

Subtitle G--W Nonimmigrant Visas

SEC. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET RESEARCH.

(a) Definitions- In this section:

(1) BUREAU- Except as otherwise specifically provided, the term ‘Bureau’ means the Bureau of Immigration and Labor Market Research established under subsection (b)

(2) COMMISSIONER- The term ‘Commissioner’ means the Commissioner of the Bureau.

(3) CONSTRUCTION OCCUPATION- The term ‘construction occupation’ means an occupation defined by the Bureau of Labor Statistics as being within the construction industry for the purposes of publishing the Bureau’s workforce statistics.

(4) METROPOLITAN STATISTICAL AREA- The term ‘metropolitan statistical area’ means a geographic area designated as a metropolitan statistical area by the Director of the Office of Management and Budget.

(5) SHORTAGE OCCUPATION- The term ‘shortage occupation’ means an occupation that the Commissioner determines is experiencing a shortage of labor

(A) throughout the United States; or

(B) in a specific metropolitan statistical area.

(6) W VISA PROGRAM- The term ‘W visa program’ means the program for the admission of nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), as added by section 4702.

(7) ZONE 1 OCCUPATION- The term ‘zone 1 occupation’ means an occupation that requires little or no preparation and is classified as a zone 1 occupation on--

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

(8) ZONE 2 OCCUPATION- The term ‘zone 2 occupation’ means an occupation that requires some preparation and is classified as a zone 2 occupation on--

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

(9) ZONE 3 OCCUPATION- The term ‘zone 3 occupation’ means an occupation that requires medium preparation and is classified as a zone 3 occupation on--

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

- (b) Establishment- There is established a Bureau of Immigration and Labor Market Research as an independent statistical agency within U.S. Citizenship and Immigration Services.
- (c) Commissioner- The head of the Bureau of Immigration and Labor Market Research is the Commissioner, who shall be appointed by the President, by and with the advice and consent of the Senate.
- (d) Duties- The duties of the Commissioner are limited to the following:
 - (1) To devise a methodology subject to publication in the Federal Register and an opportunity for public comment to determine the annual change to the numerical limitation for nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), as added by section 4702.
 - (2) To determine and to publish in the Federal Register the annual change to the numerical limitation for nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), as added by section 4702.
 - (3) With respect to the W visa program, to supplement the recruitment methods employers may use to attract such nonimmigrant aliens.
 - (4) With respect to the W visa program, to devise a methodology subject to publication in the Federal Register and an opportunity for public comment to designate shortage occupations in zone 1 occupations, zone 2 occupations, and zone 3 occupations.
 - (5) With respect to the W visa program, to designate shortage occupations in any zone 1 occupation, zone 2 occupation, or zone 3 occupation and publish such occupations in the Federal Register.
 - (6) With respect to the W visa program, to conduct a survey once every 3 months of the unemployment rate of zone 1 occupations, zone 2 occupations, or zone 3 occupations that are construction occupations in each metropolitan statistical area.
 - (7) To study and report to Congress on employment-based immigrant and nonimmigrant visa programs in the United States and to make annual recommendations to improve such programs.

(8) To carry out any functions required to carry out the duties described in paragraphs (1) through (7).

(e) Determination of Changes to Numerical Limitations- The methodology required under subsection (d)(1) shall be published in the Federal Register not later than 18 months after the date of the enactment of this Act.

(f) Designation of Shortage Occupations-

(1) METHODS TO DETERMINE- The Commissioner shall--

(A) establish the methodology to designate shortage occupations under subsection (d)(4); and

(B) publish such methodology in the Federal Register not later than 18 months after the date of the enactment of this Act.

(2) PETITION BY EMPLOYER- The methodology established under paragraph (1) shall permit an employer to petition the Commissioner for a determination that a particular occupation in a particular metropolitan statistical area is a shortage occupation.

(3) REQUIREMENT FOR NOTICE AND COMMENT- The methodology established under paragraph (1) shall be effective only after publication in the Federal Register and an opportunity for public comment.

(g) Employee Expertise- The employees of the Bureau shall have the expertise necessary to identify labor shortages in the United States and make recommendations to the Commissioner on the impact of immigrant and nonimmigrant aliens on labor markets in the United States, including expertise in economics, labor markets, demographics and methods of recruitment of United States workers.

(h) Interagency Cooperation- At the request of the Commissioner, the Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor, and the Commissioner of the Bureau of Labor Statistics shall--

(1) provide data to the Commissioner;

(2) conduct appropriate surveys; and

(3) assist the Commissioner in preparing the recommendations referred to subsection (d)(5).

(i) Budget-

(1) REPORT- Not later than 1 year after the date of the enactment of this Act, the Director of U.S. Citizenship and Immigration Services shall submit to Congress a report of the estimated budget that the Bureau will need to carry out the duties described in subsection (d).

(2) AUDIT- The Comptroller General of the United States shall submit to Congress a report that is an audit of the budget prepared by the Director under paragraph (1).

