

108TH CONGRESS  
2D SESSION

# S. 2185

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.

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IN THE SENATE OF THE UNITED STATES

MARCH 9, 2004

Mr. CHAMBLISS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 Work Reform Act of 2004”.

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

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

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 “SEC. 218. (a) APPLICATION.—No alien may be ad-  
7 mitted as an H-2A worker (as defined in subsection  
8 (u)(4)) unless the employer has filed with the Secretary  
9 of Labor an application stating the following:

10 “(1) TEMPORARY OR SEASONAL WORK OR  
11 SERVICES.—

12 “(A) IN GENERAL.—The agricultural em-  
13 ployment for which the H-2A worker or work-  
14 ers is or are sought is temporary or seasonal,  
15 the number of workers sought, and the wage  
16 rate and conditions under which they will be  
17 employed.

18 “(B) SEASONAL WORK.—For purposes of  
19 subparagraph (A), the term ‘seasonal’ means an  
20 annually recurring time period in which a par-  
21 ticular crop is planted, cultivated, or harvested,  
22 along with the ancillary activities that are re-  
23 quired to support such planting, cultivation, or  
24 harvest. For purposes of an employer’s eligi-  
25 bility to hire H-2A workers, an application filed  
26 under this subsection shall be classified as a

1           ‘seasonal job opportunity’ if the crop activity is  
2           traditionally performed in that geographical  
3           area during the time specified on the applica-  
4           tion. There shall be no limit to the number of  
5           applications that can be filed by an agricultural  
6           employer during any 12-month period as long  
7           as each application has a clearly specified sea-  
8           son for that particular crop activity.

9           “(2) BENEFITS, WAGE, AND WORKING CONDI-  
10          TIONS.—The employer will provide, at a minimum,  
11          the benefits, wages, and working conditions required  
12          by subsection (m) to all workers employed in the  
13          jobs for which the H–2A worker or workers is or are  
14          sought and to all other temporary workers in the  
15          same occupation at the place of employment.

16          “(3) NONDISPLACEMENT OF UNITED STATES  
17          WORKERS.—The employer did not displace and will  
18          not displace a United States worker employed by the  
19          employer during the period of employment and dur-  
20          ing a period of 30 days preceding the period of em-  
21          ployment in the occupation at the place of employ-  
22          ment for which the employer seeks approval to em-  
23          ploy H–2A workers.

24          “(4) RECRUITMENT.—Using the State work-  
25          force agency, the employer has attempted to recruit

1 domestic workers within the State or region of tradi-  
2 tional or expected labor supply. The obligation to en-  
3 gage in recruitment under this paragraph shall ter-  
4minate on the date the H-2A workers depart for the  
5 employer's place of employment.

6 “(5) OFFERS TO UNITED STATES WORKERS.—

7 The employer has offered or will offer the job for  
8 which the nonimmigrant is, or the nonimmigrants  
9 are, sought to any eligible United States worker who  
10 applies and is equally or better qualified for the job  
11 and who will be available at the time and place of  
12 need.

13 “(6) 50 PERCENT RULE.—The employer will

14 provide employment to any qualified United States  
15 worker who applies to the employer until 50 percent  
16 of the period of the work contract under which the  
17 H-2A worker who is in the job was hired has  
18 elapsed.

19 “(7) PROVISION OF INSURANCE.—If the job for

20 which the nonimmigrant is, or the nonimmigrants  
21 are, sought is not covered by State workers' com-  
22 pensation law, the employer will provide, at no cost  
23 to the worker, insurance covering injury and disease  
24 arising out of, and in the course of, the worker's em-  
25 ployment which will provide benefits at least equal to

1 those provided under the State workers' compensa-  
2 tion law for comparable employment.

3 “(8) REQUIREMENTS FOR PLACEMENT OF H-2A  
4 WORKERS WITH OTHER H-2A EMPLOYERS.—A non-  
5 immigrant who is admitted into the United States as  
6 an H-2A worker may be transferred to another em-  
7 ployer that has certified to the Secretary of Home-  
8 land Security that it has filed an application under  
9 this subsection and is in compliance with this sec-  
10 tion. The Secretary of Homeland Security shall es-  
11 tablish a process for the approval and reissuance of  
12 visas for such transferred H-2A workers as nec-  
13 essary.

14 “(9) STRIKE OR LOCKOUT.—There is not a  
15 strike or lockout in the course of a labor dispute  
16 which, under regulations promulgated by the Sec-  
17 retary of Labor, precludes the provision of the cer-  
18 tification described in section 101(a)(15)(H)(ii)(a).

19 “(10) PREVIOUS VIOLATIONS.—The employer  
20 has not, during the previous 2-year period, employed  
21 H-2A workers and substantially violated a material  
22 term or condition of approval with respect to the  
23 employment of domestic or nonimmigrant workers,  
24 as determined by the Secretary of Labor after notice  
25 and opportunity for a hearing.

1       “(b) PUBLICATION.—The employer shall make avail-  
2 able for public examination, within 1 working day after  
3 the date on which an application under this section is filed,  
4 at the employer’s principal place of business or worksite,  
5 a copy of each such application (and such accompanying  
6 documents as are necessary).

