

112TH CONGRESS  
2D SESSION

# H. R. 6373

To amend the Immigration and Nationality Act to simplify the petitioning procedure for H-2A workers, to expand the scope of the H-2A program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2012

Mr. GIBSON (for himself, Mr. REED, and Mr. OWENS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to simplify the petitioning procedure for H-2A workers, to expand the scope of the H-2A program, 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 “Family Farm Relief  
5 Act of 2012”.

6 **SEC. 2. ELECTRONIC FILING SYSTEM FOR H-2A PETITIONS.**

7 Not later than 1 year after the date of enactment  
8 of this Act, the Secretary of Agriculture shall establish  
9 a process for receiving petitions for nonimmigrant visas

1 under section 101(a)(15)(H)(ii)(a) of the Immigration and  
2 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)). In es-  
3 tablishing such process, the Secretary shall ensure—

4 (1) that petitioners may file such petitions over  
5 the Internet on an Internet Web page of the Sec-  
6 retary;

7 (2) that any software developed to process such  
8 petitions on such Internet Web page shall indicate to  
9 the petitioner any technical deficiency in the applica-  
10 tion prior to submission; and

11 (3) that each petitioner shall be able to file  
12 such petition in a paper format.

13 **SEC. 3. REPEAL OF 50-PERCENT DOMESTIC WORKFORCE**  
14 **REQUIREMENT.**

15 Subparagraph (B) of section 218(c)(3) of the Immi-  
16 gration and Nationality Act (8 U.S.C. 1188(c)(3)) is re-  
17 pealed, and any rule made by the Secretary of Labor or  
18 the Secretary of Homeland Security to carry out such sub-  
19 paragraph may not continue in effect.

20 **SEC. 4. PREVAILING PRACTICES SURVEY.**

21 In the case of an employer petitioning under section  
22 218 of the Immigration and Nationality Act (8 U.S.C.  
23 1188), the submission of a prevailing practice survey re-  
24 garding employment practices shall not be required.

1 **SEC. 5. ALTERATION OF REGION OF REFERENCE.**

2 Section 218(b)(3) of the Immigration and Nationality  
3 Act (8 U.S.C. 1188(b)(3)) is amended by striking “within  
4 a multi-state region of traditional or expected labor sup-  
5 ply” and inserting “within an area of 150 square miles  
6 in the United States centered around the place of employ-  
7 ment”.

8 **SEC. 6. PROHIBITION AND REPEAL OF CERTAIN RULES.**

9 (a) RULES REGARDING RECRUITMENT AND REFER-  
10 RAL REQUIREMENT.—The Secretary of Agriculture may  
11 not make any rule for purposes of carrying out section  
12 218(b)(3) of the Immigration and Nationality Act that—

13 (1) requires that an employer advertise an offer  
14 of employment—

15 (A) on a particular date; or

16 (B) in a particular publication;

17 (2) requires that an employer contact workers  
18 who the employer employed in the prior year or  
19 growing season; or

20 (3) requires that an employer submit a recruit-  
21 ment report.

22 (b) PROHIBITION ON REQUIREMENT OF CERTIFI-  
23 CATION BY EMPLOYERS.—

24 (1) IN GENERAL.—The Secretary of Agriculture  
25 or the Secretary of Homeland Security may not  
26 make any rule pertaining to a petition under section

1 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
2 ality Act, that requires an employer to provide a cer-  
3 tification of—

4 (A) recruitment advertisements; or

5 (B) recruitment reports.

6 (2) **RULE OF CONSTRUCTION.**—Nothing in this  
7 section shall be construed as limiting the authority  
8 of the Secretary to require an attestation regarding  
9 such matters from any such employer.

10 (c) **REPEAL OF EXISTING RULES.**—Any rule that is  
11 described in subsection (a) that is currently in effect may  
12 not continue in effect beginning on the date that is 60  
13 days after the date of enactment of this Act.

14 **SEC. 7. INCLUSION OF CERTAIN DAIRY WORKERS.**

15 (a) **IN GENERAL.**—Section 101(a)(15)(H)(ii)(a) of  
16 the Immigration and Nationality Act (8 U.S.C.  
17 1101(a)(15)(H)(ii)(a)) is amended by inserting “, labor  
18 as a dairy worker” before “, and the pressing of apples  
19 for cider”.

