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108TH CONGRESS
2D SESSION

S. 2823

To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2004

Mr. CRAIG (for himself and Mr. KENNEDY) introduced the following bill;
which was read the first time

SEPTEMBER 22, 2004

Read the second time and placed on the calendar

A BILL

To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Agricultural Job Opportunity, Benefits, and Security Act
4 of 2004”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LAWFUL STATUS

Sec. 101. Agricultural workers.

Sec. 102. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

Sec. 201. Amendment to the Immigration and Nationality Act.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) AGRICULTURAL EMPLOYMENT.—The term
10 “agricultural employment” means any service or ac-
11 tivity that is considered to be agricultural under sec-
12 tion 3(f) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(f)) or agricultural labor under sec-
14 tion 3121(g) of the Internal Revenue Code of 1986
15 (26 U.S.C. 3121(g)). For purposes of this para-
16 graph, agricultural employment includes employment
17 under section 101(a)(15)(H)(ii)(a) of the Immigra-

1 tion and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(ii)(a)).

3 (2) EMPLOYER.—The term “employer” means
4 any person or entity, including any farm labor con-
5 tractor and any agricultural association, that em-
6 ploys workers in agricultural employment.

7 (3) JOB OPPORTUNITY.—The term “job oppor-
8 tunity” means a job opening for temporary full-time
9 employment at a place in the United States to which
10 United States workers can be referred.

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of Homeland Security.

13 (5) TEMPORARY.—A worker is employed on a
14 “temporary” basis where the employment is in-
15 tended not to exceed 10 months.

16 (6) UNITED STATES WORKER.—The term
17 “United States worker” means any worker, whether
18 a United States citizen or national, a lawfully admit-
19 ted permanent resident alien, or any other alien,
20 who is authorized to work in the job opportunity
21 within the United States, except an alien admitted
22 or otherwise provided status under section
23 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(7) WORK DAY.—The term “work day” means any day in which the individual is employed 1 or more hours in agriculture consistent with the definition of “man-day” under section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

TITLE I—ADJUSTMENT TO LAWFUL STATUS

SEC. 101. AGRICULTURAL WORKERS.

(a) TEMPORARY RESIDENT STATUS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer upon an alien who qualifies under this subsection the status of an alien lawfully admitted for temporary residence if the Secretary determines that the following requirements are satisfied with respect to the alien:

(A) PERFORMANCE OF AGRICULTURAL EMPLOYMENT IN THE UNITED STATES.—The alien must establish that the alien—

(i) entered the United States at least two years before the date of the enactment of this Act; and

(ii) has performed agricultural employment in the United States for at least 575 hours or 100 work days, whichever is less, during any 12 consecutive months

1 during the 18-month period ending on Au-
2 gust 31, 2003.

3 (B) APPLICATION PERIOD.—The alien
4 must apply for such status during the 18-month
5 application period beginning on the 1st day of
6 the 7th month that begins after the date of en-
7 actment of this Act.

8 (C) ADMISSIBLE AS IMMIGRANT.—The
9 alien must establish that the alien is otherwise
10 admissible to the United States under section
11 212 of the Immigration and Nationality Act (8
12 U.S.C. 1182), except as otherwise provided
13 under subsection (e)(2).

14 (2) AUTHORIZED TRAVEL.—During the period
15 an alien is in lawful temporary resident status
16 granted under this subsection, the alien has the
17 right to travel abroad (including commutation from
18 a residence abroad) in the same manner as an alien
19 lawfully admitted for permanent residence.

20 (3) AUTHORIZED EMPLOYMENT.—During the
21 period an alien is in lawful temporary resident sta-
22 tus granted under this subsection, the alien shall be
23 provided an “employment authorized” endorsement
24 or other appropriate work permit, in the same man-

1 ner as an alien lawfully admitted for permanent resi-
2 dence.

3 (4) TERMINATION OF TEMPORARY RESIDENT
4 STATUS.—During the period of temporary resident
5 status granted an alien under this subsection, the
6 Secretary may terminate such status only upon a de-
7 termination under this Act that the alien is deport-
8 able.

9 (5) RECORD OF EMPLOYMENT.—

10 (A) IN GENERAL.—Each employer of a
11 worker granted status under this subsection
12 shall annually—

13 (i) provide a written record of employ-
14 ment to the alien; and

15 (ii) provide a copy of such record to
16 the Secretary.

17 (B) SUNSET.—The obligation under sub-
18 paragraph (A) terminates on August 31, 2009.

19 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-
20 DENT STATUS.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this subsection, an alien who acquires the
23 status of an alien lawfully admitted for temporary
24 residence under subsection (a), such status not hav-
25 ing changed, shall be considered to be an alien law-

1 fully admitted for permanent residence for purposes
2 of any law other than any provision of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101 et seq.).

4 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
5 ERAL PUBLIC BENEFITS.—An alien who acquires the
6 status of an alien lawfully admitted for temporary
7 residence under subsection (a) as described in para-
8 graph (1) shall not be eligible, by reason of such ac-
9 quisition of that status, for any form of assistance
10 or benefit described in section 403(a) of the Per-
11 sonal Responsibility and Work Opportunity Rec-
12 onciliation Act of 1996 (8 U.S.C. 1613(a)) until 5
13 years after the date on which the Secretary confers
14 permanent resident status upon that alien under
15 subsection (a).

16 (3) TERMS OF EMPLOYMENT RESPECTING
17 ALIENS ADMITTED UNDER THIS SECTION.—

18 (A) PROHIBITION.—No alien granted sta-
19 tus under subsection (a) may be terminated
20 from employment by any employer during the
21 period of temporary resident status except for
22 just cause.

23 (B) TREATMENT OF COMPLAINTS.—

24 (i) ESTABLISHMENT OF PROCESS.—

25 The Secretary shall establish a process for

1 the receipt, initial review, and disposition
2 in accordance with this subparagraph of
3 complaints by aliens granted temporary
4 resident status under subsection (a) who
5 allege that they have been terminated with-
6 out just cause. No proceeding shall be con-
7 ducted under this subparagraph with re-
8 spect to a termination unless the Secretary
9 determines that the complaint was filed
10 not later than 6 months after the date of
11 the termination.

12 (ii) INITIATION OF ARBITRATION.—If
13 the Secretary finds that a complaint has
14 been filed in accordance with clause (i) and
15 there is reasonable cause to believe that
16 the complainant was terminated without
17 just cause, the Secretary shall initiate
18 binding arbitration proceedings by request-
19 ing the Federal Mediation and Conciliation
20 Service to appoint a mutually agreeable ar-
21 bitrator from the roster of arbitrators
22 maintained by such Service for the geo-
23 graphical area in which the employer is lo-
24 cated. The procedures and rules of such
25 Service shall be applicable to the selection

1 of such arbitrator and to such arbitration
2 proceedings. The Secretary shall pay the
3 fee and expenses of the arbitrator, subject
4 to the availability of appropriations for
5 such purpose.

6 (iii) ARBITRATION PROCEEDINGS.—

7 The arbitrator shall conduct the pro-
8 ceeding in accordance with the policies and
9 procedures promulgated by the American
10 Arbitration Association applicable to pri-
11 vate arbitration of employment disputes.
12 The arbitrator shall make findings respect-
13 ing whether the termination was for just
14 cause. The arbitrator may not find that
15 the termination was for just cause unless
16 the employer so demonstrates by a prepon-
17 derance of the evidence. If the arbitrator
18 finds that the termination was not for just
19 cause, the arbitrator shall make a specific
20 finding of the number of days or hours of
21 work lost by the employee as a result of
22 the termination. The arbitrator shall have
23 no authority to order any other remedy, in-
24 cluding, but not limited to, reinstatement,
25 back pay, or front pay to the affected em-

1 ployee. Within 30 days from the conclusion
2 of the arbitration proceeding, the arbi-
3 trator shall transmit the findings in the
4 form of a written opinion to the parties to
5 the arbitration and the Secretary. Such
6 findings shall be final and conclusive, and
7 no official or court of the United States
8 shall have the power or jurisdiction to re-
9 view any such findings.

10 (iv) EFFECT OF ARBITRATION FIND-
11 INGS.—If the Secretary receives a finding
12 of an arbitrator that an employer has ter-
13 minated an alien granted temporary resi-
14 dent status under subsection (a) without
15 just cause, the Secretary shall credit the
16 alien for the number of days or hours of
17 work lost for purposes of the requirement
18 of subsection (c)(1).

19 (v) TREATMENT OF ATTORNEY'S
20 FEES.—The parties shall bear the cost of
21 their own attorney's fees involved in the
22 litigation of the complaint.

23 (vi) NONEXCLUSIVE REMEDY.—The
24 complaint process provided for in this sub-
25 paragraph is in addition to any other

1 rights an employee may have in accordance
2 with applicable law.

3 (vii) EFFECT ON OTHER ACTIONS OR
4 PROCEEDINGS.—Any finding of fact or
5 law, judgment, conclusion, or final order
6 made by an arbitrator in the proceeding
7 before the Secretary shall not be conclusive
8 or binding in any separate or subsequent
9 action or proceeding between the employee
10 and the employee's current or prior em-
11 ployer brought before an arbitrator, admin-
12 istrative agency, court, or judge of any
13 State or the United States, regardless of
14 whether the prior action was between the
15 same or related parties or involved the
16 same facts, except that the arbitrator's
17 specific finding of the number of days or
18 hours of work lost by the employee as a re-
19 sult of the employment termination may be
20 referred to the Secretary pursuant to
21 clause (iv).

22 (C) CIVIL PENALTIES.—

23 (i) IN GENERAL.—If the Secretary
24 finds, after notice and opportunity for a
25 hearing, that an employer of an alien

1 granted temporary resident status under
2 subsection (a) has failed to provide the
3 record of employment required under sub-
4 section (a)(5) or has provided a false state-
5 ment of material fact in such a record, the
6 employer shall be subject to a civil money
7 penalty in an amount not to exceed \$1,000
8 per violation.

9 (ii) LIMITATION.—The penalty appli-
10 cable under clause (i) for failure to provide
11 records shall not apply unless the alien has
12 provided the employer with evidence of em-
13 ployment authorization granted under this
14 section.

15 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

16 (1) AGRICULTURAL WORKERS.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), the Secretary shall adjust
19 the status of an alien granted lawful temporary
20 resident status under subsection (a) to that of
21 an alien lawfully admitted for permanent resi-
22 dence if the Secretary determines that the fol-
23 lowing requirements are satisfied:

24 (i) QUALIFYING EMPLOYMENT.—The
25 alien has performed at least 360 work days

1 or 2,060 hours, but in no case less than
2 2,060 hours, of agricultural employment in
3 the United States, during the period begin-
4 ning on September 1, 2003, and ending on
5 August 31, 2009.

6 (ii) QUALIFYING YEARS.—The alien
7 has performed at least 75 work days or
8 430 hours, but in no case less than 430
9 hours, of agricultural employment in the
10 United States in at least 3 nonoverlapping
11 periods of 12 consecutive months during
12 the period beginning on September 1,
13 2003, and ending on August 31, 2009.
14 Qualifying periods under this clause may
15 include nonconsecutive 12-month periods.

16 (iii) QUALIFYING WORK IN FIRST 3
17 YEARS.—The alien has performed at least
18 240 work days or 1,380 hours, but in no
19 case less than 1,380 hours, of agricultural
20 employment during the period beginning
21 on September 1, 2003, and ending on Au-
22 gust 31, 2006.

23 (iv) APPLICATION PERIOD.—The alien
24 applies for adjustment of status not later
25 than August 31, 2010.

1 (v) PROOF.—In meeting the require-
2 ments of clauses (i), (ii), and (iii), an alien
3 may submit the record of employment de-
4 scribed in subsection (a)(5) or such docu-
5 mentation as may be submitted under sub-
6 section (d)(3).

7 (vi) DISABILITY.—In determining
8 whether an alien has met the requirements
9 of clauses (i), (ii), and (iii), the Secretary
10 shall credit the alien with any work days
11 lost because the alien was unable to work
12 in agricultural employment due to injury
13 or disease arising out of and in the course
14 of the alien's agricultural employment, if
15 the alien can establish such disabling in-
16 jury or disease through medical records.