(j) Funding-

(1) APPROPRIATION OF FUNDS- There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$20,000,000 to establish the Bureau.

(2) USE OF W NONIMMIGRANT FEES- The amounts collected for fees under section 220(e)(6)(B) of the Immigration and Nationality Act, as added by section 4703, shall be used to establish and fund the Bureau.

(3) OTHER FEES- The Secretary may establish other fees related to the hiring of alien workers and use such fees to fund the Bureau.

SEC. 4702. NONIMMIGRANT CLASSIFICATION FOR W NONIMMIGRANTS.

Section 101(a)(15)(W), as added by section 2211, is amended by inserting before clause (iii) the following:

‘(i) to perform services or labor for a registered employer in a registered position (as those terms are defined in section 220(a)) in accordance with the requirements under section 220;

‘(ii) to accompany or follow to join such an alien described in clause (i) as the spouse or child of such alien;’.

SEC. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.

(a) Admission of W Nonimmigrant Workers-

(1) IN GENERAL- Title II (8 U.S.C. 1151 et seq.) is amended by adding at the end the following:

‘SEC. 220. ADMISSION OF W NONIMMIGRANT WORKERS.

‘(a) Definitions- In this section:

‘(1) BUREAU- The term ‘Bureau’ means the Bureau of Immigration and Labor Market Research established by section 4701 of the Border Security, Economic Opportunity, and Immigration Modernization Act.

‘(2) CERTIFIED ALIEN- The term ‘certified alien’ means an alien that the Secretary of State has certified is eligible to be a W nonimmigrant if the alien is hired by a registered employer for a registered position.

‘(3) COMMISSIONER- The term ‘Commissioner’ means the Commissioner of the Bureau.

‘(4) CONSTRUCTION OCCUPATION- The term ‘construction occupation’ means an occupation defined by the Bureau of Labor Statistics as being within the construction industry for the purposes of publishing the Bureau’s workforce statistics.

‘(5) DEPARTMENT- Except as otherwise provided, the term ‘Department’ means the Department of Homeland Security.

‘(6) ELIGIBLE OCCUPATION- The term ‘eligible occupation’ means an eligible occupation described in subsection (e)(3).

‘(7) EMPLOYER-

‘(A) IN GENERAL- The term ‘employer’ means any person or entity hiring an individual for employment in the United States.

‘(B) TREATMENT OF SINGLE EMPLOYER- For purposes of determining the number of employees or United States workers employed by an employer, a single entity shall be treated as 1 employer.

‘(8) EXCLUDED GEOGRAPHIC LOCATION- The term ‘excluded geographic location’ means an excluded geographic location described in subsection (f).

‘(9) METROPOLITAN STATISTICAL AREA- The term ‘metropolitan statistical area’ means a geographic area designated as a metropolitan statistical area by the Director of the Office of Management and Budget.

‘(10) REGISTERED EMPLOYER- The term ‘registered employer’ means an employer that the Secretary has designated as a registered employer under subsection (d).

‘(11) SECRETARY- Except as otherwise specifically provided, the term ‘Secretary’ means the Secretary of Homeland Security.

‘(12) SINGLE ENTITY- The term ‘single entity’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

‘(13) SHORTAGE OCCUPATION- The term ‘shortage occupation’ means a shortage occupation designated by the Commissioner pursuant to section 4701(d)(4) of the Border Security, Economic Opportunity, and Immigration Modernization Act.

‘(14) SMALL BUSINESS- The term ‘small business’ means an employer that employs 25 or fewer full-time equivalent employees.

‘(15) UNITED STATES WORKER- The term ‘United States worker’ means an individual who is--

‘(A) employed or seeking employment in the United States; and

‘(B)(i) a national of the United States;

‘(ii) an alien lawfully admitted for permanent residence;

‘(iii) an alien in Registered Provisional Immigrant Status; or

‘(iv) any other alien authorized to work in the United States with no limitation as to the alien’s employer.

‘(16) W NONIMMIGRANT- The term ‘W nonimmigrant’ means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(W)(i).

‘(17) W VISA PROGRAM- The term ‘W visa program’ means the program for the admission of nonimmigrant aliens described in section 101(a)(15)(W)(i).

‘(18) ZONE 1 OCCUPATION- The term ‘zone 1 occupation’ means an occupation that requires little or no preparation and is classified as a zone 1 occupation on--

‘(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

‘(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

‘(19) ZONE 2 OCCUPATION- The term ‘zone 2 occupation’ means an occupation that requires some preparation and is classified as a zone 2 occupation on--

‘(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

‘(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

‘(20) ZONE 3 OCCUPATION- The term ‘zone 3 occupation’ means an occupation that requires medium preparation and is classified as a zone 3 occupation on--

‘(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

‘(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

‘(b) Admission Into the United States-

‘(1) W NONIMMIGRANTS- Subject to this section, a certified alien is eligible to be admitted to the United States as a W nonimmigrant if the alien is hired by a registered employer for employment in a registered position in a location that is not an excluded geographic location.

