

109TH CONGRESS
1ST SESSION

H. R. 3322

To amend the Immigration and Nationality Act with respect to the H-1B and L-1 visa programs to prevent unintended United States job losses, to increase the monitoring and enforcement authority of the Secretary of Labor over such programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. SIMMONS, Mr. SHAW, Mr. PRICE of North Carolina, and Mr. BRADLEY of New Hampshire) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the H-1B and L-1 visa programs to prevent unintended United States job losses, to increase the monitoring and enforcement authority of the Secretary of Labor over such programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA Jobs Protection
5 Act of 2005”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The H–1B and L–1 visa programs were es-
4 tablished to enable United States employers to hire
5 workers with the necessary skills and allow the
6 intracompany transfer of certain workers in the em-
7 ploy of companies with operations outside of the
8 United States.

9 (2) Employers have used the H–1B and L–1
10 visa programs to fill hundreds of thousands of posi-
11 tions in United States firms.

12 (3) According to a General Accounting Office
13 report, 60 percent of the positions being filled by
14 workers provided under the H–1B visa program are
15 related to information technology.

16 (4) The median annual salaries for information
17 technology employment was \$45,000 in 1999.

18 (5) In 2001, Congress specifically banned the
19 displacement of United States employees by H–1B
20 visa holders and mandated that employers pay H–
21 1B workers prevailing United States wages.

22 (6) United States unemployment in information
23 technology specialties has increased over the last 2
24 years making it more difficult for employers to cer-
25 tify that they are unable to find American informa-

1 tion technology employees to fill vacancies as re-
2 quired to gain approval of H-1B visa applications.

3 (7) United States consular officers in foreign
4 countries in the past have expressed concerns that
5 the L-1 visa program was being exploited beyond
6 the original purpose of the program by allowing em-
7 ployers to bring in workers who subsequently are
8 employed by other companies.

9 (8) It has been reported that the former Immi-
10 migration and Naturalization Service was reviewing the
11 L-1 visa program to assess whether companies were
12 using the L-1 visa to circumvent restrictions associ-
13 ated with the H-1B visa program.

14 (9) The Department of Labor has had very lim-
15 ited authority to enforce the program requirements
16 of the H-1B visa program and no legal authority to
17 police the L-1 visa program.

18 (10) Historical weaknesses in the administra-
19 tion of the H-1B program by the former Immigra-
20 tion and Naturalization Service caused unnecessary
21 delays in processing employer requests and also
22 made the H-1B program vulnerable to abuse.

23 (b) PURPOSE.—The purpose of this Act is to ensure
24 that the H-1B and L-1 visa programs are utilized for
25 the purposes for which they were intended and not to dis-

1 place American workers with lower cost foreign visa hold-
2 ers, by closing the loopholes in the programs and strength-
3 ening enforcement and penalties for violations of laws.

4 **SEC. 3. L-1 NONIMMIGRANT VISAS.**

5 (a) WAGE REQUIREMENTS; LIMITATION ON PLACE-
6 MENT OF INTRACOMPANY TRANSFEREES; DISPLACEMENT
7 OF WORKERS.—Section 214(c)(2) of the Immigration and
8 Nationality Act (8 U.S.C. 1184(c)(2)) is amended by add-
9 ing at the end the following:

10 “(G) No alien may be admitted or provided status
11 as a nonimmigrant described in section 101(a)(15)(L) un-
12 less the importing employer has filed with the Secretary
13 of Labor an application stating the following:

14 “(i) The employer shall make available for pub-
15 lic examination, not later than 1 working day after
16 the date on which an application under this subpara-
17 graph is filed, at the employer’s principal place of
18 business or worksite, a copy of each such application
19 (and such accompanying documents as are nec-
20 essary). The Secretary shall compile, on a current
21 basis, a list (by employer and by occupational classi-
22 fication) of the applications filed under this subpara-
23 graph. The Secretary shall make such list available
24 for public examination in Washington, D.C. The
25 Secretary of Labor shall review such an application

1 only for completeness and obvious inaccuracies. Un-
2 less the Secretary of Labor finds that an application
3 is incomplete or obviously inaccurate, the Secretary
4 of Labor shall certify to the Secretary of Homeland
5 Security, not later than 7 days after the date of the
6 filing of the application, that the requirements of
7 this subclause have been satisfied. The application
8 form shall include a clear statement explaining the
9 liability under this clause if an employer places a
10 nonimmigrant with another employer in violation of
11 clause (i).