17 (B) GROUNDS FOR DENIAL OF ADJUST-
18 MENT OF STATUS.—The Secretary may deny an
19 alien adjustment to permanent resident status,
20 and provide for termination of the temporary
21 resident status granted such alien under sub-
22 section (a), if—

23 (i) the Secretary finds by a prepon-
24 derance of the evidence that the adjust-
25 ment to temporary resident status was the

1 result of fraud or willful misrepresentation,
2 as described in section 212(a)(6)(C)(i) of
3 the Immigration and Nationality Act (8
4 U.S.C. 1182(a)(6)(C)(i)); or

5 (ii) the alien—

6 (I) commits an act that makes
7 the alien inadmissible to the United
8 States under section 212 of the Immi-
9 gration and Nationality Act (8 U.S.C.
10 1182), except as provided under sub-
11 section (e)(2); or

12 (II) is convicted of a felony or 3
13 or more misdemeanors committed in
14 the United States.

15 (C) GROUNDS FOR REMOVAL.—Any alien
16 granted temporary resident status under sub-
17 section (a) who does not apply for adjustment
18 of status under this subsection before the expi-
19 ration of the application period described in
20 subparagraph (A)(iv), or who fails to meet the
21 other requirements of subparagraph (A) by the
22 end of the applicable period, is deportable and
23 may be removed under section 240 of the Immi-
24 gration and Nationality Act (8 U.S.C. 1229a).
25 The Secretary shall issue regulations estab-

1 lishing grounds to waive subparagraph (A)(iii)
2 with respect to an alien who has completed at
3 least 200 days of the work requirement speci-
4 fied in such subparagraph in the event of a nat-
5 ural disaster which substantially limits the
6 availability of agricultural employment or a per-
7 sonal emergency that prevents compliance with
8 such subparagraph.

9 (2) SPOUSES AND MINOR CHILDREN.—

10 (A) IN GENERAL.—Notwithstanding any
11 other provision of law, the Secretary shall con-
12 fer the status of lawful permanent resident on
13 the spouse and minor child of an alien granted
14 status under paragraph (1), including any indi-
15 vidual who was a minor child on the date such
16 alien was granted temporary resident status, if
17 the spouse or minor child applies for such sta-
18 tus, or if the principal alien includes the spouse
19 or minor child in an application for adjustment
20 of status to that of a lawful permanent resi-
21 dent.

22 (B) TREATMENT OF SPOUSES AND MINOR
23 CHILDREN PRIOR TO ADJUSTMENT OF STA-
24 TUS.—A spouse and minor child of an alien

1 granted temporary resident status under sub-
2 section (a) may not be—

3 (i) removed while such alien maintains
4 such status; and

5 (ii) granted authorization to engage in
6 employment in the United States or be
7 provided an “employment authorized” en-
8 dorsement or other work permit, unless
9 such employment authorization is granted
10 under another provision of law.

11 (d) APPLICATIONS.—

12 (1) TO WHOM MAY BE MADE.—

13 (A) WITHIN THE UNITED STATES.—The
14 Secretary shall provide that—

15 (i) applications for temporary resident
16 status under subsection (a) may be filed—

17 (I) with the Secretary, but only if
18 the applicant is represented by an at-
19 torney; or

20 (II) with a qualified designated
21 entity (designated under paragraph
22 (2)), but only if the applicant consents
23 to the forwarding of the application to
24 the Secretary; and

1 (ii) applications for adjustment of sta-
2 tus under subsection (c) shall be filed di-
3 rectly with the Secretary.

4 (B) OUTSIDE THE UNITED STATES.—The
5 Secretary, in cooperation with the Secretary of
6 State, shall establish a procedure whereby an
7 alien may apply for temporary resident status
8 under subsection (a) at an appropriate consular
9 office outside the United States.

10 (C) PRELIMINARY APPLICATIONS.—

11 (i) IN GENERAL.—During the applica-
12 tion period described in subsection
13 (a)(1)(B), the Secretary may grant admis-
14 sion to the United States as a temporary
15 resident and provide an “employment au-
16 thorized” endorsement or other appro-
17 priate work permit to any alien who pre-
18 sents a preliminary application for such
19 status under subsection (a) at a designated
20 port of entry on the southern land border
21 of the United States. An alien who does
22 not enter through a port of entry is subject
23 to deportation and removal as otherwise
24 provided in this Act.

1 (ii) DEFINITION.—For purposes of
2 clause (i), the term “preliminary applica-
3 tion” means a fully completed and signed
4 application which contains specific infor-
5 mation concerning the performance of
6 qualifying employment in the United
7 States, together with the payment of the
8 appropriate fee and the submission of pho-
9 tographs and the documentary evidence
10 which the applicant intends to submit as
11 proof of such employment.

12 (iii) ELIGIBILITY.—An applicant
13 under clause (i) must be otherwise admis-
14 sible to the United States under subsection
15 (e)(2) and must establish to the satisfac-
16 tion of the examining officer during an
17 interview that the applicant’s claim to eli-
18 gibility for temporary resident status is
19 credible.

20 (D) TRAVEL DOCUMENTATION.—The Sec-
21 retary shall provide each alien granted status
22 under this section with a counterfeit-resistant
23 document of authorization to enter or reenter
24 the United States that meets the requirements
25 established by the Secretary.

1 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
2 PLICATIONS.—

3 (A) IN GENERAL.—For purposes of receiv-
4 ing applications under subsection (a), the Sec-
5 retary—

6 (i) shall designate qualified farm labor
7 organizations and associations of employ-
8 ers; and

9 (ii) may designate such other persons
10 as the Secretary determines are qualified
11 and have substantial experience, dem-
12 onstrate competence, and have traditional
13 long-term involvement in the preparation
14 and submittal of applications for adjust-
15 ment of status under section 209, 210, or
16 245 of the Immigration and Nationality
17 Act, Public Law 89–732, Public Law 95–
18 145, or the Immigration Reform and Con-
19 trol Act of 1986.

20 (B) REFERENCES.—Organizations, asso-
21 ciations, and persons designated under subpara-
22 graph (A) are referred to in this Act as “quali-
23 fied designated entities”.

24 (3) PROOF OF ELIGIBILITY.—

1 (A) IN GENERAL.—An alien may establish
2 that the alien meets the requirement of sub-
3 section (a)(1)(A) or subsection (c)(1)(A)
4 through government employment records or
5 records supplied by employers or collective bar-
6 gaining organizations, and other reliable docu-
7 mentation as the alien may provide. The Sec-
8 retary shall establish special procedures to
9 properly credit work in cases in which an alien
10 was employed under an assumed name.

11 (B) DOCUMENTATION OF WORK HIS-
12 TORY.—(i) An alien applying for status under
13 subsection (a)(1) or subsection (c)(1) has the
14 burden of proving by a preponderance of the
15 evidence that the alien has worked the requisite
16 number of hours or days (as required under
17 subsection (a)(1)(A) or subsection (c)(1)(A)).

18 (ii) If an employer or farm labor con-
19 tractor employing such an alien has kept proper
20 and adequate records respecting such employ-
21 ment, the alien's burden of proof under clause
22 (i) may be met by securing timely production of
23 those records under regulations to be promul-
24 gated by the Secretary.

1 (iii) An alien can meet such burden of
2 proof if the alien establishes that the alien has
3 in fact performed the work described in sub-
4 section (a)(1)(A) or subsection (c)(1)(A) by
5 producing sufficient evidence to show the extent
6 of that employment as a matter of just and rea-
7 sonable inference.

8 (4) TREATMENT OF APPLICATIONS BY QUALI-
9 FIED DESIGNATED ENTITIES.—Each qualified des-
10 ignated entity must agree to forward to the Sec-
11 retary applications filed with it in accordance with
12 paragraph (1)(A)(i)(II) but not to forward to the
13 Secretary applications filed with it unless the appli-
14 cant has consented to such forwarding. No such en-
15 tity may make a determination required by this sec-
16 tion to be made by the Secretary. Upon the request
17 of the alien, a qualified designated entity shall assist
18 the alien in obtaining documentation of the work
19 history of the alien.

20 (5) LIMITATION ON ACCESS TO INFORMA-
21 TION.—Files and records prepared for purposes of
22 this subsection by qualified designated entities oper-
23 ating under this subsection are confidential and the
24 Secretary shall not have access to such files or
25 records relating to an alien without the consent of

1 the alien, except as allowed by a court order issued
2 pursuant to paragraph (6).

3 (6) CONFIDENTIALITY OF INFORMATION.—

4 (A) IN GENERAL.—Except as otherwise
5 provided in this subsection, neither the Sec-
6 retary, nor any other official or employee of the
7 Department of Homeland Security, or bureau
8 or agency thereof, may—

9 (i) use the information furnished by
10 the applicant pursuant to an application
11 filed under this section, the information
12 provided to the applicant by a person des-
13 ignated under paragraph (2)(A), or any in-
14 formation provided by an employer or
15 former employer, for any purpose other
16 than to make a determination on the appli-
17 cation, or for enforcement of paragraph
18 (7);

19 (ii) make any publication whereby the
20 information furnished by any particular in-
21 dividual can be identified; or

22 (iii) permit anyone other than the
23 sworn officers and employees of the De-
24 partment of Homeland Security, or bureau
25 or agency thereof, or, with respect to appli-

1 cations filed with a qualified designated en-
2 tity, that qualified designated entity, to ex-
3 amine individual applications.

4 (B) CRIME.—Whoever knowingly uses,
5 publishes, or permits information to be exam-
6 ined in violation of this paragraph shall be fined
7 not more than \$10,000.

8 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
9 PPLICATIONS.—

10 (A) CRIMINAL PENALTY.—Whoever—

11 (i) files an application for status
12 under subsection (a) or (c) and knowingly
13 and willfully falsifies, conceals, or covers
14 up a material fact or makes any false, fic-
15 titious, or fraudulent statements or rep-
16 resentations, or makes or uses any false
17 writing or document knowing the same to
18 contain any false, fictitious, or fraudulent
19 statement or entry; or

20 (ii) creates or supplies a false writing
21 or document for use in making such an ap-
22 plication;

23 shall be fined in accordance with title 18,
24 United States Code, or imprisoned not more
25 than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for adjustment of status under this section.

(9) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(i) shall be charged for the filing of applications for status under subsections (a) and (c); and

(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee

1 in excess of, or in addition to, the fees author-
2 ized under subparagraph (A)(ii) for services
3 provided to applicants.

4 (C) DISPOSITION OF FEES.—

5 (i) IN GENERAL.—There is established
6 in the general fund of the Treasury a sepa-
7 rate account, which shall be known as the
8 “Agricultural Worker Immigration Status
9 Adjustment Account”. Notwithstanding
10 any other provision of law, there shall be
11 deposited as offsetting receipts into the ac-
12 count all fees collected under subparagraph
13 (A)(i).

14 (ii) USE OF FEES FOR APPLICATION
15 PROCESSING.—Amounts deposited in the
16 “Agricultural Worker Immigration Status
17 Adjustment Account” shall remain avail-
18 able to the Secretary until expended for
19 processing applications for status under
20 subsections (a) and (c).

21 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-
22 TAIN GROUNDS FOR INADMISSIBILITY.—

23 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

24 The numerical limitations of sections 201 and 202
25 of the Immigration and Nationality Act (8 U.S.C.

1 1151 and 1152) shall not apply to the adjustment
2 of aliens to lawful permanent resident status under
3 this section.

4 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
5 MISSIBILITY.—In the determination of an alien’s eli-
6 gibility for status under subsection (a)(1)(C) or an
7 alien’s eligibility for adjustment of status under sub-
8 section (c)(1)(B)(ii)(I), the following rules shall
9 apply:

10 (A) GROUNDS OF EXCLUSION NOT APPLI-
11 CABLE.—The provisions of paragraphs (5),
12 (6)(A), (7)(A), and (9)(B) of section 212(a) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1182(a)) shall not apply.

15 (B) WAIVER OF OTHER GROUNDS.—

16 (i) IN GENERAL.—Except as provided
17 in clause (ii), the Secretary may waive any
18 other provision of such section 212(a) in
19 the case of individual aliens for humani-
20 tarian purposes, to ensure family unity, or
21 when it is otherwise in the public interest.

22 (ii) GROUNDS THAT MAY NOT BE
23 WAIVED.—The following provisions of such
24 section 212(a) may not be waived by the
25 Secretary under clause (i):

1 (I) Subparagraphs (A) and (B)
2 of paragraph (2) (relating to crimi-
3 nals).

4 (II) Paragraph (4) (relating to
5 aliens likely to become public
6 charges).

