

“(k) PENALTIES.—With respect to violations of the provisions of this section relating to the employment of Y-1 or Y-2B nonimmigrants—

“(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of this section, the Secretary may impose administrative remedies and penalties, including—

“(A) back wages;

“(B) benefits; and

“(C) civil monetary penalties.

“(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as, civil penalty—

“(A) for a violation of subsections (b) through (g)—

“(i) a fine in an amount not more than \$2,000 per violation per affected worker and \$4,000 per violation per affected worker for each subsequent violation;

“(ii) if the violation was willful, a fine in an amount not more than \$5,000 per violation per affected worker;

“(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than \$25,000 per violation per affected worker; and

“(B) for a violation of subsection (h)—

“(i) a fine in an amount not less than \$500 and not more than \$4,000 per violation per affected worker;

“(ii) if the violation was willful, a fine in an amount not less than \$2,000 and not more than \$5,000 per violation per affected worker; and

“(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than \$6,000 and not more than \$35,000 per violation per affected worker.

“(C) for knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters)—

“(1) a fine in an amount not more than \$4,000 per affected worker; and

“(2) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed \$5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.

“(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

“(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than \$35,000, or both.

“(I) Definitions—Unless otherwise provided, in this section and section 218A:

“(1) AGGRIEVED PERSON.—term ‘aggrieved person’ means a person adversely affected by an alleged violation of this section, including—

“(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

“(B) representative authorized by a worker whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

“(2) AREA OF EMPLOYMENT.—The terms ‘area of employment’ and ‘area of intended employment’ mean the area within normal commuting distance of the worksite or physical location at which the work of the Y worker is or will be performed. If such worksite or location is within a Metropolitan Sta-

tistical Area, any place within such area is deemed to be within the area of employment.

“(3) CONVENTION AGAINST TORTURE.—The term ‘Convention Against Torture’ shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, 112 Stat. 2681, 2681-821).

“(4) DERIVATIVE Y NONIMMIGRANT.—The term ‘derivative’ Y nonimmigrant means an alien described at paragraph (Y)(iii) of subsection 101(a)(15).

“(5) ELIGIBLE; ELIGIBLE INDIVIDUAL.—The term ‘eligible,’ when used with respect to an individual, or ‘eligible individual,’ means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

“(6) EMPLOY; EMPLOYEE; EMPLOYER.—The terms ‘employ,’ ‘employee,’ and ‘employer’ have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

“(7) FELONY.—The term ‘felony,’ with regard to a conviction in a foreign jurisdiction, means a crime for which sentence of one year or longer in prison may be imposed.

“(8) FORCE MAJEURE EVENT.—The term ‘force majeure event’ shall mean an event that is beyond the control of either party, including, without limitation, hurricanes, earthquakes, act of terrorism, war, fire, civil disorder or other events of a similar or different kind.

“(9) FOREIGN LABOR CONTRACTOR.—The term ‘foreign labor contractor’ means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

“(10) FOREIGN LABOR CONTRACTING ACTIVITY.—The term ‘foreign labor contracting activity’ means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

“(11) FULL TIME.—The term ‘full time,’ with respect to a job in agricultural labor or services, means any job in which the individual is employed 5.75 or more hours per day; and for any job, means in any period of authorized admission or portion of such period, employment or study for at least 90% of the total number of work-hours in such period, calculated at a rate of 1,575 work-hours per year (1,438 work-hours per year for agricultural employment). Each credit-hour of study shall be counted as the equivalent of 50 work-hours.

“(12) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

“(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(14) MISDEMEANOR.—The term ‘misdemeanor,’ with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of no more than 364 days in prison may be imposed.

“(15) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the filing of the application under section 218B by an entity not under the control of the employer making such filing which restricts the employer’s access to

water for irrigation purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

“(16) SEASONAL.—Labor is performed on a ‘seasonal’ basis if—

“(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

“(B) from its nature, it may not be continuous or carried on throughout the year.

“(17) SECRETARY.—Except as otherwise provided, the term ‘Secretary’ means the Secretary of Homeland Security.

“(18) SEPARATION FROM EMPLOYMENT.—The term ‘separation from employment’ means the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(19) UNITED STATES WORKER.—The term ‘United States worker’ means an employee who is—

“(A) a citizen or national of the United States; or

“(B) an alien who is—

“(i) lawfully admitted for permanent residence;

“(ii) admitted as a refugee under section 207;

“(iii) granted asylum under section 208; or

“(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.”.

“(20) Y NONIMMIGRANT; Y NONIMMIGRANT WORKER

“(A) The term ‘Y nonimmigrant’ means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15), or the spouse or child of such nonimmigrant in derivative status under (Y)(iii);

“(B) The term ‘Y nonimmigrant worker’ means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15); and

“(21) Y-1 NONIMMIGRANT; Y-1 WORKER.—The term ‘Y-1 nonimmigrant’ or ‘Y-1 worker’ means an alien admitted to the United States under paragraph (i) of subsection 101(a)(15)(Y).

“(23) Y-2B NONIMMIGRANT; Y-2B WORKER.—The term ‘Y-2B nonimmigrant’ or ‘Y-2B worker’ means an alien admitted to the United States under paragraph (ii) of subsection 101(a)(15)(Y).

“(24) Y-3 NONIMMIGRANT.—The term ‘Y-3 nonimmigrant’ means an alien admitted to the United States under paragraph (iii) of subsection 101(a)(15)(Y).’

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

“Sec. 218B. Employer obligations.”.

Subtitle B—Seasonal Agricultural Nonimmigrant Temporary Workers

SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended inserting the following after section 218B:

“SEC. 218C. H-2A EMPLOYER APPLICATIONS.

“(a) APPLICATIONS TO THE SECRETARY OF LABOR.—