

American Immigration Lawyers Association

The Secure America and Orderly Immigration Act Section-by-Section Analysis

Section 1. Short Title and Table of Contents

The Act may be cited as the Secure America and Orderly Immigration Act.

Section 2. Findings

This section makes a number of congressional findings on, among other things: the need to secure our borders; the contributions of immigrants and the need for our immigration policies to reflect our tradition as a nation of immigrants; the need for a comprehensive approach to solving our immigration problems, including the provision of adequate channels for legal immigration and strong enforcement of laws that serve our economic, social and security interests.

TITLE I. BORDER SECURITY

Section 101: Definitions

This section defines the following terms: “appropriate congressional committees,” “international border of the United States,” “Secretary,” and “security plan.”

SUBTITLE A—Border Security Strategic Planning

Section 111: National Strategy for Border Security

Section 111 directs the Secretary of Homeland Security (Secretary) to develop and implement a National Strategy for Border Security (Strategy) to protect the international borders of the United States. The Strategy must include: (1) identification and evaluation of points of entry and portions of the border that must be protected from illegal transit; (2) a design for the most appropriate and cost-effective means of defending the border against threats, including advancements in technology, equipment, personnel, and training needed to address security vulnerabilities; (3) risk-based priorities for assuring border security including deadlines for addressing security and enforcement needs; (4) coordination among federal, state, regional, local and tribal authorities to provide for effective border management and security enforcement; (5) a prioritization of research and development objectives to enhance border security and enforcement needs; (6) an update of the 2001 Port of Entry Infrastructure Assessment Study that was conducted by the legacy U.S. Customs Service and General Services Administration; (7) strategic interior enforcement coordination plans with personnel of Immigration and Customs Enforcement; (8) strategic enforcement coordination plans with overseas personnel of the Departments of Homeland Security and State to end human smuggling and trafficking activities; (9) any other appropriate infrastructure, security plans or reports the Secretary deems appropriate for inclusion; (10) the identification of low-risk travelers and how such identification would facilitate cross-border travel; and (11) ways to ensure that U.S. trade and commerce are not diminished by efforts, activities, and programs aimed at securing the homeland.

The Strategy shall be the governing document for federal security and enforcement efforts related to securing the borders.

Section 112: Reports to Congress

Within one year of enactment, the Secretary must submit the National Strategy for Border Security to the appropriate congressional committees. Subsequent revisions of the Strategy must be submitted every two years. Each year, in conjunction with the submission of the budget to Congress, the Secretary must submit a progress report on the implementation of the Strategy and each security plan, as well as any recommendations for improvement.

Section 113: Authorization of Appropriations

This section authorizes the appropriations necessary to carry out the provisions of this subtitle for each of the 5 fiscal years beginning with the fiscal year following the year of enactment.

SUBTITLE B—Border Infrastructure, Technology Integration and Security Enhancement

Section 121: Border Security Coordination Plan

Section 121 requires the Secretary to coordinate, develop and implement a plan with federal, state, local and tribal authorities on law enforcement, emergency response, and security-related responsibilities with regard to the international border. The plan should ensure that the security of the border is not comprised: (1) when the jurisdiction for providing security changes from one authority to another; (2) in areas where jurisdiction is shared among authorities; or (3) when one authority relinquishes jurisdiction to another authority pursuant to a memorandum of understanding. In developing the plan, the Secretary must consider methods to coordinate emergency responses, improve data sharing, communications, and technology, and promote research and development relating to the aforementioned. Within one year of implementing the plan described above, the Secretary must submit a report on its development and implementation to the appropriate congressional committees.

Section 122: Border Security Advisory Committee

Section 122 authorizes the Secretary to establish and appoint a Border Security Advisory Committee to provide advice and recommendations to the Secretary on border security and enforcement issues. The Advisory Committee must be comprised of members who represent a broad cross-section of perspectives, including representatives from border states, local law enforcement agencies, community officials, and tribal authorities of border states, and other interested parties.

Section 123: Programs on the Use of Technologies for Border Security

Section 123 requires the Secretary, within 60 days of enactment, to develop and implement a program to enhance border security through the utilization of aerial surveillance technologies. The Secretary must consider current and proposed aerial surveillance technologies, assess the feasibility of utilizing such technologies; consult with the Secretary of Defense regarding any equipment or technologies which the Secretary may deploy along the border, and consult with the Administrator of the FAA regarding safety and airspace coordination and regulation.

The program shall utilize a variety of aerial surveillance technologies in a variety of topographies and areas for a range of circumstances, as well as unmanned aerial vehicles. Within one year of implementing the program, the Secretary must submit to the appropriate congressional committees a report that includes a description of the program and the Secretary's recommendations for enhancing the program.

Section 123 also authorizes the Secretary, as part of the development and implementation of the National Strategy for Border Security, to establish and carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities that will protect the border without diminishing trade and commerce.