12 “(ii) The employer is offering and will offer
13 during the period of authorized employment to aliens
14 admitted or provided status as a nonimmigrant de-
15 scribed in section 101(a)(15)(L) wages that are at
16 least—

17 “(I) the actual wage level paid by the em-
18 ployer to all other individuals with similar expe-
19 rience and qualifications for the specific em-
20 ployment in question; or

21 “(II) the prevailing wage level for the occu-
22 pational classification in the area of employ-
23 ment;

24 whichever is greater, based on the information avail-
25 able at the time of filing the application.

1 “(iii) The employer did not displace and will
2 not displace a United States worker employed by the
3 employer within the period beginning 180 days be-
4 fore and ending 180 days after the date of filing of
5 any visa petition supported by the application.

6 “(iv) The provisions of section 212(n)(2) shall
7 apply to a failure to meet a condition of clauses (i),
8 (iii), and (iv) and subparagraph (G) in the same
9 manner as such provisions apply to a failure to meet
10 a condition of section 212(n)(1)(F).”.

11 (b) APPROPRIATE AGENCIES REFERENCES.—Section
12 214(c)(1) of the Immigration and Nationality Act (8
13 U.S.C. 1184(c)(1)) is amended by inserting after “Depart-
14 ment of Agriculture.” the following: “For purposes of this
15 subsection with respect to nonimmigrants described in sec-
16 tion 101(a)(15)(L), the term ‘appropriate agencies of Gov-
17 ernment’ means the Department of Labor.”.

18 (c) RESTRICTION OF BLANKET PETITIONS.—Section
19 214(c)(2)(A) of the Immigration and Nationality Act (8
20 U.S.C. 1184(c)(2)(A)) is amended by striking “In the case
21 of” and all that follows through the period and inserting
22 the following: “Not later than January 15 of each year,
23 the Secretary of Homeland Security shall consult with the
24 Secretary of Labor to ensure that procedures utilized in
25 that calendar year to process blanket petitions shall not

1 undermine efforts by the Department of Labor to enforce
2 the provisions of this subsection and shall consider any
3 recommendations that the Secretary of Labor proposes to
4 such procedures to enhance compliance with the provisions
5 of this subsection.”.

6 (d) ACTION ON PETITIONS.—Section 214(c)(2)(C) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1184(c)(2)(C)) is amended by inserting before the period
9 the following: “, unless the Secretary of Homeland Secu-
10 rity, after consultation with the Secretary of Labor, deter-
11 mines that an additional period of time beyond 30 days
12 is necessary to ensure the proper implementation of this
13 subsection”.

14 (e) EMPLOYMENT HISTORY.—Section 101(a)(15)(L)
15 of the Immigration and Nationality Act (8 U.S.C.
16 1101(a)(15)(L)) is amended by striking “one year” and
17 inserting “2 of the last 3 years”.

18 (f) PERIOD OF ADMISSION.—Section 214(c)(2)(D) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1184(c)(2)(D)) is amended—

21 (1) in clause (i), by striking “7 years” and in-
22 serting “5 years”; and

23 (2) in clause (ii), by striking “5 years” and in-
24 serting “3 years”.

1 (g) RECRUITMENT; ADMINISTRATIVE FEE; DEFINI-
2 TIONS.—Section 214(c)(2) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1184(c)(2)), as amended by sub-
4 section (a), is further amended by adding at the end the
5 following:

6 “(H) In the case of a petition to import aliens as non-
7 immigrants in a capacity that involves specialized knowl-
8 edge as described in section 101(a)(15)(L), the employer,
9 prior to filing the petition, shall file with the Secretary
10 of Labor an application stating that the employer has
11 taken good faith steps to recruit, in the United States
12 using procedures that meet industry-wide standards,
13 United States workers for the job for which the non-
14 immigrants are sought.

15 “(I) The Secretary of Labor shall impose a fee on
16 an employer filing a petition to import aliens as non-
17 immigrants described in section 101(a)(15)(L) to cover
18 the administrative costs of processing the petition.

19 “(J) The Secretary of Labor may initiate an inves-
20 tigation of any employer that employs nonimmigrants de-
21 scribed in section 101(a)(15)(L) if the Secretary of Labor
22 has reasonable cause to believe that the employer is not
23 in compliance with this subsection. The investigation may
24 be initiated not solely for completeness and obvious inac-

1 curacies by the employer in complying with this sub-
2 section.

3 “(K) In this paragraph:

4 “(i) In the case of an application with respect
5 to 1 or more nonimmigrants described in section
6 101(a)(15)(L) by an employer, the employer is con-
7 sidered to ‘displace’ a United States worker from a
8 job if the employer lays off the worker from a job
9 that is essentially the equivalent of the job for which
10 the nonimmigrant is sought. A job shall not be con-
11 sidered to be essentially equivalent of another job
12 unless it involves essentially the same responsibil-
13 ities, was held by a United States worker with sub-
14 stantially equivalent qualifications and experience,
15 and is located in the same area of employment as
16 the other job.