7 (III) Paragraph (2)(C) (relating
8 to drug offenses).

9 (IV) Paragraph (3) (relating to
10 security and related grounds).

11 (iii) CONSTRUCTION.—Nothing in this
12 subparagraph shall be construed as affect-
13 ing the authority of the Secretary other
14 than under this subparagraph to waive
15 provisions of such section 212(a).

16 (C) SPECIAL RULE FOR DETERMINATION
17 OF PUBLIC CHARGE.—An alien is not ineligible
18 for status under this section by reason of a
19 ground of inadmissibility under section
20 212(a)(4) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(a)(4)) if the alien dem-
22 onstrates a history of employment in the United
23 States evidencing self-support without reliance
24 on public cash assistance.

1 (f) TEMPORARY STAY OF REMOVAL AND WORK AU-
2 THORIZATION FOR CERTAIN APPLICANTS.—

3 (1) BEFORE APPLICATION PERIOD.—Effective
4 on the date of enactment of this Act, the Secretary
5 shall provide that, in the case of an alien who is ap-
6 prehended before the beginning of the application
7 period described in subsection (a)(1)(B) and who
8 can establish a nonfrivolous case of eligibility for
9 temporary resident status under subsection (a) (but
10 for the fact that the alien may not apply for such
11 status until the beginning of such period), until the
12 alien has had the opportunity during the first 30
13 days of the application period to complete the filing
14 of an application for temporary resident status, the
15 alien—

16 (A) may not be removed; and

17 (B) shall be granted authorization to en-
18 gage in employment in the United States and
19 be provided an “employment authorized” en-
20 dorsement or other appropriate work permit for
21 such purpose.

22 (2) DURING APPLICATION PERIOD.—The Sec-
23 retary shall provide that, in the case of an alien who
24 presents a nonfrivolous application for temporary
25 resident status under subsection (a) during the ap-

1 plication period described in subsection (a)(1)(B),
 2 including an alien who files such an application
 3 within 30 days of the alien’s apprehension, and until
 4 a final determination on the application has been
 5 made in accordance with this section, the alien—

6 (A) may not be removed; and

7 (B) shall be granted authorization to en-
 8 gage in employment in the United States and
 9 be provided an “employment authorized” en-
 10 dorsement or other appropriate work permit for
 11 such purpose.

12 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

13 (1) IN GENERAL.—There shall be no adminis-
 14 trative or judicial review of a determination respect-
 15 ing an application for status under subsection (a) or
 16 (c) except in accordance with this subsection.

17 (2) ADMINISTRATIVE REVIEW.—

18 (A) SINGLE LEVEL OF ADMINISTRATIVE
 19 APPELLATE REVIEW.—The Secretary shall es-
 20 tablish an appellate authority to provide for a
 21 single level of administrative appellate review of
 22 such a determination.

23 (B) STANDARD FOR REVIEW.—Such ad-
 24 ministrative appellate review shall be based
 25 solely upon the administrative record estab-

lished at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—

Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the 1st day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the

1 benefits that aliens may receive under this section and the
2 requirements to be satisfied to obtain such benefits.

3 (i) REGULATIONS.—The Secretary shall issue regula-
4 tions to implement this section not later than the 1st day
5 of the 7th month that begins after the date of enactment
6 of this Act.

7 (j) EFFECTIVE DATE.—This section shall take effect
8 on the date that regulations are issued implementing this
9 section on an interim or other basis.

10 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
11 hereby authorized to be appropriated to the Secretary to
12 carry out this section \$40,000,000 for each of fiscal years
13 2005 through 2008.

14 **SEC. 102. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

17 (1) in subparagraph (B)(ii), by striking “or” at
18 the end;

19 (2) in subparagraph (C), by inserting “or” at
20 the end;

21 (3) by inserting after subparagraph (C) the fol-
22 lowing:

23 “(D) who is granted status as a lawful tem-
24 porary resident under the Agricultural Job Oppor-
25 tunity, Benefits, and Security Act of 2004,”; and

1 (4) by striking “1990.” and inserting “1990, or
 2 in the case of an alien described in subparagraph
 3 (D), if such conduct is alleged to have occurred prior
 4 to the date on which the alien was granted lawful
 5 temporary resident status.”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) shall take effect on the 1st day of the 7th
 8 month that begins after the date of enactment of this Act.

9 **TITLE II—REFORM OF H-2A** 10 **WORKER PROGRAM**

11 **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-** 12 **ALITY ACT.**

13 (a) IN GENERAL.—The Immigration and Nationality
 14 Act is amended by striking section 218 (8 U.S.C. 1188)
 15 and inserting the following:

16 “H-2A EMPLOYER APPLICATIONS

17 “SEC. 218. (a) APPLICATIONS TO THE SECRETARY
 18 OF LABOR.—

19 “(1) IN GENERAL.—No alien may be admitted
 20 to the United States as an H-2A worker, or other-
 21 wise provided status as an H-2A worker, unless the
 22 employer has filed with the Secretary of Labor an
 23 application containing—

24 “(A) the assurances described in sub-
 25 section (b);

1 “(B) a description of the nature and loca-
2 tion of the work to be performed;

3 “(C) the anticipated period (expected be-
4 ginning and ending dates) for which the work-
5 ers will be needed; and

6 “(D) the number of job opportunities in
7 which the employer seeks to employ the work-
8 ers.

9 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
10 plication filed under paragraph (1) shall be accom-
11 panied by a copy of the job offer describing the
12 wages and other terms and conditions of employ-
13 ment and the bona fide occupational qualifications
14 that must be possessed by a worker to be employed
15 in the job opportunity in question.

16 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
17 TIONS.—The assurances referred to in subsection (a)(1)
18 are the following:

19 “(1) JOB OPPORTUNITIES COVERED BY COL-
20 LECTIVE BARGAINING AGREEMENTS.—With respect
21 to a job opportunity that is covered under a collec-
22 tive bargaining agreement:

23 “(A) UNION CONTRACT DESCRIBED.—The
24 job opportunity is covered by a union contract

1 which was negotiated at arm's length between a
2 bona fide union and the employer.

3 “(B) STRIKE OR LOCKOUT.—The specific
4 job opportunity for which the employer is re-
5 questing an H-2A worker is not vacant because
6 the former occupant is on strike or being locked
7 out in the course of a labor dispute.

8 “(C) NOTIFICATION OF BARGAINING REP-
9 REPRESENTATIVES.—The employer, at the time of
10 filing the application, has provided notice of the
11 filing under this paragraph to the bargaining
12 representative of the employer's employees in
13 the occupational classification at the place or
14 places of employment for which aliens are
15 sought.

16 “(D) TEMPORARY OR SEASONAL JOB OP-
17 PORTUNITIES.—The job opportunity is tem-
18 porary or seasonal.

19 “(E) OFFERS TO UNITED STATES WORK-
20 ERS.—The employer has offered or will offer
21 the job to any eligible United States worker
22 who applies and is equally or better qualified
23 for the job for which the nonimmigrant is, or
24 the nonimmigrants are, sought and who will be
25 available at the time and place of need.

1 “(F) PROVISION OF INSURANCE.—If the
 2 job opportunity is not covered by the State
 3 workers’ compensation law, the employer will
 4 provide, at no cost to the worker, insurance cov-
 5 ering injury and disease arising out of, and in
 6 the course of, the worker’s employment which
 7 will provide benefits at least equal to those pro-
 8 vided under the State’s workers’ compensation
 9 law for comparable employment.

10 “(2) JOB OPPORTUNITIES NOT COVERED BY
 11 COLLECTIVE BARGAINING AGREEMENTS.—With re-
 12 spect to a job opportunity that is not covered under
 13 a collective bargaining agreement:

14 “(A) STRIKE OR LOCKOUT.—The specific
 15 job opportunity for which the employer is re-
 16 questing an H-2A worker is not vacant because
 17 the former occupant is on strike or being locked
 18 out in the course of a labor dispute.

19 “(B) TEMPORARY OR SEASONAL JOB OP-
 20 PORTUNITIES.—The job opportunity is tem-
 21 porary or seasonal.

22 “(C) BENEFIT, WAGE, AND WORKING CON-
 23 DITIONS.—The employer will provide, at a min-
 24 imum, the benefits, wages, and working condi-
 25 tions required by section 218A to all workers

1 employed in the job opportunities for which the
2 employer has applied under subsection (a) and
3 to all other workers in the same occupation at
4 the place of employment.

5 “(D) NONDISPLACEMENT OF UNITED
6 STATES WORKERS.—The employer did not dis-
7 place and will not displace a United States
8 worker employed by the employer during the
9 period of employment and for a period of 30
10 days preceding the period of employment in the
11 occupation at the place of employment for
12 which the employer seeks approval to employ
13 H–2A workers.

14 “(E) REQUIREMENTS FOR PLACEMENT OF
15 NONIMMIGRANT WITH OTHER EMPLOYERS.—
16 The employer will not place the nonimmigrant
17 with another employer unless—

18 “(i) the nonimmigrant performs du-
19 ties in whole or in part at 1 or more work
20 sites owned, operated, or controlled by
21 such other employer;

22 “(ii) there are indicia of an employ-
23 ment relationship between the non-
24 immigrant and such other employer; and

1 “(iii) the employer has inquired of the
 2 other employer as to whether, and has no
 3 actual knowledge or notice that, during the
 4 period of employment and for a period of
 5 30 days preceding the period of employ-
 6 ment, the other employer has displaced or
 7 intends to displace a United States worker
 8 employed by the other employer in the oc-
 9 cupation at the place of employment for
 10 which the employer seeks approval to em-
 11 ploy H-2A workers.

12 “(F) STATEMENT OF LIABILITY.—The ap-
 13 plication form shall include a clear statement
 14 explaining the liability under subparagraph (E)
 15 of an employer if the other employer described
 16 in such subparagraph displaces a United States
 17 worker as described in such subparagraph.

18 “(G) PROVISION OF INSURANCE.—If the
 19 job opportunity is not covered by the State
 20 workers’ compensation law, the employer will
 21 provide, at no cost to the worker, insurance cov-
 22 ering injury and disease arising out of and in
 23 the course of the worker’s employment which
 24 will provide benefits at least equal to those pro-

1 vided under the State’s workers’ compensation
2 law for comparable employment.

3 “(H) EMPLOYMENT OF UNITED STATES
4 WORKERS.—

5 “(i) RECRUITMENT.—The employer
6 has taken or will take the following steps
7 to recruit United States workers for the
8 job opportunities for which the H–2A non-
9 immigrant is, or H–2A nonimmigrants are,
10 sought:

11 “(I) CONTACTING FORMER
12 WORKERS.—The employer shall make
13 reasonable efforts through the sending
14 of a letter by United States Postal
15 Service mail, or otherwise, to contact
16 any United States worker the em-
17 ployer employed during the previous
18 season in the occupation at the place
19 of intended employment for which the
20 employer is applying for workers and
21 has made the availability of the em-
22 ployer’s job opportunities in the occu-
23 pation at the place of intended em-
24 ployment known to such previous
25 workers, unless the worker was termi-

1 nated from employment by the em-
2 ployer for a lawful job-related reason
3 or abandoned the job before the work-
4 er completed the period of employ-
5 ment of the job opportunity for which
6 the worker was hired.

7 “(II) FILING A JOB OFFER WITH
8 THE LOCAL OFFICE OF THE STATE
9 EMPLOYMENT SECURITY AGENCY.—

10 Not later than 28 days prior to the
11 date on which the employer desires to
12 employ an H-2A worker in a tem-
13 porary or seasonal agricultural job op-
14 portunity, the employer shall submit a
15 copy of the job offer described in sub-
16 section (a)(2) to the local office of the
17 State employment security agency
18 which serves the area of intended em-
19 ployment and authorize the posting of
20 the job opportunity on ‘America’s Job
21 Bank’ or other electronic job registry,
22 except that nothing in this subclause
23 shall require the employer to file an
24 interstate job order under section 653

1 of title 20, Code of Federal Regula-
2 tions.

3 “(III) ADVERTISING OF JOB OP-
4 PORTUNITIES.—Not later than 14
5 days prior to the date on which the
6 employer desires to employ an H-2A
7 worker in a temporary or seasonal ag-
8 ricultural job opportunity, the em-
9 ployer shall advertise the availability of
10 the job opportunities for which the em-
11 ployer is seeking workers in a publica-
12 tion in the local labor market that is
13 likely to be patronized by potential
14 farm workers.

