

110TH CONGRESS
1ST SESSION

H. R. 1792

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2007

Mr. GOODLATTE (for himself, Mr. BISHOP of Georgia, Mr. KINGSTON, Mrs. JO ANN DAVIS of Virginia, and Ms. FOXX) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Temporary Agricul-
5 tural Labor Reform Act of 2007”.

1 **SEC. 2. ADMISSION OF TEMPORARY H-2A WORKERS.**

2 (a) PROCEDURE FOR ADMISSION.—Section 218 of
3 the Immigration and Nationality Act (8 U.S.C. 1188) is
4 amended to read as follows:

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 “SEC. 218. (a) DEFINITIONS.—In this section:

7 “(1) AREA OF EMPLOYMENT.—The term ‘area
8 of employment’ means the area within normal com-
9 muting distance of the worksite or physical location
10 where the work of the H-2A worker is or will be
11 performed. If such work site or location is within a
12 Metropolitan Statistical Area, any place within such
13 area shall be considered to be within the area of em-
14 ployment.

15 “(2) DISPLACE.—The term ‘displace’ means to
16 lay off a worker from a job that is essentially equiv-
17 alent to the job for which an H-2A worker is
18 sought. A job shall not be considered to be ‘essen-
19 tially equivalent’ to another job unless the job—

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

22 “(B) was held by a United States worker
23 with substantially equivalent qualifications and
24 experience; and

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

1 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
2 individual’ means an individual who is not an unau-
3 thorized alien (as defined in section 274A(h)(3))
4 with respect to the employment of the individual.

5 “(4) EMPLOYER.—The term ‘employer’ means
6 an employer who hires workers to perform agricul-
7 tural employment.

8 “(5) H-2A WORKER.—The term ‘H-2A worker’
9 means a nonimmigrant described in section
10 101(a)(15)(H)(ii)(a).

11 “(6) LAY OFF.—

12 “(A) IN GENERAL.—The term ‘lay off’—

13 “(i) means to cause a worker’s loss of
14 employment, other than through a dis-
15 charge for inadequate performance, viola-
16 tion of workplace rules, cause, voluntary
17 departure, voluntary retirement, or the ex-
18 piration of a grant or contract (other than
19 a temporary employment contract entered
20 into in order to evade a condition described
21 in paragraph (3) or (7) of subsection (b);
22 and

23 “(ii) does not include any situation in
24 which the worker is offered, as an alter-
25 native to such loss of employment, a simi-

1 lar employment opportunity with the same
2 employer (or, in the case of a placement of
3 a worker with another employer under sub-
4 section (h)(2), with either employer de-
5 scribed in such subsection) at equivalent or
6 higher compensation and benefits than the
7 position from which the employee was dis-
8 charged, regardless of whether or not the
9 employee accepts the offer.

10 “(B) CONSTRUCTION.—Nothing in this
11 paragraph is intended to limit an employee’s
12 rights under a collective bargaining agreement
13 or other employment contract.

14 “(7) PREVAILING WAGE.—The term ‘prevailing
15 wage’ means the wage rate that includes the 51st
16 percentile of employees with similar experience and
17 qualifications in the agricultural occupation in the
18 area of intended employment, calculated using the
19 same methodology used by the Department of Labor
20 to determine prevailing wage for the purpose of the
21 program described in section 101(a)(15)(H)(ii)(b)
22 during 2007, and expressed in terms of the pre-
23 vailing method of pay for the occupation in the area
24 of intended employment.

1 “(8) UNITED STATES WORKER.—The term
2 ‘United States worker’ means any worker who is—

3 “(A) a national of the United States; or

4 “(B) a person admitted for permanent
5 resident status under section 245 of the Immi-
6 gration and Nationality Act (8 U.S.C. 1255).

7 “(b) PETITION.—An alien may not be admitted as
8 an H-2A worker unless an employer has filed with the
9 Secretary of Homeland Security a petition attesting to the
10 following:

11 “(1) TEMPORARY WORK OR SERVICES.—

12 “(A) IN GENERAL.—The employer is seek-
13 ing to employ a specific number of agricultural
14 workers on a temporary basis and will provide
15 compensation to such workers at a specified
16 wage rate and under specified conditions.

17 “(B) DEFINITION.—For purposes of this
18 paragraph, a worker is employed on a tem-
19 porary basis if the employer intends to employ
20 the worker for no longer than 10 months dur-
21 ing any contract period.

22 “(2) BENEFITS, WAGES, AND WORKING CONDI-
23 TIONS.—The employer will provide, at a minimum,
24 the benefits, wages, and working conditions required
25 by subsection (j) to all workers employed in the jobs

1 for which the H-2A worker is sought and to all
2 other temporary workers in the same occupation at
3 the place of employment.

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

12 “(4) RECRUITMENT.—

13 “(A) IN GENERAL.—The employer—

14 “(i) conducted adequate recruitment
15 in the area of intended employment before
16 filing the attestation; and

17 “(ii) was unsuccessful in locating a
18 qualified United States worker for the job
19 opportunity for which the H-2A worker is
20 sought.

21 “(B) OTHER REQUIREMENTS.—The re-
22 cruitment requirement under subparagraph (A)
23 is satisfied if the employer places—

24 “(i) a local job order with the State
25 workforce agency serving the local area

1 where the work will be performed, except
2 that nothing in this clause shall require the
3 employer to file an interstate job order
4 under section 653 of title 20, Code of Fed-
5 eral Regulations; and

6 “(ii) a Sunday advertisement in a
7 newspaper of general circulation in the
8 area of intended employment.

