

108TH CONGRESS
1ST SESSION

S. 1452

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

IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 21), 2003

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA Jobs Protection
5 Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

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

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

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

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

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

20 (6) United States unemployment in information
21 technology specialties has increased over the last 2
22 years making it more difficult for employers to cer-
23 tify that they are unable to find American informa-
24 tion technology employees to fill vacancies as re-
25 quired to gain approval of H-1B visa applications.

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

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

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

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

21 (b) PURPOSE.—The purpose of this Act is to ensure
22 that the H-1B and L-1 visa programs are utilized for
23 the purposes for which they were intended and not to dis-
24 place American workers with lower cost foreign visa hold-

1 ers, by closing the loopholes in the programs and strength-
2 ening enforcement and penalties for violations of laws.

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

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

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

13 “(i) The employer will not place the non-
14 immigrant with another employer where—

15 “(I) the nonimmigrant performs duties in
16 whole or in part at 1 or more worksites owned,
17 operated, or controlled by such other employer;
18 and

19 “(II) there are indicia of an employment
20 relationship between the nonimmigrant and
21 such other employer.

22 “(ii) The employer shall make available for pub-
23 lic examination, not later than 1 working day after
24 the date on which an application under this subpara-
25 graph is filed, at the employer’s principal place of

1 business or worksite, a copy of each such application
2 (and such accompanying documents as are nec-
3 essary). The Secretary shall compile, on a current
4 basis, a list (by employer and by occupational classi-
5 fication) of the applications filed under this subpara-
6 graph. The Secretary shall make such list available
7 for public examination in Washington, D.C. The
8 Secretary of Labor shall review such an application
9 only for completeness and obvious inaccuracies. Un-
10 less the Secretary of Labor finds that an application
11 is incomplete or obviously inaccurate, the Secretary
12 of Labor shall certify to the Secretary of Homeland
13 Security, not later than 7 days after the date of the
14 filing of the application, that the requirements of
15 this subclause have been satisfied. The application
16 form shall include a clear statement explaining the
17 liability under this clause if an employer places a
18 nonimmigrant with another employer in violation of
19 clause (i).

20 “(iii) The employer is offering and will offer
21 during the period of authorized employment to aliens
22 admitted or provided status as a nonimmigrant de-
23 scribed in section 101(a)(15)(L) wages that are at
24 least—

1 “(I) the actual wage level paid by the em-
2 ployer to all other individuals with similar expe-
3 rience and qualifications for the specific em-
4 ployment in question; or

5 “(II) the prevailing wage level for the occu-
6 pational classification in the area of employ-
7 ment;

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

10 “(iv) The employer did not displace and will not
11 displace a United States worker employed by the
12 employer within the period beginning 180 days be-
13 fore and ending 180 days after the date of filing of
14 any visa petition supported by the application.

15 “(v) The provisions of section 212(n)(2) shall
16 apply to a failure to meet a condition of clauses (i),
17 (iii), and (iv) and subparagraph (G) in the same
18 manner as such provisions apply to a failure to meet
19 a condition of section 212(n)(1)(F).”.

20 (b) APPROPRIATE AGENCIES REFERENCES.—Section
21 214(c)(1) of the Immigration and Nationality Act (8
22 U.S.C. 1184(c)(1)) is amended by inserting after “Depart-
23 ment of Agriculture.” the following: “For purposes of this
24 subsection with respect to nonimmigrants described in sec-

1 tion 101(a)(15)(L), the term ‘appropriate agencies of Gov-
2 ernment’ means the Department of Labor.”.

3 (c) RESTRICTION OF BLANKET PETITIONS.—Section
4 214(c)(2)(A) of the Immigration and Nationality Act (8
5 U.S.C. 1184(c)(2)(A)) is amended by striking “In the case
6 of” and all that follows through the period and inserting
7 the following: “Not later than January 15 of each year,
8 the Secretary of Homeland Security shall consult with the
9 Secretary of Labor to ensure that procedures utilized in
10 that calendar year to process blanket petitions shall not
11 undermine efforts by the Department of Labor to enforce
12 the provisions of this subsection and shall consider any
13 recommendations that the Secretary of Labor proposes to
14 such procedures to enhance compliance with the provisions
15 of this subsection.”.

16 (d) ACTION ON PETITIONS.—Section 214(c)(2)(C) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1184(c)(2)(C)) is amended by inserting before the period
19 the following: “, unless the Secretary of Homeland Secu-
20 rity, after consultation with the Secretary of Labor, deter-
21 mines that an additional period of time beyond 30 days
22 is necessary to ensure the proper implementation of this
23 subsection”.

24 (e) EMPLOYMENT HISTORY.—Section 101(a)(15)(L)
25 of the Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(L)) is amended by striking “one year” and
2 inserting “2 of the last 3 years”.

3 (f) PERIOD OF ADMISSION.—Section 214(c)(2)(D) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1184(c)(2)(D)) is amended—

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

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

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

15 “(G) In the case of a petition to import aliens as non-
16 immigrants in a capacity that involves specialized knowl-
17 edge as described in section 101(a)(15)(L), the employer,
18 prior to filing the petition, shall file with the Secretary
19 of Labor an application stating that the employer has
20 taken good faith steps to recruit, in the United States
21 using procedures that meet industry-wide standards,
22 United States workers for the job for which the non-
23 immigrants are sought.

