

108TH CONGRESS
1ST SESSION

H. R. 3651

To account for all aliens unlawfully present in the United States by providing incentives for such aliens to register with the Secretary of Homeland Security, to provide immunity from criminal prosecution for the employer of such an alien if the employer pays all taxes and penalties owed by reason of such employment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2003

Mr. ISSA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To account for all aliens unlawfully present in the United States by providing incentives for such aliens to register with the Secretary of Homeland Security, to provide immunity from criminal prosecution for the employer of such an alien if the employer pays all taxes and penalties owed by reason of such employment, 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 “Alien Accountability
5 Act”.

1 **SEC. 2. ACCOUNTING FOR ALL UNLAWFULLY PRESENT**
2 **ALIENS.**

3 (a) REGISTRATION.—

4 (1) IN GENERAL.—In the case of each alien un-
5 lawfully present in the United States on December
6 8, 2003 (or in the case of each alien who is a resi-
7 dent in a foreign contiguous territory and was habit-
8 ually unlawfully present in the United States during
9 the 6-month period ending on December 8, 2003)
10 who registers with the Secretary of Homeland Secu-
11 rity during the 6-month period beginning on a date
12 (not later than 180 days after the date of the enact-
13 ment of this Act) designated by the Secretary, and
14 provides the Secretary with such biometric identi-
15 fiers as the Secretary may require—

16 (A) if the alien is eligible for adjustment of
17 status under section 251 of the Immigration
18 and Nationality Act (as added by section 3 of
19 this Act), the Secretary shall permit the alien to
20 apply for such adjustment; or

21 (B) if the alien is not so eligible, or does
22 not desire to apply for such adjustment, and
23 has not been determined by an immigration
24 judge to be inadmissible under paragraph (2) or
25 (3) of section 212(a) of the Immigration and
26 Nationality Act (8 U.S.C. 1182(a)) or deport-

1 able under paragraph (2)(A)(iii) or (4) of sec-
2 tion 237(a) of such Act (8 U.S.C. 1227(a))—

3 (i) the Secretary shall permit the alien
4 voluntarily to depart the United States at
5 the alien's own expense in lieu of being
6 subject to proceedings under section 240 of
7 such Act (8 U.S.C. 1229a) during a vol-
8 untary departure period not exceeding 120
9 days; and

10 (ii) if the alien does so depart, the
11 Secretary shall disregard such unlawful
12 presence in the United States (and the
13 alien's unlawful entrance into the United
14 States, where applicable) for purposes of
15 any determination under such Act, or any
16 other immigration law of the United
17 States, made subsequent to such depar-
18 ture.

19 (2) EMPLOYER-EMPLOYEE JOINT REGISTRA-
20 TION.—An alien unlawfully present in the United
21 States may register under paragraph (1) alone or to-
22 gether with the alien's present or former employer.

23 (3) EMPLOYER NOTIFICATION OF UNLAWFULLY
24 EMPLOYED ALIEN.—If an employer desires to make
25 a joint registration described in paragraph (2) with

1 an alien who has not yet registered under paragraph
2 (1), but the alien refuses to do so, the employer may
3 notify the Secretary of Homeland Security of such
4 refusal.

5 (b) IMMUNITY FROM FINES AND PENALTIES FOR
6 UNLAWFUL EMPLOYMENT OF ALIENS.—

7 (1) IN GENERAL.—In the case of an employer
8 who submits a joint registration described in sub-
9 section (a)(2) or a notification described in sub-
10 section (a)(3), if the employer pays to the Secretary
11 of the Treasury any Federal tax (including penalties
12 and interest) owed by reason of the employment of
13 the alien, the employer shall considered relieved of li-
14 ability for any violation of section 274A of the Immi-
15 gration and Nationality Act (8 U.S.C. 1324a) aris-
16 ing out of such employment. Such immunity shall
17 cover employment of the alien from the commence-
18 ment of such employment through the earlier of—

19 (A) the end of the application period de-
20 scribed in section 251(a)(1) of such Act (as
21 added by section 3 of this Act), if the alien fails
22 to submit an application under such section; or

23 (B) the date on which the application of
24 the alien under such section is finally adju-
25 dicated.