9 “(C) ADVERTISEMENT REQUIREMENT.—

10 The advertisement requirement under subpara-
11 graph (B)(ii) is satisfied if the advertisement—

12 “(i) names the employer;

13 “(ii) directs applicants to contact the
14 employer;

15 “(iii) provides a description of the va-
16 cancy that is specific enough to apprise
17 United States workers of the job oppor-
18 tunity for which certification is sought;

19 “(iv) describes the geographic area
20 with enough specificity to apprise appli-
21 cants of any travel requirements and where
22 applicants will likely have to reside to per-
23 form the job; and

24 “(v) states the rate of pay, which
25 shall not be less than the wage paid for the

1 occupation in the area of intended employ-
2 ment.

3 “(D) END OF RECRUITMENT REQUIRE-
4 MENT.—The requirement to recruit United
5 States workers shall terminate on the first day
6 of the contract period that work begins.

7 “(5) OFFERS TO UNITED STATES WORKERS.—
8 The employer has offered or will offer the job for
9 which the H-2A worker is sought to any eligible
10 United States worker who—

11 “(A) applies;

12 “(B) is qualified for the job; and

13 “(C) will be available at the time and place
14 of need.

15 “(6) PROVISION OF INSURANCE.—If the job for
16 which the H-2A worker is sought is not covered by
17 State workers’ compensation law, the employer will
18 provide, at no cost to the worker, insurance covering
19 injury and disease arising out of, and in the course
20 of, the worker’s employment, which will provide ben-
21 efits at least equal to those provided under the State
22 workers’ compensation law for comparable employ-
23 ment.

24 “(7) REQUIREMENTS FOR PLACEMENT OF H-2A
25 WORKERS WITH OTHER EMPLOYERS.—A non-

1 immigrant who is admitted into the United States as
2 an H-2A worker may be transferred to another em-
3 ployer that has certified to the Secretary of Home-
4 land Security that it has filed a petition under this
5 subsection and is in compliance with this section.
6 The Secretary of Homeland Security shall establish
7 a process for the approval and reissuance of visas
8 for such transferred H-2A workers as necessary.

9 “(8) STRIKE OR LOCKOUT.—There is not a
10 strike or lockout in the course of a labor dispute
11 which, under regulations promulgated by the Sec-
12 retary of Labor, precludes the hiring of H-2A work-
13 ers.

14 “(9) PREVIOUS VIOLATIONS.—The employer
15 has not, during the previous two-year period, em-
16 ployed H-2A workers and knowingly violated a ma-
17 terial term or condition of approval with respect to
18 the employment of domestic or nonimmigrant work-
19 ers, as determined by the Secretary of Labor after
20 notice and opportunity for a hearing.

21 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
22 ing day after the date on which a petition under this sec-
23 tion is filed, the employer shall make a copy of each such
24 petition available for public examination, at the employer’s
25 principal place of business or worksite.

1 “(d) LIST.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall maintain a list of the petitions filed
4 under subsection (b), which shall—

5 “(A) be sorted by employer; and

6 “(B) include the number of H-2A workers
7 sought, the wage rate, the period of intended
8 employment, and the date of need for each
9 alien.

10 “(2) AVAILABILITY.—The Secretary of Home-
11 land Security shall, at least monthly, submit a copy
12 of the list described in paragraph (1) to the Sec-
13 retary of Labor, who shall make the list available for
14 public examination.

15 “(e) PETITIONING FOR ADMISSION.—

16 “(1) IN GENERAL.—An employer, or an asso-
17 ciation acting as an agent or joint employer for its
18 members, that seeks the admission into the United
19 States of an H-2A worker shall file with the Sec-
20 retary of Homeland Security a petition that includes
21 the attestations described in subsection (b).

22 “(2) CONSIDERATION OF PETITIONS.—For each
23 petition filed and considered under this subsection—

24 “(A) the Secretary of Homeland Security
25 may not require such petition to be filed more

1 than 28 days before the first date the employer
2 requires the labor or services of the H-2A
3 worker; and

4 “(B) unless the Secretary of Homeland Se-
5 curity determines that the petition is incomplete
6 or obviously inaccurate, the Secretary, not later
7 than 7 days after the date on which such peti-
8 tion was filed, shall either approve or reject the
9 petition.

10 “(3) EXPEDITED ADJUDICATION.—The Sec-
11 retary of Homeland Security shall—

12 “(A) establish a procedure for expedited
13 adjudication of petitions filed under this sub-
14 section; and

15 “(B) not later than 7 working days after
16 such filing, transmit, by fax, cable, or other
17 means assuring expedited delivery, a copy of no-
18 tice of action on the petition—

19 “(i) in the case of approved petitions,
20 to the petitioner, the Secretary of Labor,
21 and to the appropriate immigration officer
22 at the port of entry or United States con-
23 sulate where the petitioner has indicated
24 that the alien beneficiary or beneficiaries

1 will apply for a visa or admission to the
2 United States; and

3 “(ii) in the case of denied petitions, to
4 the petitioner, including reasons for the de-
5 nial and instructions on how to appeal
6 such denial.

7 “(4) PETITION AGREEMENTS.—By filing an H-
8 2A petition, a petitioner and each employer consents
9 to allow access to the site where the labor is being
10 performed to the Department of Labor, the Depart-
11 ment of Homeland Security, or a State agency for
12 the purpose of investigations to determine compli-
13 ance with H-2A requirements.

14 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

15 “(1) PERMITTING FILING BY AGRICULTURAL
16 ASSOCIATIONS.—A petition to hire an alien as a
17 temporary agricultural worker may be filed by an as-
18 sociation of agricultural employers which use agri-
19 cultural services.