15 “(IV) EMERGENCY PROCE-
16 DURES.—The Secretary of Labor
17 shall, by regulation, provide a proce-
18 dure for acceptance and approval of
19 applications in which the employer
20 has not complied with the provisions
21 of this subparagraph because the em-
22 ployer’s need for H-2A workers could
23 not reasonably have been foreseen.

24 “(ii) JOB OFFERS.—The employer has
25 offered or will offer the job to any eligible

1 United States worker who applies and is
2 equally or better qualified for the job for
3 which the nonimmigrant is, or non-
4 immigrants are, sought and who will be
5 available at the time and place of need.

6 “(iii) PERIOD OF EMPLOYMENT.—The
7 employer will provide employment to any
8 qualified United States worker who applies
9 to the employer during the period begin-
10 ning on the date on which the foreign
11 worker departs for the employer’s place of
12 employment and ending on the date on
13 which 50 percent of the period of employ-
14 ment for which the foreign worker who is
15 in the job was hired has elapsed, subject to
16 the following requirements:

17 “(I) PROHIBITION.—No person
18 or entity shall willfully and knowingly
19 withhold United States workers prior
20 to the arrival of H-2A workers in
21 order to force the hiring of United
22 States workers under this clause.

23 “(II) COMPLAINTS.—Upon re-
24 ceipt of a complaint by an employer
25 that a violation of subclause (I) has

1 occurred, the Secretary of Labor shall
 2 immediately investigate. The Sec-
 3 retary of Labor shall, within 36 hours
 4 of the receipt of the complaint, issue
 5 findings concerning the alleged viola-
 6 tion. If the Secretary of Labor finds
 7 that a violation has occurred, the Sec-
 8 retary of Labor shall immediately sus-
 9 pend the application of this clause
 10 with respect to that certification for
 11 that date of need.

12 “(III) PLACEMENT OF UNITED
 13 STATES WORKERS.—Prior to referring
 14 a United States worker to an em-
 15 ployer during the period described in
 16 the matter preceding subclause (I),
 17 the Secretary of Labor shall make all
 18 reasonable efforts to place the United
 19 States worker in an open job accept-
 20 able to the worker, if there are other
 21 job offers pending with the job service
 22 that offer similar job opportunities in
 23 the area of intended employment.

24 “(iv) STATUTORY CONSTRUCTION.—
 25 Nothing in this subparagraph shall be con-

1 strued to prohibit an employer from using
 2 such legitimate selection criteria relevant
 3 to the type of job that are normal or cus-
 4 tomary to the type of job involved so long
 5 as such criteria are not applied in a dis-
 6 criminatory manner.

7 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
 8 OF EMPLOYER MEMBERS.—

9 “(1) IN GENERAL.—An agricultural association
 10 may file an application under subsection (a) on be-
 11 half of 1 or more of its employer members that the
 12 association certifies in its application has or have
 13 agreed in writing to comply with the requirements of
 14 this section and sections 218A through 218C.

15 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
 16 EMPLOYERS.—If an association filing an application
 17 under paragraph (1) is a joint or sole employer of
 18 the temporary or seasonal agricultural workers re-
 19 quested on the application, the certifications granted
 20 under subsection (e)(2)(B) to the association may be
 21 used for the certified job opportunities of any of its
 22 producer members named on the application, and
 23 such workers may be transferred among such pro-
 24 ducer members to perform the agricultural services

1 of a temporary or seasonal nature for which the cer-
2 tifications were granted.

3 “(d) WITHDRAWAL OF APPLICATIONS.—

4 “(1) IN GENERAL.—An employer may withdraw
5 an application filed pursuant to subsection (a), ex-
6 cept that if the employer is an agricultural associa-
7 tion, the association may withdraw an application
8 filed pursuant to subsection (a) with respect to 1 or
9 more of its members. To withdraw an application,
10 the employer or association shall notify the Sec-
11 retary of Labor in writing, and the Secretary of
12 Labor shall acknowledge in writing the receipt of
13 such withdrawal notice. An employer who withdraws
14 an application under subsection (a), or on whose be-
15 half an application is withdrawn, is relieved of the
16 obligations undertaken in the application.

17 “(2) LIMITATION.—An application may not be
18 withdrawn while any alien provided status under sec-
19 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
20 tion is employed by the employer.

21 “(3) OBLIGATIONS UNDER OTHER STATUTES.—

22 Any obligation incurred by an employer under any
23 other law or regulation as a result of the recruit-
24 ment of United States workers or H-2A workers
25 under an offer of terms and conditions of employ-

1 ment required as a result of making an application
 2 under subsection (a) is unaffected by withdrawal of
 3 such application.

4 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

5 “(1) RESPONSIBILITY OF EMPLOYERS.—The
 6 employer shall make available for public examina-
 7 tion, within 1 working day after the date on which
 8 an application under subsection (a) is filed, at the
 9 employer’s principal place of business or work site,
 10 a copy of each such application (and such accom-
 11 panying documents as are necessary).

12 “(2) RESPONSIBILITY OF THE SECRETARY OF
 13 LABOR.—

14 “(A) COMPILATION OF LIST.—The Sec-
 15 retary of Labor shall compile, on a current
 16 basis, a list (by employer and by occupational
 17 classification) of the applications filed under
 18 this subsection. Such list shall include the wage
 19 rate, number of workers sought, period of in-
 20 tended employment, and date of need. The Sec-
 21 retary of Labor shall make such list available
 22 for examination in the District of Columbia.

23 “(B) REVIEW OF APPLICATIONS.—The
 24 Secretary of Labor shall review such an applica-
 25 tion only for completeness and obvious inac-

1 curacies. Unless the Secretary of Labor finds
2 that the application is incomplete or obviously
3 inaccurate, the Secretary of Labor shall certify
4 that the intending employer has filed with the
5 Secretary of Labor an application as described
6 in subsection (a). Such certification shall be
7 provided within 7 days of the filing of the appli-
8 cation.

9 “H-2A EMPLOYMENT REQUIREMENTS

10 “SEC. 218A. (a) PREFERENTIAL TREATMENT OF
11 ALIENS PROHIBITED.—Employers seeking to hire United
12 States workers shall offer the United States workers no
13 less than the same benefits, wages, and working conditions
14 that the employer is offering, intends to offer, or will pro-
15 vide to H-2A workers. Conversely, no job offer may im-
16 pose on United States workers any restrictions or obliga-
17 tions which will not be imposed on the employer’s H-2A
18 workers.

19 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
20 CONDITIONS.—Except in cases where higher benefits,
21 wages, or working conditions are required by the provi-
22 sions of subsection (a), in order to protect similarly em-
23 ployed United States workers from adverse effects with
24 respect to benefits, wages, and working conditions, every
25 job offer which must accompany an application under sec-

1 tion 218(b)(2) shall include each of the following benefit,
 2 wage, and working condition provisions:

3 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
 4 HOUSING ALLOWANCE.—

5 “(A) IN GENERAL.—An employer applying
 6 under section 218(a) for H-2A workers shall
 7 offer to provide housing at no cost to all work-
 8 ers in job opportunities for which the employer
 9 has applied under that section and to all other
 10 workers in the same occupation at the place of
 11 employment, whose place of residence is beyond
 12 normal commuting distance.

13 “(B) TYPE OF HOUSING.—In complying
 14 with subparagraph (A), an employer may, at
 15 the employer’s election, provide housing that
 16 meets applicable Federal standards for tem-
 17 porary labor camps or secure housing that
 18 meets applicable local standards for rental or
 19 public accommodation housing or other sub-
 20 stantially similar class of habitation, or in the
 21 absence of applicable local standards, State
 22 standards for rental or public accommodation
 23 housing or other substantially similar class of
 24 habitation. In the absence of applicable local or

1 State standards, Federal temporary labor camp
2 standards shall apply.

3 “(C) FAMILY HOUSING.—When it is the
4 prevailing practice in the occupation and area
5 of intended employment to provide family hous-
6 ing, family housing shall be provided to workers
7 with families who request it.

8 “(D) WORKERS ENGAGED IN THE RANGE
9 PRODUCTION OF LIVESTOCK.—The Secretary of
10 Labor shall issue regulations that address the
11 specific requirements for the provision of hous-
12 ing to workers engaged in the range production
13 of livestock.

14 “(E) LIMITATION.—Nothing in this para-
15 graph shall be construed to require an employer
16 to provide or secure housing for persons who
17 were not entitled to such housing under the
18 temporary labor certification regulations in ef-
19 fect on June 1, 1986.

20 “(F) CHARGES FOR HOUSING.—

21 “(i) CHARGES FOR PUBLIC HOUS-
22 ING.—If public housing provided for mi-
23 grant agricultural workers under the aus-
24 pices of a local, county, or State govern-
25 ment is secured by an employer, and use of

1 the public housing unit normally requires
2 charges from migrant workers, such
3 charges shall be paid by the employer di-
4 rectly to the appropriate individual or enti-
5 ty affiliated with the housing's manage-
6 ment.

7 “(ii) DEPOSIT CHARGES.—Charges in
8 the form of deposits for bedding or other
9 similar incidentals related to housing shall
10 not be levied upon workers by employers
11 who provide housing for their workers.
12 However, an employer may require a work-
13 er found to have been responsible for dam-
14 age to such housing which is not the result
15 of normal wear and tear related to habi-
16 tation to reimburse the employer for the
17 reasonable cost of repair of such damage.

18 “(G) HOUSING ALLOWANCE AS ALTER-
19 NATIVE.—

20 “(i) IN GENERAL.—In lieu of offering
21 housing pursuant to subparagraph (A), the
22 employer may provide a reasonable housing
23 allowance, but only if the requirement of
24 clause (ii) is satisfied. Upon the request of
25 a worker seeking assistance in locating

1 housing, the employer shall make a good
2 faith effort to assist the worker in identi-
3 fying and locating housing in the area of
4 intended employment. An employer who of-
5 fers a housing allowance to a worker, or
6 assists a worker in locating housing which
7 the worker occupies, pursuant to this
8 clause shall not be deemed a housing pro-
9 vider under section 203 of the Migrant and
10 Seasonal Agricultural Worker Protection
11 Act (29 U.S.C. 1823) solely by virtue of
12 providing such housing allowance. How-
13 ever, no housing allowance may be used for
14 housing which is owned or controlled by
15 the employer.

16 “(ii) CERTIFICATION.—The require-
17 ment of this clause is satisfied if the Gov-
18 ernor of the State certifies to the Secretary
19 of Labor that there is adequate housing
20 available in the area of intended employ-
21 ment for migrant farm workers, and H-2A
22 workers, who are seeking temporary hous-
23 ing while employed at farm work. Such
24 certification shall expire after 3 years un-
25 less renewed by the Governor of the State.

1 “(iii) AMOUNT OF ALLOWANCE.—

2 “(I) NONMETROPOLITAN COUN-
3 TIES.—If the place of employment of
4 the workers provided an allowance
5 under this subparagraph is a non-
6 metropolitan county, the amount of the
7 housing allowance under this subpara-
8 graph shall be equal to the statewide
9 average fair market rental for existing
10 housing for nonmetropolitan counties
11 for the State, as established by the
12 Secretary of Housing and Urban De-
13 velopment pursuant to section 8(c) of
14 the United States Housing Act of
15 1937 (42 U.S.C. 1437f(c)), based on
16 a 2-bedroom dwelling unit and an as-
17 sumption of 2 persons per bedroom.

18 “(II) METROPOLITAN COUN-
19 TIES.—If the place of employment of
20 the workers provided an allowance
21 under this paragraph is in a metro-
22 politan county, the amount of the
23 housing allowance under this subpara-
24 graph shall be equal to the statewide
25 average fair market rental for existing

1 housing for metropolitan counties for
2 the State, as established by the Sec-
3 retary of Housing and Urban Devel-
4 opment pursuant to section 8(c) of
5 the United States Housing Act of
6 1937 (42 U.S.C. 1437f(c)), based on
7 a 2-bedroom dwelling unit and an as-
8 sumption of 2 persons per bedroom.

9 “(2) REIMBURSEMENT OF TRANSPORTATION.—

10 “(A) TO PLACE OF EMPLOYMENT.—A
11 worker who completes 50 percent of the period
12 of employment of the job opportunity for which
13 the worker was hired shall be reimbursed by the
14 employer for the cost of the worker’s transpor-
15 tation and subsistence from the place from
16 which the worker came to work for the em-
17 ployer (or place of last employment, if the
18 worker traveled from such place) to the place of
19 employment.