Section 124: Combating Human Smuggling

Section 124 requires the Secretary to develop and implement a plan to improve coordination between the Bureau of Immigration and Customs Enforcement and Bureau of Customs and Border Protection and other federal, state, local, and tribal authorities to combat human smuggling. In developing the plan, the Secretary must consider: the interoperability of databases used to prevent human smuggling; adequate and effective personnel training; methods and programs to effectively combat human smuggling; the effective utilization of visas for victims of trafficking (T-visas) and other crimes; investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other smuggling operations; joint measures with the Secretary of State to enhance intelligence sharing and cooperation with foreign governments; and any other measures that the Secretary considers appropriate. The Secretary must submit a report to Congress on the plan within one year of its implementation, including any recommendations for legislative action to improve efforts to combat human smuggling.

Section 125: Savings Clause

Section 125 provides that nothing in Subtitles A or B of Title I may be construed to provide any state or local entity any additional authority to enforce Federal immigration laws.

SUBTITLE C—International Border Enforcement

Section 131: North American Security Initiative

Section 131 requires the Secretary of State to establish a framework for better management, communication and coordination between the Governments of North America in order to enhance the security and safety of the United States.

Section 132: Information Sharing Agreements

This section authorizes the Secretary of State, in coordination with the Secretary of Homeland Security and the Government of Mexico, to negotiate an agreement with Mexico to cooperate in the screening of third-country nationals using Mexico as a corridor to the United States and to provide technical support to enhance immigration control along the Mexican border.

Section 133: Improving the Security of Mexico's Southern Border

Section 133 requires the Secretary of State, in coordination with the Secretary of Homeland Security, the Canadian Department of Foreign Affairs, and the Government of Mexico, to

establish a program to assess the needs of the governments of Central America in maintaining security of their borders. The program will also determine the financial and technical support needed to enhance security and provide technical assistance to the governments of Central America to secure the issuance of passports and travel documents in those countries. In addition, the program will encourage the governments of Central America to control alien smuggling and trafficking, and to prevent the use and manufacturing of fraudulent travel documents. It should also encourage the governments of Central American countries to share relevant information with Mexico, Canada and the United States.

The Secretary of Homeland Security, in coordination with the Secretary of State and the appropriate officials of the governments of Central American countries, must provide robust law enforcement assistance to Central American governments to address migratory issues to enable these governments to dismantle human smuggling organizations and gain tighter control over their borders.

The Secretary of State, in consultation with the Secretary of Homeland Security, the Government of Mexico, appropriate officials of the Governments of Guatemala, Belize, and neighboring contiguous countries, must establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate and patrol the international border between Mexico and Guatemala and between Mexico and Belize.

This section also mandates that the Secretary of State work in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, the Government of Mexico, and the appropriate officials of the governments of Central American countries, to monitor the impact of deporting violent criminal aliens, track Central American gang activities, devise a mechanism for notification of deportation, and share information relevant to gang activities.

TITLE II. STATE CRIMINAL ALIEN ASSISTANCE

Section 201: State Criminal Alien Assistance Program Authorization of Appropriations

Section 201 reauthorizes the State Criminal Alien Assistance Program for Fiscal Years 2005-2011, and provides that such funds may only be made available for correctional purposes.

Section 202: Reimbursement of States for Indirect Costs Relating to the Incarceration of Illegal Aliens

Section 202 establishes a new program to authorize funding to pay the indirect costs incurred by states for incarcerating illegal aliens. These "indirect costs" include court costs, county attorney costs, detention costs, criminal proceedings expenditures that do not involve going to trial, indigent defense costs, and unsupervised probation costs. Reimbursements must be allocated in a manner that gives special consideration to any State that shares a border with Mexico or Canada or to any State that includes an area in which a large number of undocumented aliens reside relative to the general population. To carry out this section, appropriations are authorized in the amount of \$200 million for each of fiscal years 2005-2011.

Section 203: Reimbursement of States for Pre-Conviction Costs Relating to the Incarceration of Illegal Aliens

Section 203 amends INA § 241(i)(3)(A) to provide for the reimbursement to states for the pre-conviction costs relating to the incarceration of undocumented criminal aliens.

TITLE III. ESSENTIAL WORKER VISA PROGRAM

Section 301: Essential Workers

Section 301 amends INA § 101(a)(15)(H) to create a new essential worker category (to be known as “H-5A”) for persons coming temporarily to the U.S. to initially perform labor or services other than those occupation classifications covered under INA § 101(a)(15)(H)(i)(b), (H)(ii)(a), (L), (O), (P), or (R). Spouses and children would be eligible to accompany or follow to join the principal alien.