‘(2) SPOUSE AND MINOR CHILDREN- The alien spouse and minor children of a W nonimmigrant--

‘(A) may be admitted to the United States pursuant to clause (ii) of section 101(a)(15)(W) during the period of the principal W nonimmigrant’s admission;

‘(B) is authorized to engage in employment in the United States during such period of admission; and

‘(C) shall be provided with employment authorization or other appropriate work permit.

‘(c) W Nonimmigrants-

‘(1) CERTIFIED ALIEN-

‘(A) APPLICATION- An alien seeking to be a W nonimmigrant shall apply to the Secretary of State at a United States embassy or consulate in a foreign country to be a certified alien.

‘(B) CRITERIA- An alien is eligible to be a certified alien if the alien--

‘(i) is not inadmissible under this Act;

‘(ii) passes a criminal background check;

‘(iii) agrees to accept only registered positions in the United States; and

‘(iv) meets other criteria as established by the Secretary.

‘(2) W NONIMMIGRANT STATUS- Only an alien that is a certified alien may be admitted to the United States as a W nonimmigrant.

‘(3) INITIAL EMPLOYMENT- A W nonimmigrant shall report to such nonimmigrant’s initial employment in a registered position not later than 14 days after such nonimmigrant is admitted to the United States.

‘(4) TERM OF ADMISSION-

‘(A) INITIAL TERM- A certified alien may be granted W nonimmigrant status for an initial period of 3 years.

‘(B) RENEWAL- A W nonimmigrant may renew his or her status as a W nonimmigrant for additional 3-year periods. Such a renewal may be made while the W nonimmigrant is in the United States and shall not require the alien to depart the United States.

‘(5) PERIODS OF UNEMPLOYMENT- A W nonimmigrant--

‘(A) may be unemployed for a period of not more than 60 consecutive days; and

‘(B) shall depart the United States if such W nonimmigrant is unable to obtain such employment during such period.

‘(6) TRAVEL- A W nonimmigrant may travel outside the United States and be readmitted to the United States. Such travel may not extend the period of authorized admission of such W nonimmigrant.

‘(d) Registered Employer-

‘(1) APPLICATION- An employer seeking to be a registered employer shall submit an application to the Secretary. Each such application shall include the following:

‘(A) Documentation to establish that the employer is a bona-fide employer.

‘(B) The employer’s Federal tax identification number or employer identification number registered with the Internal Revenue Service.

‘(C) The number of W nonimmigrants the employer estimates it will seek to employ annually.

‘(2) REFERRAL FOR FRAUD INVESTIGATION- The Secretary may refer an application submitted under paragraph (1) or subsection (e)(1)(A) to the Fraud Detection and National Security Directorate of U.S. Citizenship and Immigration Services if there is evidence of fraud for potential investigation.

‘(3) INELIGIBLE EMPLOYERS-

‘(A) IN GENERAL- Notwithstanding any other applicable penalties under law, the Secretary may deny an employer’s application to be a registered employer if the Secretary determines, after notice and an opportunity for a hearing, that the employer submitting such application--

‘(i) has, with respect to the application required under paragraph (1), including any attestations required by law--

‘(I) knowingly misrepresented a material fact;

‘(II) knowingly made a fraudulent statement; or

‘(III) knowingly failed to comply with the terms of such attestations; or

‘(ii) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary;

‘(iii) has been convicted of an offense set out in chapter 77 of title 18, United States Code, or any conspiracy to commit such offenses, or any human trafficking offense under State or territorial law;

‘(iv) has, within 2 years prior to the date of application--

‘(I) received a final adjudication of having committed any hazardous occupation orders violation resulting in injury or death under the child labor provisions contained in section 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211) and any pertinent regulation;

‘(II) received a final adjudication assessing a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); or

‘(III) received a final adjudication assessing a civil money penalty for any repeated or willful violation of the overtime provisions of section 7 of the Fair Labor Standards Act of 1938 or any regulations thereunder, other than a repeated violation that is self-reported (29 U.S.C. 207); or

‘(v) has, within 2 years prior to the date of application, received a final adjudication for a willful violation or repeated serious violations involving injury or death--

‘(I) of section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654);

‘(II) of any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); or

‘(III) of a plan approved under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

‘(B) LENGTH OF INELIGIBILITY-

‘(i) TEMPORARY INELIGIBILITY- An employer described in subparagraph (A) may be ineligible to be a registered employer for a period that is not less than the time period determined by the Secretary and not more than 3 years.

‘(ii) PERMANENT INELIGIBILITY- An employer who has been convicted of any offense set out in chapter 77 of title 18, United States Code, or any conspiracy to commit such offenses, or any human trafficking offense under State or territorial law shall be permanently ineligible to be a registered employer.

