

a shortage of United States workers in the occupation and area of intended employment for which the Y nonimmigrant is sought—

“(i) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the application; and

“(ii) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

“(I) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the application was filed with the Department of Labor and ending on the date that is 14 days before such filing date; and

“(II) the wages that the employer would be required by law to provide for the Y nonimmigrant were used in conducting recruitment.

“(H) INELIGIBILITY—The employer is not currently ineligible from using the Y nonimmigrant program described in this section.

“(I) BONA FIDE OFFER OF EMPLOYMENT—The job for which the Y nonimmigrant is sought is a bona fide job—

“(i) for which the employer needs labor or services;

“(ii) which has been and is clearly open to any United States worker; and

“(iii) for which the employer will be able to place the Y nonimmigrant on the payroll.

“(J) PUBLIC AVAILABILITY AND RECORDS RETENTION—A copy of each application filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

“(i) be provided to every Y nonimmigrant employed under the petition;

“(ii) be made available for public examination at the employer's place of business or work site;

“(iii) be made available to the Secretary of Labor during any audit; and

“(iv) remain available for examination for 5 years after the date on which the application is filed.

“(K) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of a Y nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with section 218A(q)(2).

“(L) ACTUAL NEED FOR LABOR OR SERVICES—The application was filed not more than 60 days before the date on which the employer needed labor or services for which the Y nonimmigrant is sought.

“(d) AUDIT OF ATTESTATIONS—

“(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY—The Secretary of Homeland Security shall refer all petitions approved under section 218A to the Secretary of Labor for potential audit.

“(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

“(e) INELIGIBLE EMPLOYERS.—

“(1) IN GENERAL.—In addition to any other applicable penalties under law, the Secretary of Labor and the Secretary of Homeland Security shall not, for the period described in paragraph (2), approve an employer's petition or application for a labor certification under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

“(A) has, with respect to the application required under subsection (a), including attestations required under subsection (b)—

“(i) misrepresented a material fact;

“(ii) made a fraudulent statement; or

“(iii) failed to comply with the terms of such attestations; or

“(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor;

“(C) has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law;

“(D) has, within three years prior to the date of application:

“(i) committed any hazardous occupation orders violation resulting in injury or death under the child labor provisions contained in section 12 of the Fair Labor Standards Act and any regulation thereunder;

“(ii) been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6 of the Fair Labor Standards Act; or

“(iii) been assessed a civil money penalty for any repeated or willful violation of the overtime provisions of section 7 of the Fair Labor Standards Act or any regulations thereunder, other than a repeated violation that is self-reported; or

“(E) has, within three years prior to the date of application, received a citation for:

“(i) a willful violation; or

“(ii) repeated serious violations involving injury or death of section 5 of the Occupational Safety and Health Act, or any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act, or any regulations prescribed pursuant to that. This subsection shall also apply to equivalent violations of a plan approved under section 18 of the Occupational Safety and Health Act.

“(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years. However, an employer who has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law shall be permanently ineligible to participate in the labor certification programs.

“(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and is located in a county where the unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for a waiver of this provision. The Secretary shall promulgate regulations for the expeditious review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in one of the three publications that have the highest circulation in the labor market that is likely to be patronized by a potential worker for not fewer than 20 consecutive days under the rules and conditions set forth in section (b). An employer who has provided proof of advertising in accordance with this section shall be deemed to be in compliance with the requirements of subsection (b)(1)(D) of this section. The Secretary shall provide for a process to prompt-

ly respond to all waiver requests, and shall maintain on the Department of Labor's website an annual list of counties to which this subsection applies.

“(4) INELIGIBILITY FOR PETITIONS.—The Secretary of Labor shall inform the Secretary of Homeland Security of a determination under paragraph (1) with respect to a specific employer. The Secretary of Homeland Security shall not, for the period described in paragraph (2), approve the petitions or applications of any such employer for any immigrant or nonimmigrant program, regardless of whether such application or petition requires a labor certification.

“(f) PROHIBITION OF INDEPENDENT CONTRACTORS.—

“(1) COVERAGE.—Notwithstanding any other provision of law—

“(A) a Y nonimmigrant is prohibited from being treated as an independent contractor under any federal or state law;

“(B) no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor contractor, may treat a Y nonimmigrant as an independent contractor; and

“(C) this provision shall not be construed to prevent employers who operate as independent contractors from employing Y nonimmigrants as employees.

“(2) APPLICABILITY OF LAWS.—A Y nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

“(3) TAX RESPONSIBILITIES.—With respect to each employed Y nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

“(g) WHISTLEBLOWER PROTECTION.—

“(1) PROHIBITED ACTIVITIES.—It shall be unlawful for an employer or labor contractor of a Y nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

“(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act or [title of bill]; or

“(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act or [title of bill].

“(2) RULEMAKING.—The Secretary of labor shall promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(Y) or 101(a)(15)(H) who files a nonfrivolous complaint (as defined by the Federal Rules of Civil Procedure) regarding a violation of this Act, [title of bill] or any other Federal labor or employment law, or any other rule or regulation pertaining to such laws and is otherwise eligible to remain and work in the United States prior to the expiration of the maximum period of stay authorized for that nonimmigrant classification for a period of 120 consecutive days or such additional time period as the Secretary shall determine through rulemaking is necessary to collect information or take evidence from the nonimmigrant alien regarding a complaint or agency investigation. This period shall be allowed to exceed the maximum period of stay authorized for that nonimmigrant classification if the Secretary of labor has designated the nonimmigrant alien as a necessary witness.

“(h) LABOR RECRUITERS.—With respect to the employment of Y nonimmigrant workers—