Section 302: Admission of Essential Workers

Section 302 authorizes the Secretary of State to grant a temporary H-5A visa to an alien who demonstrates that he or she is capable of performing the labor or services required for an H-5A occupation and provides the consular officer with evidence of employment in the United States. Such evidence of employment must be provided through the Employment Eligibility Confirmation System established under new INA § 274E, or in accordance with requirements issued by the Secretary of State in consultation with the Secretary of Homeland Security. The nonimmigrant worker is required to pass a criminal and security background check, pay a \$500 application fee, and undergo a medical examination. Certain grounds of inadmissibility may be waived upon payment of a \$1,500 fine.

The H-5A visa shall initially be authorized for three years, and may be extended for one additional three-year period. The alien must be employed during the alien’s stay in the United States, but may change employers at will. If the alien is unemployed for more than 45 consecutive days,¹ his or her period of authorized admission will terminate and the alien will be required to return to his or her country of nationality or last residence. An alien who returns home due to unemployment may reenter the United States to work using the same visa, provided the alien meets the same standards required for the original entry. Aliens holding H-5A visas may travel outside of the United States and be readmitted on the same visa assuming the period of authorized admission has not expired. The three-year period of authorized admission shall not be extended due to the time the alien spends outside the country. Aliens in H-5A status who willfully violate any material term or condition of such status will not be able to renew their status. A waiver is available, however, for technical violations, inadvertent errors, or violations for which the alien was not at fault.

Section 303: Employer Obligations.

Section 303 requires employers of H-5A nonimmigrants to comply with all applicable federal, state and local laws, including laws affecting migrant and seasonal agricultural workers and the requirements under new INA § 274E, as created by Section 402 of this Act.

¹ The drafters of this legislation reportedly plan to change the language of the bill to read “60 consecutive days” rather than “45 consecutive days.”

Section 304: Protection for Workers

Section 304 provides that H-5A visa nonimmigrant aliens shall have the same rights as similarly employed U.S. workers under applicable federal, state, and local labor and employment laws. Workers under this program shall not be treated as independent contractors. Employer will be responsible for all applicable federal, state and local taxes with respect to aliens under the H-5A program. In addition, Section 304 provides that: employers must provide the same wages, benefits, and working conditions to H-5A workers as are provided to similarly employed U.S. workers; employers may not hire H-5A aliens as replacement workers during a strike or lockout; H-5A aliens may not be required to waive any rights or protections under this Act; employers who have filed an employment-based immigrant visa petition on behalf of an H-5A worker may not threaten to withdraw such petition in retaliation for the alien's exercise of a right protected by this Act. Section 304 also provides whistleblower protection for H-5A employees.

In addition, Section 304 requires that foreign labor contractors (and employers that engage in foreign labor contracting activity) disclose a variety of information to H-5A workers at the time of their recruitment, including, among other things, the location of employment, a description of the duties, compensation, benefits provided and any associated costs, existence of any labor dispute or labor organizing effort, the extent of any insurance coverage, any education or training required or provided, and a statement describing the protections of this Act. Foreign labor contractors are prohibited from providing false or misleading information and may not assess any fees to the worker for such recruitment. Section 304 requires registration and certification of foreign labor contractors who recruit workers under this program, and further requires the Secretary of Labor to promulgate regulations to establish a process for the investigation and approval of an application for a certificate of registration of foreign labor contractors. Such certificates will be valid for two years, and the Secretary may refuse to issue or renew, or may suspend or revoke a certificate of registration.

This section also provides remedies for foreign labor contractor violations, and requires the Secretary of Labor to prescribe regulations for the receipt, investigation, and disposition of complaints by individuals harmed under this section. In addition, Section 304 sets forth an administrative process under which workers who are harmed by violations of the program can bring a complaint. Remedies and penalties, including both civil and criminal penalties, are also set forth in this section.

Section 305: Market-Based Numerical Limitations

Section 305 provides that 400,000 H-5A visas will be made available for the first fiscal year in which the program is implemented. In any subsequent fiscal year, if the numerical limit is reached within the first quarter, an additional 20% of the allocated number will be made available immediately and the allocated amount for the following fiscal year will increase by 20% of the original allocated amount in the prior fiscal year. If the total number of visas allocated for a given fiscal year is reached in the second quarter of that fiscal year, an additional 15% will be made available immediately and the allocated amount for the following fiscal year will increase by 15% of the original allocated amount in the prior fiscal year. If the total number of visas allocated for a given fiscal year is reached in the third quarter of that fiscal year, an additional 10% will be made available immediately and the allocated amount for the following fiscal year will increase by 10% of the original allocated amount in the prior fiscal year. If the

total number of visas allocated for a given fiscal year is reached in the last quarter of that fiscal year, the allocated amount for the following fiscal year will increase by 10% of the original allocated amount in the prior fiscal year. With the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if the allocated amount is not reached in a given year, and the reason was not due to processing delays or delays in promulgating regulations, the allocated amount will decrease by 10% for the following fiscal year.