20 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
21 EMPLOYERS.—If an association is a joint or sole em-
22 ployer of temporary agricultural workers, such work-
23 ers may be transferred among its members to per-
24 form agricultural services of a temporary nature for
25 which the petition was approved.

1 “(3) TREATMENT OF VIOLATIONS.—

2 “(A) INDIVIDUAL MEMBER.—If an indi-
3 vidual member of a joint employer association
4 violates any condition for approval with respect
5 to the member’s petition, the Secretary of
6 Homeland Security shall deny such petition
7 only with respect to that member of the associa-
8 tion unless the Secretary of Labor determines
9 that the association or other member partici-
10 pated in, had knowledge of, or had reason to
11 know of the violation.

12 “(B) ASSOCIATION OF AGRICULTURAL EM-
13 PLOYERS.—

14 “(i) JOINT EMPLOYER.—If an associa-
15 tion representing agricultural employers as
16 a joint employer violates any condition for
17 approval with respect to the association’s
18 petition, the Secretary of Homeland Secu-
19 rity shall deny such petition only with re-
20 spect to the association and may not apply
21 the denial to any individual member of the
22 association, unless the Secretary of Labor
23 determines that the member participated
24 in, had knowledge of, or had reason to
25 know of the violation.

1 “(ii) SOLE EMPLOYER.—If an associa-
2 tion of agricultural employers approved as
3 a sole employer violates any condition for
4 approval with respect to the association’s
5 petition, no individual member of such as-
6 sociation may be the beneficiary of the
7 services of temporary alien agricultural
8 workers admitted under this section in the
9 occupation in which such aliens were em-
10 ployed by the association which was denied
11 approval during the period such denial is
12 in force, unless such member employs such
13 aliens in the occupation in question di-
14 rectly or through an association which is a
15 joint employer of such workers with the
16 member.

17 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
18 Secretary of Homeland Security shall promulgate regula-
19 tions to provide for an expedited procedure—

20 “(1) for the review of a denial of a petition
21 under this section by the Secretary; or

22 “(2) at the petitioner’s request, for a de novo
23 administrative hearing respecting the denial.

24 “(h) MISCELLANEOUS PROVISIONS.—

1 “(1) ENDORSEMENT OF DOCUMENTS.—The
2 Secretary of Homeland Security shall provide for the
3 endorsement of entry and exit documents of H-2A
4 workers as may be necessary to carry out this sec-
5 tion and to provide notice for purposes of section
6 274A.

7 “(2) PREEMPTION OF STATE LAWS.—The pro-
8 visions of subsections (a) and (c) of section 214 and
9 the provisions of this section preempt any State or
10 local law regulating admissibility of nonimmigrant
11 workers.

12 “(3) FEES.—

13 “(A) IN GENERAL.—The Secretary of
14 Homeland Security may require, as a condition
15 of approving the petition, the payment of a fee,
16 in accordance with subparagraph (B), to re-
17 cover the reasonable cost of processing peti-
18 tions.

19 “(B) FEE BY TYPE OF EMPLOYEE.—

20 “(i) SINGLE EMPLOYER.—An em-
21 ployer whose petition for temporary alien
22 agricultural workers is approved shall, for
23 each approved petition, pay a fee that—

1 “(I) subject to subclause (II), is
2 equal to \$100 plus \$10 for each ap-
3 proved H-2A worker; and

4 “(II) does not exceed \$1,000.

5 “(ii) ASSOCIATION.—Each employ-
6 member of a joint employer association
7 whose petition for H-2A workers is ap-
8 proved shall, for each such approved peti-
9 tion, pay a fee that—

10 “(I) subject to subclause (II), is
11 equal to \$100 plus \$10 for each ap-
12 proved H-2A worker; and

13 “(II) does not exceed \$1,000.

14 “(iii) LIMITATION ON ASSOCIATION
15 FEES.—A joint employer association under
16 clause (ii) shall not be charged a separate
17 fee.

18 “(C) METHOD OF PAYMENT.—The fees
19 collected under this paragraph shall be paid by
20 check or money order to the Department of
21 Homeland Security. In the case of employers of
22 H-2A workers that are members of a joint em-
23 ployer association petitioning applying on their
24 behalf, the aggregate fees for all employers of

1 H-2A workers under the petition may be paid
2 by 1 check or money order.

3 “(4) EMPLOYMENT VERIFICATION PROGRAM.—

4 “(A) IN GENERAL.—Not later than 12
5 months after the date of enactment of this
6 paragraph, the Secretary of Homeland Security
7 shall establish a mandatory employment
8 verification program for all employers of H-2A
9 workers to verify the eligibility of all individuals
10 hired by each such employer, including those
11 who present an H-2A visa to work in the
12 United States.

13 “(B) EMPLOYER COMPLIANCE.—Each em-
14 ployer of an H-2A worker shall comply with the
15 requirements promulgated by the Secretary of
16 Homeland Security to verify the identity and
17 employment eligibility of all individuals hired.

18 “(C) REGULATIONS.—In carrying out the
19 program under this paragraph, the Secretary of
20 Homeland Security shall promulgate regulations
21 to require each employer to verify the employ-
22 ment eligibility of each employee hired
23 through—

24 “(i) a secure Internet site;

1 “(ii) a machine capable of reading the
2 H–2A visa, which shall serve as the identi-
3 fication and employment eligibility docu-
4 ment for each H–2A alien; or

5 “(iii) a toll-free telephone number to
6 check the accuracy of any social security
7 number presented to the employer.

