

111TH CONGRESS
2D SESSION

S. 3858

To improve the H-2A agricultural worker program for use by dairy workers, sheepherders, and goat herders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2010

Mr. LEAHY (for himself, Mrs. GILLIBRAND, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the H-2A agricultural worker program for use by dairy workers, sheepherders, and goat herders, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “H-2A Improvement
5 Act”.

6 **SEC. 2. NONIMMIGRANT STATUS FOR DAIRY WORKERS,** 7 **SHEEPHERDERS, AND GOAT HERDERS.**

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

1 amended by inserting “who is coming temporarily to the
 2 United States to perform agricultural labor or services as
 3 a dairy worker, shepherd, or goat herder, or” after
 4 “abandoning”.

5 **SEC. 3. SPECIAL RULES FOR ALIENS EMPLOYED AS DAIRY**
 6 **WORKERS, SHEPHERDERS, OR GOAT HERD-**
 7 **ERS.**

8 Section 218 of the Immigration and Nationality Act
 9 (8 U.S.C. 1188) is amended—

10 (1) by redesignating subsections (h) and (i) as
 11 subsections (i) and (j), respectively;

12 (2) by inserting after subsection (g) the fol-
 13 lowing:

14 “(h) SPECIAL RULES FOR ALIENS EMPLOYED AS
 15 DAIRY WORKERS, SHEPHERDERS, OR GOAT HERD-
 16 ERS.—

17 “(1) IN GENERAL.—Notwithstanding any other
 18 provision of this Act, an alien admitted as a non-
 19 immigrant under section 101(a)(15)(H)(ii)(a) for
 20 employment as a dairy worker, shepherd, or goat
 21 herder—

22 “(A) may be admitted for an initial period
 23 of 3 years; and

1 “(B) subject to paragraph (3)(E), may
2 have such initial period of admission extended
3 for an additional period of up to 3 years.

4 “(2) EXEMPTION FROM TEMPORARY OR SEA-
5 SONAL REQUIREMENT.—Not withstanding section
6 101(a)(15)(H)(ii)(a), an employer filing a petition to
7 employ H–2A workers in positions as dairy workers,
8 sheepherders, or goat herders shall not be required
9 to show that such positions are of a seasonal or tem-
10 porary nature.

11 “(3) ADJUSTMENT TO LAWFUL PERMANENT
12 RESIDENT STATUS.—

13 “(A) ELIGIBLE ALIEN.—In this paragraph,
14 the term ‘eligible alien’ means an alien who—

15 “(i) has H–2A worker status based on
16 employment as a dairy worker, sheep-
17 herder, or goat herder;

18 “(ii) has maintained such status in
19 the United States for a not fewer than 33
20 of the preceding 36 months; and

21 “(iii) is seeking to receive an immi-
22 grant visa under section 203(b)(3)(A)(iii).

23 “(B) CLASSIFICATION PETITION.—A peti-
24 tion under section 204 for classification of an

1 eligible alien under section 203(b)(3)(A)(iii)
2 may be filed by—

3 “(i) the alien’s employer on behalf of
4 the eligible alien; or

5 “(ii) the eligible alien.

6 “(C) NO LABOR CERTIFICATION RE-
7 QUIRED.—Notwithstanding section
8 203(b)(3)(C), no determination under section
9 212(a)(5)(A) is required with respect to an im-
10 migrant visa under section 203(b)(3)(A)(iii) for
11 an eligible alien.

12 “(D) EFFECT OF PETITION.—The filing of
13 a petition described in subparagraph (B) or an
14 application for adjustment of status based on a
15 petition described in subparagraph (B) shall not
16 be a basis for denying—

17 “(i) another petition to employ H–2A
18 workers;

19 “(ii) an extension of nonimmigrant
20 status for a H–2A worker;

21 “(iii) admission of an alien as an H–
22 2A worker;

23 “(iv) a request for a visa for an H–
24 2A worker;

1 “(v) a request from an alien to modify
 2 the alien’s immigration status to or from
 3 status as an H–2A worker; or

4 “(vi) a request made for an H–2A
 5 worker to extend such worker’s stay in the
 6 United States.

7 “(E) EXTENSION OF STAY.—The Sec-
 8 retary of Homeland Security shall extend the
 9 stay of an eligible alien having a pending or ap-
 10 proved petition described in subparagraph (B)
 11 in 1-year increments until a final determination
 12 is made on the alien’s eligibility for adjustment
 13 of status to that of an alien lawfully admitted
 14 for permanent residence.

15 “(F) CONSTRUCTION.—Nothing in this
 16 paragraph may be construed to prevent an eligi-
 17 ble alien from seeking adjustment of status in
 18 accordance with any other provision of law.”;
 19 and

20 (3) in subsection (j)(1), as redesignated by
 21 paragraph (1), by striking “The term” and inserting
 22 “Except as provided under subsection (h)(2)(A), the
 23 term”.

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