

114TH CONGRESS
1ST SESSION

H. R. 3918

To modify the provisions of the Immigration and Nationality Act relating to nonimmigrant visas issued under section 101(a)(15)(H)(ii)(b) of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2015

Mr. CHABOT (for himself, Mr. GOODLATTE, Mr. HARRIS, and Mr. BOUSTANY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modify the provisions of the Immigration and Nationality Act relating to nonimmigrant visas issued under section 101(a)(15)(H)(ii)(b) of such Act, 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 “Strengthen Employ-
5 ment And Seasonal Opportunities Now (SEASON) Act”.

1 **SEC. 2. H-2B NUMERICAL LIMITATIONS.**

2 (a) IN GENERAL.—Section 214(g)(9)(A) of the Im-
3 migration and Nationality Act (8 U.S.C. 1184(g)(9)(A))
4 is amended to read as follows:

5 “(A) Subject to subparagraphs (B) and (C), an alien
6 who has already been counted toward the numerical limi-
7 tation of paragraph (1)(B) during 1 of the 3 fiscal years
8 preceding a fiscal year shall not again be counted toward
9 such limitation during that fiscal year. Such an alien shall
10 be considered a returning worker.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect as if enacted on January
13 1, 2015.

14 **SEC. 3. H-2B TEMPORARY NON-AGRICULTURAL WORK VISA**
15 **PROGRAM.**

16 (a) DEFINITION.—Section 214(g)(9) of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1184(g)(9)) is amend-
18 ed by adding at the end the following:

19 “(D) For purposes of section 101(a)(15)(H)(ii)(b),
20 the term ‘other temporary service or labor’ means that an
21 employer’s need for labor will last not more than 1 year
22 and is a seasonal, peak load, or intermittent need, unless
23 it is a one-time occurrence lasting not longer than 3 years.
24 For purposes of the preceding sentence, a ‘seasonal’ need
25 for labor is a need for labor that lasts not longer than
26 10 months.”.

1 (b) ADMISSION OF TEMPORARY H-2B WORKERS.—
2 Chapter 2 of title II of the Immigration and Nationality
3 Act (8 U.S.C. 1181 et seq.) is amended by inserting after
4 section 218 the following:

5 **“§ 218A. Admission of temporary H-2B workers**

6 “(a) DEFINITIONS.—In this section:

7 “(1) The term ‘H-2B worker’ means a non-
8 immigrant described in section 101(a)(15)(H)(ii)(b).

9 “(2) The term ‘United States worker’ means
10 any worker who is—

11 “(A) a citizen or national of the United
12 States; or

13 “(B) an alien who is lawfully admitted for
14 permanent residence, is admitted as a refugee
15 under section 207, is granted asylum under sec-
16 tion 208, or is an immigrant otherwise author-
17 ized by this Act to be employed.

18 “(3) The term ‘displace’ means to lay off a
19 worker from a job that is essentially equivalent to
20 the job for which an H-2B worker is sought. A job
21 shall not be considered to be ‘essentially equivalent’
22 to another job unless the job—

23 “(A) involves essentially the same respon-
24 sibilities as such other job;

1 “(B) was held by a United States worker
2 with substantially equivalent qualifications and
3 experience; and

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

6 “(4) The term ‘layoff’—

7 “(A) means to cause a worker’s loss of em-
8 ployment, other than through a discharge for
9 inadequate performance, violation of workplace
10 rules, cause, voluntary departure, voluntary re-
11 tirement, or the expiration of a grant or con-
12 tract (other than a temporary employment con-
13 tract entered into in order to evade a condition
14 described in subsection (b)(2)(G)); and

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

23 “(5) The term ‘full time’ means 30 or more
24 hours per week, except that where a State or an es-
25 tablished practice in an industry has developed a

1 definition of full-time employment for any occupa-
2 tion that is less than 30 hours per week, that defini-
3 tion shall have precedence.