‘(4) TERM OF REGISTRATION- The Secretary shall approve applications meeting the criteria of this subsection for a term of 3 years.

‘(5) RENEWAL- An employer may submit an application to renew the employer’s status as a registered employer for additional 3-year periods.

‘(6) FEE- At the time an employer’s application to be a registered employer or to renew such status is approved, such employer shall pay a fee in an amount determined by the Secretary to be sufficient to cover the costs of the registry of such employers.

‘(7) CONTINUED ELIGIBILITY- Each registered employer shall submit to the Secretary an annual report that demonstrates that the registered employer has provided the wages and working conditions the registered employer agreed to provide to its employees.

‘(e) Registered Positions-

‘(1) IN GENERAL-

‘(A) APPLICATION- Each registered employer shall submit to the Secretary an application to designate a position for which the employer is seeking a W nonimmigrant as a registered position. Each such application shall include a description of each such position.

‘(B) ATTESTATION- An application submitted under subparagraph (A) shall include an attestation of the following:

‘(i) The number of employees of the employer.

‘(ii) The occupational category, as classified by the Secretary of Labor, for which the registered position is sought.

‘(iii) Whether the occupation for which the registered position is sought is a shortage occupation.

‘(iv) The wages to be paid to W nonimmigrants employed by the employer in the registered position, including a position in a shortage occupation, will be the greater of--

‘(I) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position; or

‘(II) the prevailing wage level for the occupational classification of the position in the metropolitan statistical area of the employment, based on the best information available as of the time of filing the application.

‘(v) The working conditions for W nonimmigrants will not adversely affect the working conditions of other workers employed in similar positions.

‘(vi) The employer has carried out the recruiting activities required by paragraph (2)(B).

‘(vii) There is no qualified United States worker who has applied for the position and who is ready, willing, and able to fill such position pursuant to the requirements in subparagraphs (B) and (C) of paragraph (2).

‘(viii) There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the W nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with all applicable regulations.

‘(ix)(I) The employer has not laid off and will not layoff a United States worker during the period beginning 90 days prior to and ending 90 days after the date the employer files an application for designation of a position for which the W nonimmigrant is sought or hires such W nonimmigrant, unless the employer has notified such United States worker of the position and documented the legitimate reasons that such United States worker is not qualified or available for the position.

‘(II) A United States worker is not laid off for purposes of this subparagraph if, at the time such worker’s employment is terminated, such worker is not employed in the same occupation and in the same metropolitan statistical area where the registered position referred to in subclause (I) is located.

‘(C) BEST INFORMATION AVAILABLE- In subparagraph (B)(iv)(II), the term ‘best information available’, with respect to determining the prevailing wage for a position, means--

‘(i) a controlling collective bargaining agreement or Federal contract wage, if applicable;

‘(ii) if there is no applicable wage under clause (i), the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics data; or

‘(iii) if the data referred to in clause (ii) is not available, a legitimate and recent private survey of the wages paid for such positions in the metropolitan statistical area.

‘(D) PERMIT- The Secretary shall provide each registered employer whose application submitted under subparagraph (A) is approved with a permit that includes the number and description of such employer’s approved registered positions.

‘(E) TERM OF REGISTRATION- The approval of a registered position under subparagraph (A) is for a term that begins on the date of such approval and ends on the earlier of--

‘(i) the date the employer’s status as a registered employer is terminated;

‘(ii) three years after the date of such approval; or

‘(iii) upon proper termination of the registered position by the employer.

‘(2) REQUIREMENTS-

‘(A) ELIGIBLE OCCUPATION- Each registered position shall be for a position in an eligible occupation as described in paragraph (3).

‘(B) RECRUITMENT OF UNITED STATES WORKERS-

‘(i) REQUIREMENTS- A position may not be a registered position unless the registered employer--

‘(I) advertises the position for a period of 30 days, including the wage range, location, and proposed start date--

‘(aa) on the Internet website maintained by the Secretary of Labor for the purpose of such advertising; and

‘(bb) with the workforce agency of the State where the position will be located; and

‘(II) carries out not less than 3 of the recruiting activities described in subparagraph (C).

‘(ii) DURATION OF ADVERTISING- The 30 day periods required by item (aa) of (bb) of clause (i)(I) may occur at the same time.