7       “(c) LIST.—The Secretary of Labor shall compile, on  
8 a current basis, a list (by employer) of the applications  
9 filed under subsection (a). Such list shall include the wage  
10 rate, number of aliens sought, period of intended employ-  
11 ment, and date of need. The Secretary of Labor shall  
12 make such list available for public examination in Wash-  
13 ington, DC.

14       “(d) SPECIAL RULES FOR CONSIDERATION OF AP-  
15 PPLICATIONS.—The following rules shall apply in the case  
16 of the filing and consideration of an application under sub-  
17 section (a):

18               “(1) DEADLINE FOR FILING APPLICATIONS.—  
19       The Secretary of Labor may not require that the ap-  
20 plication be filed more than 45 days before the first  
21 date the employer requires the labor or services of  
22 the H-2A worker or workers.

23               “(2) REVIEW.—The Secretary of Labor shall  
24 review such an application only for completeness and  
25 obvious inaccuracies.

1           “(3) ISSUANCE OF APPROVAL.—Unless the Sec-  
2           retary of Labor finds that the application is incom-  
3           plete or obviously inaccurate, the Secretary of Labor  
4           shall provide the certification described in section  
5           101(a)(15)(H)(ii)(a) within 15 days of the date of  
6           the filing of the application.

7           “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

8           “(1) PERMITTING FILING BY AGRICULTURAL  
9           ASSOCIATIONS.—An application to import an alien  
10          as a temporary agricultural worker may be filed by  
11          an association of agricultural producers which use  
12          agricultural services.

13          “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
14          EMPLOYERS.—If an association is a joint or sole em-  
15          ployer of temporary agricultural workers, such work-  
16          ers may be transferred among its producer members  
17          to perform agricultural services of a temporary or  
18          seasonal nature for which the application was ap-  
19          proved.

20          “(3) STATEMENT OF LIABILITY.—The applica-  
21          tion form shall include a clear statement explaining  
22          the liability under this section of an employer who  
23          places an H-2A worker with another H-2A em-  
24          ployer if the other employer displaces a United

1 States worker in violation of the condition described  
2 in subsection (a)(8).

3 “(4) TREATMENT OF VIOLATIONS.—

4 “(A) MEMBER’S VIOLATION DOES NOT  
5 NECESSARILY DISQUALIFY ASSOCIATION OR  
6 OTHER MEMBERS.—If an individual producer  
7 member of a joint employer association is deter-  
8 mined to have committed an act that is in viola-  
9 tion of the conditions for approval with respect  
10 to the member’s application, the denial shall  
11 apply only to that member of the association  
12 unless the Secretary of Labor determines that  
13 the association or other member participated in,  
14 had knowledge of, or had reason to know of, the  
15 violation.

16 “(B) ASSOCIATION’S VIOLATION DOES NOT  
17 NECESSARILY DISQUALIFY MEMBERS.—

18 “(i) JOINT EMPLOYER.—If an associa-  
19 tion representing agricultural producers as  
20 a joint employer is determined to have  
21 committed an act that is in violation of the  
22 conditions for approval with respect to the  
23 association’s application, the denial shall  
24 apply only to the association and does not  
25 apply to any individual producer member

1 of the association, unless the Secretary of  
2 Labor determines that the member partici-  
3 pated in, had knowledge of, or had reason  
4 to know of, the violation.

5 “(ii) SOLE EMPLOYER.—If an associa-  
6 tion of agricultural producers approved as  
7 a sole employer is determined to have com-  
8 mitted an act that is in violation of the  
9 conditions for approval with respect to the  
10 association’s application, no individual pro-  
11 ducer member of such association may be  
12 the beneficiary of the services of temporary  
13 alien agricultural workers admitted under  
14 this section in the commodity and occupa-  
15 tion in which such aliens were employed by  
16 the association which was denied approval  
17 during the period such denial is in force,  
18 unless such producer member employs such  
19 aliens in the commodity and occupation in  
20 question directly or through an association  
21 which is a joint employer of such workers  
22 with the producer member.

23 “(f) EXPEDITED ADMINISTRATIVE APPEALS OF CER-  
24 TAIN DETERMINATIONS.—Regulations shall provide for an  
25 expedited procedure for the review of a denial of approval

1 under this section, or at the applicant's request, for a de  
2 novo administrative hearing respecting the denial.

3 “(g) MISCELLANEOUS PROVISIONS.—

4 “(1) WITHHOLDING OF DOMESTIC WORKERS.—

5 No person or entity shall willfully and knowingly  
6 withhold domestic workers prior to the arrival of H-  
7 2A workers in order to force the hiring of domestic  
8 workers under subsection (a)(6).

9 “(2) ENDORSEMENT OF DOCUMENTS.—The

10 Secretary of Homeland Security shall provide for the  
11 endorsement of entry and exit documents of non-  
12 immigrants described in section 101(a)(15)(H)(ii)(a)  
13 as may be necessary to carry out this section and to  
14 provide notice for purposes of section 274A.

