in section 218A or 218B that are employed
5 by an employer; and

6 “(iv) the occupation, industry and
7 length of time that an alien described in
8 section 218A or 218B has been employed
9 in the United States.

10 “(b) APPLICATION TO EMPLOY ALIENS DESCRIBED
11 IN SECTION 218A OR 218B.—

12 “(1) REQUIREMENT FOR APPLICATION.—An
13 employer shall submit to the Secretary of Homeland
14 Security an application to request an authorization
15 to employ aliens described in section 218A or 218B.
16 Such application shall—

17 “(A) establish that such aliens will be em-
18 ployed by a legitimate company;

19 “(B) include an attestation that the em-
20 ployer will comply with the terms of the pro-
21 gram required by subsection (a) and with all
22 other applicable Federal, State, and local laws
23 and regulations, including provisions to protect
24 employees; and

1 “(C) include the number of such aliens the
2 employer is seeking to employ.

3 “(2) FORM OF APPLICATION.—The Secretary
4 shall permit an employer to submit the application
5 described in paragraph (1) in a written or electronic
6 form.

7 “(c) PROTECTION OF UNITED STATES WORKERS.—
8 An employer may not hire an alien described in section
9 218A or 218B for a vacancy unless the employer submits
10 an attestation to the Secretary of Homeland Security
11 that—

12 “(1) the employer has advertised the position in
13 a national, electronic job registry maintained by the
14 Secretary of Labor for not less than 30 days;

15 “(2) the employer has offered the position to
16 any eligible United States worker who applies and is
17 equally or better qualified for the vacancy for which
18 such an alien is sought and who will be available at
19 the time and place of need, and the employer will
20 maintain records for not less than 1 year that de-
21 scribe the reason that a United States worker who
22 applied for such vacancy was not hired;

23 “(3) the employer shall comply with the terms
24 of the program required by subsection (a), including
25 the terms of any temporary worker monitoring pro-

1 gram established by the Secretary of Homeland Se-
2 curity;

3 “(4) an alien hired for the vacancy shall be paid
4 not less than the greater of—

5 “(A) the hourly wage prescribed under sec-
6 tion 6(a)(1) of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 206(a)(1)); or

8 “(B) the applicable State minimum wage;

9 “(5) the employer will pay such alien in a time-
10 ly manner and accurately maintain all payroll
11 records for such alien; and

12 “(6) the employment of such alien shall not ad-
13 versely affect the working conditions of other simi-
14 larly employed United States workers.

15 “(d) APPROVAL.—After determining that there are
16 no United States workers who are qualified and willing
17 to obtain the employment for which the employer is seek-
18 ing an alien described in section 218A or 218B, the Sec-
19 retary of Homeland Security may approve the application
20 submitted by the employer under subsection (b). Such ap-
21 proval shall be valid for a 10-year period unless the em-
22 ployer violates a term of this section, in which case the
23 Secretary may, in the discretion of the Secretary, revoke
24 the approval.

1 “(e) PENALTIES.—An employer who employs an alien
 2 described in section 218A or 218B without obtaining au-
 3 thorization from the Secretary of Homeland Security pur-
 4 suant to this section is subject to—

5 “(1) the same penalties and provisions as an
 6 employer who violates paragraph (1)(A) or (2) of
 7 section 274(a); and

8 “(2) any penalties prescribed by the Secretary
 9 of Homeland Security by regulation, which may in-
 10 clude monetary penalties and ineligibility to employ
 11 an alien described in section 218A or 218B.”.

12 **SEC. 402. LABOR INVESTIGATIONS AND PENALTIES.**

13 (a) IN GENERAL.—The Secretary of Homeland Secu-
 14 rity, in cooperation with the Secretary of Labor, shall con-
 15 duct random audits of employers who employ aliens de-
 16 scribed under section 218A or 218B of the Immigration
 17 and Nationality Act, as added by section 202 and 301,
 18 respectively.

19 (b) PENALTIES.—The Secretary of Homeland Secu-
 20 rity shall establish penalties, which may include ineligi-
 21 bility to employ an alien described in section 218A or
 22 218B of the Immigration and Nationality Act, as added
 23 by section 202 and 301, respectively, for employers who
 24 fail to comply with section 218C of such Act, as added
 25 by section 401 of this Act, and shall establish protections

1 for aliens who report employers who fail to comply with
2 such section 218C.

3 **TITLE V—PROTECTION AGAINST**
4 **IMMIGRATION FRAUD**

5 **SEC. 501. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
6 **TRAINING.**

7 (a) PURPOSE.—The purpose of this title is to provide
8 grants to nonprofit entities, immigrant communities, and
9 other interested entities to provide education and training
10 to appropriate individuals regarding the changes to immi-
11 gration law made by this Act, and the amendments made
12 by this Act, and to provide support to such entities.