Of the total number of visas allocated in a given fiscal year, 50,000 must be allocated to “qualifying counties,” defined as counties that are outside a metropolitan statistical area and that, during the 20-year-period preceding the date of enactment of this Act, experienced a net out-migration of at least 10%.

Finally, Section 305 provides that, in allocating visas under this section, the Secretary of State may take any additional measures necessary to deter illegal immigration.

Section 306: Adjustment to Lawful Permanent Resident Status

Section 306 amends INA § 245 to provide for adjustment to lawful permanent resident status for eligible aliens admitted under the H-5A program, either through employer-based petitions or, if the alien has maintained H-5A status in the U.S. for a cumulative total of four years, through self-petition. Applicants for adjustment under this section must be physically present in the U.S. and establish that they meet the requirements of INA § 312 (setting forth the English language and civics requirements for naturalization applicants) or be satisfactorily pursuing a course of study to achieve such knowledge. Aliens will not be deemed ineligible for H-5A nonimmigrant status solely by virtue of the fact that they have filed for adjustment of status or have otherwise sought permanent residence in the U.S.

Section 306 also authorizes the Secretary of Homeland Security to extend the stay of an H-5A nonimmigrant beyond the period of authorized stay if a labor certification or immigrant visa petition filed on behalf of the alien is pending. In such cases, the alien’s stay shall be extended in one-year increments until a final decision is made on his or her lawful permanent residence.

Section 307: Essential Worker Visa Program Task Force

Section 307 establishes the Essential Worker Visa Program Task Force to study the Essential Worker Visa Program and make recommendations to Congress. The Task Force will be comprised of 10 persons who will represent a variety of pertinent areas of expertise. The members shall be appointed by the President and leadership of both Houses of Congress and no one party may constitute a majority of the membership. The Task Force must submit a report to Congress within two years of the essential worker program’s implementation, evaluating a variety of aspects of the program including its development and implementation, the criteria for admission of the temporary worker, the formula for determining the yearly numerical limitation, and the program’s impact on immigration, the U.S. workforce and U.S. businesses. A final report must be submitted no later than four years after the submission of the initial report.

Section 308: Willing Worker -Willing Employer Job Registry

Section 308 requires the Secretary of Labor to direct the coordination and modification of the national system of public labor exchange services (known as “America’s Job Bank”) to

incorporate essential worker employment opportunities available to United States workers and nonimmigrant workers. Employers seeking to hire H-5A nonimmigrants must attest that they have posted the employment opportunity in the Job Registry for at least 30 days in an attempt to recruit U.S. workers. Employers must maintain a record of such recruitment efforts for one year and must demonstrate why U.S. workers who applied were not hired.

The Secretary of Labor must ensure that job opportunities advertised on the electronic job registry are accessible by state workforce agencies and that the Internet-based job registry may be accessed by workers, employers, labor organizations and other interested parties.

Section 309: Authorization of Appropriations

Section 309 authorizes appropriations as necessary to carry out this title for each fiscal year beginning with the date of enactment through the sixth fiscal year beginning after implementation of this title.

TITLE IV. ENFORCEMENT

Section 401: Document and Visa Requirements

Section 401 provides that, no later than six months from the date of enactment of this Act, all new visas issued by the Secretary of State and immigration-related documents issued by the Secretary of Homeland Security must be machine-readable and tamper-resistant, use biometric identifiers, and be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under INA § 274E, as added by section 402 below. The information contained on the visas or immigration-related documents must include: the alien's name, date and place of birth; alien registration or visa number and, if applicable, social security number; the alien's citizenship and immigration status in the U.S.; and the date that the alien's authorization to work in the U.S. expires, if appropriate.

Section 402: Employment Eligibility Confirmation System

Section 402 adds a new § 274E to the INA, requiring the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, to establish an Employment Eligibility Confirmation System to allow employers to verify an employee's identity and employment authorization. The new system, which will gradually replace the existing I-9 system, will use machine-readable documents that contain encrypted electronic information to verify employment eligibility within one working day after the initial inquiry. Section 402 also requires the establishment of a secondary verification process to be used in cases of a tentative nonconfirmation. In such cases, the employer must make the secondary verification inquiry within 10 days of receiving the tentative nonconfirmation. If an employee chooses to contest a secondary nonconfirmation, the employer must provide the employee with a referral letter and instruct the employee to visit an office of the DHS or the SSA to resolve the discrepancy within 10 working days of receipt of the referral letter. An individual's failure to contest a confirmation will not constitute knowledge, as that term is defined in 8 CFR § 274a.1(1).

As a safeguard against erroneous information, individuals will be able to view their records in the system. The Commissioner of Social Security, in coordination with the Secretary of Homeland Security, will provide a process by which individuals may correct false information.