15 “(3) PREEMPTION OF STATE LAWS.—The pro-  
16 visions of subsections (a) and (c) of section 214 and  
17 the provisions of this section preempt any State or  
18 local law regulating admissibility of nonimmigrant  
19 workers.

20 “(4) FEES.—

21 “(A) IN GENERAL.—The Secretary of  
22 Labor may require, as a condition of approving  
23 the application, the payment of a fee in accord-  
24 ance with subparagraph (B) to recover the rea-  
25 sonable costs of processing applications.

1 “(B) AMOUNTS.—

2 “(i) EMPLOYER.—The fee for each  
3 employer that receives a temporary alien  
4 agricultural labor certification shall be  
5 equal to \$100 plus \$10 for each job oppor-  
6 tunity for H-2A workers certified, pro-  
7 vided that the fee to an employer for each  
8 temporary alien agricultural labor certifi-  
9 cation received shall not exceed \$1,000.

10 “(ii) JOINT EMPLOYER ASSOCIA-  
11 TION.—In the case of a joint employer as-  
12 sociation that receives a temporary alien  
13 agricultural labor certification, each em-  
14 ployer-member receiving such certification  
15 shall pay a fee equal to \$100 plus \$10 for  
16 each job opportunity for H-2A workers  
17 certified, provided that the fee to an em-  
18 ployer for each temporary alien agricul-  
19 tural labor certification received shall not  
20 exceed \$1,000. The joint employer associa-  
21 tion shall not be charged a separate fee.

22 “(C) PAYMENTS.—The fees collected under  
23 this paragraph shall be paid by check or money  
24 order made payable to the ‘Department of  
25 Labor’. In the case of employers of H-2A work-

1           ers that are members of a joint employer asso-  
2           ciation applying on their behalf, the aggregate  
3           fees for all employers of H-2A workers under  
4           the application may be paid by one check or  
5           money order.

6           “(D) INFLATION ADJUSTMENT.—In the  
7           case of any calendar year beginning after 2005,  
8           each dollar amount in subparagraph (B) may  
9           be increased by an amount equal to—

10                   “(i) such dollar amount; multiplied by

11                   “(ii) the percentage (if any) by which  
12                   the average of the Consumer Price Index  
13                   for all urban consumers (United States  
14                   city average) for the 12-month period end-  
15                   ing with August of the preceding calendar  
16                   year exceeds such average for the 12-  
17                   month period ending with August 2004.

18           “(h) FAILURE TO MEET CONDITIONS.—If the Sec-  
19           retary of Labor finds, after notice and opportunity for a  
20           hearing, a failure to meet a condition of subsection (a),  
21           or a material misrepresentation of fact in an application  
22           under subsection (a)—

23                   “(1) the Secretary of Labor shall notify the  
24                   Secretary of Homeland Security of such finding and  
25                   may, in addition, impose such other administrative

1 remedies (including civil money penalties in an  
2 amount not to exceed \$1,000 per violation) as the  
3 Secretary of Labor determines to be appropriate;  
4 and

5 “(2) the Secretary of Homeland Security may  
6 disqualify the employer from the employment of H-  
7 2A workers for a period of 1 year.

8 “(i) WILLFUL FAILURES AND WILLFUL MISREPRE-  
9 SENTATIONS.—If the Secretary of Labor finds, after no-  
10 tice and opportunity for a hearing, a willful failure to meet  
11 a condition of subsection (a) or a willful misrepresentation  
12 of a material fact in an application under subsection (a),  
13 or a violation of subsection (g)(1)—

14 “(1) the Secretary of Labor shall notify the  
15 Secretary of Homeland Security of such finding and  
16 may, in addition, impose such other administrative  
17 remedies (including civil money penalties in an  
18 amount not to exceed \$5,000 per violation) as the  
19 Secretary of Labor determines to be appropriate;

20 “(2) the Secretary of Labor may seek appro-  
21 priate legal or equitable relief to effectuate the pur-  
22 poses of subsection (g)(1); and

23 “(3) the Secretary of Homeland Security may  
24 disqualify the employer from the employment of H-  
25 2A workers for a period of 2 years.

1       “(j) DISPLACEMENT OF UNITED STATES WORK-  
2 ERS.—If the Secretary of Labor finds, after notice and  
3 opportunity for a hearing, a willful failure to meet a condi-  
4 tion of subsection (a) or a willful misrepresentation of a  
5 material fact in an application under subsection (a), in  
6 the course of which failure or misrepresentation the em-  
7 ployer displaced a United States worker employed by the  
8 employer during the period of employment on the employ-  
9 er’s application under subsection (a) or during the period  
10 of 30 days preceding such period of employment—

11               “(1) the Secretary of Labor shall notify the  
12 Secretary of Homeland Security of such finding and  
13 may, in addition, impose such other administrative  
14 remedies (including civil money penalties in an  
15 amount not to exceed \$15,000 per violation) as the  
16 Secretary of Labor determines to be appropriate;  
17 and

18               “(2) the Secretary of Homeland Security may  
19 disqualify the employer from the employment of H-  
20 2A workers for a period of 3 years.