‘(C) RECRUITING ACTIVITIES- The recruiting activities described in this subparagraph, with respect to a position for which the employer is seeking a W nonimmigrant, shall consist of any combination of the following as defined by the Secretary of Homeland Security:

- '(i) Advertising such position at job fairs.
- '(ii) Advertising such position on the employer's external website.
- '(iii) Advertising such position on job search Internet websites.
- '(iv) Advertising such position using presentations or postings at vocational, career technical schools, community colleges, high schools, or other educational or training sites.
- '(v) Posting such position with trade associations.
- '(vi) Utilizing a search firm to seek applicants for such position.
- '(vii) Advertising such position through recruitment programs with placement offices at vocational schools, career technical schools, community colleges, high schools, or other educational or training sites.
- '(viii) Advertising such position through advertising or postings with local libraries, journals, or newspapers.
- '(ix) Seeking a candidate for such position through an employee referral program with incentives.
- '(x) Advertising such position through advertising on radio or television.
- '(xi) Advertising such position through advertising, postings, or presentations with newspapers, Internet websites, job fairs, or community events targeted to constituencies designed to increase employee diversity.
- '(xii) Advertising such position through career day presentations at local high schools or community organizations.
- '(xiii) Providing in-house training.
- '(xiv) Providing third-party training.
- '(xv) Advertising such position through recruitment, educational, or other cooperative programs offered by the employer and a local economic development authority.
- '(xvi) Advertising such position twice in the Sunday ads in the primary daily circulation newspaper in the area.
- '(xvii) Any other recruitment activities determined to be appropriate to be added by the Commissioner.

‘(3) ELIGIBLE OCCUPATION-

‘(A) IN GENERAL- An occupation is an eligible occupation if the occupation--

‘(i) is a zone 1 occupation, a zone 2 occupation, or zone 3 occupation; and

‘(ii) is not an excluded occupation under subparagraph (B).

‘(B) EXCLUDED OCCUPATIONS-

‘(i) OCCUPATIONS REQUIRING COLLEGE DEGREES- An occupation that is listed in the Occupational Outlook Handbook published by the Bureau of Labor Statistics (or similar successor publication) that is classified as requiring an individual with a bachelor’s degree or higher level of education may not be an eligible occupation.

‘(ii) COMPUTER OCCUPATIONS- An occupation in the field of computer operation, computer programming, or computer repair may not be an eligible occupation.

‘(C) PUBLICATION- The Secretary of Labor shall publish the eligible occupations, designated as zone 1 occupations, zone 2 occupations, or zone 3 occupations, on an on-going basis on a publicly available website.

‘(4) FILLING OF VACANCIES- If a W nonimmigrant terminates employment in a registered position or is terminated from such employment by the registered employer, such employer may fill that vacancy by hiring--

‘(A) a certified alien;

‘(B) a W nonimmigrant;

‘(C) a United States worker; or

‘(D) an alien who is the beneficiary of a petition for a visa described in section 203(b)(3).

‘(5) PERIOD OF APPROVAL-

‘(A) IN GENERAL- Except as provided in subparagraph (B), a registered position shall be approved by the Secretary for a period of 3 years.

‘(B) INTENDING IMMIGRANTS-

‘(i) EXTENSION OF PERIOD- A registered position shall continue to be a registered position at the end of the 3-year period referred to in subparagraph (A) if the W

nonimmigrant hired for such position is the beneficiary of a petition for immigrant status filed by the registered employer pursuant to this Act.

‘(ii) TERMINATION OF PERIOD- The term of a registration position extended under clause (i) shall terminate on the date that is the earlier of--

‘(I) the date the petition referred to in clause (i) for a W nonimmigrant is approved or denied by the Secretary; or

‘(II) the date of the termination of such W nonimmigrant’s employment with the registered employer.

‘(6) FEES-

‘(A) REGISTRATION FEE-

‘(i) IN GENERAL- At the time a registered position is approved for a registered employer, such employer shall pay a registration fee in an amount determined by the Secretary.

‘(ii) USE OF FEE- A fee collected under clause (i) shall be used to fund any aspect of the operation of the W visa program.

‘(B) ADDITIONAL FEE-

‘(i) IN GENERAL- In addition to the fee required by subparagraph (A), a registered employer shall pay an additional fee for each approved registered position as follows:

‘(I) A fee of \$1,750 for the registered position if the registered employer is a small business and more than 50 percent and less than 75 percent of the employees of the registered employees are not United States workers.

‘(II) A fee of \$3,500 for the registered position if the registered employer is a small business and more than 75 percent of the employees of the registered employees are not United States workers.

‘(III) A fee of \$3,500 for the registered position if the registered employer is not a small business and more than 15 percent and less than 30 percent of the employees of the registered employees are not United States workers.

‘(ii) USE OF FEE- A fee collected under clause (i) shall be used to fund the operations of the Bureau.

‘(C) PROHIBITION ON OTHER FEES- A registered employer may not be required to pay an additional fee under subparagraph (B) if the registered employer is a small business.

‘(7) PROHIBITION ON REGISTERED POSITIONS FOR CERTAIN EMPLOYERS- The Secretary may not approve an application for a registered position for an employer if the employer is not a small business and 30 percent or more of the employees of the employer are not United States workers.

‘(f) Excluded Geographic Location- No W nonimmigrant may be hired by a registered employer for an eligible occupation located in a metropolitan statistical area that has an unemployment rate that is more than 8 1/2 percent as reported in the most recent month preceding the date that the application is submitted to the Secretary unless--

‘(1) the Commissioner has identified the eligible occupation as a shortage occupation; or

‘(2) the Secretary approves the registered position under subsection (g)(4).

