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H. R. 2895

To amend the Immigration and Nationality Act to provide for a temporary agricultural worker program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2011

Mr. DANIEL E. LUNGREN of California introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Energy and Commerce, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Immigration and Nationality Act to provide for a temporary agricultural worker program, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legal Agricultural Workforce Act''.

SEC. 2. NONIMMIGRANT AGRICULTURAL PROGRAM.

(a) NEW ''W'' NONIMMIGRANT CLASSIFICATION FOR NONIMMIGRANT AGRICULTURAL WORKERS.—Section

101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) by striking ''or'' at the end of the subparagraph (U);

(2) by striking the period at the end of subparagraph (V) and inserting ''; or''; and

(3) by adding at the end the following:

''(W) an alien having a residence in a foreign country which the alien has no intention of abandoning who is coming to the United States for a temporary period (as defined in section 220(o)) to perform services or labor in agricultural employment, as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), who meets the requirements specified in section 220, and with respect to whom the Secretary of Agriculture has notified the Secretary of Homeland Security and the Secretary of State that the intending employer has accepted the terms and conditions of such employment through successful enrollment in the nonimmigrant agricultural worker program pursuant to section 220(c).''.

(b) ESTABLISHMENT OF NONIMMIGRANT AGRICULTURAL WORKER PROGRAM.—

(1) IN GENERAL.—Chapter 2 of title II of such Act is amended by adding at the end the following:

"SEC. 220. NONIMMIGRANT AGRICULTURAL WORKER PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—The Secretary of Agriculture, in consultation with the Secretary of Homeland Security, shall establish a nonimmigrant agricultural worker program (in this section referred to as the 'program') for the admission into the United States of nonimmigrants described in section 101(a)(15)(W) (in this section referred to as a 'nonimmigrant agricultural workers') and issue all relevant regulations implementing the program.

"(2) COMPONENTS OF PROGRAM.—The program shall include the following components:

"(A) A process developed by the Secretary of Agriculture for the submission of data and information by agricultural employers that will allow such Secretary to determine the number of nonimmigrant agricultural workers required by month and annually for a 10-month period.

"(B) A process developed by the Secretary of Agriculture for the enrollment of qualified agricultural employers in the program that re-

quires enrolled employers to abide by the obligations described in subsection (f).

"(C) A process developed by the Department of Homeland Security, based upon the determination made under subsection (d) by the Secretary of Agriculture, on the need for nonimmigrant agricultural workers, for imposition of monthly and annual numerical limitations, established under such subsection, on the issuance of nonimmigrant visas for nonimmigrant agricultural employment. These visas shall be made available subject to such limitations on such workers in accordance with the preference system established under subsection (g).

"(D) A process developed by the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, by which such Secretaries can determine that persons employing nonimmigrant agricultural workers are enrolled in the program and that the nonimmigrant agricultural workers so employed possess a valid visa pursuant to section 101(a)(15)(W).

"(E) A nonimmigrant visa issued pursuant to subsection (g) shall not limit the geo-

graphical area within which an alien may be employed or limit the type of agricultural employment the alien may perform, except that the employment shall only be with a qualified agricultural employer enrolled in the program.

"(b) PRE-ENROLLMENT REQUIREMENTS.—

"(1) RECRUITMENT OF UNITED STATES WORKERS.—Not later than 30 days before filing a request to enroll in the nonimmigrant agricultural worker program pursuant to subsection (c), each person filing such a request shall list with the Department of Labor's Employment and Training Administration's Electronic Job Registry a description of the anticipated period for which workers will be needed expected beginning and ending dates), as well as a description of the wages and other terms and conditions of agricultural employment that satisfy the disclosure requirements of sections 201 and 301 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821; 1831), except that nothing in this paragraph shall cause such listing to be treated as an interstate job order under section 653 of title 20, Code of Federal Regulations.

"(2) RECORD OF UNITED STATES WORKERS.—A person or entity shall keep a record of all eligible

able, willing, and qualified United States workers applying for employment with the person in response to its filing on the Electronic Job Registry and provide such record in its request to enroll filed under subsection (c).