21       “(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—  
22 The Secretary of Labor shall not impose total civil money  
23 penalties with respect to an application under subsection  
24 (a) in excess of \$90,000.

1           “(l) FAILURES TO PAY WAGES OR REQUIRED BENE-  
2 FITS.—If the Secretary of Labor finds, after notice and  
3 opportunity for a hearing, that the employer has failed to  
4 pay the wages, or provide the housing allowance, transpor-  
5 tation, subsistence reimbursement, or guarantee of em-  
6 ployment, required under subsection (a)(2), the Secretary  
7 of Labor shall assess payment of back wages, or other re-  
8 quired benefits, due any United States worker or H-2A  
9 worker employed by the employer in the specific employ-  
10 ment in question. The back wages or other required bene-  
11 fits under section subsection (a)(2) shall be equal to the  
12 difference between the amount that should have been paid  
13 and the amount that actually was paid to such worker.

14           “(m) MINIMUM BENEFITS, WAGES, AND WORKING  
15 CONDITIONS.—

16           “(1) PREFERENTIAL TREATMENT OF ALIENS  
17 PROHIBITED.—

18           “(A) IN GENERAL.—Employers seeking to  
19 hire United States workers shall offer the  
20 United States workers not less than the same  
21 benefits, wages, and working conditions that the  
22 employer is offering, intends to offer, or will  
23 provide to H-2A workers. Conversely, no job  
24 offer may impose on United States workers any

1 restrictions or obligations which will not be im-  
2 posed on the employer's H-2A workers.

3 “(B) INTERPRETATIONS AND DETERMINA-  
4 TIONS.—While benefits, wages, and other terms  
5 and conditions of employment specified in this  
6 subsection are required to be provided in con-  
7 nection with employment under this section,  
8 every interpretation and determination made  
9 under this Act or under any other law, regula-  
10 tion, or interpretative provision regarding the  
11 nature, scope, and timing of the provision of  
12 these and any other benefits, wages, and other  
13 terms and conditions of employment, must be  
14 made in conformance with the governing prin-  
15 ciples that the services of workers to their em-  
16 ployers and the employment opportunities af-  
17 forded to workers by their employers, including  
18 those employment opportunities that require  
19 United States workers or H-2A workers to  
20 travel or relocate in order to accept or perform  
21 employment, mutually benefit such workers, as  
22 well as their families, and employers, principally  
23 benefiting neither, and that employment oppor-  
24 tunities within the United States further benefit

1 the United States economy as a whole and  
2 should be encouraged.

3 “(2) REQUIRED WAGES.—

4 “(A) An employer applying for workers  
5 under subsection (a) shall offer to pay, and  
6 shall pay, all workers in the occupation for  
7 which the employer has applied for workers, not  
8 less than the prevailing wage.

9 “(B) In complying with subparagraph (A),  
10 an employer may request and obtain a pre-  
11 vailing wage determination from the State em-  
12 ployment security agency.

13 “(C) In lieu of the procedure described in  
14 subparagraph (B), an employer may rely on  
15 other wage information, including a survey of  
16 the prevailing wages of workers in the occupa-  
17 tion in the area of intended employment that  
18 has been conducted or funded by the employer  
19 or a group of employers, that meets criteria  
20 specified by the Secretary of Labor in regula-  
21 tions.

22 “(D) An employer who obtains such pre-  
23 vailing wage determination, or who relies on a  
24 qualifying survey of prevailing wages, and who  
25 pays the wage determined to be prevailing, shall

1 be considered to have complied with the re-  
2 quirement of subparagraph (A).

3 “(E) No worker shall be paid less than the  
4 greater of the prevailing wage or the applicable  
5 State minimum wage.

6 “(3) REQUIREMENT TO PROVIDE HOUSING OR A  
7 HOUSING ALLOWANCE.—

8 “(A) IN GENERAL.—An employer applying  
9 for workers under subsection (a) shall offer to  
10 provide housing at no cost to all workers in job  
11 opportunities for which the employer has ap-  
12 plied under that section and to all other work-  
13 ers in the same occupation at the place of em-  
14 ployment, whose place of residence is beyond  
15 normal commuting distance.

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

1 housing or other substantially similar class of  
2 habitation. In the absence of applicable local or  
3 State standards, Federal temporary labor camp  
4 standards shall apply.

5 “(C) CERTIFICATE OF INSPECTION.—Prior  
6 to any occupation by a worker in housing de-  
7 scribed in subparagraph (B), the employer shall  
8 submit a certificate of inspection by an ap-  
9 proved Federal or State agency to the Secretary  
10 of Labor.