8 “(i) ENFORCEMENT.—

9 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
10 retary of Labor shall be responsible for conducting
11 investigations and random audits of employer work
12 sites to ensure compliance with the requirements of
13 the H–2A program and all other requirements under
14 this Act. All monetary fines levied against violating
15 employers shall be paid to the Department of Labor
16 and used to enhance the Department of Labor’s in-
17 vestigatory and auditing power.

18 “(2) FAILURE TO MEET CONDITIONS.—If the
19 Secretary of Labor finds, after notice and oppor-
20 tunity for a hearing, a failure to meet a condition
21 of subsection (a), or a material misrepresentation of
22 fact in a petition under subsection (a)—

23 “(A) the Secretary of Labor—

24 “(i) shall notify the Secretary of
25 Homeland Security of such finding; and

1 “(ii) may, in addition, impose such
2 other administrative remedies (including
3 civil money penalties in an amount not to
4 exceed \$1,000 per violation) as the Sec-
5 retary of Labor determines to be appro-
6 priate; and

7 “(B) the Secretary of Homeland Security
8 may disqualify the employer from the employ-
9 ment of H-2A workers for a period of 1 year.

10 “(3) PENALTIES FOR WILLFUL FAILURE.—If
11 the Secretary of Labor finds, after notice and oppor-
12 tunity for a hearing, a willful failure to meet a mate-
13 rial condition of subsection (a), or a willful misrepre-
14 sentation of a material fact in a petition under sub-
15 section (a)—

16 “(A) the Secretary of Labor—

17 “(i) shall notify the Secretary of
18 Homeland Security of such finding; and

19 “(ii) may, in addition, impose such
20 other administrative remedies (including
21 civil money penalties in an amount not to
22 exceed \$5,000 per violation) as the Sec-
23 retary of Labor determines to be appro-
24 priate;

1 “(B) the Secretary of Homeland Security
2 may—

3 “(i) disqualify the employer from the
4 employment of H-2A workers for a period
5 of 2 years;

6 “(ii) for a second violation, the Sec-
7 retary of Homeland Security may dis-
8 qualify the employer from the employment
9 of H-2A workers for a period of 5 years;
10 and

11 “(iii) for a third violation, the Sec-
12 retary of Homeland Security may perma-
13 nently disqualify the employer from the
14 employment of H-2A workers.

15 “(4) PENALTIES FOR DISPLACEMENT OF
16 UNITED STATES WORKERS.—If the Secretary of
17 Labor finds, after notice and opportunity for a hear-
18 ing, a willful failure to meet a material condition of
19 subsection (a) or a willful misrepresentation of a
20 material fact in a petition under subsection (a), in
21 the course of which failure or misrepresentation the
22 employer displaced a United States worker employed
23 by the employer during the period of employment on
24 the employer’s petition under subsection (a) or dur-

1 ing the period of 30 days preceding such period of
2 employment—

3 “(A) the Secretary of Labor—

4 “(i) shall notify the Secretary of
5 Homeland Security of such finding; and

6 “(ii) may, in addition, impose such
7 other administrative remedies (including
8 civil money penalties in an amount not to
9 exceed \$15,000 per violation) as the Sec-
10 retary of Labor determines to be appro-
11 priate; and

12 “(B) the Secretary of Homeland Security
13 may—

14 “(i) disqualify the employer from the
15 employment of H-2A workers for a period
16 of 5 years; and

17 “(ii) for a second violation, perma-
18 nently disqualify the employer from the
19 employment of H-2A workers.

20 “(5) LIMITATIONS ON CIVIL MONEY PEN-
21 ALTIES.—The Secretary of Labor may not impose
22 total civil money penalties with respect to a petition
23 under subsection (b) in excess of \$90,000.

24 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
25 FITS.—

1 “(1) ASSESSMENT.—If the Secretary of Labor
2 finds, after notice and opportunity for a hearing,
3 that the employer has failed to pay the wages, trans-
4 portation, subsistence reimbursement, or guarantee
5 of employment attested by the employer under sub-
6 section (b)(2), the Secretary of Labor shall assess
7 payment of back wages, or other required benefits,
8 due any United States worker or H-2A worker em-
9 ployed by the employer in the specific employment in
10 question.

11 “(2) AMOUNT.—The back wages or other re-
12 quired benefits described in paragraph (1)—

13 “(A) shall be equal to the difference be-
14 tween the amount that should have been paid
15 and the amount that was paid to such worker;
16 and

17 “(B) shall be distributed to the worker to
18 whom such wages are due.

19 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
20 CONDITIONS.—

21 “(1) PREFERENTIAL TREATMENT OF ALIENS
22 PROHIBITED.—

23 “(A) IN GENERAL.—Each employer seek-
24 ing to hire United States workers shall offer
25 such workers not less than the same benefits,

1 wages, and working conditions that the em-
2 ployer is offering, intends to offer, or will pro-
3 vide to H-2A workers. No job offer may impose
4 on United States workers any restrictions or
5 obligations which will not be imposed on the
6 employer's H-2A workers.

7 “(B) INTERPRETATION.—Every interpreta-
8 tion and determination made under this section
9 or under any other law, regulation, or interpre-
10 tative provision regarding the nature, scope,
11 and timing of the provision of these and any
12 other benefits, wages, and other terms and con-
13 ditions of employment shall be made so that—

14 “(i) the services of workers to their
15 employers and the employment opportuni-
16 ties afforded to workers by the employers,
17 including those employment opportunities
18 that require United States workers or H-
19 2A workers to travel or relocate in order to
20 accept or perform employment—

21 “(I) mutually benefit such work-
22 ers, as well as their families, and em-
23 ployers; and

24 “(II) principally benefit neither
25 employer nor employee; and

1 “(ii) employment opportunities within
2 the United States benefit the United
3 States economy.