‘(g) Numerical Limitation-

‘(1) REGISTERED POSITIONS-

‘(A) IN GENERAL- Subject to paragraphs (3) and (4), the maximum number of registered positions that may be approved by the Secretary for a year is as follows:

‘(i) For the first year aliens are admitted as W nonimmigrants, 20,000.

‘(ii) For the second such year, 35,000.

‘(iii) For the third such year, 55,000.

‘(iv) For the fourth such year, 75,000.

‘(v) For each year after the fourth such year, the level calculated for that year under paragraph (2).

‘(B) DATES- The first year referred to in subparagraph (A)(i) shall begin on April 1, 2015 and end on March 31, 2016, unless the Secretary determines that such first year shall begin on October 1, 2015 and end on September 30, 2016.

‘(2) YEARS AFTER YEAR 4-

‘(A) CURRENT YEAR AND PRECEDING YEAR- In this paragraph--

‘(i) the term ‘current year’ shall refer to the 12-month period for which the calculation of the numerical limits under this paragraph is being performed; and

‘(ii) the term ‘preceding year’ shall refer to the 12-month period immediately preceding the current year.

‘(B) NUMERICAL LIMITATION- Subject to subparagraph (D), the number of registered positions that may be approved by the Secretary for a year after the fourth year referred to in paragraph (1)(A)(iv) shall be equal to the sum of--

‘(i) the number of such registered positions available under this paragraph for the preceding year; and

‘(ii) the product of--

‘(I) the number of such registered positions available under this paragraph for the preceding year; multiplied by

‘(II) the index for the current year calculated under subparagraph (C).

‘(C) INDEX- The index calculated under this subparagraph for a current year equals 1 plus the sum of--

‘(i) one-fifth of a fraction--

‘(I) the numerator of which is the number of registered positions that registered employers applied to have approved under subsection (e)(1) for the preceding year minus the number of registered positions approved under subsection (e) for the preceding year; and

‘(II) the denominator of which is the number of registered positions approved under subsection (e) for the preceding year;

‘(ii) one-fifth of a fraction--

‘(I) the numerator of which is the number of registered positions the Commissioner recommends be available under this subparagraph for the current year minus the number of registered positions available under this subsection for the preceding year; and

‘(II) the denominator of which is the number of registered positions available under this subsection for the preceding year;

‘(iii) three-tenths of a fraction--

‘(I) the numerator of which is the number of unemployed United States workers for the preceding year minus the number of unemployed United States workers for the current year; and

‘(II) the denominator of which is the number of unemployed United States workers for the preceding year; and

‘(iv) three-tenths of a fraction--

‘(I) the numerator of which is the number of job openings as set out in the Job Openings and Labor Turnover Survey of the Bureau of Labor Statistics for the current year minus such number of job openings for the preceding year; and

‘(II) the denominator of which is the number of such job openings for the preceding year;

‘(D) MINIMUM AND MAXIMUM LEVELS- The number of registered positions calculated under subparagraph (B) for a 12-month period may not be less than 20,000 or more than 200,000.

‘(3) ADDITIONAL REGISTERED POSITIONS FOR SHORTAGE OCCUPATIONS- In addition to the number of registered positions made available for a year under paragraph (1), the Secretary shall make available for a year an additional number of registered positions for shortage occupations in a particular metropolitan statistical area.

‘(4) SPECIAL ALLOCATIONS OF REGISTERED POSITIONS-

‘(A) AUTHORITY TO MAKE AVAILABLE- In addition to the number of registered positions made available for a year under paragraph (1) or (3), the Secretary shall make additional registered positions available for the year for a specific registered employer if--

‘(i)(I) the maximum number of registered positions available under paragraph (1) have been approved for the year and none remain available for allocation; or

‘(II) such registered employer is located in a metropolitan statistical area that has an unemployment rate that is more than 8 1/2 percent as reported in the most recent month preceding the date that the application is submitted to the Secretary; and

‘(ii) such registered employer has carried out not less than 7 of the recruiting activities described in subsection (e)(2)(C) and posts the position, including the wage range, location, and initial date of employment, for not less than 30 days--

‘(I) on the Internet website maintained by the Secretary of Labor for the purpose of such advertising; and

‘(II) with the workforce agency of the State where the position will be located.

‘(B) DURATION OF POSTING- The 30 day periods required by subclauses (I) or (II) of subparagraph (A)(iii) may occur at the same time.

‘(C) WAGES- A W nonimmigrant hired to perform an eligible occupation pursuant to a registered position made available under this paragraph may not be paid less than the greater of--

‘(i) the level 4 wage set out in the Foreign Labor Certification Data Center Online Wage Library (or similar successor website) maintained by the Secretary of Labor for such occupation in that metropolitan statistical area; or

‘(ii) the mean of the highest two-thirds of wages surveyed for such occupation in that metropolitan statistical area.