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

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

23 “(F) HOUSING ALLOWANCE AS ALTER-  
24 NATIVE.—

1           “(i) IN GENERAL.—In lieu of offering  
2           housing pursuant to subparagraph (A), the  
3           employer may provide a reasonable housing  
4           allowance, but only if the requirement of  
5           clause (ii) is satisfied. Upon the request of  
6           a worker seeking assistance in locating  
7           housing, the employer shall make a good  
8           faith effort to assist the worker in identi-  
9           fying and locating housing in the area of  
10          intended employment. An employer who of-  
11          fers a housing allowance to a worker, or  
12          assists a worker in locating housing which  
13          the worker occupies, pursuant to this  
14          clause shall not be deemed a housing pro-  
15          vider under section 203 of the Migrant and  
16          Seasonal Agricultural Worker Protection  
17          Act (29 U.S.C. 1823) solely by virtue of  
18          providing such housing allowance. How-  
19          ever, no housing allowance may be used for  
20          housing which is owned or controlled by  
21          the employer. The employer must provide  
22          the Secretary of Labor with a list of the  
23          names of all workers assisted under this  
24          clause and the local address of each such  
25          worker.

1           “(ii) CERTIFICATION.—The require-  
2           ment of this clause is satisfied if the Gov-  
3           ernor of the State certifies to the Secretary  
4           of Labor that there is adequate housing  
5           available in the area of intended employ-  
6           ment for migrant farm workers, and H-2A  
7           workers, who are seeking temporary hous-  
8           ing while employed at farm work. Such  
9           certification shall expire after 3 years un-  
10          less renewed by the Governor of the State.

11          “(iii) AMOUNT OF ALLOWANCE.—

12                 “(I) NONMETROPOLITAN COUN-  
13                 TIES.—If the place of employment of  
14                 the workers provided an allowance  
15                 under this subparagraph is a non-  
16                 metropolitan county, the amount of  
17                 the housing allowance under this sub-  
18                 paragraph shall be equal to the state-  
19                 wide average fair market rental for  
20                 existing housing for nonmetropolitan  
21                 counties for the State, as established  
22                 by the Secretary of Housing and  
23                 Urban Development pursuant to sec-  
24                 tion 8(c) of the United States Hous-  
25                 ing Act of 1937 (42 U.S.C. 1437f(c)),

1 based on a 2-bedroom dwelling unit  
2 and an assumption of 2 persons per  
3 bedroom.

4 “(II) METROPOLITAN COUN-  
5 TIES.—If the place of employment of  
6 the workers provided an allowance  
7 under this paragraph is in a metro-  
8 politan county, the amount of the  
9 housing allowance under this subpara-  
10 graph shall be equal to the statewide  
11 average fair market rental for existing  
12 housing for metropolitan counties for  
13 the State, as established by the Sec-  
14 retary of Housing and Urban Devel-  
15 opment pursuant to section 8(c) of  
16 the United States Housing Act of  
17 1937 (42 U.S.C. 1437f(c)), based on  
18 a 2-bedroom dwelling unit and an as-  
19 sumption of 2 persons per bedroom.

20 “(4) REIMBURSEMENT OF TRANSPORTATION.—

21 “(A) TO PLACE OF EMPLOYMENT.—

22 “(i) IN GENERAL.—A worker who  
23 completes 50 percent of the period of em-  
24 ployment of the job opportunity for which  
25 the worker was hired, measured from the

1 worker's first day of work in such employ-  
2 ment, shall be reimbursed by the employer  
3 for the cost of the worker's transportation  
4 and subsistence from the place from which  
5 the worker was approved to enter the  
6 United States to work for the employer (or  
7 place of last employment, if the worker  
8 traveled from such place) to the place of  
9 employment by the employer, except that  
10 the employer shall not be required to reim-  
11 burse visa, passport, consular, or inter-  
12 national border-crossing fees or any other  
13 fees associated with the worker's lawful ad-  
14 mission into the United States to perform  
15 employment that may be incurred by the  
16 worker.

17 “(ii) **TIMELY REIMBURSEMENT.**—Re-  
18 imbursement to the worker of expenses for  
19 the cost of the worker's transportation and  
20 subsistence to the place of employment  
21 shall be considered timely if such reim-  
22 bursement is made not later than the  
23 worker's first regular payday after the  
24 worker completes 50 percent of the period

1 of employment of the job opportunity as  
2 provided under this paragraph.

3 “(B) FROM PLACE OF EMPLOYMENT.—A  
4 worker who completes the period of employment  
5 for the job opportunity involved shall be reim-  
6 bursed by the employer for the cost of the  
7 worker’s transportation and subsistence from  
8 the place from which the worker was approved  
9 to enter the United States to work for the em-  
10 ployer, or to the place of next employment, if  
11 the worker has contracted with a subsequent  
12 employer who has not agreed to provide or pay  
13 for the worker’s transportation and subsistence  
14 to such subsequent employer’s place of employ-  
15 ment.

16 “(C) LIMITATION.—

17 “(i) AMOUNT OF REIMBURSEMENT.—  
18 Except as provided in clause (ii), the  
19 amount of reimbursement provided under  
20 subparagraph (A) or (B) to a worker or  
21 alien shall not exceed the lesser of—

22 “(I) the actual cost to the worker  
23 or alien of the transportation and sub-  
24 sistence involved; or

1                   “(II) the most economical and  
2                   reasonable common carrier transpor-  
3                   tation charges and subsistence costs  
4                   for the distance involved.