4 “(2) REQUIRED WAGES.—

5 “(A) IN GENERAL.—Each employer peti-
6 tioning for workers under subsection (b) shall
7 pay not less than the greater of—

8 “(i) the prevailing wage to all workers
9 in the occupation for which the employer
10 has petitioned for workers; or

11 “(ii) the applicable State minimum
12 wage.

13 “(B) DETERMINATION OF WAGES.—An
14 employer seeking to comply with subparagraph
15 (A) may—

16 “(i) request and obtain a prevailing
17 wage determination from the State employ-
18 ment agency; or

19 “(ii) rely on other wage information,
20 including a survey of the prevailing wages
21 of workers in the occupation in the area of
22 employment that has been conducted or
23 funded by the employer or a group of em-
24 ployers, using the methodology used by the
25 Secretary of Labor to establish Occupa-

1 tional Employment and Wage estimate, or
2 another methodology approved by the Sec-
3 retary of Labor for the purpose of deter-
4 mining H-2A wages.

5 “(C) COMPLIANCE.—An employer shall be
6 considered to have complied with the require-
7 ment under subparagraph (A) if the employer—

8 “(i)(I) obtains a prevailing wage de-
9 termination under subparagraph (C)(i); or

10 “(II) relies on a qualifying survey of
11 prevailing wages; and

12 “(ii) pays such prevailing wage.

13 “(3) REIMBURSEMENT OF TRANSPORTATION
14 COSTS.—

15 “(A) REQUIREMENT FOR REIMBURSE-
16 MENT.—An H-2A worker who completes 50
17 percent of the period of employment of the job
18 for which the worker was hired, beginning on
19 the first day of such employment, shall be reim-
20 bursed by the employer for the cost of the
21 worker’s transportation and subsistence from—

22 “(i) the place from which the H-2A
23 worker was approved to enter the United
24 States to the location at which the work
25 for the employer is performed; or

1 “(ii) if the H-2A worker traveled
2 from a place in the United States at which
3 the H-2A worker was last employed, from
4 such place of last employment to the loca-
5 tion at which the work for the employer is
6 performed.

7 “(B) TIMING OF REIMBURSEMENT.—Reim-
8 bursement to the worker of expenses for the
9 cost of the worker’s transportation and subsist-
10 ence to the place of employment under subpara-
11 graph (A) shall be considered timely if such re-
12 imbursement is made not later than the work-
13 er’s first regular payday after a worker com-
14 pletes 50 percent of the period of employment
15 of the job opportunity as provided under this
16 paragraph.

17 “(C) ADDITIONAL REIMBURSEMENT.—A
18 worker who completes the period of employment
19 for the job opportunity involved shall be reim-
20 bursed by the employer for the cost of the
21 worker’s transportation and subsistence from
22 the work site to the place where the worker was
23 approved to enter the United States to work for
24 the employer. If the worker has contracted with
25 a subsequent employer, the previous and subse-

1 quent employer shall share the cost of the work-
2 er's transportation and subsistence from work
3 site to work site.

4 “(D) LIMITATION.—

5 “(i) AMOUNT OF REIMBURSEMENT.—

6 The amount of reimbursement provided to
7 a worker or alien under this paragraph
8 shall be equal to the lesser of—

9 “(I) the actual cost to the worker

10 or alien of the transportation and sub-
11 sistence involved; or

12 “(II) the most economical and

13 reasonable common carrier transpor-
14 tation charges and subsistence costs
15 for the distance involved.

16 “(ii) DISTANCE TRAVELED.—No reim-

17 bursement under subparagraph (A) or (B)

18 shall be required if the distance traveled is

19 100 miles or less.

20 “(E) REIMBURSEMENT FOR LAID OFF

21 WORKERS.—If the worker is laid off or employ-

22 ment is terminated for contract impossibility

23 (as described in paragraph (5)(D)) before the

24 anticipated ending date of employment, the em-

25 ployer shall provide—

1 “(i) the transportation and subsist-
2 ence required under subparagraph (C); and

3 “(ii) notwithstanding whether the
4 worker has completed 50 percent of the pe-
5 riod of employment, the transportation re-
6 imbursement required under subparagraph
7 (A).

8 “(F) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed to require an em-
10 ployer to reimburse visa, passport, consular, or
11 international bordercrossing fees or any other
12 fees associated with the H-2A worker’s lawful
13 admission into the United States to perform
14 employment that may be incurred by the work-
15 er.

16 “(4) EMPLOYMENT GUARANTEE.—

17 “(A) IN GENERAL.—

18 “(i) REQUIREMENT.—Each employer
19 petitioning for workers under subsection
20 (b) shall guarantee to offer the worker em-
21 ployment for the hourly equivalent of not
22 less than 75 percent of the work hours
23 during the total anticipated period of em-
24 ployment, beginning with the first work
25 day after the arrival of the worker at the

1 place of employment and ending on the ex-
2 piration date specified in the job offer.

3 “(ii) FAILURE TO MEET GUAR-
4 ANTEE.—If the employer affords the
5 United States worker or the H-2A worker
6 less employment than that required under
7 this subparagraph, the employer shall pay
8 such worker the amount which the worker
9 would have earned if the worker had
10 worked for the guaranteed number of
11 hours.

