

HR 1001 IH

111th CONGRESS

1st Session

H. R. 1001

To create a new nonimmigrant visa category for registered nurses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**February 11, 2009**

Mr. SHADEGG (for himself, Mr. FLAKE, and Mr. PASTOR of Arizona) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To create a new nonimmigrant visa category for registered nurses, 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 `Nursing Relief Act of 2009'.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings- The Congress finds the following:

- (1) There are more vacant nursing positions in the United States than there are qualified registered nurses and nursing school candidates to fill those positions.
- (2) According to the Department of Labor, the current national nursing shortage exceeds 126,000.
- (3) States in the West and Southwest have a disproportionate number of nursing vacancies because of rapid population growth, which exacerbates a widening gap in the number of facilities and staff compared to patients that need care.
- (4) Foreign countries such as the Philippines, India, and China have an oversupply of nurses.
- (5) Major hospital systems in the United States spend hundreds of millions of dollars every year recruiting foreign nurses under our current immigration system. [+] FEEDBACK
- (6) Current law, with certain limited exceptions, requires health care providers to sponsor desired nurses for permanent resident status while the nurses remain outside of the United States, which can take as much as 3 years.
- (7) This cost is passed on to consumers and adds to the rising cost of health care.
- (8) Health care providers cannot efficiently and effectively recruit qualified foreign nurses through the existing immigration process.
- (9) Our health care system requires an immediate modification of Federal laws relating to recruitment of qualified foreign nurses in order to operate at an efficient and effective level.

(b) Purpose- The purpose of this Act is to create a new nonimmigrant visa category for registered nurses

and establish admission requirements for such nonimmigrants.

SEC. 3. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES.

(a) Establishment of a New Nonimmigrant Category- 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 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 who is coming temporarily to the United States to perform services as a professional nurse, as described in section 212(v)(1)(A), who meets the qualifications described in section 212(v)(1)(B), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(v)(2), and the alien spouse and children of any such principal alien, if accompanying or following to join the principal alien.'

(b) Requiring Petition of Importing Employer- Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:.

`(15)(A) The question of importing any alien as a nonimmigrant under section 101(a)(15)(W) in any specific case or specific cases shall be determined by the consular officer, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall prescribe by regulation. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

`(B) The following petitions shall be determined by the Secretary of Homeland Security, after consultation with appropriate agencies of the Government:

- `(i) A petition for an alien lawfully present in the United States to be initially granted nonimmigrant status described in section 101(a)(15)(W).
- `(ii) A petition for an alien having such status to obtain an extension of stay.
- `(iii) A petition to obtain authorization for an alien having such status to change employers.'

(c) Shifting Burden of Proof for Nonimmigrant Status- Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking `(L) or (V)' and inserting `(L), (V), or (W)'

(d) Allowing Petition for Permanent Residence While in Nonimmigrant Status- Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by striking `(L), or (V)' and inserting `(L), (V), or (W)'

(e) Other Admission Requirements- Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended--

- (1) by redesignating the second subsection (t) (added by section 1(b)(2)(B) of Public Law 108-449 (118 Stat. 3470)) as subsection (u); and
- (2) by adding at the end the following:

`(v)(1)(A) For purposes of section 101(a)(15)(W) and this subsection--

`(i) the term `professional nurse' means a person who applies the art and science of professional nursing in a manner that reflects comprehension of principles derived from the physical, biological, and behavioral sciences; and

`(ii) the term `professional nursing' includes--

`(I) making clinical judgments involving the observation, care, and counsel of persons requiring nursing care;

`(II) administering of medicines and treatments prescribed by the physician or dentist; and

`(III) participation in the activities for the `promotion of health and prevention of illness in others.

`(B) The qualifications referred to in section 101(a)(15)(W) are that the alien is qualified, under the laws (including such temporary or interim licensing provisions or nurse licensure compact provisions which authorize the nurse to be employed) governing the place of intended employment, to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed, except that if the alien has completed all licensing requirements except for submission of a social security account number, the alien may provide a letter from the State Board of Nursing of the State of intended employment which confirms that the alien is eligible for license issuance upon presentation of such number.

`(2)(A) The attestation referred to in section 101(a)(15)(W) is an attestation by the employer to the following:

`(i) The employer is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(W) wages that are at least--

`(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

`(II) the prevailing wage level for the occupational classification in the area of employment;

whichever is greater, based on the best information available as of the time of the attestation.

`(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed at the worksite.

`(iii) The alien will be paid the wage rate for registered nurses similarly employed at the worksite.

`(iv) There is not a strike or lockout in the course of a labor dispute in the registered nurse classification at the worksite.

`(v) The employer has provided notice of the filing of the attestation to the bargaining representative of the registered nurses at the worksite or, if there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the worksite through physical posting in a conspicuous location at the worksites.

`(vi) The number of workers sought, the work locations, and the wage rate and conditions under which they will be employed.

`(B) The employer shall make a copy of the attestation available for public examination, within 10 working days after the date on which the attestation is filed, at the employer's principal place of business or worksite (along with such accompanying documents as are necessary).