20 “(B) FROM PLACE OF EMPLOYMENT.—A
21 worker who completes the period of employment
22 for the job opportunity involved shall be reim-
23 bursed by the employer for the cost of the
24 worker’s transportation and subsistence from
25 the place of employment to the place from

1 which the worker, disregarding intervening em-
 2 ployment, came to work for the employer, or to
 3 the place of next employment, if the worker has
 4 contracted with a subsequent employer who has
 5 not agreed to provide or pay for the worker's
 6 transportation and subsistence to such subse-
 7 quent employer's place of employment.

8 “(C) LIMITATION.—

9 “(i) AMOUNT OF REIMBURSEMENT.—

10 Except as provided in clause (ii), the
 11 amount of reimbursement provided under
 12 subparagraph (A) or (B) to a worker or
 13 alien shall not exceed the lesser of—

14 “(I) the actual cost to the worker

15 or alien of the transportation and sub-
 16 sistence involved; or

17 “(II) the most economical and

18 reasonable common carrier transpor-
 19 tation charges and subsistence costs
 20 for the distance involved.

21 “(ii) DISTANCE TRAVELED.—No reim-

22 bursement under subparagraph (A) or (B)
 23 shall be required if the distance traveled is
 24 100 miles or less, or the worker is not re-
 25 siding in employer-provided housing or

1 housing secured through an allowance as
2 provided in paragraph (1)(G).

3 “(D) EARLY TERMINATION.—If the worker
4 is laid off or employment is terminated for con-
5 tract impossibility (as described in paragraph
6 (4)(D)) before the anticipated ending date of
7 employment, the employer shall provide the
8 transportation and subsistence required by sub-
9 paragraph (B) and, notwithstanding whether
10 the worker has completed 50 percent of the pe-
11 riod of employment, shall provide the transpor-
12 tation reimbursement required by subparagraph
13 (A).

14 “(E) TRANSPORTATION BETWEEN LIVING
15 QUARTERS AND WORK SITE.—The employer
16 shall provide transportation between the work-
17 er’s living quarters (i.e., housing provided by
18 the employer pursuant to paragraph (1), includ-
19 ing housing provided through a housing allow-
20 ance) and the employer’s work site without cost
21 to the worker, and such transportation will be
22 in accordance with applicable laws and regula-
23 tions.

24 “(3) REQUIRED WAGES.—

1 “(A) IN GENERAL.—An employer applying
2 for workers under section 218(a) shall offer to
3 pay, and shall pay, all workers in the occupa-
4 tion for which the employer has applied for
5 workers, not less (and is not required to pay
6 more) than the greater of the prevailing wage
7 in the occupation in the area of intended em-
8 ployment or the adverse effect wage rate. No
9 worker shall be paid less than the greater of the
10 hourly wage prescribed under section 6(a)(1) of
11 the Fair Labor Standards Act of 1938 (29
12 U.S.C. 206(a)(1)) or the applicable State min-
13 imum wage.

14 “(B) LIMITATION.—Effective on the date
15 of enactment of the Agricultural Job Oppor-
16 tunity, Benefits, and Security Act of 2004 and
17 continuing for 3 years thereafter, no adverse ef-
18 fect wage rate for a State may be more than
19 the adverse effect wage rate for that State in
20 effect on January 1, 2003, as established by
21 section 655.107 of title 20, Code of Federal
22 Regulations.

23 “(C) REQUIRED WAGES AFTER 3-YEAR
24 FREEZE.—

1 “(i) FIRST ADJUSTMENT.—Unless
2 Congress acts to set a new wage standard
3 applicable to this section, effective on De-
4 cember 1, 2006, the adverse effect wage
5 rate then in effect shall be adjusted by the
6 12 month percentage change in the Con-
7 sumer Price Index for All Urban Con-
8 sumers between December of the preceding
9 year and December of the second preceding
10 year, except that such adjustment shall not
11 exceed 4 percent.

12 “(ii) SUBSEQUENT ANNUAL ADJUST-
13 MENTS.—Effective on March 1, 2007, and
14 each March 1 thereafter, the adverse effect
15 wage rate then in effect shall be adjusted
16 in accordance with the requirements of
17 clause (i).

18 “(D) DEDUCTIONS.—The employer shall
19 make only those deductions from the worker’s
20 wages that are authorized by law or are reason-
21 able and customary in the occupation and area
22 of employment. The job offer shall specify all
23 deductions not required by law which the em-
24 ployer will make from the worker’s wages.

1 “(E) FREQUENCY OF PAY.—The employer
2 shall pay the worker not less frequently than
3 twice monthly, or in accordance with the pre-
4 vailing practice in the area of employment,
5 whichever is more frequent.

6 “(F) HOURS AND EARNINGS STATE-
7 MENTS.—The employer shall furnish to the
8 worker, on or before each payday, in one or
9 more written statements the following informa-
10 tion:

11 “(i) The worker’s total earnings for
12 the pay period.

13 “(ii) The worker’s hourly rate of pay,
14 piece rate of pay, or both.

15 “(iii) The hours of employment which
16 have been offered to the worker (broken
17 out by hours offered in accordance with
18 and over and above the three-quarters
19 guarantee described in paragraph (4)).

20 “(iv) The hours actually worked by
21 the worker.

22 “(v) An itemization of the deductions
23 made from the worker’s wages.

24 “(vi) If piece rates of pay are used,
25 the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—

Not later than June 1, 2007, the Resources, Community and Economic Development Division, and the Health, Education and Human Services Division, of the General Accounting Office shall jointly prepare and transmit to the Secretary of Labor and to the Committees on the Judiciary of the House of Representatives and the Senate a report which shall address—

“(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

1 “(iii) whether alternative wage stand-
 2 ards, such as a prevailing wage standard,
 3 would be sufficient to prevent wages in oc-
 4 cupations in which H-2A workers are em-
 5 ployed from falling below the wage level
 6 that would have prevailed in the absence of
 7 H-2A employment;

8 “(iv) whether any changes are war-
 9 ranted in the current methodologies for
 10 calculating the adverse effect wage rate
 11 and the prevailing wage; and

12 “(v) recommendations for future wage
 13 protection under this section.

14 “(H) COMMISSION ON WAGE STAND-
 15 ARDS.—

16 “(i) ESTABLISHMENT.—There is es-
 17 tablished the Commission on Agricultural
 18 Wage Standards under the H-2A program
 19 (in this subparagraph referred to as the
 20 ‘Commission’).

21 “(ii) COMPOSITION.—The Commission
 22 shall consist of 10 members as follows:

23 “(I) 4 representatives of agricul-
 24 tural employers and 1 representative
 25 of the Department of Agriculture,

1 each appointed by the Secretary of
2 Agriculture.

3 “(II) 4 representatives of agricul-
4 tural workers and 1 representative of
5 the Department of Labor, each ap-
6 pointed by the Secretary of Labor.

7 “(iii) FUNCTIONS.—The Commission
8 shall conduct a study that shall address—

9 “(I) whether the employment of
10 H-2A or unauthorized aliens in the
11 United States agricultural workforce
12 has depressed United States farm
13 worker wages below the levels that
14 would otherwise have prevailed if alien
15 farm workers had not been employed
16 in the United States;

17 “(II) whether an adverse effect
18 wage rate is necessary to prevent
19 wages of United States farm workers
20 in occupations in which H-2A work-
21 ers are employed from falling below
22 the wage levels that would have pre-
23 vailed in the absence of the employ-
24 ment of H-2A workers in those occu-
25 pations;

1 “(III) whether alternative wage
2 standards, such as a prevailing wage
3 standard, would be sufficient to pre-
4 vent wages in occupations in which
5 H-2A workers are employed from fall-
6 ing below the wage level that would
7 have prevailed in the absence of H-2A
8 employment;

9 “(IV) whether any changes are
10 warranted in the current methodolo-
11 gies for calculating the adverse effect
12 wage rate and the prevailing wage
13 rate; and

14 “(V) recommendations for future
15 wage protection under this section.

16 “(iv) FINAL REPORT.—Not later than
17 June 1, 2007, the Commission shall sub-
18 mit a report to the Congress setting forth
19 the findings of the study conducted under
20 clause (iii).

21 “(v) TERMINATION DATE.—The Com-
22 mission shall terminate upon submitting
23 its final report.

24 “(4) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least three-
4 fourths of the work days of the total period of
5 employment, beginning with the first work day
6 after the arrival of the worker at the place of
7 employment and ending on the expiration date
8 specified in the job offer. For purposes of this
9 subparagraph, the hourly equivalent means the
10 number of hours in the work days as stated in
11 the job offer and shall exclude the worker’s
12 Sabbath and Federal holidays. If the employer
13 affords the United States or H-2A worker less
14 employment than that required under this para-
15 graph, the employer shall pay such worker the
16 amount which the worker would have earned
17 had the worker, in fact, worked for the guaran-
18 teed number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
 2 worker's Sabbath, or on Federal holidays) may
 3 be counted by the employer in calculating
 4 whether the period of guaranteed employment
 5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
 7 TERMINATION FOR CAUSE.—If the worker vol-
 8 untarily abandons employment before the end
 9 of the contract period, or is terminated for
 10 cause, the worker is not entitled to the ‘three-
 11 fourths guarantee’ described in subparagraph
 12 (A).

13 “(D) CONTRACT IMPOSSIBILITY.—If, be-
 14 fore the expiration of the period of employment
 15 specified in the job offer, the services of the
 16 worker are no longer required for reasons be-
 17 yond the control of the employer due to any
 18 form of natural disaster, including but not lim-
 19 ited to a flood, hurricane, freeze, earthquake,
 20 fire, drought, plant or animal disease or pest in-
 21 festation, or regulatory drought, before the
 22 guarantee in subparagraph (A) is fulfilled, the
 23 employer may terminate the worker's employ-
 24 ment. In the event of such termination, the em-
 25 ployer shall fulfill the employment guarantee in

1 subparagraph (A) for the work days that have
2 elapsed from the first work day after the arrival
3 of the worker to the termination of employ-
4 ment. In such cases, the employer will make ef-
5 forts to transfer the United States worker to
6 other comparable employment acceptable to the
7 worker. If such transfer is not effected, the em-
8 ployer shall provide the return transportation
9 required in paragraph (2)(D).

10 “(5) MOTOR VEHICLE SAFETY.—

11 “(A) MODE OF TRANSPORTATION SUBJECT
12 TO COVERAGE.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clauses (iii) and (iv), this sub-
15 section applies to any H-2A employer that
16 uses or causes to be used any vehicle to
17 transport an H-2A worker within the
18 United States.

19 “(ii) USES OR CAUSES TO BE USED.—
20 (I) In this subsection, the term ‘uses or
21 causes to be used’ applies only to transpor-
22 tation provided by an H-2A employer to
23 an H-2A worker, or by a farm labor con-
24 tractor to an H-2A worker at the request
25 or direction of an H-2A employer.

1 “(II) The term ‘uses or causes to be
2 used’ does not apply to—

3 “(aa) transportation provided, or
4 transportation arrangements made, by
5 an H-2A worker himself or herself,
6 unless the employer specifically re-
7 quested or arranged such transpor-
8 tation; or

9 “(bb) carpooling arrangements
10 made by H-2A workers themselves,
11 using one of the workers’ own vehi-
12 cles, unless specifically requested by
13 the employer directly or through a
14 farm labor contractor.

15 “(III) The mere providing of a job
16 offer by an employer to an H-2A worker
17 that causes the worker to travel to or from
18 the place of employment, or the payment
19 or reimbursement of the transportation
20 costs of an H-2A worker by an H-2A em-
21 ployer, shall not constitute an arrangement
22 of, or participation in, such transportation.

23 “(iii) AGRICULTURAL MACHINERY
24 AND EQUIPMENT EXCLUDED.—This sub-
25 section does not apply to the transpor-

1 tation of an H-2A worker on a tractor,
 2 combine, harvester, picker, or other similar
 3 machinery or equipment while such worker
 4 is actually engaged in the planting, culti-
 5 vating, or harvesting of agricultural com-
 6 modities or the care of livestock or poultry
 7 or engaged in transportation incidental
 8 thereto.