This section also sets forth various unlawful uses of the system that shall be considered unlawful immigration-related employment practices.

Employers are required to notify employees and prospective employees of the use of the Employment Eligibility Confirmation System and that the system may be used for enforcement purposes. In addition, employers must verify the identity and employment authorization status of new H-5A employees within three days of hire and must provide a copy of the employment verification receipt to such employees. Section 402 provides for an affirmative defense against violations based upon good faith compliance with the requirements of this section. This section requires the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, to the extent practicable, to implement an interim system to confirm employment eligibility before implementation of the new Employment Eligibility Confirmation System.

In addition, Section 402 requires the Commissioner of Social Security, in coordination with the Secretary of Homeland Security and other appropriate agencies, to design, implement, and maintain an Employment Eligibility Database, which will be implemented gradually, and will include employment eligibility data for all individuals who are not citizens or nationals of the U.S. but who are authorized or seeking authorization to be employed in the U.S. The Commissioner of Social Security is required to establish a system to annually reverify the employment eligibility of each individual described in this section. Access to the new database will be limited and provisions to protect against the unauthorized disclosure of the information contained in the database must be established.

Finally, Section 402 requires the Comptroller General of the United States to submit to the House and Senate Judiciary Committees, no later than 3 months after the last day of the second and third years that the system is in effect, a report on the new Employment Eligibility Confirmation System, including: an assessment of the impact of the system on the employment of unauthorized workers; an assessment of the accuracy of the Employment Eligibility Database and Social Security Administration databases and the timeliness and accuracy of responses to employers; an assessment of the privacy, confidentiality and system security of the system; an assessment of whether the system is being implemented in a nondiscriminatory manner; and any recommendations on whether the system should be modified.

Section 403: Improved Entry and Exit Data System

This section amends § 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to make various technical corrections and provide for the collection of biometric machine-readable information from an alien's visa or immigration-related documents upon arrival and departure from the U.S. to determine the alien's status.

Section 404: Department of Labor Investigative Authorities

This section provides the Secretary of Labor with the authority to initiate investigations of employers employing H-5A nonimmigrants if the Secretary or her designee certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act or INA § 274E. This section also sets forth various criteria for determining whether such reasonable cause exists.

Section 405: Protection of Employment Rights

Section 405 directs the Secretaries of Labor and Homeland Security to establish a process by which H-2B and H-5A nonimmigrants, who file non-frivolous complaints regarding an employer's violation under the program, may seek other appropriate employment under their visa.

Section 406: Increased Fines for Prohibited Behavior

This section doubles the existing fines for unfair employment practices under INA § 274B(g)(2)(B)(iv).

TITLE V. PROMOTING CIRCULAR MIGRATION PATTERNS

Section 501: Labor Migration Facilitation Programs

Section 501 authorizes the Secretary of State to enter into agreements with foreign governments whose citizens participate in the new temporary worker program in an effort to establish and administer joint labor migration facilitation programs. The Secretary of Homeland Security and the Secretary of Labor are also authorized to participate in such programs. The programs would be designed to monitor the foreign workers' participation in the temporary worker program and may address: the facilitation and monitoring of travel between the country of origin and the U.S.; reintegration in the worker's country of origin upon permanent return from the U.S.; and any other appropriate features to promote the worker's strong ties to his/her country of origin. The Secretary of State must place priority on developing programs with foreign governments that have a large number of nationals working as temporary workers and must enter into such agreements not later than 3 months after the date of enactment or as soon thereafter as is practicable.

Section 502: Bilateral Efforts with Mexico to Reduce Migration Pressures and Costs

This section contains a series of "findings" and a Sense of Congress that acknowledge the need to assist the Government of Mexico in strengthening its governance and promoting opportunities for its citizens that will help reduce migration incentives. It also includes a Sense of Congress urging the Governments of the United States and Mexico to enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration by: 1) increasing health care access for poor and underserved populations in Mexico; 2) assisting Mexico in increasing its emergency and trauma healthcare facilities along the border; 3) facilitating the return of stable, incapacitated workers to Mexico to receive long-term care in their home country; and 4) helping the Mexican government to establish a program with the private sector to cover the health care needs of its citizens working in the United States.

TITLE VI. FAMILY UNITY AND BACKLOG REDUCTION

Section 601: Elimination of Existing Backlogs

This section exempts immediate relatives (spouses, children, and parents of U.S. citizens) from the annual level of 480,000 for family-sponsored immigrant visas. Unused family-sponsored immigrant visas from previous fiscal years are recaptured and made available for family-sponsored immigrant visas for future fiscal years.

The level of employment-based immigrant visas is increased from 140,000 to 290,000 per fiscal year. Unused employment-based immigrant visas from previous fiscal years are recaptured and made available for employment-based immigrant visas for future fiscal years.