1 (2) RECOUPMENT OF CERTAIN COSTS.—The
2 Secretary of the Treasury may impose a fee on an
3 employer paying taxes, penalties, or interest under
4 paragraph (1), to be set at a level necessary to re-
5 cover the costs of collecting and processing such
6 payments.

7 (3) PROVISION OF INFORMATION TO STATES.—
8 The Secretary of the Treasury shall provide to any
9 State in which an employer conducts (or has con-
10 ducted) business information that is collected by the
11 Federal Government pursuant to the employer’s sub-
12 mission of a joint registration described in sub-
13 section (a)(2) or a notification described in sub-
14 section (a)(3), or pursuant to the employer’s pay-
15 ment of taxes, penalties, or interest under paragraph
16 (1), but only if the State agrees to accept payment
17 of all State and local taxes (including penalties and
18 interest) owed by the employer in lieu of criminal
19 prosecution.

20 (c) EXIT PROGRAM.—The Secretary of Homeland Se-
21 curity shall implement an exit program to ensure that ap-
22 propriate data are collected about aliens departing volun-
23 tarily under subsection (a)(1)(B).

24 (d) MINORS.—In the case of an alien who is under
25 18 years of age, a parent or legal guardian of the alien

1 may exercise the authorities under this section on behalf
2 of the alien.

3 (e) LIMITATION ON REGISTRATION.—Any alien
4 whose unlawful presence in the United States is known
5 to officials of the Bureau of Immigration and Customs
6 Enforcement of the Department of Homeland Security (as
7 evidenced by documentary records) at any time prior to
8 the alien’s registration under this section is ineligible for
9 such registration. Any purported registration by such an
10 alien, or any purported notification made by an employer
11 under subsection (a)(3) with respect to such an alien, shall
12 be deemed null and void.

13 (f) LIMITATIONS ON VOLUNTARY DEPARTURE.—

14 (1) FINANCIAL MEANS.—No alien may be per-
15 mitted to depart voluntarily under this section un-
16 less the alien has established by clear and convincing
17 evidence that the alien has the means to depart the
18 United States and intends to do so.

19 (2) BOND.—An alien permitted to depart volun-
20 tarily under this section shall be required to post a
21 voluntary departure bond, in an amount necessary to
22 ensure that the alien will depart, to be surrendered
23 upon proof that the alien has departed the United
24 States within the time specified.

1 (3) ALIENS NOT ELIGIBLE.—The Secretary of
2 Homeland Security shall not permit an alien to de-
3 part voluntarily under this section if the alien is sub-
4 ject to pending civil or criminal proceedings, impris-
5 oned, sentenced to imprisonment, or on parole, su-
6 pervised release, or probation.

7 (4) CIVIL PENALTY FOR FAILURE TO DE-
8 PART.—In addition to being subject to removal pro-
9 ceedings under section 240 of the Immigration and
10 Nationality Act (8 U.S.C. 1229a), if an alien is per-
11 mitted to depart voluntarily under this section and
12 fails to do so within the time period specified, the
13 alien shall be subject to a civil penalty in accordance
14 with section 240B(d) of such Act (8 U.S.C.
15 1229e(d)).

16 **SEC. 3. ADJUSTMENT OF STATUS FOR CERTAIN REG-**
17 **ISTRANTS.**

18 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
19 gration and Nationality Act (8 U.S.C. 1255 et seq.) is
20 amended by inserting after section 250 the following:

21 **“SEC. 251. ADJUSTMENT OF STATUS FOR CERTAIN REG-**
22 **ISTRANTS.**

23 “(a) ADJUSTMENT OF STATUS.—The Secretary of
24 Homeland Security shall adjust the status of an alien who
25 has registered under section 2(a) of the Alien Account-

1 ability Act to that of a nonimmigrant under section
2 101(a)(15)(W) if the alien meets the following require-
3 ments:

4 “(1) APPLICATION PERIOD.—The alien applies
5 for such adjustment during the 6-month period be-
6 ginning on a date designated by the Secretary and
7 occurring not later than 6 months after the termi-
8 nation of the registration period described in such
9 section.