9 “(iv) COMMON CARRIERS EX-
 10 CLUDED.—This subsection does not apply
 11 to common carrier motor vehicle transpor-
 12 tation in which the provider holds itself out
 13 to the general public as engaging in the
 14 transportation of passengers for hire and
 15 holds a valid certification of authorization
 16 for such purposes from an appropriate
 17 Federal, State, or local agency.

18 “(B) APPLICABILITY OF STANDARDS, LI-
 19 CENSING, AND INSURANCE REQUIREMENTS.—

20 “(i) IN GENERAL.—When using, or
 21 causing to be used, any vehicle for the pur-
 22 pose of providing transportation to which
 23 this subparagraph applies, each employer
 24 shall—

1 “(I) ensure that each such vehi-
2 cle conforms to the standards pre-
3 scribed by the Secretary of Labor
4 under section 401(b) of the Migrant
5 and Seasonal Agricultural Worker
6 Protection Act (29 U.S.C. 1841(b))
7 and other applicable Federal and
8 State safety standards;

9 “(II) ensure that each driver has
10 a valid and appropriate license, as
11 provided by State law, to operate the
12 vehicle; and

13 “(III) have an insurance policy
14 or a liability bond that is in effect
15 which insures the employer against li-
16 ability for damage to persons or prop-
17 erty arising from the ownership, oper-
18 ation, or causing to be operated, of
19 any vehicle used to transport any H-
20 2A worker.

21 “(ii) AMOUNT OF INSURANCE RE-
22 QUIRED.—The level of insurance required
23 shall be determined by the Secretary of
24 Labor pursuant to regulations to be issued
25 under this subsection.

1 “(iii) EFFECT OF WORKERS’ COM-
2 PENSATION COVERAGE.—If the employer
3 of any H-2A worker provides workers’
4 compensation coverage for such worker in
5 the case of bodily injury or death as pro-
6 vided by State law, the following adjust-
7 ments in the requirements of subparagraph
8 (B)(i)(III) relating to having an insurance
9 policy or liability bond apply:

10 “(I) No insurance policy or liabil-
11 ity bond shall be required of the em-
12 ployer, if such workers are trans-
13 ported only under circumstances for
14 which there is coverage under such
15 State law.

16 “(II) An insurance policy or li-
17 ability bond shall be required of the
18 employer for circumstances under
19 which coverage for the transportation
20 of such workers is not provided under
21 such State law.

22 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
23 ployer shall assure that, except as otherwise provided in
24 this section, the employer will comply with all applicable
25 Federal, State, and local labor laws, including laws affect-

1 ing migrant and seasonal agricultural workers, with re-
 2 spect to all United States workers and alien workers em-
 3 ployed by the employer, except that a violation of this as-
 4 surance shall not constitute a violation of the Migrant and
 5 Seasonal Agricultural Worker Protection Act (29 U.S.C.
 6 1801 et seq.).

7 “(d) COPY OF JOB OFFER.—The employer shall pro-
 8 vide to the worker, not later than the day the work com-
 9 mences, a copy of the employer’s application and job offer
 10 described in section 218(a), or, if the employer will require
 11 the worker to enter into a separate employment contract
 12 covering the employment in question, such separate em-
 13 ployment contract.

14 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
 15 in this section or sections 218 or 218B shall preclude the
 16 Secretary of Labor and the Secretary from continuing to
 17 apply special procedures and requirements to the admis-
 18 sion and employment of aliens in occupations involving the
 19 range production of livestock.

20 “PROCEDURE FOR ADMISSION AND EXTENSION OF STAY
 21 OF H–2A WORKERS

22 “SEC. 218B. (a) PETITIONING FOR ADMISSION.—An
 23 employer, or an association acting as an agent or joint
 24 employer for its members, that seeks the admission into
 25 the United States of an H–2A worker may file a petition
 26 with the Secretary. The petition shall be accompanied by

1 an accepted and currently valid certification provided by
2 the Secretary of Labor under section 218(e)(2)(B) cov-
3 ering the petitioner.

4 “(b) EXPEDITED ADJUDICATION BY THE SEC-
5 RETARY.—The Secretary shall establish a procedure for
6 expedited adjudication of petitions filed under subsection
7 (a) and within 7 working days shall, by fax, cable, or other
8 means assuring expedited delivery, transmit a copy of no-
9 tice of action on the petition to the petitioner and, in the
10 case of approved petitions, to the appropriate immigration
11 officer at the port of entry or United States consulate (as
12 the case may be) where the petitioner has indicated that
13 the alien beneficiary (or beneficiaries) will apply for a visa
14 or admission to the United States.

15 “(c) CRITERIA FOR ADMISSIBILITY.—

16 “(1) IN GENERAL.—An H-2A worker shall be
17 considered admissible to the United States if the
18 alien is otherwise admissible under this section, sec-
19 tion 218, and section 218A, and the alien is not in-
20 eligible under paragraph (2).

21 “(2) DISQUALIFICATION.—An alien shall be
22 considered inadmissible to the United States and in-
23 eligible for nonimmigrant status under section
24 101(a)(15)(H)(ii)(a) if the alien has, at any time
25 during the past 5 years—

1 “(A) violated a material provision of this
2 section, including the requirement to promptly
3 depart the United States when the alien’s au-
4 thorized period of admission under this section
5 has expired; or

6 “(B) otherwise violated a term or condition
7 of admission into the United States as a non-
8 immigrant, including overstaying the period of
9 authorized admission as such a nonimmigrant.

10 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
11 FUL PRESENCE.—

12 “(A) IN GENERAL.—An alien who has not
13 previously been admitted into the United States
14 pursuant to this section, and who is otherwise
15 eligible for admission in accordance with para-
16 graphs (1) and (2), shall not be deemed inad-
17 missible by virtue of section 212(a)(9)(B). If an
18 alien described in the preceding sentence is
19 present in the United States, the alien may
20 apply from abroad for H-2A status, but may
21 not be granted that status in the United States.

22 “(B) MAINTENANCE OF WAIVER.—An
23 alien provided an initial waiver of ineligibility
24 pursuant to subparagraph (A) shall remain eli-
25 gible for such waiver unless the alien violates

1 the terms of this section or again becomes ineli-
2 gible under section 212(a)(9)(B) by virtue of
3 unlawful presence in the United States after
4 the date of the initial waiver of ineligibility pur-
5 suant to subparagraph (A).

6 “(d) PERIOD OF ADMISSION.—

7 “(1) IN GENERAL.—The alien shall be admitted
8 for the period of employment in the application cer-
9 tified by the Secretary of Labor pursuant to section
10 218(e)(2)(B), not to exceed 10 months, supple-
11 mented by a period of up to 1 week before the begin-
12 ning of the period of employment (to be granted for
13 the purpose of travel to the work site) and a period
14 of 14 days following the period of employment (to be
15 granted for the purpose of departure or extension
16 based on a subsequent offer of employment), except
17 that—

18 “(A) the alien is not authorized to be em-
19 ployed during such 14-day period except in the
20 employment for which the alien was previously
21 authorized; and

22 “(B) the total period of employment, in-
23 cluding such 14-day period, may not exceed 10
24 months.

1 “(2) CONSTRUCTION.—Nothing in this sub-
2 section shall limit the authority of the Secretary to
3 extend the stay of the alien under any other provi-
4 sion of this Act.

5 “(e) ABANDONMENT OF EMPLOYMENT.—

6 “(1) IN GENERAL.—An alien admitted or pro-
7 vided status under section 101(a)(15)(H)(ii)(a) who
8 abandons the employment which was the basis for
9 such admission or status shall be considered to have
10 failed to maintain nonimmigrant status as an H–2A
11 worker and shall depart the United States or be sub-
12 ject to removal under section 237(a)(1)(C)(i).

13 “(2) REPORT BY EMPLOYER.—The employer
14 (or association acting as agent for the employer)
15 shall notify the Secretary within 7 days of an H–2A
16 worker’s having prematurely abandoned employ-
17 ment.

18 “(3) REMOVAL BY THE SECRETARY.—The Sec-
19 retary shall promptly remove from the United States
20 any H–2A worker who violates any term or condi-
21 tion of the worker’s nonimmigrant status.

22 “(4) VOLUNTARY TERMINATION.—Notwith-
23 standing paragraph (1), an alien may voluntarily
24 terminate his or her employment if the alien prompt-

1 ly departs the United States upon termination of
2 such employment.

3 “(f) REPLACEMENT OF ALIEN.—

4 “(1) IN GENERAL.—Upon presentation of the
5 notice to the Secretary required by subsection (e)(2),
6 the Secretary of State shall promptly issue a visa to,
7 and the Secretary shall admit into the United
8 States, an eligible alien designated by the employer
9 to replace an H-2A worker—

10 “(A) who abandons or prematurely termi-
11 nates employment; or

12 “(B) whose employment is terminated
13 after a United States worker is employed pur-
14 suant to section 218(b)(2)(H)(iii), if the United
15 States worker voluntarily departs before the
16 end of the period of intended employment or if
17 the employment termination is for a lawful job-
18 related reason.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section is intended to limit any preference required
21 to be accorded United States workers under any
22 other provision of this Act.

23 “(g) IDENTIFICATION DOCUMENT.—

24 “(1) IN GENERAL.—Each alien authorized to be
25 admitted under section 101(a)(15)(H)(ii)(a) shall be

1 provided an identification and employment eligibility
2 document to verify eligibility for employment in the
3 United States and verify such person's proper iden-
4 tity.

5 “(2) REQUIREMENTS.—No identification and
6 employment eligibility document may be issued
7 which does not meet the following requirements:

8 “(A) The document shall be capable of re-
9 liably determining whether—

10 “(i) the individual with the identifica-
11 tion and employment eligibility document
12 whose eligibility is being verified is in fact
13 eligible for employment;

14 “(ii) the individual whose eligibility is
15 being verified is claiming the identity of
16 another person; and

17 “(iii) the individual whose eligibility is
18 being verified is authorized to be admitted
19 into, and employed in, the United States
20 as an H-2A worker.

21 “(B) The document shall be in a form that
22 is resistant to counterfeiting and to tampering.

23 “(C) The document shall—

24 “(i) be compatible with other data-
25 bases of the Secretary for the purpose of

1 excluding aliens from benefits for which
2 they are not eligible and determining
3 whether the alien is unlawfully present in
4 the United States; and

5 “(ii) be compatible with law enforce-
6 ment databases to determine if the alien
7 has been convicted of criminal offenses.

8 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
9 UNITED STATES.—

10 “(1) EXTENSION OF STAY.—If an employer
11 seeks approval to employ an H-2A alien who is law-
12 fully present in the United States, the petition filed
13 by the employer or an association pursuant to sub-
14 section (a), shall request an extension of the alien’s
15 stay and a change in the alien’s employment.

16 “(2) LIMITATION ON FILING A PETITION FOR
17 EXTENSION OF STAY.—A petition may not be filed
18 for an extension of an alien’s stay—

19 “(A) for a period of more than 10 months;
20 or

21 “(B) to a date that is more than 3 years
22 after the date of the alien’s last admission to
23 the United States under this section.

24 “(3) WORK AUTHORIZATION UPON FILING A
25 PETITION FOR EXTENSION OF STAY.—In the case of

1 an alien who is lawfully present in the United
2 States, the alien is authorized to commence the em-
3 ployment described in a petition under paragraph
4 (1) on the date on which the petition is filed. For
5 purposes of the preceding sentence, the term ‘file’
6 means sending the petition by certified mail via the
7 United States Postal Service, return receipt re-
8 quested, or delivered by guaranteed commercial de-
9 livery which will provide the employer with a docu-
10 mented acknowledgment of the date of receipt of the
11 petition. The employer shall provide a copy of the
12 employer’s petition to the alien, who shall keep the
13 petition with the alien’s identification and employ-
14 ment eligibility document as evidence that the peti-
15 tion has been filed and that the alien is authorized
16 to work in the United States. Upon approval of a
17 petition for an extension of stay or change in the
18 alien’s authorized employment, the Secretary shall
19 provide a new or updated employment eligibility doc-
20 ument to the alien indicating the new validity date,
21 after which the alien is not required to retain a copy
22 of the petition.

23 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
24 TION OF ALIENS WITHOUT VALID IDENTIFICATION
25 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-

1 pired identification and employment eligibility docu-
2 ment, together with a copy of a petition for exten-
3 sion of stay or change in the alien’s authorized em-
4 ployment that complies with the requirements of
5 paragraph (1), shall constitute a valid work author-
6 ization document for a period of not more than 60
7 days beginning on the date on which such petition
8 is filed, after which time only a currently valid iden-
9 tification and employment eligibility document shall
10 be acceptable.