4 “(6) The term ‘prevailing wage’ means—

5 “(A) if the job opportunity is covered by a
6 collective bargaining agreement that was nego-
7 tiated at arms’ length between the union and
8 the employer, the wage rate set forth in the col-
9 lective bargaining agreement;

10 “(B) If the H-2B worker is a professional
11 athlete whose job opportunity is covered by pro-
12 fessional sports league rules or regulations, the
13 wage set forth in section 212(p)(2);

14 “(C) if subparagraphs (A) and (B) do not
15 apply, at the employer’s option—

16 “(i) the wage rate provided by the De-
17 partment of Homeland Security that re-
18 flects the mean wage of workers similarly
19 employed at the skill level in the area of
20 employment based on Bureau of Labor
21 Statistics data; or

22 “(ii) the wage rate indicated by a
23 wage survey prepared by an entity other
24 than the Federal Government where—

1 “(I) the survey data was collected
2 within 24 months;

3 “(II) the survey was published
4 within the prior 24 months;

5 “(III) the employer’s job descrip-
6 tion adequately matches the job de-
7 scription in the survey;

8 “(IV) the survey reflects the area
9 of intended employment, if there are
10 substantially comparable jobs in the
11 area of intended employment;

12 “(V) the survey is across indus-
13 tries that employ workers in the occu-
14 pation;

15 “(VI) the wage determination re-
16 flects the mean wage of workers simi-
17 larly employed (and, at the employer’s
18 discretion, at the same skill level) in
19 the area of intended employment; and

20 “(VII) the survey identifies a sta-
21 tistically valid methodology that was
22 used to collect the data.

23 “(b) PETITIONS.—

24 “(1) IN GENERAL.—An employer that seeks to
25 employ an alien as an H-2B worker shall file with

1 the Secretary of Homeland Security a petition (and
2 shall not be required to make any additional filings
3 with the Secretary of Labor).

4 “(2) CONTENTS.—In the petition, the employer
5 shall include the following:

6 “(A) The number of named and unnamed
7 H–2B workers the employer is seeking to em-
8 ploy.

9 “(B) The reason for the employer’s tem-
10 porary (consistent with section 214(g)(9)(D))
11 and full time need for the H–2B workers and
12 the occupations sought.

13 “(C) The area of employment and work-
14 sites of the H–2B workers, except that for
15 itinerant industries that do not operate in a sin-
16 gle fixed-site location, an employer shall provide
17 a list of work locations.

18 “(D) The time period during which the H–
19 2B workers will be needed (the ‘work period’),
20 including whether actual entry will be stag-
21 gered.

22 “(3) ATTESTATIONS.—In the petition, the em-
23 ployer shall attest to the following:

24 “(A) The employer’s need for non-
25 agricultural services or labor is temporary (con-

1 sistent with section 214(g)(9)(D)), and full-
2 time.

3 “(B) The work period, reason for tem-
4 porary need, and number of positions being re-
5 quested have been truly and accurately stated
6 in the petition.

7 “(C) The employer is offering terms and
8 working conditions normal to U.S. workers
9 similarly employed in the area of intended em-
10 ployment.

11 “(D) The employer will provide to each H-
12 2B worker covered by the petition, prior to the
13 submission of the H-2B worker’s visa applica-
14 tion, written disclosure of the terms and condi-
15 tions of their employment.

16 “(E) The employer conducted recruitment
17 for United States workers consistent with para-
18 graph (4) before filing the petition and was un-
19 successful in locating sufficient qualified United
20 States workers for the job opportunity for
21 which the H-2B workers are sought.

22 “(F) The employer will provide or reim-
23 burse transportation expenses to an H-2B
24 worker consistent with the following rules:

1 “(i) If an H–2B worker completes 50
2 percent of the work period set forth in the
3 petition, the employer shall pay the H–2B
4 worker for the reasonable costs (including
5 daily subsistence) incurred by the worker
6 for transportation from the United States
7 consulate that issued their visa, or, if al-
8 ready lawfully present in the United States
9 in H–2B status or otherwise, from their
10 previous place of residence in the United
11 States, to the place of their employment as
12 an H–2B worker.

13 “(ii) In addition to an employer’s obli-
14 gations under section 214(c)(5)(A), if an
15 H–2B worker completes the work period
16 set forth in the petition, and is leaving the
17 United States, the employer shall pay the
18 H–2B worker for the reasonable costs (in-
19 cluding daily subsistence) incurred by the
20 worker for transportation from the place of
21 their employment as an H–2B worker to
22 the United States consulate that issued
23 their visa.

24 “(G) The employer has not and will not
25 displace United States workers employed by the

1 employer during the period of employment of
2 the H-2B workers and for a period of 60 days
3 preceding such period in the occupation and at
4 the area of employment set forth in the peti-
5 tion.

6 “(H) The specific job opportunity that is
7 the subject of the petition is not vacant because
8 the former workers in that specific job are on
9 strike or locked out in the course of a labor dis-
10 pute.