17 “(ii)(I) The term ‘lays off’, with respect to a
18 worker—

19 “(aa) means to cause the worker’s loss of
20 employment, other than through a discharge for
21 inadequate performance, violation of workplace
22 rules, cause, voluntary departure, voluntary re-
23 tirement, or the expiration of a grant or con-
24 tract; but

1 “(bb) does not include any situation in
2 which the worker is offered, as an alternative to
3 such loss of employment, a similar employment
4 opportunity with the same employer at equiva-
5 lent or higher compensation and benefits than
6 the position from which the employee was dis-
7 charged, regardless of whether or not the em-
8 ployee accepts the offer.

9 “(II) Nothing in this clause is intended to limit
10 an employee’s rights under a collective bargaining
11 agreement or other employment contract.

12 “(iii) The term ‘United States worker’ means
13 an employee who—

14 “(I) is a citizen or national of the United
15 States; or

16 “(II) is an alien who is lawfully admitted
17 for permanent residence or is an immigrant
18 otherwise authorized by this Act or by the Sec-
19 retary of Homeland Security to be employed.”.

20 (h) TECHNICAL AND CONFORMING AMENDMENT.—
21 Section 214 of the Immigration and Nationality Act (8
22 U.S.C. 1184) is amended by striking “Attorney General”
23 each place that term appears and inserting “Secretary of
24 Homeland Security”.

1 **SEC. 4. TEMPORARY NONIMMIGRANT WORKERS.**

2 (a) H-1B DEPENDENT EMPLOYERS.—

3 (1) IN GENERAL.—Section 212(n) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1182(n)) is
5 amended—

6 (A) in paragraph (1)—

7 (i) in subparagraph (E)(ii), by strik-
8 ing “an H-1B-dependent employer (as de-
9 fined in paragraph (3))” and inserting “an
10 employer that employs H-1B non-
11 immigrants”; and

12 (ii) in subparagraph (F), by striking
13 “(regardless of whether or not such other
14 employer is an H-1B-dependent em-
15 ployer)”; and

16 (B) in paragraph (2)—

17 (i) in subparagraph (E), by striking
18 “If an H-1B-dependent employer” and in-
19 serting “If an employer that employs H-
20 1B nonimmigrants”; and

21 (ii) in subparagraph (F), by striking
22 “The preceding sentence shall apply to an
23 employer regardless of whether or not the
24 employer is an H-1B-dependent em-
25 ployer.”.

1 (2) CONFORMING DEFINITION AMENDMENT.—

2 Section 212(n)(3) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1182(n)(3)) is amended—

4 (A) by striking subparagraph (A); and

5 (B) by redesignating subparagraphs (B)
6 and (C) as subparagraphs (A) and (B), respec-
7 tively.

8 (b) DISPLACEMENT OF WORKERS.—Section 212(n)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1182(n)) is amended—

11 (1) in paragraph (1)(F), by striking “90 days”
12 each place that term appears and inserting “180
13 days”; and

14 (2) in paragraph (2)(C)(iii), by striking “90
15 days” each place that term appears and inserting
16 “180 days”.

17 (c) ENFORCEMENT ACTION.—Section 212(n)(2) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1182(n)(2)) is amended by adding at the end the fol-
20 lowing:

21 “(J) The Secretary of Labor may initiate an inves-
22 tigation of any employer that hires nonimmigrants de-
23 scribed in section 101(a)(15)(H)(i)(b) if the Secretary of
24 Labor has reasonable cause to believe that the employer
25 is not in compliance with this subsection. The investiga-

1 tion may be initiated not solely for completeness and obvi-
2 ous inaccuracies by the employer in complying with this
3 subsection.”.

4 **SEC. 5. COMPTROLLER GENERAL INVESTIGATION.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Comptroller General of the United States
7 shall undertake an investigation to determine—

8 (1) how the amendments made by this Act are
9 being implemented;

10 (2) the impact that the amendments made by
11 this Act have had on employers and workers in the
12 United States; and

13 (3) whether additional changes to existing law
14 are necessary—

15 (A) to prevent American workers from
16 being displaced by nonimmigrants described in
17 subparagraphs (L) and (H)(i)(b) of section
18 101(a)(15) of the Immigration and Nationality
19 Act (8 U.S.C. 1101(a)(15)); or

20 (B) to meet the legitimate needs of United
21 States employers.

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