# Public Law 101-238
# 101st Congress

## An Act

To amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers.

Dec. 18, 1989
[H.R. 3259]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Immigration Nursing Relief Act of 1989.
Aliens.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Immigration Nursing Relief Act of 1989".

8 USC 1101 note.

**SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN H-1 NONIMMIGRANT NURSES.**

8 USC 1255 note.

(a) IN GENERAL.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act shall not apply to the adjustment of status under section 245 of such Act of an immigrant, and the immigrant's accompanying spouse and children—

(1) who, as of September 1, 1989, has the status of a nonimmigrant under paragraph (15)(H)(i) of section 101(a) of such Act to perform services as a registered nurse,

(2) who, for at least 3 years before the date of application for adjustment of status (whether or not before, on, or after, the date of the enactment of this Act), has been employed as a registered nurse in the United States, and

(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(14) of such Act.

The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

Regulations.

(b) TRANSITION.—For purposes of adjustment of status under section 245 of the Immigration and Nationality Act in the case of an alien who, as of December 31, 1989, is present in the United States in the lawful status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse, or who is the spouse or child of such an alien, such an alien shall be considered as having continued to maintain lawful status as such a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out subsection (a).

(c) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—The definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).

SEC. 3. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES DURING 5-YEAR PERIOD.

(a) ESTABLISHMENT OF A NEW NONIMMIGRANT CLASSIFICATION FOR NONIMMIGRANT NURSES.—Section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) is amended—

(1) by inserting "(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility for which the alien will perform the services, or (b)" after "(i)", and

(2) by inserting "(other than services as a registered nurse)" after "to perform services".

(b) REQUIREMENTS.—Section 212 of such Act (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(a), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

"(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

"(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

"(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

Health care facilities.

"(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(a), with respect to a facility for which an alien will perform services, is an attestation as to the following:

"(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

"(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

"(iii) The alien will be paid the wage rate for registered nurses similarly employed by the facility.

"(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is

subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

"(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

"(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of this subsection.

"(B) For purposes of subparagraph (A)(iv)(I), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

"(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

"(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

"(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

"(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

"(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv)(I). Nothing herein shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable.

"(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

"(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

"(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

"(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

"(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(a) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

Public information. District of Columbia.

"(ii) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to.

"(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

"(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least 1 year for nurses to be employed by the facility.

"(v) In addition to the sanctions provided under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

"(3) The Secretary of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individuals concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.

"(4) The period of admission of an alien under section 101(a)(15)(H)(i)(a) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).

"(5) For purposes of this subsection and section 101(a)(15)(H)(i)(a), the term 'facility' includes an employer who employs registered nurses in a home setting.".

(c) IMPLEMENTATION.—The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall— 8 USC 1182 note.

(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act; and Regulations.

(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—

(A) concerning the impact of this section on the nursing shortage,

(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,

(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

(D) on the advisability of extending the amendments made by this section beyond the 5-year period described in subsection (d).

(d) LIMITING APPLICATION OF NONIMMIGRANT CHANGES TO 5-YEAR PERIOD.—The amendments made by the previous provisions of this section shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of this Act. 8 USC 1182 note.

**SEC. 4. FRAUD PREVENTION IN SAW PROGRAM.**

(a) Section 210(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1160(a)(3)) is amended by—

(1) inserting "(A)" before "During", and

(2) inserting at the end of such paragraph the following new subparagraph:

"(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

"(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(19), or

"(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.".

(b) Section 210(b)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1160) is amended to read as follows:

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a deter-

mination under subparagraph (a)(3)(B), or for enforcement of paragraph (7).".

8 USC 1324a note.

SEC. 5. PILOT PROJECTS FOR SECURE DOCUMENTS.

State and local governments.

(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

Reports.

Grants. Contracts. California.

(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.

SEC. 6. ADDITIONAL USES OF STATE LEGALIZATION IMPACT ASSISTANCE GRANT FUNDS.

8 USC 1255a note.

(a) IN GENERAL.—Section 204(c) of the Immigration Reform and Control Act of 1986 is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (B),

(B) by striking the period at the end of subparagraph (C) and inserting a comma, and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding—

"(i) the requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status,

"(ii) sources of assistance for such aliens obtaining the adjustment of status described in clause (i), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence,

"(iii) the identification of health, employment, and social services, and

"(iv) the importance of identifying oneself as a temporary resident alien to service providers,

except that nothing in this subparagraph may be construed as authorizing the provision of client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status described in clause (i),

"(E)(i) subject to clause (ii), to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status,

"(ii) except that the State agencies shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program."; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

"(D) Of the amount allotted to a State with respect to any fiscal year, a State may not use more than—

"(i) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(D), and

"(ii) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(E).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to the use of allotments for fiscal years beginning with fiscal year 1989. 8 USC 1255a note.

Approved December 18, 1989.

LEGISLATIVE HISTORY—H.R. 3259:

HOUSE REPORTS: No. 101-288 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 135 (1989):
Oct. 17, considered and passed House.
Nov. 20, considered and passed Senate, amended.
Nov. 21, House concurred in Senate amendment.