"(c) ENROLLMENT IN THE NONIMMIGRANT AGRICULTURAL WORKER PROGRAM.—

"(1) IN GENERAL.—A person who employs individuals to perform agricultural employment (including an association of such persons and a person who contracts for the performance of agricultural employment) with respect to agricultural commodities may submit to the Secretary of Agriculture, at such time and in such manner as the Secretary specifies, a request for enrollment in the nonimmigrant agricultural worker program.

"(2) INFORMATION REQUIRED.—The request must specify for each month concerned—

"(A) the total number and qualifications of nonimmigrant agricultural workers required in agricultural employment in each month;

"(B) the type of agricultural work required to be performed by these workers;

"(C) the anticipated period (expected beginning and ending dates) for which workers will be needed;

"(D) a copy of the information submitted to the Electronic Job Registry pursuant to subsection (b)(1); and

"(E) the record of United States workers described in subsection (b)(2) at the time of the request.

"(3) OPTIONAL INFORMATION ON ALIENS PREFERRED.—The person may also include a statement indicating a preference as to country of nationality of aliens (or names of particular aliens) desired to perform agricultural services in any such month.

"(d) DETERMINATION OF NUMERICAL LIMITATIONS ON NONIMMIGRANT AGRICULTURAL VISAS BY MONTH AND ANNUALLY.—Based upon requests for enrollment described in subsection (c), and taking into consideration the historical employment needs of agricultural employers and the reports of United States workers applying for agricultural employment listed on requests for enrollment, the Secretary of Agriculture shall advise the Secretary of Homeland Security of a numerical limitation on the issuance of nonimmigrant visas to nonimmigrant agricul-

tural workers sufficient to meet the labor needs of agricultural employers by month and annually.

"(e) STANDARDS FOR APPROVAL OF REQUESTS FOR ENROLLMENT.—

"(1) IN GENERAL.—The Secretary of Agriculture shall approve a request for enrollment submitted under subsection (c)(1) if—

"(A) the person is an agricultural employer and the worker is to be employed in agricultural work;

"(B) the request complies with the provisions of subsection (c) and the request sets forth the need for such workers;

"(C) the person has not employed or petitioned for a nonimmigrant described in section 101(a)(15)(H)(ii)(a) at the time when a request on behalf of the person is pending or granted under this subsection, or during any previous period during which the employer had a request granted under this section; and

"(D) the person is not disqualified under subsection (f)(6).

"(2) REVIEW OF CERTAIN DENIALS.—Except as provided under subsection (f), a person who is determined not to be eligible under paragraph (1) (other

than because of subparagraph (D) thereof) is entitled to an expedited review of the determination by the Secretary of Agriculture.

"(f) OBLIGATIONS UNDER PROGRAM.—Any person whose request to enroll in the nonimmigrant agricultural worker program has been granted shall ensure as follows:

"(1) NO DISPLACEMENT OF THE UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer, other than for good cause, during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks to employ nonimmigrant agricultural workers.

"(2) OFFERS TO UNITED STATES WORKERS.—The employer shall offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is sought, and will be available at the time and place of need. The employer shall post all such job openings on the Electronic Job Registry administered by the Employment and Training Administration of the Department of Labor.

"(3) WORKERS' COMPENSATION.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to United States and nonimmigrant agricultural workers, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(4) LABOR DISPUTE.—The person shall not employ a nonimmigrant agricultural worker for a specific job opportunity for which the employer is requesting a nonimmigrant agricultural worker because the former occupant of the job is on strike or being locked out in the course of a labor dispute.

"(5) NOT USED FOR NONAGRICULTURAL SERVICES.—The person shall not employ a nonimmigrant agricultural worker for services other than agricultural services.

"(6) VIOLATION OF PROGRAM REQUIREMENTS.—If the Secretary of Agriculture determines, after an opportunity for a hearing, that an enrolled employer has violated this subsection the Secretary may impose penalties, including fines and, in cases of serious violations, the disqualification of the em-

ployer from future enrollment in the program for a period of up to three years.

"(g) ALLOCATION OF VISAS.—

"(1) PREFERENCE SYSTEM.—Nonimmigrant agricultural workers who are subject to the numerical limitations specified in subsection (d) shall be allotted nonimmigrant visas and work authority as follows:

"(A) IDENTIFIED WORKERS.—Visas shall first be made available to qualified nonimmigrant agricultural workers specifically identified pursuant to subsection (c)(3).