12 “(iii) PERIOD OF EMPLOYMENT.—For
13 purposes of this subparagraph, the term
14 “period of employment” means the total
15 number of anticipated work hours and
16 workdays described in the job offer and
17 shall exclude the worker’s Sabbath and
18 Federal holidays.

19 “(B) CALCULATION OF HOURS.—Any
20 hours which the worker fails to work, up to a
21 maximum of the number of hours specified in
22 the job offer for a work day, when the worker
23 has been offered an opportunity to do so, and
24 all hours of work actually performed (including
25 voluntary work in excess of the number of

1 hours specified in the job offer in a work day,
2 on the worker's Sabbath, or on Federal holi-
3 days) may be counted by the employer in calcu-
4 lating whether the period of guaranteed employ-
5 ment has been met.

6 “(C) LIMITATION.—If the worker volun-
7 tarily abandons employment before the end of
8 the contract period, or is terminated for cause,
9 the worker is not entitled to the 75 percent
10 guarantee described in subparagraph (A).

11 “(D) TERMINATION OF EMPLOYMENT.—

12 “(i) IN GENERAL.—If, before the expi-
13 ration of the period of employment speci-
14 fied in the job offer, the services of the
15 worker are no longer required due to any
16 form of natural disaster, including flood,
17 hurricane, freeze, earthquake, fire,
18 drought, plant or animal disease, pest in-
19 festation, regulatory action, or any other
20 reason beyond the control of the employer
21 before the employment guarantee in sub-
22 paragraph (A) is fulfilled, the employer
23 may terminate the worker's employment.

1 “(ii) REQUIREMENTS.—If a worker’s
2 employment is terminated under clause (i),
3 the employer shall—

4 “(I) fulfill the employment guar-
5 antee in subparagraph (A) for the
6 work days that have elapsed during
7 the period beginning on the first work
8 day after the arrival of the worker
9 and ending on the date on which such
10 employment is terminated; and

11 “(II) make efforts to transfer the
12 United States worker to other com-
13 parable employment acceptable to the
14 worker.

15 “(1) EXPEDITED ADJUDICATION BY THE SEC-
16 RETARY.—The Secretary of Homeland Security—

17 “(1) shall establish a procedure for expedited
18 adjudication of petitions filed under subsection (e);
19 and

20 “(2) not later than 7 working days after such
21 filing shall, by fax, cable, or other means assuring
22 expedited delivery transmit a copy of notice of action
23 on the petition—

24 “(A) to the petitioner; and

1 “(B) in the case of approved petitions, to
2 the appropriate immigration officer at the port
3 of entry or United States consulate (as the case
4 may be) where the petitioner has indicated that
5 the alien beneficiary (or beneficiaries) will apply
6 for a visa or admission to the United States.

7 “(m) DISQUALIFICATION.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 an alien shall be considered inadmissible to the
10 United States and ineligible for nonimmigrant status
11 under section 101(a)(15)(H)(ii)(a) if the alien has,
12 at any time during the past 5 years, violated a term
13 or condition of admission into the United States as
14 a nonimmigrant, including overstaying the period of
15 authorized admission.

16 “(2) WAIVERS.—

17 “(A) IN GENERAL.—An alien seeking ad-
18 mission under section 101(a)(15)(H)(ii)(a)
19 while outside of the United States shall not be
20 deemed inadmissible under such section by rea-
21 son of—

22 “(i) paragraph (1);

23 “(ii) section 212(a)(6)(C), if such
24 alien has previously falsely represented
25 himself or herself to be a citizen of the

1 United States for the purpose of agricul-
2 tural employment; or

3 “(iii) section 212(a)(9)(B), unless
4 such alien was deported from the United
5 States;

6 if the violation occurred on or before the date
7 of the enactment of this Act.

8 “(B) EFFECTIVE PERIOD OF WAIVER.—If
9 an alien is admitted to the United States as a
10 result of a waiver under subparagraph (A),
11 such waiver shall remain in effect unless the
12 alien subsequently violates—

13 “(i) a material provision of this sec-
14 tion; or

15 “(ii) a term or condition of admission
16 into the United States as a nonimmigrant.

17 “(n) PERIOD OF ADMISSION.—

18 “(1) IN GENERAL.—An H-2A worker shall be
19 admitted for a period of employment, not to exceed
20 10 months, that includes—

21 “(A) a period of not more than 7 days
22 prior to the beginning of the period of employ-
23 ment for the purpose of travel to the work site;
24 and

1 “(B) a period of not more than 14 days
2 following the period of employment for the pur-
3 pose of departure or extension based on a sub-
4 sequent offer of employment.

5 “(2) EMPLOYMENT LIMITATION.—An alien may
6 not be employed during the 14-day period described
7 in paragraph (1)(B) except in the employment for
8 which the alien was previously authorized.

9 “(3) CONSTRUCTION.—Nothing in this sub-
10 section shall limit the authority of the Secretary of
11 Homeland Security to extend the stay of an alien
12 under any other provision of this Act.

13 “(o) ABANDONMENT OF EMPLOYMENT.—

14 “(1) IN GENERAL.—An alien admitted or pro-
15 vided status under section 101(a)(15)(H)(ii)(a) who
16 abandons the employment which was the basis for
17 such admission or status—

18 “(A) shall have failed to maintain non-
19 immigrant status as an H-2A worker; and

20 “(B) shall depart the United States or be
21 subject to removal under section
22 237(a)(1)(C)(i).

23 “(2) REPORT BY EMPLOYER.—Not later than
24 24 hours after the abandonment of employment by
25 an H-2A worker, the employer or association acting

1 as an agent for the employer, shall notify the Sec-
2 retary of Homeland Security of such abandonment.