5                   “(ii) DISTANCE TRAVELED.—No reim-  
6                   bursement under subparagraph (A) or (B)  
7                   shall be required if the distance traveled is  
8                   100 miles or less or if the worker is not re-  
9                   siding in employer-provided housing or  
10                  housing secured through an allowance as  
11                  provided in paragraph (3).

12                  “(D) EARLY TERMINATION.—If the worker  
13                  is laid off or employment is terminated for con-  
14                  tract impossibility (as described in paragraph  
15                  (5)(D)) before the anticipated ending date of  
16                  employment, the employer shall provide the  
17                  transportation and subsistence required by sub-  
18                  paragraph (B) and, notwithstanding whether  
19                  the worker has completed 50 percent of the pe-  
20                  riod of employment, shall provide the transpor-  
21                  tation reimbursement required by subparagraph  
22                  (A).

23                  “(E) TRANSPORTATION BETWEEN LIVING  
24                  QUARTERS AND WORK SITE.—The employer  
25                  shall provide transportation between the work-

1 er's living quarters (such as housing provided  
2 by the employer pursuant to paragraph (3), in-  
3 cluding housing provided through a housing al-  
4 lowance) and the employer's work site without  
5 cost to the worker, and such transportation will  
6 be in accordance with applicable laws and regu-  
7 lations.

8 “(5) GUARANTEE OF EMPLOYMENT.—

9 “(A) OFFER TO WORKER.—The employer  
10 shall guarantee to offer the worker employment  
11 for the hourly equivalent of at least three-  
12 fourths of the work days of the total period of  
13 employment, beginning with the first work day  
14 after the arrival of the worker at the place of  
15 employment and ending on the expiration date  
16 specified in the job offer. For purposes of this  
17 subparagraph, the hourly equivalent means the  
18 number of hours in the work days as stated in  
19 the job offer and shall exclude the worker's  
20 Sabbath and Federal holidays. If the employer  
21 affords the United States or H-2A worker less  
22 employment than that required under this sub-  
23 paragraph, the employer shall pay such worker  
24 the amount which the worker would have

1           earned had the worker, in fact, worked for the  
2           guaranteed number of hours.

3           “(B) FAILURE TO WORK.—Any hours  
4           which the worker fails to work, up to a max-  
5           imum of the number of hours specified in the  
6           job offer for a work day, when the worker has  
7           been offered an opportunity to do so, and all  
8           hours of work actually performed (including vol-  
9           untary work in excess of the number of hours  
10          specified in the job offer in a work day, on the  
11          worker’s Sabbath, or on Federal holidays) may  
12          be counted by the employer in calculating  
13          whether the period of guaranteed employment  
14          has been met.

15          “(C) ABANDONMENT OF EMPLOYMENT,  
16          TERMINATION FOR CAUSE.—If the worker vol-  
17          untarily abandons employment before the end  
18          of the contract period, or is terminated for  
19          cause, the worker is not entitled to the three-  
20          fourths guarantee described in subparagraph  
21          (A).

22          “(D) CONTRACT IMPOSSIBILITY.—If, be-  
23          fore the expiration of the period of employment  
24          specified in the job offer, the services of the  
25          worker are no longer required for reasons be-

1           yond the control of the employer due to any  
2           form of natural disaster (including a flood, hur-  
3           ricane, freeze, earthquake, fire, or drought),  
4           plant or animal disease, pest infestation, or reg-  
5           ulatory action, before the employment guar-  
6           antee in subparagraph (A) is fulfilled, the em-  
7           ployer may terminate the worker’s employment.  
8           In the event of such termination, the employer  
9           shall fulfill the employment guarantee in sub-  
10          paragraph (A) for the work days that have  
11          elapsed from the first work day after the arrival  
12          of the worker to the termination of employ-  
13          ment. In such cases, the employer will make ef-  
14          forts to transfer the United States worker to  
15          other comparable employment acceptable to the  
16          worker.

17          “(n) PETITIONING FOR ADMISSION.—An employer,  
18          or an association acting as an agent or joint employer for  
19          its members, that seeks the admission into the United  
20          States of an H-2A worker must file a petition with the  
21          Secretary of Homeland Security. The petition shall be ac-  
22          panied by the certification described in section  
23          101(a)(15)(H)(ii)(a).

24          “(o) EXPEDITED ADJUDICATION BY THE SEC-  
25          RETARY.—The Secretary of Homeland Security shall es-

1 tablish a procedure for expedited adjudication of petitions  
2 filed under subsection (n) and within 7 working days of  
3 such filing shall, by fax, cable, or other means assuring  
4 expedited delivery, transmit a copy of notice of action on  
5 the petition to the petitioner and, in the case of approved  
6 petitions, to the appropriate immigration officer at the  
7 port of entry or United States consulate (as the case may  
8 be) where the petitioner has indicated that the alien bene-  
9 ficiary (or beneficiaries) will apply for a visa or admission  
10 to the United States.