‘(D) REDUCTION OF FUTURE REGISTERED POSITIONS- Each registered position made available for a year under this paragraph shall reduce by 1 the number of registered positions made available under paragraph (g)(1) for the following year or the earliest possible year for which a registered position is available. The limitation contained in paragraph (h)(4) shall not be reduced by any registered position made available under this paragraph.

‘(5) OTHER CONSIDERATION- In no event shall the number of visas issued under section 101(a)(15)(W)(i) exceed the number of registered positions in existence.

‘(h) Allocation of Registered Positions-

‘(1) IN GENERAL-

‘(A) FIRST 6-MONTH PERIOD- The number of registered positions available for the 6-month period beginning on the first day of a year is 50 percent of the maximum number of registered positions available for such year under subsection (g)(1). Such registered positions shall be allocated as described in this subsection.

‘(B) SECOND 6-MONTH PERIOD- The number of registered positions available for the 6-month period ending on the last day of a year is the maximum number of registered positions available for such year under subsection (g)(1) minus the number of registered positions approved during the 6-month period referred to in subsection (A). Such registered positions shall be allocated as described in this subsection.

‘(2) SHORTAGE OCCUPATIONS-

‘(A) IN GENERAL- For the first month of each 6-month period referred to in subparagraph (A) or (B) of paragraph (1) a registered position may not be created in an occupation that is not a shortage occupation.

‘(B) INITIAL DESIGNATIONS- Subparagraph (A) shall not apply in any period for which the Commissioner has not designated any shortage occupations.

‘(3) SMALL BUSINESSES- During the second, third, and fourth months of each 6-month period referred to in subparagraph (A) or (B) of paragraph (1), one-third of the number of registered positions allocated for such period shall be approved only for a registered employer that is a small business. Any such registered positions not approved for such small

businesses during such months shall be available for any registered employer during the last 2 months of each such 6-month period.

‘(4) MEAT, POULTRY, AND FISH CUTTERS AND TRIMMERS- In addition to the number of registered positions made available for a year under paragraph (1) or (3) of such section (g), the Secretary shall make additional registered positions available for the year for occupations designated by the Secretary of Labor as Meat, Poultry, and Fish Cutters and Trimmers. The numerical limitation for such additional registered positions shall be no more than 10 percent of the annual numerical limitation provided for in such paragraph (1).

‘(5) LIMITATION FOR CONSTRUCTION OCCUPATIONS-

‘(A) IN GENERAL- Subject to subparagraph (B), not more than 33 percent of the registered positions made available under subsection (g)(1) for a year may be granted to perform work in a construction occupation.

‘(B) MAXIMUM LEVEL- Notwithstanding subparagraph (A), the number of registered positions granted to perform work in a construction occupation under subsection (g)(1) may not exceed 15,000 for a year and 7,500 for any 6-month period.

‘(C) PROHIBITION FOR OCCUPATIONS WITH HIGH UNEMPLOYMENT-

‘(i) IN GENERAL- A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone in that metropolitan statistical area was more than 8 1/2 percent.

‘(ii) DETERMINATION OF UNEMPLOYMENT RATE- The unemployment rate used in clause (i) shall be determined--

‘(I) using the most recent survey taken by the Bureau; or

‘(II) if a survey referred to in subclause (I) is not available, a recent and legitimate private survey.

‘(i) Portability- A W nonimmigrant who is admitted to the United States for employment by a registered employer may--

‘(1) terminate such employment for any reason; and

‘(2) seek and accept employment with another registered employer in any other registered position within the terms and conditions of the W nonimmigrants visa.

‘(j) Promotion- A registered employer who has applied for a registered position in a shortage occupation may promote the W nonimmigrant hired for that registered position to a registered position in an occupation that is not a shortage occupation if the W nonimmigrant has been

employed with that employer for a period of not less than 12 months. Such a promotion shall not increase the total number of registered positions available to that employer.

‘(k) Prohibition on Outplacement- A registered employer may not place, outsource, lease, or otherwise contract for the services or placement of a W nonimmigrant employee with another employer if more than 15 percent of the employees of the registered employer are W nonimmigrants.

‘(l) W Nonimmigrant Protections-

‘(1) APPLICABILITY OF LAWS- A W nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien’s status as a nonimmigrant worker.

‘(2) WAIVER OF RIGHTS PROHIBITED-

‘(A) IN GENERAL- A W nonimmigrant may not be required to waive any substantive rights or protections under this Act.

‘(B) CONSTRUCTION- Nothing under this paragraph may be construed to affect the interpretation of any other law.

‘(3) PROHIBITION ON TREATMENT AS INDEPENDENT CONTRACTORS-

‘(A) IN GENERAL- Notwithstanding any other provision of law--

‘(i) a W nonimmigrant is prohibited from being treated as an independent contractor under any Federal or State law; and

‘(ii) no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor contractor, may treat a W nonimmigrant as an independent contractor.