"(B) PREVIOUSLY EMPLOYED WORKERS.—Visas shall next be made available to qualified nonimmigrant agricultural workers who have previously been employed in agricultural employment in the United States, providing priority in consideration among such workers in the order of the length of time in which they were employed.

"(C) ORDER IN WHICH APPLIED.—The remaining visas shall be made available to other qualified nonimmigrant agricultural workers strictly in the chronological order in which they apply. Waiting lists of applicants shall be main-

tained in accordance with regulations prescribed by the Secretary of State.

"(2) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of such a worker is not entitled to visa or such status by virtue of such relationship, but may be provided the same status as such a worker if the spouse or child also is a qualified nonimmigrant agricultural worker to perform agricultural employment.

"(3) CRIMINAL BACKGROUND CHECK.—In the addition to any other examination required under this Act, no visa or other documentation may be issued to an alien under section 101(a)(15)(W) until the alien has obtained successful clearance of the security and criminal background checks specified by the Secretary of Homeland Security for purposes of this section.

"(h) APPLICATION FOR AN INCREASE WHERE EXTRAORDINARY AND UNUSUAL CIRCUMSTANCES.—

"(1) IN GENERAL.—If an agricultural employer (or association or representative thereof) establishes that extraordinary and unusual circumstances have resulted in a significant change in the employer's need for nonimmigrant agricultural workers specified in the application, or in the availability of do-

mestic workers who are able, willing, and qualified to perform agricultural employment, the employer may apply to the Secretary of Agriculture (in such form and manner as the Secretary shall provide) for an increase in the numerical limitations otherwise established under subsection (d) to accommodate such emergency need. If approved, the Secretary shall forward the application to the Secretary of Homeland Security with a recommendation on the additional number of nonimmigrant agricultural worker visas found necessary.

"(2) TIMELY DETERMINATION ON APPLICATION.—The Secretary of Agriculture shall make a determination on an application under subparagraph (A) and forward its recommendations to the Secretary of Homeland Security within 72 hours of the date the application is completed.

"(3) INCREASE IN LIMITATION.—To the extent the application is approved, the Secretary of Homeland Security shall provide for an appropriate increase in the appropriate numerical limitation within 72 hours.

"(i) ENTRY OF WORKERS.—

"(1) IN GENERAL.—An alien may not be admitted to the United States as a nonimmigrant agricul-

tural worker during the three-year period beginning on the most recent date (if any) on which the alien violated a material term or condition of a previous admission as a nonimmigrant agricultural worker.

"(2) DISQUALIFICATION FOR COMMISSION OF CRIME.—An alien who commits a crime while in the United States as a nonimmigrant agricultural worker shall be ineligible to retain such status and shall be required to depart from the United States.

"(3) CONTINUOUS EMPLOYMENT.—Nonimmigrant agricultural workers admitted under this program shall be continuously employed or actively seeking employment in agricultural employment throughout the term of their admission.

"(4) DIRECTION OF NONIMMIGRANT AGRICULTURAL WORKERS TO EMPLOYMENT OPPORTUNITIES.—The Secretary of State and Secretary of Agriculture, in consultation with the Secretary of Labor, shall establish a system for providing information on available agricultural employment opportunities to individuals whose applications for nonimmigrant agricultural visas have been approved if those individuals are not named by an employer or do not have a letter of employment opportunity provided by a person enrolled in the program.

"(j) APPLICABILITY OF EMPLOYMENT LAWS.—All Federal, State, and local employment related laws applicable to United States agricultural workers shall apply to nonimmigrant agricultural workers admitted pursuant to this program.

"(k) BIOMETRIC IDENTIFICATION CARD.—The Secretary of Homeland Security shall provide each nonimmigrant agricultural worker with an identification card that contains—

"(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

"(2) biometric identifiers, including fingerprints and a digital photograph; and

"(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

"(l) TRUST FUND.—

"(1) ESTABLISHMENT.—The Secretary of Agriculture shall establish by regulation a trust fund the purpose of which is to provide, without further appropriation, funds for the administration and the enforcement of the program under this section, for the cost of the cards issued under subsection (k), for a monetary incentive for nonimmigrant agricultural

workers to return to their country of origin upon expiration of their visas under the program, and for payment with respect to emergency medical services furnished to nonimmigrant agricultural workers. The Secretary of Agriculture in consultation with the Secretary of the Treasury shall promulgate such other regulations as may be necessary to carry out this subsection.

