

108TH CONGRESS
2D SESSION

H. R. 4166

To amend the Immigration and Nationality Act with respect to nonimmigrants described in subparagraphs (H)(i)(b) and (L) of section 101(a)(15) of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2004

Mr. SMITH of Texas (for himself, Mr. CARTER, Mr. FLAKE, Mr. CHABOT, Mr. GOODLATTE, and Mr. MCKEON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to nonimmigrants described in subparagraphs (H)(i)(b) and (L) of section 101(a)(15) of such Act, 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 “American Workforce
5 Improvement and Jobs Protection Act”.

1 **SEC. 2. EXEMPTING ALIENS EARNING MASTER’S OR HIGH-**
2 **ER DEGREE IN UNITED STATES FROM NU-**
3 **MERICAL LIMITATIONS ON H-1B NON-**
4 **IMMIGRANTS.**

5 Section 214(g) of the Immigration and Nationality
6 Act (8 U.S.C. 1184(g)) is amended by adding at the end
7 the following:

8 “(9) For any fiscal year, the applicable numerical
9 limitation contained in paragraph (1)(A) shall not apply
10 to any nonimmigrant alien issued a visa or otherwise pro-
11 vided status under section 101(a)(15)(H)(i)(b) who has
12 earned a master’s or higher degree from an institution of
13 higher education (as defined in section 101(a) of the High-
14 er Education Act of 1965 (20 U.S.C. 1001(a))), until the
15 number of aliens who are exempted from such numerical
16 limitation during such year exceeds 20,000.”

17 **SEC. 3. MAKING PERMANENT CERTAIN REQUIREMENTS**
18 **AND AUTHORITIES WITH RESPECT TO H-1B**
19 **NONIMMIGRANTS.**

20 (a) **ATTESTATION REQUIREMENTS.**—Section
21 212(n)(1)(E)(ii) of the Immigration and Nationality Act
22 (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking “sub-
23 paragraph, and before October 1, 2003,” and inserting
24 “subparagraph”.

1 (b) FEE.—Section 214(c)(9)(A) of the Immigration
2 and Nationality Act (8 U.S.C. 1184(c)(9)(A)) is amended
3 by striking “before October 1, 2003”.

4 (c) DEPARTMENT OF LABOR INVESTIGATIVE AU-
5 THORITIES.—Section 413(e)(2) of the American Competi-
6 tiveness and Workforce Improvement Act of 1998 (8
7 U.S.C. 1182 note) is repealed.

8 (d) EFFECTIVE DATES.—

9 (1) ATTESTATION REQUIREMENTS.—The
10 amendment made by subsection (a) shall apply to
11 applications under section 212(n)(1) of the Immigra-
12 tion and Nationality Act filed on or after the date
13 that is 30 days after the date of the enactment of
14 this Act.

15 (2) FEE.—The amendment made by subsection
16 (b) shall apply to petitions under section 214(c) of
17 the Immigration and Nationality Act filed on or
18 after the date that is 30 days after the date of the
19 enactment of this Act.

20 (3) DEPARTMENT OF LABOR INVESTIGATIVE
21 AUTHORITY.—The amendment made by subsection
22 (c) shall take effect on the date of the enactment of
23 this Act.

1 **SEC. 4. FRAUD PREVENTION AND DETECTION FEE.**

2 (a) IMPOSITION OF FEE.—Section 214(c) of the Im-
3 migration and Nationality Act (8 U.S.C. 1184(c)) is
4 amended by adding at the end the following:

5 “(12)(A) In addition to any other fees authorized by
6 law, the Secretary of Homeland Security shall impose a
7 fraud prevention and detection fee on an employer filing
8 a petition under paragraph (1)—

9 “(i) initially to grant an alien nonimmigrant
10 status described in subparagraph (H)(i)(b) or (L) of
11 section 101(a)(15); or

12 “(ii) to obtain authorization for an alien having
13 such status to change employers.

14 “(B) In addition to any other fees authorized by law,
15 the Secretary of State shall impose a fraud prevention and
16 detection fee on an alien filing an application abroad for
17 a visa authorizing admission to the United States as a
18 nonimmigrant described in section 101(a)(15)(L), if the
19 alien is covered under a blanket petition described in para-
20 graph (2)(A).

21 “(C) The amount of the fee imposed under subpara-
22 graph (A) or (B) shall be \$500.

23 “(D) The fee imposed under subparagraph (A) or (B)
24 shall only apply to principal aliens and not to the spouses
25 or children who are accompanying or following to join such
26 principal aliens.

1 “(E) Fees collected under this paragraph shall be de-
2 posited in the Treasury in accordance with section
3 286(v).”.