11 “(p) DISQUALIFICATION.—

12 “(1) Subject to paragraph (2), an alien shall be  
13 considered inadmissible to the United States and in-  
14 eligible for nonimmigrant status under section  
15 101(a)(15)(H)(ii)(a) if the alien has, at any time  
16 during the past 5 years, violated a term or condition  
17 of admission into the United States as a non-  
18 immigrant, including overstaying the period of au-  
19 thorized admission.

20 “(2) WAIVERS.—

21 “(A) IN GENERAL.—An alien outside the  
22 United States, and seeking admission under  
23 section 101(a)(15)(H)(ii)(a) shall not be  
24 deemed inadmissible under such section by rea-  
25 son of paragraph (1) or section 212(a)(9)(B). A

1 waiver under this subparagraph may be granted  
2 only once to an individual alien.

3 “(B) LIMITATION.—In any case in which  
4 an alien is admitted to the United States upon  
5 having a ground of inadmissibility waived under  
6 subparagraph (A), such waiver shall be consid-  
7 ered to remain in effect unless the alien again  
8 violates a material provision of this section or  
9 otherwise violates a term or condition of admis-  
10 sion into the United States as a nonimmigrant,  
11 in which case such waiver shall terminate.

12 “(q) ABANDONMENT OF EMPLOYMENT.—

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

20 “(2) REPORT BY EMPLOYER.—The employer  
21 (or association acting as agent for the employer)  
22 shall notify the Secretary of Homeland Security  
23 within 7 days of an H-2A worker’s having pre-  
24 maturely abandoned employment.

1           “(3) REMOVAL BY THE SECRETARY.—The Sec-  
2           retary of Homeland Security shall promptly remove  
3           from the United States any H-2A worker who vio-  
4           lates any term or condition of the worker’s non-  
5           immigrant status.

6           “(4) VOLUNTARY TERMINATION.—Notwith-  
7           standing paragraph (1), an alien may voluntarily  
8           terminate his or her employment if the alien prompt-  
9           ly departs the United States upon termination of  
10          such employment.

11          “(r) REPLACEMENT OF ALIEN.—

12           “(1) IN GENERAL.—Upon presentation of the  
13           notice to the Secretary of Homeland Security re-  
14           quired by subsection (q)(2), the Secretary of State  
15           shall promptly issue a visa to, and the Secretary of  
16           Homeland Security shall admit into the United  
17           States, an eligible alien designated by the employer  
18           to replace an H-2A worker—

19                   “(A) who abandons or prematurely termi-  
20                   nates employment; or

21                   “(B) whose employment is terminated  
22                   after a United States worker is employed pur-  
23                   suant to subsection (a)(6), if the United States  
24                   worker voluntarily departs before the end of the  
25                   period of intended employment or if the employ-

1           ment termination is for a lawful job-related rea-  
2           son.

3           “(2) CONSTRUCTION.—Nothing in this sub-  
4           section is intended to limit any preference required  
5           to be accorded United States workers under any  
6           other provision of this Act.

7           “(s) IDENTIFICATION DOCUMENT.—

8           “(1) IN GENERAL.—Each alien authorized to be  
9           admitted under section 101(a)(15)(H)(ii)(a) shall be  
10          provided an identification and employment eligibility  
11          document to verify eligibility for employment in the  
12          United States and verify such person’s proper iden-  
13          tity.

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

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

19                          “(i) the individual with the identifica-  
20                          tion and employment eligibility document  
21                          whose eligibility is being verified is in fact  
22                          eligible for employment;

23                          “(ii) the individual whose eligibility is  
24                          being verified is claiming the identity of  
25                          another person; and

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

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

7           “(C) The document shall—

8                   “(i) be compatible with other data-  
9                   bases of the Secretary of Homeland Secu-  
10                  rity for the purpose of excluding aliens  
11                  from benefits for which they are not eligi-  
12                  ble and determining whether the alien is  
13                  unlawfully present in the United States;  
14                  and

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

18           “(t) EXTENSION OF STAY OF H-2A WORKERS IN  
19           THE UNITED STATES.—

20                   “(1) EXTENSION OF STAY.—If an employer  
21                  seeks approval to employ an H-2A worker who is  
22                  lawfully present in the United States, the petition  
23                  filed by the employer or an association pursuant to  
24                  subsection (n) shall request an extension of the  
25                  alien’s stay and a change in the alien’s employment.

1           “(2) WORK AUTHORIZATION UPON FILING PE-  
2           TITION FOR EXTENSION OF STAY.—In the case of an  
3           alien who is lawfully present in the United States,  
4           the alien is authorized to commence the employment  
5           described in a petition under paragraph (1) on the  
6           date on which the petition is filed. For purposes of  
7           the preceding sentence, the term ‘file’ means sending  
8           the petition by certified mail via the United States  
9           Postal Service, return receipt requested, or delivered  
10          by guaranteed commercial delivery which will provide  
11          the employer with a documented acknowledgment of  
12          the date of receipt of the petition. The employer  
13          shall provide a copy of the employer’s petition to the  
14          alien, who shall keep the petition with the alien’s  
15          identification and employment eligibility document  
16          as evidence that the petition has been filed and that  
17          the alien is authorized to work in the United States.  
18          Upon approval of a petition for an extension of stay  
19          or change in the alien’s authorized employment, the  
20          Secretary of Homeland Security shall provide a new  
21          or updated employment eligibility document to the  
22          alien indicating the new validity date, after which  
23          the alien is not required to retain a copy of the peti-  
24          tion.