‘(B) CONSTRUCTION- Subparagraph (A) may not be construed to prevent registered employers who operate as independent contractors from employing W nonimmigrants.

‘(4) PAYMENT OF FEES-

‘(A) IN GENERAL- A fee related to the hiring of a W nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to a W nonimmigrant.

‘(B) EXCLUDED COSTS- The cost of round trip transportation from a certified alien’s home to the location of a registered position and the cost of obtaining a foreign passport are not fees required to be paid by the employer.

‘(5) TAX RESPONSIBILITIES- An employer shall comply with all applicable Federal, State, and local tax laws with respect to each W nonimmigrant employed by the employer.

‘(6) WHISTLEBLOWER PROTECTION-

‘(A) PROHIBITED ACTIVITIES- It shall be unlawful for an employer of a W nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee--

‘(i) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this section; or

‘(ii) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this section.

‘(m) Complaint Process- The Secretary shall establish a process for the receipt, investigation, and disposition of complaints with respect to--

‘(1) the failure of a registered employer to meet a condition of this section; or

‘(2) the lay off or non-hiring of a United States worker as required by this section.

‘(n) Enforcement-

‘(1) IN GENERAL- The Secretary shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved W nonimmigrant respecting a violation of this section.

‘(2) FILING DEADLINE- No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 6 months after the date of such violation.

‘(3) REASONABLE BASIS- The Secretary shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

‘(4) NOTICE AND HEARING-

‘(A) IN GENERAL- Not later than 60 days after the Secretary makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

‘(B) HEARING DEADLINE- Not later than 60 days after the date of a hearing under this paragraph, the Secretary shall make a finding on the matter.

‘(5) Attorney’S FEES-

‘(A) AWARD- A complainant who prevails in an action under this subsection with respect to a claim related to wages or compensation for employment, or a claim for a violation of subsection (l) or (m), shall be entitled to an award of reasonable attorney’s fees and costs.

‘(B) FRIVOLOUS COMPLAINTS- A complainant who files a frivolous complaint for an improper purpose under this subsection shall be liable for the reasonable attorney’s fees and costs of the person named in the complaint.

‘(6) POWER OF THE SECRETARY- The Secretary may bring an action in any court of competent jurisdiction--

‘(A) to seek remedial action, including injunctive relief;

‘(B) to recover the damages described in this subsection and subsection (o); or

‘(C) to ensure compliance with terms and conditions described in subsection (l)(6).

‘(7) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES- The rights and remedies provided to W nonimmigrants under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

‘(o) Penalties-

‘(1) IN GENERAL- If, after notice and an opportunity for a hearing, the Secretary finds a violation of this section, the Secretary may impose administrative remedies and penalties, including--

‘(A) back wages;

‘(B) benefits; and

‘(C) civil monetary penalties.

‘(2) CIVIL PENALTIES- The Secretary may impose, as a civil penalty--

‘(A) for a violation of this subsection--

‘(i) a fine in an amount not more than \$2,000 per violation per affected worker and \$4,000 per violation per affected worker for each subsequent violation;

‘(ii) if the violation was willful, a fine in an amount not more than \$5,000 per violation per affected worker;

‘(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than \$25,000 per violation per affected worker; or

‘(B) for knowingly failing to materially comply with the terms of representations made in petitions, applications, certifications, or attestations under this section--

‘(i) a fine in an amount not more than \$4,000 per aggrieved worker; and

‘(ii) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed \$5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.

‘(3) CRIMINAL PENALTY- Any person who misrepresents the number of full-time equivalent employees of an employer or the number of employees of a person who are United States workers for the purpose of reducing a fee under subsection (e)(6) or avoiding the limitation in subsection (e)(7), shall be fined in accordance with title 18, United States Code, in an amount up to \$25,000 or imprisoned not more than 1 year, or both.

‘(p) Monitoring-

‘(1) REQUIREMENT TO MONITOR- The Secretary shall monitor the movement of W nonimmigrants in registered positions through--

‘(A) the Employment Verification System described in section 274A(d); and

‘(B) the electronic monitoring system described in paragraph (2).

‘(2) ELECTRONIC MONITORING SYSTEM- The Secretary, through U.S. Citizenship and Immigration Services, shall implement an electronic monitoring system to monitor presence and employment of W nonimmigrants. Such system shall be modeled on the Student and Exchange Visitor Information System (SEVIS) and SEVIS II tracking system of U.S. Immigration and Customs Enforcement.’.

(2) TABLE OF CONTENTS AMENDMENT- The table of contents in the first section (8 U.S.C. 1101 et seq.) is amended by adding after the item relating to section 219 the following:

‘Sec. 220. Admission of W nonimmigrant workers.’.

(b) Intention to Abandon Foreign Residence- Section 214(h) (8 U.S.C. 1184(h)) is amended by striking ‘or (V)’ and inserting ‘(V), or (W)’.