Section 602: Country Limits

Section 602 increases the per country limits for family-sponsored and employment-based immigrants from 7% to 10% (in the case of countries) and from 2% to 5% (in the case of dependent areas).

Section 603: Allocation of Immigrant Visas

Section 603 redistributes the 480,000 family-sponsored immigrant numbers among existing family preference categories, as follows: 10% is allocated to the first preference—unmarried sons and daughters of U.S. citizens. 50% is allocated to the second preference—spouses and unmarried sons and daughters of lawful permanent residents—of which 77% of such visas will be allocated to spouses and children of lawful permanent residents. 10% is allocated to the third preference—married sons and daughters of U.S. citizens. 30% is allocated to the fourth preference—brothers and sisters of U.S. citizens.

The 290,000 ceiling for employment-based immigrant visas is redistributed among the employment-based immigrant visa categories and certain modifications are made to current categories. 20% is allocated to the first preference—aliens with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. 20% is allocated to the second preference—aliens holding advanced degrees or having exceptional ability. 35% is allocated to the third preference—skilled workers and professionals. 5% is allocated to a re-designated fourth preference—investors. 30% is allocated to a re-designated fifth preference—other workers performing unskilled labor that is not of a temporary or seasonal nature (previously included in third preference). Each year, all unused immigrant visas from the first four preference categories will be made available for fifth preference workers.

The current fourth preference category is stricken, so that special immigrants are no longer counted against the employment-based ceiling. Similarly, Section 203 strikes INA § 203(b)(6), which provides special numerical rules for K special immigrants.

Section 604: Relief for Children and Widows

Section 604 extends eligibility for the immediate relative category to the accompanying or following to join children of the children, spouses and parents of U.S. citizens.

In addition, Section 604 provides that surviving spouses, children, and parents who applied for adjustment of status prior to the death of a qualifying relative may have such application adjudicated as if the death had not occurred. Aliens whose qualifying relative died before the date of enactment and who received a denial of an application for adjustment of status not more than two years before the date of enactment may renew their adjustment application through a motion to reopen, without fee, filed no later than one year after the date of enactment.

Section 605: Amending the Affidavit of Support Requirements

This section lowers the income level required for an affidavit of support from 125% to 100% of the federal poverty guidelines.

Section 606: Discretionary Authority

Section 606 grants the Secretary of Homeland Security the discretionary authority to waive certain misrepresentation grounds of inadmissibility for spouses, parents, or sons or daughters of U.S. citizens or lawful permanent residents if the Secretary determines that the refusal of the alien's admission would result in extreme hardship to the U.S. citizen or lawful permanent residence relative. The DHS Secretary may also exercise such discretionary authority in the case of an alien granted classification under clause (iii) or (iv) of INA § 204(a)(1)(A), or clause (ii) or (iii) of § 204(a)(1)(B), if the alien demonstrates extreme hardship to the alien, or to his or her U.S. citizen, lawful permanent resident, or qualified alien parent or child. Aliens granted such waivers must pay a \$2000 fine.

Section 607: Family Unity

This section raises the maximum age of eligibility for exemption from the 3- and 10-year bars from 18 to 21 years of age. In addition, the DHS Secretary is granted discretionary authority to waive the 3- and 10-year and permanent bars for aliens who, on or before the date of introduction of this Act, had pending family-sponsored or employment-based petitions. Aliens granted such waivers must pay a \$2000 fine.

TITLE VII. H-5B NONIMMIGRANTS

Section 701: H-5B Nonimmigrants

Section 701 adds a new INA § 250A to provide for the adjustment to H-5B nonimmigrant status for an alien who can establish that he or she: (1) was present in the U.S. without authorization before the date of this Act's introduction; and (2) was employed in the U.S. before the date of this Act's introduction, whether full time, part time, seasonally, or self-employed, and has been employed in the U.S. since that date. The alien's spouse and children are also eligible to apply for adjustment of status or to follow to join the alien. An alien may conclusively establish such employment by submission of employment records maintained by: the Social Security Administration, Internal Revenue Service, or by any other federal, state or local government agency; an employer; or a labor union, day labor center, or an organization that assists workers in matters related to employment. Aliens who are unable to submit a document described above may satisfy the requirement of establishing previous employment by submitting at least two of the following types of documents that provide evidence of employment: bank records; business records; sworn affidavits from non-relatives who have direct knowledge of the alien's employment; or remittance records. The employment requirements under this section will not apply to minors under 21 years of age. In addition, an alien may satisfy the employment requirements, in whole or in part, by full-time attendance at either an institution of higher education or a secondary school.

An applicant for H-5B status must pay an initial fine of \$1000 in addition to an application fee, submit fingerprints and other data, and undergo criminal and security background checks. An applicant is inadmissible as an H-5B nonimmigrant for grounds related to criminal conduct, security reasons, terrorist activity, or participating in the persecution of any person. Practicing

polygamists and child abductors are also barred. However, other grounds of inadmissibility related to undocumented status will be waived for conduct that occurred before the date of this Act's introduction.