10 “(2) FEE.—The alien (or a present or former
11 employer of the alien) pays a fee established by the
12 Secretary in accordance with subsection (g).

13 “(3) ABANDONMENT OF OTHER APPLICATIONS
14 FOR RELIEF.—The alien must withdraw or otherwise
15 demonstrate voluntary abandonment or termination
16 of any other application for relief from removal
17 under this Act, or any other Federal immigration
18 law, which may have been pending prior to the sub-
19 mission of the application under paragraph (1), and
20 the alien must permanently relinquish the oppor-
21 tunity subsequently to submit any such application.

22 “(4) EMPLOYMENT OR SPONSORSHIP.—The
23 alien, or an employer or other sponsor of the alien,
24 has satisfied the requirements of subsection (b).

1 “(5) CONTINUOUS UNLAWFUL RESIDENCE OR
2 HABITUAL PRESENCE.—

3 “(A) IN GENERAL.—The alien must estab-
4 lish that the alien entered the United States be-
5 fore December 8, 2003, and has resided con-
6 tinuously in the United States in an unlawful
7 status since such date and through the date the
8 application is filed under this subsection.

9 “(B) NONIMMIGRANTS.—

10 “(i) IN GENERAL.—In the case of an
11 alien who entered the United States as a
12 nonimmigrant before December 8, 2003,
13 the alien must establish that the alien’s pe-
14 riod of authorized stay as a nonimmigrant
15 expired before such date through the pas-
16 sage of time.

17 “(ii) EXCHANGE VISITORS.—If the
18 alien was at any time a nonimmigrant ex-
19 change alien (as defined in section
20 101(a)(15)(J)), the alien must establish
21 that the alien was not subject to the two-
22 year foreign residence requirement of sec-
23 tion 212(e) or has fulfilled that require-
24 ment or received a waiver thereof.

1 “(C) HABITUAL BORDER CROSSERS.—Not-
2 withstanding subparagraph (A), in the case of
3 an alien who is a resident of a foreign contig-
4 uous territory and has not established a resi-
5 dence in the United States, the alien must es-
6 tablish that the alien was habitually unlawfully
7 present in the United States during the 6-
8 month period ending on December 8, 2003.

9 “(6) CRIMINAL, SECURITY, OR RELATED
10 GROUNDS.—The alien must establish that the alien
11 has not been determined by an immigration judge to
12 be inadmissible under paragraph (2) or (3) of sec-
13 tion 212(a) or deportable under paragraph
14 (2)(A)(iii) or (4) of section 237(a).

15 “(7) COOPERATION.—The alien must have pro-
16 vided truthful answers to all questions posed by offi-
17 cials of the Department of Homeland Security, and
18 otherwise have cooperated in investigative efforts by
19 such officials.

20 “(b) MEANS OF SUPPORT.—

21 “(1) EMPLOYMENT.—An employer employing
22 an alien in the United States may demonstrate (to
23 the satisfaction of the Secretary pursuant to such
24 standards as the Secretary shall by regulations es-
25 tablish) that such employment produces adequate

1 means financially to support the alien, and depend-
2 ents of the alien, for the duration of the period dur-
3 ing which the alien will be a nonimmigrant described
4 in section 101(a)(15)(W). Alternatively, if the em-
5 ployer of the alien does not desire to make such
6 demonstration, the alien may do so using adequate
7 employment documentation established by the Sec-
8 retary.

9 “(2) SPONSORSHIP.—In the case of an alien
10 who is not able to satisfy the requirements of para-
11 graph (1), if the alien is a financial dependent of an-
12 other individual, the alien may demonstrate (to the
13 satisfaction of the Secretary pursuant to such stand-
14 ards as the Secretary shall by regulations establish)
15 that such individual possesses lawful means ade-
16 quately to support the alien financially and has
17 agreed (in a legally enforceable writing promulgated
18 by the Secretary under such regulations) to provide
19 such support for the duration of the period during
20 which the alien will be a nonimmigrant described in
21 section 101(a)(15)(W).

