

Attachment III

Pub. L. 101-649 Immigration Act of 1990

101st Congress

Nov. 29, 1990

104 STAT. 4978

[S. 358]

An Act

To amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 205. TEMPORARY WORKERS AND TRAINEES (H NONIMMIGRANTS).

"(A) The employer--

"(i) is offering and will offer during the period of authorized employment to aliens and to other individuals employed in the occupational classification and in the area of employment wages that are at least--

"(I) the actual wage level for the occupational classification at the place of employment, or

"(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, determined as of the time of filing the application, and

"(ii) will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed.

"(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

"(C) The employer, at the time of filing the application--

"(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

"(ii) if there is no such bargaining representative, as posted notice of filing in conspicuous locations at the place of employment.

"(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed. The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and accompanying documentation). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C.

"(2)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

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

"(C) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition (or a substantial failure in the case of a condition described in subparagraph (C) or (D) of paragraph (1)) or misrepresentation of material fact in an application--

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate, and

"(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

"(D) In addition to the sanctions provided under subparagraph (C), if the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1)."

(d) Limitation on Trainees.--Section 101(a)(15)(H)(iii) (8 U.S.C. 1101(a)(15)(H)(iii)) is amended by inserting before the semicolon at the end the following: ", in a training program that is not designed primarily to provide productive employment".

(e) Removal of Foreign Residence Requirement for H-1 Nonimmigrants.-- Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended--

(1) by striking "having a residence in a foreign country which he has no intention of abandoning";

(2) in clause (ii), by striking "who is coming temporarily to the United States (a)" and inserting "(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States";

(3) in clause (ii)(b), by inserting "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States" immediately after "(b)"; and

(4) in clause (iii), by inserting "having a residence in a foreign country which he has no intention of abandoning" after "(iii)".