4 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
5 Section 286 of the Immigration and Nationality Act (8
6 U.S.C. 1356) is amended by adding at the end the fol-
7 lowing:

8 “(v) H-1B AND L FRAUD PREVENTION AND DETEC-
9 TION ACCOUNT.—

10 “(1) IN GENERAL.—There is established in the
11 general fund of the Treasury a separate account,
12 which shall be known as the ‘H-1B and L Fraud
13 Prevention and Detection Account’. Notwithstanding
14 any other provision of law, there shall be deposited
15 as offsetting receipts into the account all fees col-
16 lected under section 214(c)(12).

17 “(2) USE OF FEES TO COMBAT FRAUD.—

18 “(A) SECRETARY OF STATE.—One-third of
19 the amounts deposited into the H-1B and L
20 Fraud Prevention and Detection Account shall
21 remain available to the Secretary of State until
22 expended for programs and activities at United
23 States embassies and consulates abroad—

24 “(i) to increase the number diplomatic
25 security personnel assigned exclusively to

1 the function of preventing and detecting
2 fraud by applicants for visas described in
3 subparagraph (H)(i) or (L) of section
4 101(a)(15);

5 “(ii) otherwise to prevent and detect
6 such fraud pursuant to the terms of a
7 memorandum of understanding or other
8 cooperative agreement between the Sec-
9 retary of State and the Secretary of Home-
10 land Security; and

11 “(iii) upon request by the Secretary of
12 Homeland Security, to assist such Sec-
13 retary in carrying out the fraud prevention
14 and detection programs and activities de-
15 scribed in subparagraph (B).

16 “(B) SECRETARY OF HOMELAND SECUR-
17 ITY.—One-third of the amounts deposited into
18 the H-1B and L Fraud Prevention and Detec-
19 tion Account shall remain available to the Sec-
20 retary of Homeland Security until expended for
21 programs and activities to prevent and detect
22 fraud with respect to petitions under paragraph
23 (1) or (2)(A) of section 214(c) to grant an alien
24 nonimmigrant status described in subparagraph
25 (H)(i) or (L) of section 101(a)(15).

1 (1) IN GENERAL.—Section 214(c)(2) of the Im-
2 migration and Nationality Act (8 U.S.C. 1184(c)(2))
3 is amended by adding at the end the following:

4 “(F) An alien who will serve in a capacity involving
5 specialized knowledge with respect to an employer for pur-
6 poses of section 101(a)(15)(L) and will be stationed pri-
7 marily at the worksite of an employer other than the peti-
8 tioning employer or its affiliate, subsidiary, or parent shall
9 not be eligible for classification under section
10 101(a)(15)(L) if—

11 “(i) the alien will be controlled and supervised
12 principally by such unaffiliated employer; or

13 “(ii) the placement of the alien at the worksite
14 of the unaffiliated employer is part of an arrange-
15 ment merely to provide labor for the unaffiliated em-
16 ployer rather than in connection with the provision
17 of a product or service for which specialized knowl-
18 edge specific to the petitioning employer is nec-
19 essary.”.

20 (2) APPLICABILITY.—The amendment made by
21 paragraph (1) shall apply to petitions filed on or
22 after the effective date of this section, whether for
23 initial, extended, or amended classification.

1 (b) REQUIREMENT FOR PRIOR CONTINUOUS EM-
2 PLOYMENT FOR CERTAIN INTRACOMPANY TRANS-
3 FEREEES.—

4 (1) IN GENERAL.—Section 214(c)(2)(A) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1184(c)(2)(A)) is amended by striking the last sen-
7 tence (relating to reduction of the 1-year period of
8 continuous employment abroad to 6 months).

9 (2) APPLICABILITY.—The amendment made by
10 paragraph (1) shall apply only to petitions for initial
11 classification filed on or after the effective date of
12 this section.

13 (c) MAINTENANCE OF STATISTICS.—

14 (1) IN GENERAL.—The Secretary of Homeland
15 Security shall maintain statistics regarding petitions
16 filed, approved, extended, and amended with respect
17 to nonimmigrants described in section 101(a)(15)(L)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)(L)), including the number of such non-
20 immigrants who are classified on the basis of spe-
21 cialized knowledge and the number of non-
22 immigrants who are classified on the basis of spe-
23 cialized knowledge in order to work primarily at off-
24 site locations.

1 (2) APPLICABILITY.—Paragraph (1) shall apply
2 to petitions filed on or after the effective date of this
3 section.

4 (d) EFFECTIVE DATE.—This section and the amend-
5 ments made by this section shall take effect 180 days after
6 the date of the enactment of this Act.

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