13 (b) AUTHORITY.—The head of the Office of Justice
14 Programs of the Department of Justice is authorized to
15 award grants to nonprofit entities, immigrant commu-
16 nities, and other interested entities for the purposes de-
17 scribed in subsection (c).

18 (c) USE OF GRANTS.—The grants awarded under
19 this section shall be used to fund public education, train-
20 ing, technical assistance, government liaisons, and related
21 costs (including personnel and equipment) incurred by
22 nonprofit entities that provide services to aliens who may
23 be effected by the changes in immigration law made by
24 this Act, and the amendments made by this Act, and to
25 educate, train and support nonprofit organizations, immi-

1 grant communities, and other interested parties regarding
2 such changes. Such grants shall be used for educating—

3 (1) immigrant communities and other interested
4 entities on the individuals and organizations that
5 can provide authorized legal representation in immi-
6 gration matters under regulations prescribed by the
7 Secretary of Homeland Security, and on the dangers
8 of securing legal advice and assistance from a person
9 who is not authorized to provide legal representation
10 in immigration matters;

11 (2) interested entities on the requirements for
12 obtaining nonprofit recognition and accreditation to
13 represent immigrants under regulations prescribed
14 by the Secretary of Homeland Security, and pro-
15 viding nonprofit agencies with training and technical
16 assistance on the recognition and accreditation proc-
17 ess; and

18 (3) nonprofit organizations, immigrant commu-
19 nities and other interested entities on the process for
20 obtaining benefits under this Act, and the amend-
21 ments made by this Act, and the availability of au-
22 thorized legal representation for low-income persons
23 who may qualify for benefits under this Act.

24 (d) IN GENERAL.—The head of the Office of Justice
25 Programs shall ensure, to the extent possible, that the en-

1 titles awarded grants under this section shall serve geo-
 2 graphically diverse locations and ethnically diverse popu-
 3 lations who may qualify for benefits under the Act or the
 4 amendments made by this Act.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated to the Office of Justice
 7 Programs at the Department of Justice \$10,000,000 to
 8 carry out this section for each of fiscal years 2007 through
 9 2011.

10 **TITLE VI—HIGHLY EDUCATED** 11 **AND SKILLED WORKERS**

12 **SEC. 601. REMOVAL OF NUMERICAL LIMITATIONS FOR** 13 **NONIMMIGRANTS WITH ADVANCED DEGREES.**

14 (a) IN GENERAL.—Section 214(g)(5)(C) of the Im-
 15 migration and Nationality Act (8 U.S.C. 1184(g)(5)(C))
 16 is amended by striking “, until the number of aliens who
 17 are exempted from such numerical limitation during such
 18 year exceeds 20,000”.

19 (b) APPLICABILITY.—The amendment made by sub-
 20 section (a) shall apply to an alien who—

- 21 (1) has submitted an application for a visa that
- 22 is pending on the date of the enactment of this Act;
- 23 or
- 24 (2) files such an application on or after such
- 25 date.

1 **SEC. 602. ALIENS NOT SUBJECT TO NUMERICAL LIMITA-**
 2 **TIONS ON EMPLOYMENT-BASED IMMI-**
 3 **GRANTS.**

4 (a) IN GENERAL.—Section 201(b)(1) of the Immi-
 5 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is
 6 amended by adding at the end the following:

7 “(F) Aliens who have earned an advanced
 8 degree in science, technology, engineering, or
 9 math from an accredited university in the
 10 United States and have been working in a re-
 11 lated field in the United States under a non-
 12 immigrant visa during the 3-year period pre-
 13 ceding their application for an immigrant visa
 14 under section 203(b).

15 “(G) Aliens described in subparagraph (A)
 16 or (B) of section 203(b)(1) or who have re-
 17 ceived a national interest waiver under section
 18 203(b)(2)(B).

19 “(H) The spouse and child of an alien who
 20 is admitted as an employment-based immigrant
 21 under section 203(b).”.

22 (b) APPLICABILITY.—The amendment made by sub-
 23 section (a) shall apply to an alien who—

24 (1) has submitted an application for a visa that
 25 is pending on the date of the enactment of this Act;
 26 or

1 (2) files such an application on or after such
2 date.