11 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
12 STATUS.—

13 “(A) MAXIMUM PERIOD.—The maximum
14 continuous period of authorized status as an
15 H–2A worker (including any extensions) is 3
16 years.

17 “(B) REQUIREMENT TO REMAIN OUTSIDE
18 THE UNITED STATES.—

19 “(i) IN GENERAL.—Subject to clause
20 (ii), in the case of an alien outside the
21 United States whose period of authorized
22 status as an H–2A worker (including any
23 extensions) has expired, the alien may not
24 again apply for admission to the United
25 States as an H–2A worker unless the alien

1 has remained outside the United States for
2 a continuous period equal to at least $\frac{1}{5}$
3 the duration of the alien's previous period
4 of authorized status as an H-2A worker
5 (including any extensions).

6 “(ii) EXCEPTION.—Clause (i) shall
7 not apply in the case of an alien if the
8 alien's period of authorized status as an
9 H-2A worker (including any extensions)
10 was for a period of not more than 10
11 months and such alien has been outside
12 the United States for at least 2 months
13 during the 12 months preceding the date
14 the alien again is applying for admission to
15 the United States as an H-2A worker.

16 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
17 SHEEPHERDERS.—Notwithstanding any other provision
18 of the Agricultural Job Opportunity, Benefits, and Secu-
19 rity Act of 2004, aliens admitted under section
20 101(a)(15)(H)(ii)(a) for employment as shepherders—

21 “(1) may be admitted for a period of 12
22 months;

23 “(2) may be extended for a continuous period
24 of up to 3 years; and

1 “(3) shall not be subject to the requirements of
 2 subsection (h)(5) relating to periods of absence from
 3 the United States.

4 “WORKER PROTECTIONS AND LABOR STANDARDS

5 ENFORCEMENT

6 “SEC. 218C. (a) ENFORCEMENT AUTHORITY.—

7 “(1) INVESTIGATION OF COMPLAINTS.—

8 “(A) AGGRIEVED PERSON OR THIRD-PARTY
 9 COMPLAINTS.—The Secretary of Labor shall es-
 10 tablish a process for the receipt, investigation,
 11 and disposition of complaints respecting a peti-
 12 tioner’s failure to meet a condition specified in
 13 section 218(b), or an employer’s misrepresenta-
 14 tion of material facts in an application under
 15 section 218(a). Complaints may be filed by any
 16 aggrieved person or organization (including bar-
 17 gaining representatives). No investigation or
 18 hearing shall be conducted on a complaint con-
 19 cerning such a failure or misrepresentation un-
 20 less the complaint was filed not later than 12
 21 months after the date of the failure, or mis-
 22 representation, respectively. The Secretary of
 23 Labor shall conduct an investigation under this
 24 subparagraph if there is reasonable cause to be-
 25 lieve that such a failure or misrepresentation
 26 has occurred.

“(B) DETERMINATION ON COMPLAINT.—

Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (H). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

“(C) FAILURES TO MEET CONDITIONS.—If

the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D),

1 (1)(F), (2)(A), (2)(B), or (2)(G) of section
2 218(b), a substantial failure to meet a condition
3 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
4 (2)(E), or (2)(H) of section 218(b), or a mate-
5 rial misrepresentation of fact in an application
6 under section 218(a)—

7 “(i) the Secretary of Labor shall no-
8 tify the Secretary of such finding and may,
9 in addition, impose such other administra-
10 tive remedies (including civil money pen-
11 alties in an amount not to exceed \$1,000
12 per violation) as the Secretary of Labor
13 determines to be appropriate; and

14 “(ii) the Secretary may disqualify the
15 employer from the employment of aliens
16 described in section 101(a)(15)(H)(ii)(a)
17 for a period of 1 year.

18 “(D) WILLFUL FAILURES AND WILLFUL
19 MISREPRESENTATIONS.—If the Secretary of
20 Labor finds, after notice and opportunity for
21 hearing, a willful failure to meet a condition of
22 section 218(b), a willful misrepresentation of a
23 material fact in an application under section
24 218(a), or a violation of subsection (d)(1)—

1 “(i) the Secretary of Labor shall no-
2 tify the Secretary of such finding and may,
3 in addition, impose such other administra-
4 tive remedies (including civil money pen-
5 alties in an amount not to exceed \$5,000
6 per violation) as the Secretary of Labor
7 determines to be appropriate;

8 “(ii) the Secretary of Labor may seek
9 appropriate legal or equitable relief to ef-
10 fectuate the purposes of subsection (d)(1);
11 and

12 “(iii) the Secretary may disqualify the
13 employer from the employment of H-2A
14 workers for a period of 2 years.

15 “(E) DISPLACEMENT OF UNITED STATES
16 WORKERS.—If the Secretary of Labor finds,
17 after notice and opportunity for hearing, a will-
18 ful failure to meet a condition of section 218(b)
19 or a willful misrepresentation of a material fact
20 in an application under section 218(a), in the
21 course of which failure or misrepresentation the
22 employer displaced a United States worker em-
23 ployed by the employer during the period of em-
24 ployment on the employer’s application under

1 section 218(a) or during the period of 30 days
2 preceding such period of employment—

3 “(i) the Secretary of Labor shall no-
4 tify the Secretary of such finding and may,
5 in addition, impose such other administra-
6 tive remedies (including civil money pen-
7 alties in an amount not to exceed \$15,000
8 per violation) as the Secretary of Labor
9 determines to be appropriate; and

10 “(ii) the Secretary may disqualify the
11 employer from the employment of H-2A
12 workers for a period of 3 years.

13 “(F) LIMITATIONS ON CIVIL MONEY PEN-
14 ALTIES.—The Secretary of Labor shall not im-
15 pose total civil money penalties with respect to
16 an application under section 218(a) in excess of
17 \$90,000.

18 “(G) FAILURES TO PAY WAGES OR RE-
19 QUIRED BENEFITS.—If the Secretary of Labor
20 finds, after notice and opportunity for a hear-
21 ing, that the employer has failed to pay the
22 wages, or provide the housing allowance, trans-
23 portation, subsistence reimbursement, or guar-
24 antee of employment, required under section
25 218A(b), the Secretary of Labor shall assess

1 payment of back wages, or other required bene-
2 fits, due any United States worker or H-2A
3 worker employed by the employer in the specific
4 employment in question. The back wages or
5 other required benefits under section 218A(b)
6 shall be equal to the difference between the
7 amount that should have been paid and the
8 amount that actually was paid to such worker.

9 “(2) STATUTORY CONSTRUCTION.—Nothing in
10 this section shall be construed as limiting the au-
11 thority of the Secretary of Labor to conduct any
12 compliance investigation under any other labor law,
13 including any law affecting migrant and seasonal ag-
14 ricultural workers, or, in the absence of a complaint
15 under this section, under section 218 or 218A.

16 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
17 ACTION.—H-2A workers may enforce the following rights
18 through the private right of action provided in subsection
19 (c), and no other right of action shall exist under Federal
20 or State law to enforce such rights:

21 “(1) The providing of housing or a housing al-
22 lowance as required under section 218A(b)(1).

23 “(2) The reimbursement of transportation as
24 required under section 218A(b)(2).

1 “(3) The payment of wages required under sec-
2 tion 218A(b)(3) when due.

3 “(4) The benefits and material terms and con-
4 ditions of employment expressly provided in the job
5 offer described in section 218(a)(2), not including
6 the assurance to comply with other Federal, State,
7 and local labor laws described in section 218A(c),
8 compliance with which shall be governed by the pro-
9 visions of such laws.

10 “(5) The guarantee of employment required
11 under section 218A(b)(4).

12 “(6) The motor vehicle safety requirements
13 under section 218A(b)(5).

14 “(7) The prohibition of discrimination under
15 subsection (d)(2).

16 “(c) PRIVATE RIGHT OF ACTION.—

17 “(1) MEDIATION.—Upon the filing of a com-
18 plaint by an H-2A worker aggrieved by a violation
19 of rights enforceable under subsection (b), and with-
20 in 60 days of the filing of proof of service of the
21 complaint, a party to the action may file a request
22 with the Federal Mediation and Conciliation Service
23 to assist the parties in reaching a satisfactory reso-
24 lution of all issues involving all parties to the dis-
25 pute. Upon a filing of such request and giving of no-

1 tice to the parties, the parties shall attempt medi-
2 ation within the period specified in subparagraph
3 (B).

4 “(A) MEDIATION SERVICES.—The Federal
5 Mediation and Conciliation Service shall be
6 available to assist in resolving disputes arising
7 under subsection (b) between H-2A workers
8 and agricultural employers without charge to
9 the parties.

10 “(B) 90-DAY LIMIT.—The Federal Medi-
11 ation and Conciliation Service may conduct me-
12 diation or other non-binding dispute resolution
13 activities for a period not to exceed 90 days be-
14 ginning on the date on which the Federal Medi-
15 ation and Conciliation Service receives the re-
16 quest for assistance unless the parties agree to
17 an extension of this period of time.

18 “(C) AUTHORIZATION.—There is hereby
19 authorized to be appropriated annually not to
20 exceed \$500,000 to the Federal Mediation and
21 Conciliation Service to carry out this section,
22 provided that, any contrary provision of law
23 notwithstanding, the Director of the Federal
24 Mediation and Conciliation Service is author-
25 ized to conduct the mediation or other dispute

1 resolution activities from any other appro-
2 priated funds available to the Director and to
3 reimburse such appropriated funds when the
4 funds are appropriated pursuant to this author-
5 ization, such reimbursement to be credited to
6 appropriations currently available at the time of
7 receipt thereof.

8 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
9 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
10 worker aggrieved by a violation of rights enforceable
11 under subsection (b) by an agricultural employer or
12 other person may file suit in any district court of the
13 United States having jurisdiction of the parties,
14 without regard to the amount in controversy, with-
15 out regard to the citizenship of the parties, and
16 without regard to the exhaustion of any alternative
17 administrative remedies under this Act, not later
18 than 3 years after the date the violation occurs.

19 “(3) ELECTION.—An H-2A worker who has
20 filed an administrative complaint with the Secretary
21 of Labor may not maintain a civil action under
22 paragraph (2) unless a complaint based on the same
23 violation filed with the Secretary of Labor under
24 subsection (a)(1) is withdrawn prior to the filing of

1 such action, in which case the rights and remedies
2 available under this subsection shall be exclusive.

3 “(4) PREEMPTION OF STATE CONTRACT
4 RIGHTS.—Nothing in this Act shall be construed to
5 diminish the rights and remedies of an H-2A worker
6 under any other Federal or State law or regulation
7 or under any collective bargaining agreement, except
8 that no court or administrative action shall be avail-
9 able under any State contract law to enforce the
10 rights created by this Act.

11 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
12 ments by employees purporting to waive or modify
13 their rights under this Act shall be void as contrary
14 to public policy, except that a waiver or modification
15 of the rights or obligations in favor of the Secretary
16 of Labor shall be valid for purposes of the enforce-
17 ment of this Act. The preceding sentence may not
18 be construed to prohibit agreements to settle private
19 disputes or litigation.

20 “(6) AWARD OF DAMAGES OR OTHER EQUI-
21 TABLE RELIEF.—

22 “(A) If the court finds that the respondent
23 has intentionally violated any of the rights en-
24 forceable under subsection (b), it shall award
25 actual damages, if any, or equitable relief.

1 “(B) Any civil action brought under this
2 section shall be subject to appeal as provided in
3 chapter 83 of title 28, United States Code.

4 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
5 CLUSIVE REMEDY.—

6 “(A) Notwithstanding any other provision
7 of this section, where a State’s workers’ com-
8 pensation law is applicable and coverage is pro-
9 vided for an H-2A worker, the workers’ com-
10 pensation benefits shall be the exclusive remedy
11 for the loss of such worker under this section
12 in the case of bodily injury or death in accord-
13 ance with such State’s workers’ compensation
14 law.

15 “(B) The exclusive remedy prescribed in
16 subparagraph (A) precludes the recovery under
17 paragraph (6) of actual damages for loss from
18 an injury or death but does not preclude other
19 equitable relief, except that such relief shall not
20 include back or front pay or in any manner, di-
21 rectly or indirectly, expand or otherwise alter or
22 affect—

23 “(i) a recovery under a State workers’
24 compensation law; or

1 “(ii) rights conferred under a State
2 workers’ compensation law.