22 “(c) IDENTIFICATION DOCUMENT.—

23 “(1) IN GENERAL.—Each alien provided status
24 under section 101(a)(15)(W) shall be given an iden-
25 tification document that uses biometric identifiers.

1 In carrying out the preceding sentence, the Sec-
2 retary of Homeland Security shall select from among
3 biometric identifiers recognized by domestic and
4 international standards organizations.

5 “(2) COST.—The cost of producing and issuing
6 the identification documents described in paragraph
7 (1) shall be taken into account in establishing fees
8 under subsection (g).

9 “(d) BENEFITS.—

10 “(1) WORK AUTHORIZATION.—The Secretary of
11 Homeland Security shall authorize an adult alien
12 whose status has been adjusted under subsection (a)
13 to engage in employment in the United States dur-
14 ing the term of the alien’s lawful status and shall
15 provide the alien with an ‘employment authorized’
16 endorsement or other appropriate document signi-
17 fying authorization of employment.

18 “(2) CHANGE IN NONIMMIGRANT CLASSIFICA-
19 TION; ADJUSTMENT OF STATUS.—In the case of a
20 nonimmigrant having lawful status under section
21 101(a)(15)(W), the Secretary of Homeland Security
22 may authorize a change of nonimmigrant classifica-
23 tion, or may adjust the status of the alien to that
24 of an alien lawfully admitted for permanent resi-

1 dence, if the alien otherwise satisfies the require-
2 ments for such change or adjustment.

3 “(3) TRAVEL ABROAD.—The Secretary of
4 Homeland Security shall permit the alien to travel
5 abroad for temporary periods without the prior con-
6 sent of the Secretary during periods of lawful status
7 as a nonimmigrant under section 101(a)(15)(W).

8 “(4) INAPPLICABILITY OF CERTAIN GROUNDS
9 FOR REMOVAL.—For purposes of obtaining the bene-
10 fits described in this subsection, and for purposes of
11 any other determination under the immigration laws
12 of the United States, any ground for removal or de-
13 nial of admission applicable to an alien granted sta-
14 tus under section 101(a)(15)(W) shall be dis-
15 regarded if the ground is reflected in the records of
16 the Department of Homeland Security or the De-
17 partment of State on the date on which the alien
18 first applied for such status.

19 “(5) SPECIAL RULE FOR HABITUAL BORDER
20 CROSSERS.—Notwithstanding any other provision of
21 this section, in the case of an alien described in sub-
22 section (a)(5)(C), the Secretary of Homeland Secu-
23 rity shall have the discretion to impose conditions on
24 the alien’s status under section 101(a)(15)(W) de-
25 signed to permit the alien to engage solely in those

1 activities in the United States in which the alien en-
2 gaged during the 6-month period described in sub-
3 section (a)(5)(C).

4 “(6) FAMILY MEMBERS MAY NOT FOLLOW TO
5 JOIN.—No relative of an alien having status under
6 section 101(a)(15)(W) may follow to join the alien.

7 “(e) MINORS.—In the case of an alien who is under
8 18 years of age, a parent or legal guardian of the alien
9 may exercise the authorities under this section on behalf
10 of the alien.

11 “(f) PERIOD OF AUTHORIZED ADMISSION.—

12 “(1) IN GENERAL.—The initial period of au-
13 thorized admission as a nonimmigrant described in
14 section 101(a)(15)(W) shall be 1 year.

15 “(2) RENEWAL.—Such initial period may be re-
16 newed by the Secretary of Homeland Security up to
17 5 times, in 1-year increments. The Secretary of
18 Homeland Security shall impose a fee on applicants
19 for status renewal in accordance with subsection (g).
20 Renewal shall be contingent on the alien, or an em-
21 ployer or other sponsor of the alien, demonstrating
22 continuous satisfaction of the employment or spon-
23 sorship requirements of subsection (b).