3 “(3) REMOVAL.—The Secretary of Homeland
4 Security shall promptly remove from the United
5 States any H–2A worker who violates any term or
6 condition of the worker’s nonimmigrant status.

7 “(4) VOLUNTARY TERMINATION.—Notwith-
8 standing paragraph (1), an alien may voluntarily
9 terminate the alien’s employment if the alien
10 promptly departs the United States upon termi-
11 nation of such employment.

12 “(p) REPLACEMENT OF ALIEN.—

13 “(1) IN GENERAL.—Upon notification under
14 subsection (p)(2)—

15 “(A) the Secretary of State shall promptly
16 issue a visa to, and the Secretary of Homeland
17 Security shall admit into the United States, an
18 eligible alien designated by the employer to re-
19 place an H–2A worker who abandons or pre-
20 maturely terminates employment; and

21 “(B) the Secretary of Homeland Security
22 shall admit such alien into the United States.

23 “(2) CONSTRUCTION.—Nothing in this sub-
24 section shall limit any preference for which United
25 States workers are eligible under this Act.

1 “(q) IDENTIFICATION DOCUMENT.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall provide each authorized H-2A worker
4 with a single machine-readable, tamper-resistant,
5 and counterfeit-resistant document that—

6 “(A) authorizes the alien’s entry into the
7 United States;

8 “(B) serves, for the appropriate period, as
9 an employment eligibility document; and

10 “(C) verifies the identity of the alien.

11 “(2) FORM.—

12 “(A) The document shall be—

13 “(i) in a form that is resistant to
14 counterfeiting and to tampering; and

15 “(ii) compatible with—

16 “(I) other databases of the Sec-
17 retary of Homeland Security for the
18 purpose of excluding an alien from
19 benefits for which an alien is not eligi-
20 ble and determining whether the alien
21 is unlawfully present in the United
22 States; and

23 “(II) law enforcement databases
24 for the purpose of determining if an

1 alien has been convicted of criminal
2 offenses.

3 “(B) As soon as practicable, the document
4 shall include a biometric identifier. The deter-
5 mination of a biometric identifier to be used for
6 such purposes shall take into account factors
7 such as efficiency, accuracy, the technology
8 available, economic considerations, and storage
9 requirements.

10 “(r) EXTENSION OF STAY OF H-2A WORKERS IN
11 THE UNITED STATES.—

12 “(1) EXTENSION OF STAY.—If an employer
13 seeks approval to employ an H-2A worker who is
14 lawfully present in the United States, the petition
15 filed by the employer or an association pursuant to
16 subsection (p) shall request an extension of the
17 alien’s stay and, if applicable, a change in the alien’s
18 employment.

19 “(2) LIMITATION ON FILING PETITION FOR EX-
20 TENSION OF STAY.—A petition may not be filed for
21 an extension of an alien’s stay for a period of more
22 than 10 months.

23 “(3) WORK AUTHORIZATION UPON FILING PE-
24 TITION FOR EXTENSION OF STAY.—

1 “(A) IN GENERAL.—An alien who is law-
2 fully present in the United States on the date
3 of the filing of a petition to extend the stay of
4 the alien may commence or continue the em-
5 ployment described in a petition under para-
6 graph (1). The employer shall provide a copy of
7 the employer’s petition for extension of stay to
8 the alien. The alien shall keep the petition with
9 the alien’s identification and employment eligi-
10 bility document, as evidence that the petition
11 has been filed and that the alien is authorized
12 to work in the United States.

13 “(B) EMPLOYMENT ELIGIBILITY DOCU-
14 MENT.—Upon approval of a petition for an ex-
15 tension of stay or change in the alien’s author-
16 ized employment, the Secretary of Homeland
17 Security shall provide a new or updated employ-
18 ment eligibility document to the alien indicating
19 the new validity date, after which the alien is
20 not required to retain a copy of the petition.

21 “(C) FILE DEFINED.—In this paragraph,
22 the term ‘file’ means sending the petition by
23 certified mail via the United States Postal Serv-
24 ice, return receipt requested, or delivering by
25 guaranteed commercial delivery which will pro-

1 vide the employer with a documented acknowl-
2 edgment of the date of receipt of the petition
3 for an extension of stay.

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

6 “(A) MAXIMUM PERIOD.—The maximum
7 continuous period of authorized status as an
8 H-2A worker (including any extensions) is 20
9 months.

10 “(B) REQUIREMENT TO REMAINS OUTSIDE
11 THE UNITED STATES.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), in the case of an alien outside the
14 United States whose period of authorized
15 status as an H-2A worker (including any
16 extensions) has expired, the alien may not
17 again apply for admission to the United
18 Stats as an H-2A worker unless the alien
19 has remained outside the United States for
20 a continuous period equal to at least $\frac{1}{5}$
21 the duration of the alien’s previous period
22 of authorized status as an H-2A worker
23 (including any extensions).

24 “(ii) EXCEPTION.—Clause (i) shall
25 not apply in the case of an alien if the

1 alien's period of authorized status as an
2 H-2A worker (including any extensions)
3 was for a period of not more than 10
4 months and such alien has been outside
5 the United States for at least 2 months
6 during the 12 months preceding the date
7 the alien again is applying for admission to
8 the United States as an H-2A worker.

9 “(s) SPECIAL RULE FOR ALIENS EMPLOYED AS
10 SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—

11 Notwithstanding any other provision of this section, an
12 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
13 ployment as a shepherd, goatherder, or dairy worker—

14 “(1) may be admitted for a period of 12
15 months; and

16 “(2) shall not be subject to the requirements of
17 subsection (r)(4)(B).”.