24 “(H) The Secretary of Labor shall impose a fee on
25 an employer filing a petition to import aliens as non-

1 immigrants described in section 101(a)(15)(L) to cover
2 the administrative costs of processing the petition.

3 “(I) The Secretary of Labor may initiate an inves-
4 tigation of any employer that employs nonimmigrants de-
5 scribed in section 101(a)(15)(L) if the Secretary of Labor
6 has reasonable cause to believe that the employer is not
7 in compliance with this subsection. The investigation may
8 be initiated not solely for completeness and obvious inac-
9 curacies by the employer in complying with this sub-
10 section.

11 “(J) In this paragraph:

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

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

3 “(aa) means to cause the worker’s loss of
4 employment, other than through a discharge for
5 inadequate performance, violation of workplace
6 rules, cause, voluntary departure, voluntary re-
7 tirement, or the expiration of a grant or con-
8 tract; but

9 “(bb) does not include any situation in
10 which the worker is offered, as an alternative to
11 such loss of employment, a similar employment
12 opportunity with the same employer at equiva-
13 lent or higher compensation and benefits than
14 the position from which the employee was dis-
15 charged, regardless of whether or not the em-
16 ployee accepts the offer.

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

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

22 “(I) is a citizen or national of the United
23 States; or

24 “(II) is an alien who is lawfully admitted
25 for permanent residence or is an immigrant

1 otherwise authorized by this Act or by the Sec-
2 retary of Homeland Security to be employed.”.

3 (h) **TECHNICAL AND CONFORMING AMENDMENT.**—

4 Section 214 of the Immigration and Nationality Act (8
5 U.S.C. 1184) is amended by striking “Attorney General”
6 each place that term appears and inserting “Secretary of
7 Homeland Security”.

8 **SEC. 4. TEMPORARY NONIMMIGRANT WORKERS.**

9 (a) **H-1B DEPENDENT EMPLOYERS.**—

10 (1) **IN GENERAL.**—Section 212(n) of the Immi-
11 gration and Nationality Act (8 U.S.C. 1182(n)) is
12 amended—

13 (A) in paragraph (1)—

14 (i) in subparagraph (E)(ii), by strik-
15 ing “an H-1B-dependent employer (as de-
16 fined in paragraph (3))” and inserting “an
17 employer that employs H-1B non-
18 immigrants”; and

19 (ii) in subparagraph (F), by striking
20 “(regardless of whether or not such other
21 employer is an H-1B-dependent em-
22 ployer)”; and

23 (B) in paragraph (2)—

24 (i) in subparagraph (E), by striking
25 “If an H-1B-dependent employer” and in-

1 serting “If an employer that employs H–
2 1B nonimmigrants”; and

3 (ii) in subparagraph (F), by striking
4 “The preceding sentence shall apply to an
5 employer regardless of whether or not the
6 employer is an H–1B-dependent em-
7 ployer.”.

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

11 (A) by striking subparagraph (A); and
12 (B) by redesignating subparagraphs (B)
13 and (C) as subparagraphs (A) and (B), respec-
14 tively.

15 (b) DISPLACEMENT OF WORKERS.—Section 212(n)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1182(n)) is amended—

18 (1) in paragraph (1)(F), by striking “90 days”
19 each place that term appears and inserting “180
20 days”; and

21 (2) in paragraph (2)(C)(iii), by striking “90
22 days” each place that term appears and inserting
23 “180 days”.

24 (c) ENFORCEMENT ACTION.—Section 212(n)(2) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1182(n)(2)) is amended by adding at the end the fol-
 2 lowing:

3 “(I) The Secretary of Labor may initiate an inves-
 4 tigation of any employer that hires nonimmigrants de-
 5 scribed in section 101(a)(15)(H)(i)(b) if the Secretary of
 6 Labor has reasonable cause to believe that the employer
 7 is not in compliance with this subsection. The investiga-
 8 tion may be initiated not solely for completeness and obvi-
 9 ous inaccuracies by the employer in complying with this
 10 subsection.”.

11 (d) ADMINISTRATIVE FEE.—Section 214(c)(9)(A) of
 12 the Immigration and Nationality Act (8 U.S.C.
 13 1184(c)(9)(A)) is amended by striking “before October 1,
 14 2003”.

15 **SEC. 5. COMPTROLLER GENERAL INVESTIGATION.**

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

19 (1) how the amendments made by this Act are
 20 being implemented;

21 (2) the impact that the amendments made by
 22 this Act have had on employers and workers in the
 23 United States; and

24 (3) whether additional changes to existing law
 25 are necessary—

1 (A) to prevent American workers from
2 being displaced by nonimmigrants described in
3 subparagraphs (L) and (H)(i)(b) of section
4 101(a)(15) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(15)); or

6 (B) to meet the legitimate needs of United
7 States employers.

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