"(2) PAYMENT OF FICA AND FUTA AMOUNTS INTO TRUST FUND.—In the case of employment of a nonimmigrant agricultural worker—

"(A) the employer shall provide for payment into the trust fund established under paragraph (1) of the sum of—

"(i) an amount equivalent to the amount of excise taxes which the employer would pay under the chapter 21 of the Internal Revenue Code of 1986 with respect to such employment if it were considered employment for the purpose of such Act; and

"(ii) an amount equivalent to (and in lieu of) the amount of excise taxes which the employer would otherwise pay under

chapter 23 of such Code with respect to such employment; and

"(B) there shall be deducted from the wages of the worker and paid into such trust fund an amount equivalent to the amount of excise taxes that the employee would pay under such chapter 21 with respect to such employment if it were considered employment for the purposes of such Act.

"(3) EXPENDITURES FROM TRUST FUND.—

"(A) USE OF EMPLOYER CONTRIBUTIONS FOR ADMINISTRATION.—Amounts described in paragraph (2)(A) paid into the trust fund shall be used for the purpose of administering and enforcing the program under this section and for the cost of the cards issued under subsection (k).

"(B) USE OF EMPLOYEE CONTRIBUTIONS FOR REPAYMENT OF EMPLOYEE CONTRIBUTIONS UPON RETURN TO COUNTRY OF ORIGIN.—Except as provided in subparagraph (C), amounts described in paragraph (2)(B) paid into the trust fund with respect to a nonimmigrant agricultural worker shall, upon application by the worker at the United States

consulate nearest the worker's residence in the country of origin, be paid to the worker if the worker demonstrates the compliance of the worker with the terms and conditions of the program.

"(C) USE OF EMPLOYEE CONTRIBUTIONS ATTRIBUTABLE TO HI TAXES FOR EMERGENCY MEDICAL SERVICES FOR NONIMMIGRANT AGRICULTURAL WORKERS.—

"(i) IN GENERAL.—Amounts described in paragraph (2)(B) paid into the trust fund which relate to excise tax in section 3101(b) of the Internal Revenue Code of 1986 shall be used to provide payment with respect to emergency medical services (as defined in clause (iii)) for nonimmigrant agricultural workers.

"(ii) ADMINISTRATION.—The Secretary of Agriculture shall establish rules, in consultation with the Secretary of Health and Human Services, with respect to the payments under this subparagraph, including methods for determining qualifications for payment and the amount of

payment to be made with respect to emergency medical services.

"(iii) EMERGENCY MEDICAL SERVICES DEFINED.—In this subparagraph, the term 'emergency medical services' means those items and services required to be provided under section 1867 of the Social Security Act (42 U.S.C. 1395dd) with respect to an individual who is a nonimmigrant agricultural worker and does not include items and services for which coverage under workers' compensation is required under subsection (f)(3) with respect to the worker.

"(m) SEMIANNUAL REPORTS TO CONGRESS.—The Secretary of Agriculture shall report to Congress semiannually regarding the program under this section. Each such report shall include a statement of the number of nonimmigrant visas issued under the program, an evaluation of the effectiveness of the program, a description of any problems related to the enforcement of the program, and any recommendations for legislation relating to the program.

"(n) MISCELLANEOUS PROVISIONS.—

"(1) DISQUALIFICATION OF NONIMMIGRANT AGRICULTURAL WORKERS FROM FINANCIAL ASSISTANCE.—An alien admitted as a nonimmigrant agricultural worker is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Secretary of Agriculture in consultation with other appropriate heads of the various departments and agencies of Government.

"(2) EXPANSION OF CONSULATES.—The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply to become nonimmigrant agricultural workers under the program to the extent such expansion is fully covered by the funds obtained in subsection (l)(3)(A).

"(3) PREEMPTION.—The provisions of this section preempt any State or local law on the same subject.

"(o) DEFINITIONS.—For purposes of this section and section 101(a)(15)(W):

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' has the meaning given

such term in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal.

"(2) TEMPORARY PERIOD.—The term 'temporary period' means that period during which a nonimmigrant agricultural worker may remain in the United States to perform agricultural employment, not to exceed 10 months in any 12 month period.".

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relation to section 219 the following new item:

"Sec. 220. Nonimmigrant agricultural worker program.".

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