The period of authorized stay for an H-5B nonimmigrant is 6 years, during which time the Secretary of Homeland Security may not authorize a change from H-5B classification to any other nonimmigrant or immigrant classification. An extension of such status may be granted only to accommodate the processing of an application for adjustment of status under INA §245B, as added by this section.

An alien who files an application for H-5B status (as well as the alien's spouse or child) will be granted employment authorization, permission to travel abroad, and may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment to H-5B status, unless the alien becomes ineligible for such status based upon conduct or criminal conviction. If an alien is apprehended after the date of enactment of this section but before the promulgation of regulations, and the alien can establish prima facie eligibility as an H-5B nonimmigrant, the Secretary of Homeland Security must provide the alien with an opportunity, after promulgation of regulations, to file an adjustment application. In addition, aliens in removal proceedings must be provided the opportunity to apply for adjustment to H-5B status unless a final administrative determination has been made. Aliens present in the U.S. who have been ordered excluded, deported, removed, or ordered to depart voluntarily may, notwithstanding such order, apply for adjustment to H-5B status. Such aliens will not be required to file motions to reopen, reconsider or vacate; if the Secretary of Homeland Security grants the application, he must cancel the order. If the application is denied, the original order will be enforceable.

Section 701 also requires the Secretary of Homeland Security to establish an appellate authority within USCIS to provide for a single level of administrative appellate review with respect to applications for adjustment to H-5B status and also provides for judicial review in the federal courts.

This section also provides for the confidentiality of information furnished by H-5B applicants and provides for criminal penalties for violations of the confidentiality provisions. Criminal penalties are also established for false statements made in connection with an H-5B application

Section 702: Adjustment of Status for H-5B Nonimmigrants

Section 702 adds a new INA § 245B to provide for the adjustment to lawful permanent resident status of an H-5B alien if he or she satisfies the following requirements: (1) completes the employment requirement; (2) pays an additional \$1000 fine as well as the application fee; (3) is admissible under immigration laws; (4) undergoes a medical examination; (5) shows proof of payment of taxes; (6) demonstrates the requisite knowledge of English and U.S. civics; (7) successfully undergoes criminal and security background checks; and (8) registers for military selective service, if applicable. The children and spouse of such an alien may also apply for adjustment.

Section 703: Aliens Not Subject to Direct Numerical Limitations

This section exempts from the direct numerical limitations aliens whose status is adjusted from H-5B to lawful permanent resident status.

Section 704: Employer Protections

Section 704 provides that employers of aliens who apply for adjustment of status under this section (either initially, to H-5B status, or from H-5B to permanent resident status) shall not be subject to civil or criminal tax liability relating to the employment of the alien prior to his or her receiving employment authorization.

Section 705: Authorization of Appropriations

This section authorizes funds to the Secretary of Homeland Security to carry out the provisions in this title, and contains a Sense of Congress that such funds should be directly appropriated.

TITLE VIII. PROTECTION AGAINST IMMIGRATION FRAUD

Section 801: Right to Qualified Representation

Section 801 amends INA § 292 to set forth the classes of individuals considered to be authorized representatives for purposes of representation in an immigration matter. This section further provides that only attorneys or individuals approved as accredited representatives under the provisions of this Act may advertise their services to provide representation in an immigration matter. Section 801 also establishes a process by which the Board of Immigration Appeals (BIA) may determine that a person is a “recognized organization” for purposes of designating accredited representatives of the organization to appear in immigration matters. The BIA must approve any qualified individual of a recognized organization as an accredited representative. Such accredited representatives must certify their continuing eligibility for accreditation every 3 years, or will lose their authority to provide representation in immigration matters on behalf of the recognized organization.

Section 801 provides for the right to representation at no cost to the government of individuals in removal proceedings and individuals filing benefits applications, adding that representation by a person other than an authorized representative as described under this section may cause the representative to be subject to civil or other applicable penalties in the case of removal proceedings, and civil or criminal penalties in the case of benefits filings.

Section 801 also proscribes certain representation-related conduct by individuals other than authorized representatives, and provides for civil causes of action for violations thereof. Potential remedies include damages, injunctive relief, attorney’s fees, and civil penalties.

Section 802: Protection of Witness Testimony

Section 802 broadens eligibility for a “U” nonimmigrant visa to certain aliens who are determined to be victims of immigration fraud by an unauthorized representative, and raises the numerical limitation on U visas from 10,000 to 15,000 per year.

TITLE IX. CIVICS INTEGRATION

Section 901: Funding for the Office of Citizenship

Section 901 authorizes the Secretary of Homeland Security to establish the United States Citizenship Foundation under the auspices of USCIS. The Foundation is allowed to solicit, accept and make charitable gifts to support the functions of USCIS's Office of Citizenship. This section also authorizes the appropriations necessary to carry out the mission of the Office of Citizenship.