3 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

4 If it is determined under a State workers’ compensa-
5 tion law that the workers’ compensation law is not
6 applicable to a claim for bodily injury or death of an
7 H-2A worker, the statute of limitations for bringing
8 an action for actual damages for such injury or
9 death under subsection (c) shall be tolled for the pe-
10 riod during which the claim for such injury or death
11 under such State workers’ compensation law was
12 pending. The statute of limitations for an action for
13 actual damages or other equitable relief arising out
14 of the same transaction or occurrence as the injury
15 or death of the H-2A worker shall be tolled for the
16 period during which the claim for such injury or
17 death was pending under the State workers’ com-
18 pensation law.

19 “(9) PRECLUSIVE EFFECT.—Any settlement by
20 an H-2A worker and H-2A employer reached
21 through the mediation process required under sub-
22 section (c)(1) shall preclude any right of action aris-
23 ing out of the same facts between the parties in any
24 Federal or State court or administrative proceeding,

1 unless specifically provided otherwise in the settle-
 2 ment agreement.

3 “(10) SETTLEMENTS.—Any settlement by the
 4 Secretary of Labor with an H-2A employer on be-
 5 half of an H-2A worker of a complaint filed with the
 6 Secretary of Labor under this section or any finding
 7 by the Secretary of Labor under subsection
 8 (a)(1)(B) shall preclude any right of action arising
 9 out of the same facts between the parties under any
 10 Federal or State court or administrative proceeding,
 11 unless specifically provided otherwise in the settle-
 12 ment agreement.

13 “(d) DISCRIMINATION PROHIBITED.—

14 “(1) IN GENERAL.—It is a violation of this sub-
 15 section for any person who has filed an application
 16 under section 218(a), to intimidate, threaten, re-
 17 strain, coerce, blacklist, discharge, or in any other
 18 manner discriminate against an employee (which
 19 term, for purposes of this subsection, includes a
 20 former employee and an applicant for employment)
 21 because the employee has disclosed information to
 22 the employer, or to any other person, that the em-
 23 ployee reasonably believes evidences a violation of
 24 section 218 or 218A or any rule or regulation per-
 25 taining to section 218 or 218A, or because the em-

1 ployee cooperates or seeks to cooperate in an inves-
2 tigation or other proceeding concerning the employ-
3 er's compliance with the requirements of section 218
4 or 218A or any rule or regulation pertaining to ei-
5 ther of such sections.

6 “(2) DISCRIMINATION AGAINST H-2A WORK-
7 ERS.—It is a violation of this subsection for any per-
8 son who has filed an application under section
9 218(a), to intimidate, threaten, restrain, coerce,
10 blacklist, discharge, or in any manner discriminate
11 against an H-2A employee because such worker has,
12 with just cause, filed a complaint with the Secretary
13 of Labor regarding a denial of the rights enumer-
14 ated and enforceable under subsection (b) or insti-
15 tuted, or caused to be instituted, a private right of
16 action under subsection (c) regarding the denial of
17 the rights enumerated under subsection (b), or has
18 testified or is about to testify in any court pro-
19 ceeding brought under subsection (c).

20 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
21 PRIATE EMPLOYMENT.—The Secretary of Labor and the
22 Secretary shall establish a process under which an H-2A
23 worker who files a complaint regarding a violation of sub-
24 section (d) and is otherwise eligible to remain and work
25 in the United States may be allowed to seek other appro-

1 priate employment in the United States for a period not
2 to exceed the maximum period of stay authorized for such
3 nonimmigrant classification.

4 “(f) ROLE OF ASSOCIATIONS.—

5 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
6 TION.—An employer on whose behalf an application
7 is filed by an association acting as its agent is fully
8 responsible for such application, and for complying
9 with the terms and conditions of sections 218 and
10 218A, as though the employer had filed the applica-
11 tion itself. If such an employer is determined, under
12 this section, to have committed a violation, the pen-
13 alty for such violation shall apply only to that mem-
14 ber of the association unless the Secretary of Labor
15 determines that the association or other member
16 participated in, had knowledge, or reason to know,
17 of the violation, in which case the penalty shall be
18 invoked against the association or other association
19 member as well.

20 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
21 AS AN EMPLOYER.—If an association filing an appli-
22 cation as a sole or joint employer is determined to
23 have committed a violation under this section, the
24 penalty for such violation shall apply only to the as-
25 sociation unless the Secretary of Labor determines

1 that an association member or members participated
 2 in or had knowledge, or reason to know of the viola-
 3 tion, in which case the penalty shall be invoked
 4 against the association member or members as well.

5 “DEFINITIONS

6 “SEC. 218D. For purposes of sections 218 through
 7 218C:

8 “(1) AGRICULTURAL EMPLOYMENT.—The term
 9 ‘agricultural employment’ means any service or ac-
 10 tivity that is considered to be agricultural under sec-
 11 tion 3(f) of the Fair Labor Standards Act of 1938
 12 (29 U.S.C. 203(f)) or agricultural labor under sec-
 13 tion 3121(g) of the Internal Revenue Code of 1986
 14 (26 U.S.C. 3121(g)). For purposes of this para-
 15 graph, agricultural employment includes employment
 16 under section 101(a)(15)(H)(ii)(a).

17 “(2) BONA FIDE UNION.—The term ‘bona fide
 18 union’ means any organization in which employees
 19 participate and which exists for the purpose of deal-
 20 ing with employers concerning grievances, labor dis-
 21 putes, wages, rates of pay, hours of employment, or
 22 other terms and conditions of work for agricultural
 23 employees. Such term does not include an organiza-
 24 tion formed, created, administered, supported, domi-
 25 nated, financed, or controlled by an employer or em-
 26 ployer association or its agents or representatives.

1 “(3) DISPLACE.—In the case of an application
2 with respect to 1 or more H-2A workers by an em-
3 ployer, the employer is considered to ‘displace’ a
4 United States worker from a job if the employer lays
5 off the worker from a job for which the H-2A work-
6 er or workers is or are sought.

7 “(4) ELIGIBLE.—The term ‘eligible’, when used
8 with respect to an individual, means an individual
9 who is not an unauthorized alien (as defined in sec-
10 tion 274A(h)(3)).

11 “(5) EMPLOYER.—The term ‘employer’ means
12 any person or entity, including any farm labor con-
13 tractor and any agricultural association, that em-
14 ploys workers in agricultural employment.

15 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
16 ployer’ means an employer who seeks to hire 1 or
17 more nonimmigrant aliens described in section
18 101(a)(15)(H)(ii)(a).

19 “(7) H-2A WORKER.—The term ‘H-2A worker’
20 means a nonimmigrant described in section
21 101(a)(15)(H)(ii)(a).

22 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
23 tunity’ means a job opening for temporary full-time
24 employment at a place in the United States to which
25 United States workers can be referred.

1 “(9) LAYS OFF.—

2 “(A) IN GENERAL.—The term ‘lays off’,
3 with respect to a worker—

4 “(i) means to cause the worker’s loss
5 of employment, other than through a dis-
6 charge for inadequate performance, viola-
7 tion of workplace rules, cause, voluntary
8 departure, voluntary retirement, contract
9 impossibility (as described in section
10 218A(b)(4)(D)), or temporary layoffs due
11 to weather, markets, or other temporary
12 conditions; but

13 “(ii) does not include any situation in
14 which the worker is offered, as an alter-
15 native to such loss of employment, a simi-
16 lar employment opportunity with the same
17 employer (or, in the case of a placement of
18 a worker with another employer under sec-
19 tion 218(b)(2)(E), with either employer de-
20 scribed in such section) at equivalent or
21 higher compensation and benefits than the
22 position from which the employee was dis-
23 charged, regardless of whether or not the
24 employee accepts the offer.

1 “(B) STATUTORY CONSTRUCTION.—Noth-
 2 ing in this paragraph is intended to limit an
 3 employee’s rights under a collective bargaining
 4 agreement or other employment contract.

5 “(10) REGULATORY DROUGHT.—The term ‘reg-
 6 ulatory drought’ means a decision subsequent to the
 7 filing of the application under section 218 by an en-
 8 tity not under the control of the employer making
 9 such filing which restricts the employer’s access to
 10 water for irrigation purposes and reduces or limits
 11 the employer’s ability to produce an agricultural
 12 commodity, thereby reducing the need for labor.

13 “(11) SEASONAL.—Labor is performed on a
 14 ‘seasonal’ basis if—

15 (A) ordinarily, it pertains to or is of the
 16 kind exclusively performed at certain seasons or
 17 periods of the year; and

18 (B) from its nature, it may not be contin-
 19 uous or carried on throughout the year.

20 “(12) SECRETARY.—The term ‘Secretary’
 21 means the Secretary of Homeland Security.

22 “(13) TEMPORARY.—A worker is employed on a
 23 ‘temporary’ basis where the employment is intended
 24 not to exceed 10 months.

“Sec. 218. H-2A employer applications.
“Sec. 218A. H-2A employment requirements.
“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.
“Sec. 218C. Worker protections and labor standards enforcement.
“Sec. 218D. Definitions.”.

15 SEC. 301. DETERMINATION AND USE OF USER FEES.

23 (b) DETERMINATION OF SCHEDULE.—

1 (1) IN GENERAL.—The schedule under sub-
2 section (a) shall reflect a fee rate based on the num-
3 ber of job opportunities indicated in the employer’s
4 application under section 218 of the Immigration
5 and Nationality Act, as added by section 201 of this
6 Act, and sufficient to provide for the direct costs of
7 providing services related to an employer’s author-
8 ization to employ eligible aliens pursuant to this Act,
9 to include the certification of eligible employers, the
10 issuance of documentation, and the admission of eli-
11 gible aliens.

12 (2) PROCEDURE.—

13 (A) IN GENERAL.—In establishing and ad-
14 justing such a schedule, the Secretary shall
15 comply with Federal cost accounting and fee
16 setting standards.

17 (B) PUBLICATION AND COMMENT.—The
18 Secretary shall publish in the Federal Register
19 an initial fee schedule and associated collection
20 process and the cost data or estimates upon
21 which such fee schedule is based, and any sub-
22 sequent amendments thereto, pursuant to which
23 public comment shall be sought and a final rule
24 issued.

1 (c) USE OF PROCEEDS.—Notwithstanding any other
2 provision of law, all proceeds resulting from the payment
3 of the alien employment user fees shall be available with-
4 out further appropriation and shall remain available with-
5 out fiscal year limitation to reimburse the Secretary, the
6 Secretary of State, and the Secretary of Labor for the
7 costs of carrying out sections 218 and 218B of the Immi-
8 gration and Nationality Act, as added by section 201 of
9 this Act, and the provisions of this Act.

10 **SEC. 302. REGULATIONS.**

11 (a) REGULATIONS OF THE SECRETARY.—The Sec-
12 retary shall consult with the Secretary of Labor and the
13 Secretary of Agriculture on all regulations to implement
14 the duties of the Secretary under this Act.

15 (b) REGULATIONS OF THE SECRETARY OF STATE.—
16 The Secretary of State shall consult with the Secretary,
17 the Secretary of Labor, and the Secretary of Agriculture
18 on all regulations to implement the duties of the Secretary
19 of State under this Act.

20 (c) REGULATIONS OF THE SECRETARY OF LABOR.—
21 The Secretary of Labor shall consult with the Secretary
22 of Agriculture and the Secretary on all regulations to im-
23 plement the duties of the Secretary of Labor under this
24 Act.

1 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
2 All regulations to implement the duties of the Secretary,
3 the Secretary of State, and the Secretary of Labor created
4 under sections 218, 218A, 218B, and 218C of the Immi-
5 gration and Nationality Act, as added by section 201, shall
6 take effect on the effective date of section 201 and shall
7 be issued not later than 1 year after the date of enactment
8 of this Act.

9 **SEC. 303. EFFECTIVE DATE.**

10 (a) IN GENERAL.—Except as otherwise provided, sec-
11 tions 201 and 301 shall take effect 1 year after the date
12 of enactment of this Act.

13 (b) REPORT.—Not later than 180 days after the date
14 of enactment of this Act, the Secretary shall prepare and
15 submit to the appropriate committees of Congress a report
16 that describes the measures being taken and the progress
17 made in implementing this Act.

Calendar No. 711

108TH CONGRESS
2D Session
S. 2823

A BILL

To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

SEPTEMBER 22, 2004

Read the second time and placed on the calendar