`(C) The Secretary of Labor shall review the attestation only for completeness and obvious inaccuracies. Unless such Secretary finds that the attestation is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(W) within 7 days of the date of the filing of the attestation.

`(D) An attestation under subparagraph (A)--

`(i) shall expire on the date that is the later of--

`(I) the end of the 3-year period beginning on the date on which it is filed; or

`(II) the end of the period of admission under section 101(a)(15)(W) of the last alien with respect to whose admission it applied (in accordance with clause (ii)); and

`(ii) shall apply to petitions described in section 214(c)(15) filed during the 3-year period beginning on the date on which it is filed if the employer states in each such petition that it continues to comply with the conditions in the attestation.

`(E) An employer may meet the requirements of this paragraph with respect to more than one professional nurse in a single attestation.

`(F) An employer may meet the requirements of this paragraph with respect to more than one work location in a single attestation.

`(3)(A) The Secretary of Labor shall compile, and make available for public examination in a timely manner, a list identifying employers that have filed attestations under paragraph (2)(A). Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, and period of intended employment.

`(B) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in an attestation submitted under paragraph (2)(A) or a misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). The Secretary shall conduct an investigation under this subparagraph if there is reasonable cause to believe that an employer willfully failed to meet a condition or willfully misrepresented a material fact. No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

`(C) Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in subparagraph (B). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this clause on such complaints.

`(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has willfully failed to meet a condition specified in an attestation or that there was a willful misrepresentation of material fact in the attestation, the Secretary shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per nurse per violation, with the total penalty not to exceed \$10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Secretary of Homeland Security shall not approve petitions described in section 214(c)(15) by the employer during a period of at least 1 year for nurses to be employed by the employer.

`(4)(A) A nonimmigrant alien described in subparagraph (B) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(W) is authorized to accept new employment upon the filing by the prospective employer of a petition described in section 214(c)(15)(B)(iii) on behalf of such nonimmigrant. Employment authorization shall continue for such alien until such petition is adjudicated. If such petition is denied, such authorization shall cease.

`(B) A nonimmigrant alien described in this subparagraph is a nonimmigrant alien--

`(i) who has been lawfully admitted into the United States;

`(ii) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security; and

` (iii) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

` (5)(A) The initial period of authorized admission for a nonimmigrant under section 101(a)(15)(W) may not exceed 3 years, and may be extended, except that the total period of authorized admission as such a nonimmigrant may not exceed 6 years.

` (B)(i) Subparagraph (A) shall not apply to any nonimmigrant on whose behalf a petition under section 204(b) to accord the alien immigrant status under section 203(b), or an application for adjustment of status under section 245 to accord the alien status under section 203(b), has been filed, if 365 days or more have elapsed since the filing of such petition or application.

` (ii) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under clause (i) in 1-year increments until such time as a final decision is made on the alien's lawful permanent residence.

` (iii) Notwithstanding subparagraph (A) and clause (ii), any alien who is the beneficiary of an approved petition filed under section 204(b) for a status under paragraph (1), (2), or (3) of section 203(b), and who is eligible to be granted that status but for application of the per-country limitations on immigrants under such paragraph, may apply for, and the Secretary of Homeland Security may grant, one or more extensions of nonimmigrant status under section 101(a)(15)(W) until such time as an immigrant visa is immediately available to the alien and a decision on the alien's application for adjustment of status is made.

` (6) In the case of an alien spouse, who is accompanying or following to join a principal alien admitted under section 101(a)(15)(W), the Secretary of Homeland Security shall authorize the alien spouse to engage in employment in the United States and shall provide the spouse with an `employment authorized' endorsement or other appropriate work permit.

` (7)(A)(i) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(W) during any fiscal year is 50,000.

` (ii) If the numerical limitation in clause (i)--

` (I) is reached during a fiscal year, the numerical limitation applicable to the subsequent fiscal year shall be 120 percent of the preceding numerical limitation; or

` (II) is not reached during a fiscal year, the numerical limitation shall remain the same during the subsequent fiscal year.

` (B) Notwithstanding subparagraph (A), aliens may be issued visas or otherwise provided nonimmigrant status under such section without regard to numerical limitation if they are only working in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

` (C) The numerical limitations in subparagraph (A) shall only apply to principal aliens and not to the spouse or children of such aliens.'

SEC. 4. REGULATIONS; EFFECTIVE DATE.

(a) Regulations- Not later than 90 days after the date of the enactment of this Act, the following shall promulgate regulations to carry out the amendments made by section 3:

(1) The Secretary of Labor, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

(2) The Secretary of Homeland Security, in consultation with the Secretary of State.

(b) Effective Date- Notwithstanding subsection (a), the amendments made by section 3 shall take effect 90 days after the date of the enactment of this Act, regardless of whether the regulations promulgated under

subsection (a) are in effect on such date.

SEC. 5. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

This Act is enacted pursuant to the power granted to Congress under article I, section 8, clause 4, to establish an uniform rule naturalization, and under article I, section 8, clause 18, of the United States Constitution.

END

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