11 “(I) The employer shall pay the H-2B
12 workers, and any United States worker hired in
13 response to the recruitment required by sub-
14 paragraph (E), the greatest of—

15 “(i) the actual wage level paid by the
16 employer to all other individuals with simi-
17 lar experience and qualifications for the
18 specific employment in question;

19 “(ii) the applicable Federal, State, or
20 local minimum wage, whichever is greatest,
21 or;

22 “(iii) the prevailing wage level for the
23 occupational classification in the area of
24 employment.

1 “(J) The employer will notify the Secretary
2 of Homeland Security within 2 work days of—

3 “(i) an H–2B worker failing to report
4 for work within 5 work days after the em-
5 ployment start date stated on the petition;

6 “(ii) the labor or services for which
7 the H–2B worker was hired being com-
8 pleted more than 30 days early; or

9 “(iii) the employer discovering that an
10 H–2B worker has failed to report for work
11 at the regularly scheduled time for 5 or
12 more consecutive working days without the
13 consent of the employer.

14 “(K) The employer—

15 “(i) has not collected and will not col-
16 lect any job placement fee, payment for
17 any activity related to preparing or filing
18 the petition, or other compensation from a
19 beneficiary of an H–2B petition as a condi-
20 tion of an offer of employment or a condi-
21 tion of H–2B employment (other than any
22 government-mandated passport, visa, or in-
23 spection fees);

24 “(ii) has contractually forbidden any
25 agent, attorney, facilitator, recruiter, or

1 similar employment service from collecting
2 such fees; and

3 “(iii) shall ensure that the fees are re-
4 imbursed in full, if at any point the em-
5 ployer learns or has reason to know that
6 any agent, attorney, facilitator, recruiter,
7 or similar employment service has been
8 paid such fees.

9 “(4) EFFECT OF NOTICE.—An employer who
10 notifies the Secretary of Homeland Security in ac-
11 cordance with paragraph (3)(J) may designate an el-
12 igible alien to replace an H-2B worker who fails to
13 report for work notwithstanding the numerical limi-
14 tation in section 214(g)(1)(B).

15 “(5) RECRUITMENT.—

16 “(A) IN GENERAL.—The recruitment re-
17 quired by paragraph (3)(E) is satisfied if the
18 employer—

19 “(i) prior to filing the petition, placed
20 a local job order with the State workforce
21 agency serving the local area or areas
22 where the work will be performed (or in
23 the case of an itinerant employer, where
24 the job is to begin), except that nothing in
25 this clause shall require the employer to

1 file an interstate job order under section
2 653 of title 20, Code of Federal Regula-
3 tions. The State workforce agency shall
4 post the job order on its official agency
5 website for a minimum of 30 days and not
6 later than 3 days after receipt using the
7 employment statistics system authorized
8 under section 15 of the Wagner-Peyser Act
9 (29 U.S.C. 491–2);

10 “(ii) offered or will offer United
11 States workers not less than the same ben-
12 efits, wages, and working conditions that
13 the employer is offering, intends to offer,
14 or will provide to H–2B workers;

15 “(iii) does not impose on recruited
16 United States workers any restrictions or
17 obligations which will not be imposed on
18 the employer’s H–2B workers; and

19 “(iv) has offered or will offer the job
20 for which the H–2B worker(s) are sought,
21 unless the employer has a lawful, job-re-
22 lated reason not to do so, to any eligible
23 United State worker who—

24 “(I) applies;

25 “(II) is qualified for the job; and

1 “(III) will be available at the
2 time and place of need.

3 “(B) TERMINATION.—The requirement to
4 offer a job to a United States worker ceases to
5 apply as of the date the petition is approved.

6 “(c) APPLICATION PROCESS.—

7 “(1) ACCEPTANCE OF PETITIONS.—An em-
8 ployer may file a petition during the period that be-
9 gins on the 90th day, and ends on the 51st day, be-
10 fore the first date the employer requires the labor or
11 services of a petitioned-for H–2B worker.

12 “(2) ADJUDICATION OF PETITIONS.—The Sec-
13 retary of Homeland Security—

14 “(A) shall approve the petition if the Sec-
15 retary determines that the employer—

16 “(i) has established that the need for
17 the nonagricultural services or labor to be
18 performed is temporary in nature and that
19 the number of worker positions being re-
20 quested is justified and represents bona
21 fide job opportunities;

22 “(ii) made the attestations required in
23 subsection (b); and

24 “(iii) has complied with all other re-
25 quirements of this section; and

1 “(B) shall submit notice to the petitioner
2 of approval or nonapproval not later than the
3 later of 45 days prior to the first date the em-
4 ployer requires the labor or services of a peti-
5 tioned-for H-2B worker, or 21 days following
6 the date the employer files a petition for the H-
7 2B worker.