20 (b) **LENGTH OF STAY FOR DAIRY WORKERS.**—Sec-  
21 tion 218 of the Immigration and Nationality Act (8 U.S.C.  
22 1188) is amended by adding at the end the following:

23 “(j) **SPECIAL RULE FOR DAIRY WORKERS.**—Not-  
24 withstanding any other provision of this section, an H-  
25 2A worker who is admitted for purposes of performing

1 labor as a dairy worker may be admitted for a period of  
2 not more than 12 months. At the end of that period, the  
3 Secretary of Homeland Security may not approve a peti-  
4 tion to import that alien as an H-2A worker for a period  
5 of 3 months. Such a petition may be filed pertaining to  
6 that alien any number of times. Such petition may not  
7 be filed by any person who, at the time of filing, is an  
8 alien who is unlawfully present in the United States.”.

9 **SEC. 8. REPLACEMENT OF WORKERS AND EXPEDITED AD-**  
10 **MINISTRATIVE APPEALS.**

11 Section 218 of the Immigration and Nationality Act  
12 (8 U.S.C. 1188), as amended by this Act, is further  
13 amended by adding at the end the following:

14 “(k) **REPLACEMENT OF WORKERS.**—On receiving no-  
15 tice that an H-2A worker recruited or hired by an em-  
16 ployer has prematurely abandoned employment or has  
17 failed to appear for employment, the Secretary of State  
18 shall promptly issue a visa under section  
19 101(a)(15)(H)(ii)(a) to an eligible alien designated by the  
20 employer to replace that worker and the Secretary of  
21 Homeland Security shall expeditiously admit such alien  
22 into the United States.”.

1 **SEC. 9. AGRICULTURAL ASSOCIATIONS AND POOLING OF**  
2 **WORKERS.**

3 Section 218(d) of the Immigration and Nationality  
4 Act (8 U.S.C. 1188(d)) is amended to read as follows:

5 “(d) **ROLE OF AGRICULTURAL ASSOCIATIONS.**—

6 “(1) **FILING BY AGRICULTURAL ASSOCIATION**  
7 **PERMITTED.**—An application to hire an H–2A work-  
8 er may be filed by an association of agricultural em-  
9 ployers which use agricultural labor.

10 “(2) **TREATMENT OF ASSOCIATIONS ACTING AS**  
11 **EMPLOYERS.**—If an association is a joint or sole em-  
12 ployer of H–2A workers, such H–2A workers may be  
13 transferred among its members to perform agricul-  
14 tural labor of the same nature for which the applica-  
15 tion was approved.

16 “(3) **TREATMENT OF VIOLATIONS.**—

17 “(A) **INDIVIDUAL MEMBERS.**—If an indi-  
18 vidual member of a joint employer association  
19 violates any condition for approval with respect  
20 to the member’s application, the Secretary of  
21 Agriculture shall deny such application only  
22 with respect to that member of the association  
23 unless the Secretary determines that the asso-  
24 ciation or other member participated in, had  
25 knowledge of, or had reason to know of the vio-  
26 lation.

1                   “(B) ASSOCIATION OF AGRICULTURAL EM-  
2                   PLOYERS.—

3                   “(i) JOINT EMPLOYER.—If an associa-  
4                   tion representing agricultural employers as  
5                   a joint employer violates any condition for  
6                   approval with respect to the association’s  
7                   application, the Secretary of Agriculture  
8                   shall deny such application only with re-  
9                   spect to the association and may not apply  
10                  the denial to any individual member of the  
11                  association, unless the Secretary deter-  
12                  mines that the member participated in,  
13                  had knowledge of, or had reason to know  
14                  of the violation.

15                  “(ii) SOLE EMPLOYER.—If an associa-  
16                  tion of agricultural employers approved as  
17                  a sole employer violates any condition for  
18                  approval with respect to the association’s  
19                  application, no individual member of the  
20                  association may be the beneficiary of the  
21                  services of H-2A workers admitted under  
22                  this section in the occupation in which  
23                  such H-2A workers were employed by the  
24                  association which was denied approval dur-  
25                  ing the period such denial is in force.”.

1 **SEC. 10. GAO REPORT.**

2 Not later than 90 days after the date of enactment  
3 of this Act, the Comptroller General shall submit to Con-  
4 gress a report on a study—

5 (1) evaluating the effects of introducing biomet-  
6 ric identification cards to H-2A workers; and

7 (2) whether the usage of such identification  
8 cards would promote efforts to efficiently enforce the  
9 immigration laws and streamline the visa application  
10 and admission process for H-2A workers.

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