3 **SEC. 603. OFF-CAMPUS WORK AUTHORIZATION FOR FOR-**
4 **EIGN STUDENTS.**

5 (a) IN GENERAL.—Aliens admitted as nonimmigrant
6 students described in section 101(a)(15)(F) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1101(a)(15)(F))
8 may be employed in an off-campus position unrelated to
9 the alien’s field of study if—

10 (1) the alien has enrolled full time at the edu-
11 cational institution and is maintaining good aca-
12 demic standing;

13 (2) the employer provides the educational insti-
14 tution and the Secretary of Labor with an attesta-
15 tion that the employer—

16 (A) has attempted to recruit a citizen of
17 the United States to fill such position for a pe-
18 riod of not less than 3 months recruiting
19 United States; and

20 (B) will pay the alien and other similarly
21 situated workers at a rate equal to not less
22 than the greater of—

23 (i) the actual wage level for the occu-
24 pation at the place of employment; or

- 1 (ii) the prevailing wage level for the
 2 occupation in the area of employment; and
 3 (3) the alien will not be employed more than—
 4 (A) 20 hours per week during the aca-
 5 demic term; or
 6 (B) 40 hours per week during vacation pe-
 7 riods and between academic terms.

8 (b) DISQUALIFICATION.—If the Secretary of Labor
 9 determines that an employer has provided an attestation
 10 under subsection (a)(2) that is materially false or has
 11 failed to pay wages in accordance with the attestation, the
 12 employer, after notice and opportunity for a hearing, shall
 13 be disqualified from employing an alien student under this
 14 section.

15 **SEC. 604. TEMPORARY VISAS FOR GRADUATING STUDENTS.**

16 Notwithstanding any other provision of law, the Sec-
 17 retary of Homeland Security shall grant a temporary non-
 18 immigrant visa to an alien to permit the alien to remain
 19 in the United States while awaiting the issuance of an em-
 20 ployment based nonimmigrant visa if the alien—

- 21 (1) graduated with honors from an established
 22 college or university in the United States while ad-
 23 mitted to the United States pursuant to a visa
 24 issued under subparagraph (F), (J), or (M) of sec-

1 tion 101(a)(15) of the Immigration and Nationality
2 Act (8 U.S.C. 1101(a)(15));

3 (2) has a bona fide offer of employment from
4 an employer who utilizes the Employment Manage-
5 ment System described in section 218C of the Immi-
6 gration and Nationality Act, as added by section
7 401; and

8 (3) submits to the Secretary an application for
9 such visa.

10 **SEC. 605. TRAVEL AUTHORIZATION.**

11 Notwithstanding any other provision of law, the Sec-
12 retary of Homeland Security shall permit an alien attend-
13 ing an established college or university in the United
14 States to travel outside of the United States if—

15 (1) the alien is admitted to the United States
16 pursuant to a visa issued under subparagraph (F),
17 (J), or (M) of section 101(a)(15) of the Immigration
18 and Nationality Act (8 U.S.C. 1101(a)(15));

19 (2) the purpose of such travel is to attend a
20 meeting, seminar, lecture, or similar event in a field
21 related to the alien's field of study; and

22 (3) the alien submits to the Secretary a request
23 for authorization for such travel not later than 30
24 days prior to the alien's proposed date of departure.

1 **SEC. 606. ADDITIONAL EMPLOYEES AND TECHNOLOGIES.**

2 (a) INCREASED EMPLOYEES.—During each of fiscal
3 years 2007 through 2011, the Secretary of Homeland Se-
4 curity shall, subject to the availability of appropriations
5 for such purpose, increase by not less than 100 the num-
6 ber of Homeland Security personnel dedicated to proc-
7 essing applications for visas applied for pursuant to sub-
8 paragraph (F), (J), or (M) of section 101(a)(15) of the
9 Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

10 (b) IMPROVED PROCEDURES.—The Secretary of
11 Homeland Security shall improve technology and auto-
12 mated procedures to enhance visa clearance procedures for
13 visas applied for pursuant to subparagraph (F), (J), or
14 (M) of section 101(a)(15) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1101(a)(15)).

16 (c) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated during each of fiscal
18 years 2007 through 2011 such sums as may be necessary
19 to carry out this section.

20 **TITLE VII—TRAVEL RESTRIC-**
21 **TIONS FOR TEMPORARY VISI-**
22 **TORS**

23 **SEC. 701. TRAVEL RESTRICTIONS.**

24 Section 214 of the Immigration and Nationality Act
25 (8 U.S.C. 1184) is amended by adding at the end the fol-
26 lowing new subsection:

1 “(s) The Secretary of Homeland Security—

2 “(1) may not prohibit an nonimmigrant admit-
3 ted under section 101(a)(15)(B) from traveling up
4 to 100 miles from an international border of the
5 United States; and

6 “(2) may permit such a nonimmigrant to travel
7 further from such a border.”.

8 **TITLE VIII—TEMPORARY**
9 **AGRICULTURAL WORKERS**

10 **SEC. 801. SENSE OF THE SENATE ON TEMPORARY AGRICUL-**
11 **TURAL WORKERS.**

12 It is the sense of the Senate that consideration of
13 any comprehensive immigration reform during the 109th
14 Congress should include reform for immigration laws re-
15 lated to employment of agricultural workers.