24 “(3) EMPLOYMENT OR SPONSORSHIP TERMI-
25 NATION.—If at any time the employment or sponsor-

1 ship conditions described in subsection (b) that were
2 the predicate for an initial or subsequent grant of
3 status as a nonimmigrant under section
4 101(a)(15)(W) terminate or change, the non-
5 immigrant shall notify the Secretary of Homeland
6 Security. The Secretary shall grant the alien 30
7 days to arrange new employment or sponsorship so
8 as to satisfy such conditions. Such 30-day period
9 may be extended by the Secretary in 30-day incre-
10 ments not more than twice. If the alien is unable to
11 satisfy such conditions within the period granted by
12 the Secretary, the Secretary shall terminate the
13 alien's authorization to remain in the United States.
14 If the Secretary determines that an alien has failed
15 to comply with the notification requirement of this
16 paragraph, the Secretary shall terminate the alien's
17 authorization to remain in the United States.

18 “(g) AMOUNT OF FEES.—Fees collected under sub-
19 section (a)(2), and upon renewal of nonimmigrant status
20 pursuant to subsection (f)(2), shall be set at a level that
21 ensures recovery of at least the following costs:

22 “(1) The cost of processing applications for ad-
23 justment of status under subsection (a)(1) and ap-
24 plications for status renewal under subsection (f)(2).

1 “(2) Other costs of administering this section
2 and section 2 of the Alien Accountability Act.

3 “(3) The cost of increasing the personnel of the
4 Bureau of Immigration and Customs Enforcement
5 by the number established under section 5(a)(2) of
6 such Act.

7 “(h) SUNSET.—The authority of the Secretary of
8 Homeland Security to adjust the status of an alien under
9 subsection (a) shall expire 6 years after the first day on
10 which any alien is provided status under section
11 101(a)(15)(W).

12 “(i) WORK AUTHORIZATION FOR APPLICANTS.—The
13 Secretary of Homeland Security may authorize an alien
14 who has applied for adjustment of status under subsection
15 (a) to engage in employment in the United States during
16 the pendency of such application and may provide the
17 alien with an ‘employment authorized’ endorsement or
18 other appropriate document signifying authorization of
19 employment, except that if such application is pending for
20 a period exceeding 180 days, and has not been denied,
21 the Secretary shall authorize such employment. Notwith-
22 standing the preceding sentence, the Secretary shall not
23 be required to authorize employment for an alien described
24 in subsection (a)(5)(C) unless the alien engaged in em-

1 ployment in the United States during the 6-month period
2 described in such subsection.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
4 for the Immigration and Nationality Act is amended by
5 inserting after the item relating to section 250 the fol-
6 lowing:

“Sec. 251. Adjustment of status for certain registrants.”.

7 **SEC. 4. NEW NONIMMIGRANT VISA CATEGORY.**

8 Section 101(a)(15) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1101(a)(15)) is amended—

10 (1) in subparagraph (U), by striking “or” at
11 the end;

12 (2) in subparagraph (V), by striking the period
13 at the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(W) an alien whose status is adjusted under
16 section 251.”.

17 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR IN-**
18 **CREASE IN NUMBER OF CERTAIN IMMIGRA-**
19 **TION-RELATED PERSONNEL.**

20 (a) IN GENERAL.—There are authorized to be appro-
21 priated for fiscal year 2005 and subsequent fiscal years
22 such sums as may be necessary to enable the Secretary
23 of Homeland Security to increase, above the number of
24 positions for which funds were allotted for the preceding
25 fiscal year, the total number of personnel of the Bureau

1 of Immigration and Customs Enforcement engaged in in-
2 terior enforcement and alien removal functions by—

3 (1) 3,000, for the fiscal year in which this Act
4 is enacted; and

5 (2) the number derived under subsection (b) for
6 each subsequent fiscal year.

7 (b) INCREASE.—The number derived under this sub-
8 section shall equal 1,000 for each 1,000,000 aliens initially
9 granted status as nonimmigrants under section
10 101(a)(15)(H)(W) of the Immigration and Nationality
11 Act (as added by section 4 of this Act) during the previous
12 fiscal year.

13 **SEC. 6. STUDY OF IMMIGRATION LEVELS.**

14 The Secretary of Homeland Security shall conduct a
15 study to determine whether, for each program under Fed-
16 eral immigration law for which a number of eligible aliens
17 is specified for a year or otherwise, such number ought
18 to be modified in view of the number of aliens registered
19 under section 2.

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