25          “(u) DEFINITIONS.—For purposes of this section:

1           “(1) AREA OF EMPLOYMENT.—The term ‘area  
2 of employment’ means the area within normal com-  
3 muting distance of the worksite or physical location  
4 where the work of the H-2A worker is or will be  
5 performed. If such worksite or location is within a  
6 Metropolitan Statistical Area, any place within such  
7 area is deemed to be within the area of employment.

8           “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
9 individual’ means, with respect to employment, an  
10 individual who is not an unauthorized alien (as de-  
11 fined in section 274A(h)(3)) with respect to that em-  
12 ployment.

13           “(3) DISPLACE.—In the case of an application  
14 with respect to 1 or more H-2A workers by an em-  
15 ployer, the employer is considered to ‘displace’ a  
16 United States worker from a job if the employer lays  
17 off the worker from a job that is essentially the  
18 equivalent of the job for which the H-2A worker or  
19 workers is or are sought. A job shall not be consid-  
20 ered to be essentially equivalent of another job un-  
21 less it involves essentially the same responsibilities,  
22 was held by a United States worker with substan-  
23 tially equivalent qualifications and experience, and is  
24 located in the same area of employment as the other  
25 job.

1           “(4) H-2A WORKER.—The term ‘H-2A worker’  
2 means a nonimmigrant described in section  
3 101(a)(15)(H)(ii)(a).

4           “(5) LAYS OFF.—

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

7           “(i) means to cause the worker’s loss  
8 of employment, other than through a dis-  
9 charge for inadequate performance, viola-  
10 tion of workplace rules, cause, voluntary  
11 departure, voluntary retirement, or the ex-  
12 piration of a grant or contract (other than  
13 a temporary employment contract entered  
14 into in order to evade a condition described  
15 in paragraph (3) or (8) of subsection (a);  
16 but

17           “(ii) does not include any situation in  
18 which the worker is offered, as an alter-  
19 native to such loss of employment, a simi-  
20 lar employment opportunity with the same  
21 employer (or, in the case of a placement of  
22 a worker with another employer under sub-  
23 section (a)(8), with either employer de-  
24 scribed in such subsection) at equivalent or  
25 higher compensation and benefits than the

1 position from which the employee was dis-  
2 charged, regardless of whether or not the  
3 employee accepts the offer.

4 “(B) CONSTRUCTION.—Nothing in this  
5 paragraph is intended to limit an employee’s  
6 rights under a collective bargaining agreement  
7 or other employment contract.

8 “(6) PREVAILING WAGE.—The term ‘prevailing  
9 wage’ means, with respect to an agricultural occupa-  
10 tion in an area of intended employment, the rate of  
11 wages that includes the 51st percentile of employees  
12 with similar experience and qualifications in the ag-  
13 ricultural occupation in the area of intended employ-  
14 ment, expressed in terms of the prevailing method of  
15 pay for the occupation in the area of intended em-  
16 ployment.

17 “(7) UNITED STATES WORKER.—The term  
18 ‘United States worker’ means an employee who—

19 “(A) is a citizen or national of the United  
20 States; or

21 “(B) is an alien who is lawfully admitted  
22 for permanent residence, is admitted as a ref-  
23 ugee under section 207, is granted asylum  
24 under section 208, or is an immigrant otherwise

1 authorized, by this Act or by the Secretary of  
2 Homeland Security, to be employed.”.

3 (b) 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 “seasonal nature, or (b)” and inserting “seasonal na-  
7 ture, and with respect to whom the Secretary of Labor  
8 determines and certifies to the Secretary of Homeland Se-  
9 curity that the intending employer has filed with the Sec-  
10 retary of Labor an application under section 218(a), or  
11 (b)”.

12 **SEC. 3. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**  
13 **SERVICES CORPORATION.**

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

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

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

20 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-  
21 poration may not provide legal assistance for or on behalf  
22 of any alien, and may not provide financial assistance to  
23 any person or entity that provides legal assistance for or  
24 on behalf of any alien, unless the alien—

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

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

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

9           “(c) REQUIRED MEDIATION.—The Legal Services  
10          Corporation may not bring a civil action for damages on  
11          behalf of a nonimmigrant described in section  
12          101(a)(15)(H)(ii)(a) of the Immigration and Nationality  
13          Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90  
14          days prior to bringing the action a request has been made  
15          to the Federal Mediation and Conciliation Service to assist  
16          the parties in reaching a satisfactory resolution of all  
17          issues involving all parties to the dispute and mediation  
18          has been attempted.”.

○