

authorized admission under this subsection exceeds 7% and the percentage is not significantly affected by countries whose nationals have a disproportionately high rate of aliens overstaying their period of authorized admission, the Secretary may, in his discretion, determine that no more visas may be issued under this subsection as of the date of the second consecutive report described in subparagraph (A) finding an overstay rate in excess of 7%.

“(D) EFFECT ON EXISTING VISAS.—In the event the Secretary determines to that no more visas shall be issued under subparagraphs (B) or (C); all visas previously issued under this subsection and still valid on the date that the Secretary determines that no more visas should be issued shall expire on the visa’s date of expiration or 12 months after the date of the determination, whichever is soonest.

“(5) PERMANENT BARS FOR OVERSTAYS.—

“(A) IN GENERAL.—Any alien admitted as visitor for pleasure under the terms and conditions of this subsection who remains in the United States beyond his or her authorized period of admission is permanently barred from any future immigration benefits under the immigration laws, except—

“(i) asylum under section 208(a);

“(ii) withholding of removal under section 241(b)(3); or

“(iii) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

“(B) EXCEPTION.—Overstay of the authorized period of admission granted to aliens admitted as visitors for pleasure under the terms and conditions of this subsection may be excused in the discretion of the Secretary where it is demonstrated that:

“(i) the period of overstay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstance; and

“(ii) the alien has not otherwise violated his or her nonimmigrant status.

“(6) BAR ON SPONSOR OF OVERSTAY.—The United States citizen or Y-1 nonimmigrant sponsor of an alien—

“(A) admitted as visitor for pleasure under the terms and conditions of this subsection, and

“(B) who remains in the United States beyond his or her authorized period of admission, shall be permanently barred from sponsoring that alien or any other alien for admission as a visitor for pleasure under the terms and conditions of this subsection, and, in the case of a Y-1 nonimmigrant sponsor, shall have his Y-1 nonimmigrant status terminated.

“(7) CONSTRUCTION.—Nothing in this subsection shall be construed, except as provided in this subsection, to make inapplicable the requirements for admissibility and eligibility, as well as the terms and conditions of admission, as a nonimmigrant under section 101(a)(15)(B).”

SEC. 507. PREVENTION OF VISA FRAUD.

(a) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding a paragraph at the end:

“(h) FRAUD PREVENTION.—The Secretary of Homeland Security may audit and evaluate the information furnished as part of the applications filed under subsection (a) and refer evidence of fraud to appropriate law enforcement agencies based on the audit information.”

(b) Sections 286(v)(2)(B) and (C) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B), (C)) are amended to read as follows:

“(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the

Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including but not limited to fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i), (H)(ii), or (L) of section 101(a)(15).

“(C) SECRETARY OF LABOR.—One third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs, and activities described in section 212(n), and for enforcement programs, and fraud detection and prevention activities not otherwise authorized under 212(n), to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants.”

SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-BASED AND EMPLOYMENT-BASED IMMIGRANTS.

(a) Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended by amending paragraph (2) to read as follows:

“(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND MERIT-BASED IMMIGRANTS.—Subject to paragraphs (3), (4), (5), (6), and (7), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed 10 percent (in the case of a single foreign state) or 3 percent (in the case of dependent area) of the total number of such visas made available under such subsections in that fiscal year;

(b) Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended by adding at the end the following:

“(6) RULES FOR CERTAIN FAMILY-BASED PETITION FILED BEFORE MAY 1, 2005.—In the event that the per country levels in paragraph (2) prevent the use of otherwise available visas described in section 201(c)(1)(B), then the per country level will not apply for such visas.

“(7) EXCEPTION FOR Z NONIMMIGRANTS.—Paragraph (2) shall not apply to aliens who are nonimmigrants described in section 101(a)(15)(Z) of this Act who are eligible to seek lawful permanent resident status based on a petition for classification under section 203(b)(1) of this Act.”

TITLE VI—NONIMMIGRANTS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

SEC. 601.

(a) IN GENERAL.—Notwithstanding any other provision of law, (including section 244(h) of the Immigration and Nationality Act (hereinafter “the Act”) (8 U.S.C. 1254a(h)), the Secretary may permit an alien, or dependent of such alien, described in this section, to remain lawfully in the United States under the conditions set forth in this Title.

(b) DEFINITION OF NONIMMIGRANTS.—Section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) is amended by inserting at the end the following new subparagraph—

“(Z) subject to Title VI of the [Insert title of Act], an alien who—

“(i) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, is employed, and seeks to continue performing labor, services or education; or

“(ii) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, and

“(I) is the spouse or parent (65 years of age or older) of an alien described in (i); or

“(II) was within two years of the date on which [NAME OF THIS ACT] was intro-

duced, the spouse of an alien who was subsequently classified as a Z nonimmigrant under this section, or is eligible for such classification, if—

“(aa) the termination of the relationship with such spouse was connected to domestic violence; and

“(bb) the spouse has been battered or subjected to extreme cruelty by the spouse or parent who is a Z nonimmigrant.

“(iii) is under 18 years of age at the time of application for nonimmigrant status under this subparagraph, is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, and was born to or legally adopted by at least one parent who is at the time of application described in (i) or (ii).”

(c) PRESENCE IN THE UNITED STATES.—

(1) IN GENERAL.—The alien shall establish that the alien was not present in lawful status in the United States on January 1, 2007, under any classification described in section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE.—For purposes of this section, an absence from the United States without authorization for a continuous period of 90 days or more than 180 days in the aggregate shall constitute a break in continuous physical presence.

(d) OTHER CRITERIA.—

(1) GROUNDS OF INELIGIBILITY.—An alien is ineligible for Z nonimmigrant status if the Secretary determines that the alien—

(A)(1) is inadmissible to the United States under section 212(a) of the Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(2) Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

(B) is subject to the execution of an outstanding administratively final order of removal, deportation, or exclusion;

(C) is described in or is subject to section 241(61)(5) of the Act;

(D) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(E) is an alien—

(i) for whom there are reasonable grounds for believing that the alien has committed a serious criminal offense as described in section 101(h) of the Act outside the United States before arriving in the United States; or

(ii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(F) has been convicted of—

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) 3 or more misdemeanors under Federal or State law; or

(iv) a serious criminal offense as described in section 101(h) of the Act;

(G) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(H) with respect to an applicant for Z-2 or Z-3 nonimmigrant status, a Z-2 nonimmigrant, or a Z-3 nonimmigrant who is under 18 years of age, the alien is ineligible for nonimmigrant status if the principal Z-1 nonimmigrant Z-1 nonimmigrant status applicant is ineligible.

(I) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (C) if the alien has not been physically removed from the United States and if the alien demonstrates that his departure from