18 (b) REGULATIONS.—Not later than 180 days after
19 the date of the enactment of this Act, the Secretary of
20 Homeland Security shall promulgate regulations, in ac-
21 cordance with the notice and comment provisions of sec-
22 tion 553 of title 5, United States Code, to provide for the
23 uniform procedures for the issuance of visas to non-
24 immigrants described in section 101(a)(15)(H)(ii)(a) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(H)(ii)(a)) by visa-issuing United States con-
2 sulates and consular officers.

3 (c) CONFORMING AMENDMENT.—Section
4 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-
6 ing “of a temporary or seasonal nature” and inserting
7 “and with respect to whom the intending employer has
8 filed with the Secretary a petition under section 218(a)”.

9 **SEC. 3. EMERGENCY GRANTS TO ASSIST EMPLOYERS WITH**
10 **H-2A TRANSPORTATION COSTS.**

11 Subtitle D of the Consolidated Farm and Rural De-
12 velopment Act (7 U.S.C. 1981 et seq.) is amended by add-
13 ing at the end the following:

14 **“SEC. 379E. EMERGENCY GRANTS TO ASSIST EMPLOYERS**
15 **WITH H-2A TRANSPORTATION COSTS.**

16 “(a) IN GENERAL.—The Secretary of Agriculture
17 may make grants, not to exceed \$1,000,000 annually, to
18 employers of H-2A workers for the purpose of reimburs-
19 ing the employers for the amounts paid to H-2A workers
20 under section 218(m)(4)(B) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1188) (as amended by the ‘Tem-
22 porary Agricultural Labor Reform Act of 2005’) if, before
23 the expiration of the period of employment specified in the
24 job offer, the services of the worker are no longer required
25 for reasons beyond the control of the employer due to any

1 form of natural disaster, including but not limited to a
2 flood, hurricane, freeze, earthquake, fire, drought, plant
3 or animal disease or pest infestation, or regulatory
4 drought.

5 “(b) FUNDING.—The grants described in subsection
6 (a) shall be made out of the funds, facilities and authori-
7 ties of the Commodity Credit Corporation to the extent
8 that such funds are provided in advance through an appro-
9 priations act.”.

10 **SEC. 4. ESTABLISHMENT OF H-2A OMBUDSMAN.**

11 Subtitle D of the Consolidated Farm and Rural De-
12 velopment Act (7 U.S.C. 1981 et seq.), as amended by
13 section 3 of this Act, is amended by adding at the end
14 the following:

15 **“SEC. 379F. ESTABLISHMENT OF H-2A OMBUDSMAN.**

16 “The Secretary shall establish an H-2A Worker Pro-
17 gram Ombudsman within the Office of Agriculture Labor
18 Affairs, Office of the Chief Economist, U.S. Department
19 of Agriculture. The H-2A Ombudsman shall help resolve
20 disputes and other conflicts between contracted H-2A
21 workers and their employers, other than alleged violations
22 of conditions required under section 218(a) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1188(a)).”.

1 **SEC. 5. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
2 **SERVICES CORPORATION.**

3 (a) IN GENERAL.—Section 305 of the Immigrant Re-
4 form and Control Act of 1986 (8 U.S.C. 1101 note) is
5 amended—

6 (1) by striking “A nonimmigrant” and inserting
7 “(a) IN GENERAL.—A nonimmigrant”; and

8 (2) by adding at the end the following:

9 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
10 poration may not provide legal assistance for or on behalf
11 of any alien, and may not provide financial assistance to
12 any person or entity that provides legal assistance for or
13 on behalf of any alien, unless the alien—

14 “(1) is present in the United States at the time
15 the legal assistance is provided; and

16 “(2) is an alien to whom subsection (a) ap-
17 plies.”.

18 (b) MEDIATION.—Section 305 of the Immigrant Re-
19 form and Control Act of 1986 (8 U.S.C. 1101 note), as
20 amended by subsection (a), is further amended by adding
21 at the end the following:

22 “(c) REQUIRED MEDIATION.—The Legal Services
23 Corporation may not bring a civil action for damages on
24 behalf of a nonimmigrant described in section
25 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
26 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90

1 days prior to bringing the action a request has been made
2 to the Federal Mediation and Conciliation Service to assist
3 the parties in reaching a satisfactory resolution of all
4 issues involving all parties to the dispute and mediation
5 has been attempted.”.

6 (c) CONDITION FOR ENTRY ONTO PROPERTY FOR
7 LEGAL SERVICES CORPORATION REPRESENTATION.—
8 Section 305 of the Immigrant Reform and Control Act
9 of 1986 (8 U.S.C. 1101 note), as amended by subsection
10 (b), is further amended by adding at the end the following:

11 “(d) CONDITION FOR ENTRY ONTO EMPLOYER’S
12 PROPERTY FOR LEGAL SERVICES CORPORATION REP-
13 RESENTATION.—No employer of a nonimmigrant having
14 status under section 101(a)(15)(H)(ii)(a) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))
16 shall be required to permit any recipient of a grant or con-
17 tract under section 1007 of the Legal Services Corpora-
18 tion Act (42 U.S.C. 2996f), or any employee of such a
19 recipient, to enter upon the employer’s property, unless
20 such recipient or employee has a pre-arranged appoint-
21 ment with a specific nonimmigrant having such status.”.

1 **SEC. 6. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect
3 on the date that is 180 days after the date of the enact-
4 ment of this Act.

○