

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(s) of Pub. L. 100-525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

DATE OF SUBMISSION OF FIRST REPORT

Pub. L. 114-113, div. O, title II, §205(b), Dec. 18, 2015, 129 Stat. 2993, provided that: “The Secretary of Homeland Security shall submit the first report described in subclause (V) of section 217(c)(5)(A)(i) of the Immigration and Nationality Act (8 U.S.C. (c)(5)(A)(i)), as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Dec. 18, 2015].”

MODERNIZING AND STRENGTHENING OF SECURITY OF VISA WAIVER PROGRAM

Pub. L. 110-53, title VII, §711(b), Aug. 3, 2007, 121 Stat. 338, provided that: “It is the sense of Congress that—

“(1) the United States should modernize and strengthen the security of the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) by simultaneously—

“(A) enhancing program security requirements; and

“(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

“(i) that are actively cooperating with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information; and

“(ii) whose nationals have demonstrated their compliance with the provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] regarding the purpose and duration of their admission to the United States; and

“(2) the modernization described in paragraph (1) will—

“(A) enhance bilateral cooperation on critical counterterrorism and information sharing initiatives;

“(B) support and expand tourism and business opportunities to enhance long-term economic competitiveness; and

“(C) strengthen bilateral relationships.”

MACHINE READABLE PASSPORTS

Pub. L. 107-56, title IV, §417(a), (b), Oct. 26, 2001, 115 Stat. 355, required the Secretary of State to perform annual audits and submit reports relating to machine readable, counterfeit, and tamper-resistant passports until Sept. 30, 2007.

REPORT REQUIRED

Pub. L. 106-396, title IV, §403(e), Oct. 30, 2000, 114 Stat. 1649, provided that: “Not later than two years after the date of the enactment of this Act [Oct. 30, 2000], the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate assessing the effectiveness of the program implemented under the amendments made by this section [amending this section] for simplifying the admission of business travelers from visa waiver program countries and compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by such travelers under that program.”

TRANSITION PROVISIONS

Pub. L. 104-208, div. C, title VI, §635(c)(2), Sept. 30, 1996, 110 Stat. 3009-703, provided that: “A country des-

ignated as a pilot program country with probationary status under section 217(g) of the Immigration and Nationality Act [8 U.S.C. 1187(g)] (as in effect on the day before the date of the enactment of this Act [Sept. 30, 1996]) shall be considered to be designated as a pilot program country on and after such date, subject to placement in probationary status or termination of such designation under such section (as amended by paragraph (1)).”

OPERATION OF AUTOMATED DATA ARRIVAL AND DEPARTURE CONTROL SYSTEM; REPORT TO CONGRESS

Pub. L. 101-649, title II, §201(c), Nov. 29, 1990, 104 Stat. 5014, provided that: “By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program.”

REPORT ON VISA WAIVER PILOT PROGRAM

Pub. L. 99-603, title IV, §405, Nov. 6, 1986, 100 Stat. 3442, provided that the Attorney General and the Secretary of State would jointly monitor the pilot program established under this section and report to the Congress not later than two years after the beginning of the program.

§ 1187a. Provision of assistance to non-program countries

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide assistance in a risk-based manner to countries that do not participate in the visa waiver program under section 1187 of this title to assist those countries in—

(1) submitting to Interpol information about the theft or loss of passports of citizens or nationals of such a country; and

(2) issuing, and validating at the ports of entry of such a country, electronic passports that are fraud-resistant, contain relevant biographic and biometric information (as determined by the Secretary of Homeland Security), and otherwise satisfy internationally accepted standards for electronic passports.

(Pub. L. 114-113, div. O, title II, §208, Dec. 18, 2015, 129 Stat. 2995.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1188. Admission of temporary H-2A workers**(a) Conditions for approval of H-2A petitions**

(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H-2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an em-

ployer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local

standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H-2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) with respect to a petition for the importation of such worker.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association,

the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, \$10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunc-

tive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term "H-2A worker" means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 218, formerly § 216, as added Pub. L. 99-603, title III, § 301(c), Nov. 6, 1986, 100 Stat. 3411; renumbered § 218 and amended Pub. L. 100-525, § 2(l)(2), (3), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 102-232, title III, §§ 307(l)(4), 309(b)(8), Dec. 12, 1991, 105 Stat. 1756, 1759; Pub. L. 103-416, title II, § 219(z)(8), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 106-78, title VII, § 748, Oct. 22, 1999, 113 Stat. 1167; Pub. L. 106-554, § 1(a)(1) [title I, § 105], Dec. 21, 2000, 114 Stat. 2763, 2763A-11.)

Editorial Notes

REFERENCES IN TEXT

Section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(3)(B)(iii), is section 403(a)(4)(D) of Pub. L. 99-603, which is set out in a note under this section.

CODIFICATION

Section was classified to section 1186 of this title prior to its renumbering by Pub. L. 100-525.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106-554 inserted at end "The determination as to whether the housing furnished by an employer for an H-2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) with respect to a petition for the importation of such worker."

1999—Subsec. (c)(1). Pub. L. 106-78, § 748(1), substituted “45 days” for “60 days”.

Subsec. (c)(3)(A). Pub. L. 106-78, § 748(2), substituted “30 days” for “20 days” in introductory provisions.

1994—Subsec. (i)(1). Pub. L. 103-416 made technical correction to directory language of Pub. L. 102-232, § 309(b)(8). See 1991 Amendment note below.

1991—Subsec. (g)(3). Pub. L. 102-232, § 307(l)(4), substituted “section 1182(a)(5)(A)(i)” for “section 1182(a)(14)”.

Subsec. (i)(1). Pub. L. 102-232, § 309(b)(8), as amended by Pub. L. 103-416, substituted “1324a(h)(3)” for “1324a(h)”.

1988—Pub. L. 100-525, § 2(l)(2)(A), made technical amendment to directory language of Pub. L. 99-603, § 301(c), which enacted this section.

Subsec. (c)(4). Pub. L. 100-525, § 2(l)(3), substituted “accommodations” for “accomodations” wherever appearing.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-416, title II, § 219(z), Oct. 25, 1994, 108 Stat. 4318, provided that the amendment made by subsec. (z)(8) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-232, title III, § 307(l), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(l) is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(s) of Pub. L. 100-525, set out as a note under section 1101 of this title.

EFFECTIVE DATE; REGULATIONS

Pub. L. 99-603, title III, § 301(d), (e), Nov. 6, 1986, 100 Stat. 3416, as amended by Pub. L. 100-525, § 2(l)(4), Oct. 24, 1988, 102 Stat. 2612, provided that:

“(d) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending sections 1101 and 1184] apply to petitions and applications filed under sections 214(c) and 218 of the Immigration and Nationality Act [8 U.S.C. 1184(c), 1188] on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986] (hereinafter in this section referred to as the ‘effective date’).

“(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Pub. L. 99-603, title III, § 301(f), Nov. 6, 1986, 100 Stat. 3416, as amended by Pub. L. 100-525, § 2(l)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: “It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and

advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188].”

REPORTS ON H-2A PROGRAM

Pub. L. 99-603, title IV, § 403, Nov. 6, 1986, 100 Stat. 3441, provided that:

“(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

“(1) the number of foreign workers permitted to be employed under the program in each year;

“(2) the compliance of employers and foreign workers with the terms and conditions of the program;

“(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

“(4) recommendations for modifications of the program, including—

“(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

“(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

“(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

“(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

“(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.”

[Functions of President under section 403 of Pub. L. 99-603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capa-