8 “(3) EXPEDITED ADMINISTRATIVE APPEALS.—
9 The Secretary of Homeland Security shall promul-
10 gate regulations to provide for an expedited proce-
11 dure for the review of a denial of a petition under
12 this section by the Secretary, which may include, at
13 the petitioner’s request, a de novo administrative
14 hearing regarding the denial of a petition at which
15 new evidence may be introduced.

16 “(d) ADMISSION OF AN H-2B WORKER.—An H-2B
17 worker shall be admitted to the United States for the du-
18 ration of the work period in the petition, plus a period
19 of up to 10 days before the work period begins and 10
20 days after the work period ends. An H-2B worker is not
21 authorized to be employed except during the work period
22 set forth in the petition.

23 “(e) LIMITATION ON AN H-2B WORKER’S STAY IN
24 STATUS.—An H-2B worker who has spent 3 years in the
25 United States under section 101(a)(15)(H) and (L) may

1 not seek extension of stay, change status, or be readmitted
 2 to the United States pursuant to these provisions of such
 3 section unless the alien has resided and been physically
 4 present outside the United States for the immediately pre-
 5 ceding 3 months. This limitation shall not apply to aliens
 6 who did not reside continually in the United States and
 7 whose employment in the United States was seasonal or
 8 intermittent or was for an aggregate of 6 months or less
 9 per year.

10 “(f) HOUSING.—An employer is not required to pro-
 11 vide housing or a housing allowance to an H-2B worker.”.

12 (c) ENFORCEMENT.—Section 214(c)(14) of the Im-
 13 migration and Nationality Act (8 U.S.C. 1184(c)(14)) is
 14 amended—

15 (1) by striking subparagraph (B); and

16 (2) by redesignating subparagraphs (C) and
 17 (D) as subparagraphs (B) and (C), respectively.

18 (d) CLERICAL AMENDMENT.—The table of contents
 19 of the Immigration and Nationality Act is amended by in-
 20 serting after the item relating to section 218 the following:

“218A. Admission of temporary H-2B workers.”.

21 **SEC. 4. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND**
 22 **REFUNDABLE TAX CREDITS.**

23 (a) FEDERAL PUBLIC BENEFITS.—An H-2B worker
 24 (as defined in section 218A(a)(1) of the Immigration and
 25 Nationality Act, as inserted by section 3 of this Act)—

1 (1) is not entitled to the premium assistance
2 tax credit authorized under section 36B of the Inter-
3 nal Revenue Code of 1986;

4 (2) shall be subject to the rules applicable to in-
5 dividuals who are not lawfully present set forth in
6 subsection (e) of such section; and

7 (3) shall be subject to the rules applicable to in-
8 dividuals who are not lawfully present set forth in
9 section 1402(e) of the Patient Protection and Af-
10 fordable Care Act (42 U.S.C. 18071(e)).

11 (b) REFUNDABLE TAX CREDITS.—An H–2B worker
12 (as defined in section 218A(a)(1) of the Immigration and
13 Nationality Act, as inserted by section 3 of this Act) shall
14 not be allowed any credit under section 24 or 32 of the
15 Internal Revenue Code of 1986. In the case of a joint re-
16 turn, no credit shall be allowed under either such section
17 if both spouses are such a worker or alien.

18 **SEC. 5. REGULATIONS.**

19 The Department of Labor H–2B program regulations
20 published at 73 Federal Register 78020 et seq. (2008)
21 shall be in force for all petitions submitted under section
22 101(a)(15)(H)(ii)(b) of the Immigration and Nationality
23 Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) beginning on the
24 date of the enactment of this Act until the effective date
25 of regulations implementing this Act. Not later than 12

1 months after the date of the enactment of this Act, the
2 Secretary of Homeland Security shall promulgate regula-
3 tions, in accordance with the notice and comment provi-
4 sions of section 553 of title 5, United States Code, to im-
5 plement the Secretary's duties under this Act. The Sec-
6 retary of Homeland Security shall have the exclusive au-
7 thority to make rules to implement this Act.

○