Section 902: Civics Integration Grant Program

Section 902 directs the Secretary of Homeland Security to establish a competitive grant program to fund entities certified by the Office of Citizenship to provide civics and English classes. The Secretary may accept and use gifts from the United States Citizenship Foundation for grants under this section. Appropriations are authorized as necessary.

TITLE X. PROMOTING ACCESS TO HEALTH CARE

Section 1001: Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens

This section extends the authorization for reimbursement of hospitals for the emergency care of undocumented immigrants established under Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 from fiscal years 2008 to 2011 and adds H-5A and H-5B workers to the classes of patients for whom hospitals may be reimbursed.

Section 1002: Prohibition Against Offset of Certain Medicare and Medicaid Payments

Section 1002 provides that payments made under section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 shall not be considered "third party coverage" for the purposes of section 1923 of the Social Security Act and shall not impact payments made under such section.

Section 1003: Prohibition Against Discrimination Against Aliens on the Basis of Employment in Hospital-Based Versus Non-Hospital-Based Sites

Section 1003 prohibits state or federal agencies, in determining which aliens will be eligible for waivers of the two-year foreign residence requirement under INA § 212(e) on behalf of an alien described in clause (iii) of such section, from discriminating on the basis of the J visa holder's employment in a hospital-based versus non-hospital-based facility.

Section 1004: Binational Public Health Infrastructure and Health Insurance

Section 1004 requires the Secretary of Health and Human Services to contract with the Institute of Medicine of the National Academies to study binational public health infrastructure and health insurance efforts. Within one year of entering into such contract, the Institute must submit a report to the appropriate congressional committees detailing its recommendations on ways to expand or improve binational public health infrastructure and health insurance efforts.

TITLE XI. MISCELLANEOUS

Section 1101: Submission to Congress of Information Regarding H-5A Nonimmigrants

Section 1101 requires the Secretaries of State and Homeland Security to provide quarterly reports to the House and Senate Judiciary Committees on the number of aliens issued H-5A

nonimmigrant visas or otherwise provided H-5A status during the preceding 3-month period. In addition, the Secretaries must issue more detailed reports to these committees on an annual basis, including statistics on the countries of origin, occupations of, geographic area of employment, and compensation paid to these H-5A workers.

Section 1102: H-5 Nonimmigrant Petitioner Account

This section provides that all petition fees paid by H-5A workers and fees and fines paid by H-5B workers shall be deposited with the U.S. Treasury into the “H-5 Nonimmigrant Petitioner Account.” The money in the account will be divided as follows: (a) 53% for the Department of Homeland Security for the adjudication and implementation of the H-5 visa programs and any other efforts necessary to carry out the provisions of this Act. Of that sum, 10% will be directed toward the border security efforts described in Title I of the bill, up to 1% will be used to promote public awareness of the H-5 visa program, to protect migrants from fraud, and to combat the unauthorized practice of law; another 1% will be set aside for the promotion of civics integration activities, and 2% will go to the Civics Integration Grant Program; (b) 15% for Department of Labor enforcement activities; (c) 15% for the Commissioner of Social Security for the creation and maintenance of the Employment Eligibility Confirmation System described in section 402 of the Act; (d) 15% for the Department of State to carry out any necessary provisions of the Act; and (e) 2% for the reimbursement of hospitals serving individuals working under the H-5 programs.

Section 1103: Anti-Discrimination Protections

Section 1103 amends INA § 274(a)(3)(B) to include H-5A and H-5B workers in the class of individuals protected under the INA’s anti-discrimination provisions.

Section 1104: Women and Children at Risk of Harm

Section 1104 amends INA § 101(a)(27) to render eligible for special immigrant status certain women and children at risk of harm and provides an expedited adjudication process for potential beneficiaries under this section. To be admitted under this section, aliens must pass a background check and must submit fingerprints upon entry. Section 1104 also requires the Secretary of Homeland Security, within one year of enactment, to report to the House and Senate Judiciary Committees on the implementation of this section, including the number of placements.

Section 1105: Expansion of S Visa

Section 1105 expands eligibility for S nonimmigrant status to aliens who are determined to possess critical reliable information concerning the activities of governments or organizations with respect to the development, sale or transfer of weapons of mass destruction and related delivery systems, and who are willing to supply or have supplied such information to the U.S. government. This section also increases the number of aliens who may be granted an S nonimmigrant visa in any given fiscal year from 250 to 3,500.

Section 1106: Volunteers

Section 1106 amends INA § 274(a)(1) to exempt certain religious denominations or organizations from criminal liability for harboring undocumented immigrants if such persons are volunteers with the denominations or organizations, helping them to carry out their vocation.

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