

No later than the conclusion of the eighth fiscal year after the effective date of section 218D of the Immigration and Nationality Act, the Secretary will determine the total number of qualified applicants who have followed the procedures set forth in this section. The number calculated pursuant to this paragraph shall be 20 percent of the total number of qualified applicants. The Secretary will calculate the number of visas needed per year.

(3) SECOND SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST STATUS- No later than the conclusion of the thirteenth fiscal year after the effective date of section 218D of the Immigration and Nationality Act, the Secretary will determine the total number of qualified applicants not described in paragraph (2) who have followed the procedures set forth in this section. The number calculated pursuant to this paragraph shall be the lesser of:

(A) the number of qualified applicants, as determined by the Secretary pursuant to this paragraph; and

(B) the number calculated pursuant to paragraph (2).

(g) Conforming Amendments-

(1) Section 212(d)(12)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(12)(B)) is amended by striking `201(b)(2)(A)' and inserting `201(b)(2)';

(2) Section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is amended by striking `201(b)(2)(A)(i)' and inserting `201(b)(2)';

(3) Section 204(a) of the Immigration and Nationality Act (8 U.S.C. 1154(a)) is amended by striking `201(b)(2)(A)(i)' each place it appears and inserting `201(b)(2)';

(4) Section 214(r)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(r)(3)(A)) is amended by striking `201(b)(2)(A)(i)' and inserting `201(b)(2)'.

## **SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF FAMILY MEMBERS IN HARDSHIP CASES.**

(a) IN GENERAL- The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding a new section 203A reading:

## **` SEC. 203A. IMMIGRANT VISAS FOR HARDSHIP CASES.**

` (a) IN GENERAL- Immigrant visas under this section may not exceed 5,000 per fiscal year.

` (b) DETERMINATION OF ELIGIBILITY- The Secretary of Homeland Security may grant an immigrant visa to an applicant who satisfies the following qualifications:

` (1) FAMILY RELATIONSHIP- Visas under this section will be given to aliens who are:

` (A) the unmarried sons or daughters of citizens of the United States;

` (B) the unmarried sons or the unmarried daughters of aliens lawfully admitted for permanent residence;

` (C) the married sons or married daughters of citizens of the United States; or

` (D) the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age,

` (2) NECESSARY HARDSHIP- The petitioner must demonstrate to the satisfaction of the Secretary of Homeland Security that the lack of an immigrant visa under this clause would result in extreme hardship to the petitioner or the beneficiary that cannot be relieved by temporary visits as a nonimmigrant.

` (3) INELIGIBILITY TO IMMIGRATE THROUGH OTHER MEANS- The alien described in clause (1) must be ineligible to immigrate or adjust status through other means, including but not limited to obtaining an immigrant visa filed for classification under section 201(b)(2)(A) or section 203(a) or (b) of this Act, and obtaining cancellation of removal under section 240A(b) of this Act. A determination under this section that an alien is eligible to immigrate through other means does not foreclose or restrict any later determination on the question of eligibility by the Secretary of Homeland Security or the Attorney General.

` (c) Processing of Applications-

` (1) An alien selected for an immigrant visa pursuant to this section shall remain eligible to receive such visa only if the alien files an application for an immigrant visa or an application for adjustment of status within the fiscal year in which the visa becomes available, or at such reasonable time

as the Secretary may specify after the end of the fiscal year for petitions approved in the last quarter of the fiscal year.

`(2) All petitions for an immigrant visa under this section shall automatically terminate if not granted within the fiscal year in which they were filed. The Secretary may in his discretion establish such reasonable application period or other procedures for filing petitions as he may deem necessary in order to ensure their orderly processing within the fiscal year of filing.

`(3) The secretary may reserve up to 2,500 of the immigrant visas under this section for approval in the period between March 31 and September 30 of a fiscal year.

`(d) Decisions whether an alien qualifies for an immigrant visa under this section are in the unreviewable discretion of the Secretary.'

## **SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.**

(a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended--

(1) in subsection (a)--

(A) by inserting `and' at the end of paragraph (1);

(B) by striking `; and' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended--

(1) by striking subsection (c);

(2) in subsection (d), by striking `(a), (b), or (c),' and inserting `(a) or (b),';

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking `(a), (b), or (c)' and inserting `(a) or (b)';

and

(5) in subsection (g), by striking `(a), (b), and (c)' and inserting `(a) and (b)'.

(c) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended--

(1) by striking subsection (a)(1)(I);

(2) by redesignating subparagraphs (J), (K), and (L) of subsection (a)(1) as subparagraphs (I), (J), and (K), respectively; and

(3) in subsection (e), by striking `(a), (b), or (c)' and inserting `(a) or (b)'.

(d) REPEAL OF TEMPORARY REDUCTION IN VISAS FOR OTHER WORKERS- Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act, as amended (Public Law 105-100; 8 U.S.C. 1153 note), is repealed.

(e) Effective Date-

(1) The amendments made by this section shall take effect on October 1, 2008;

(2) No alien may receive lawful permanent resident status based on the diversity visa program on or after the effective date of this section.

(g) CONFORMING AMENDMENTS- Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended by redesignating paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f), and (g), respectively.

## **SEC. 506. FAMILY VISITOR VISAS.**

(a) Section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) is amended to read as follows:

`(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he or she has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure. The requirement that the alien have a residence in a foreign country which the alien has no intention of abandoning shall not apply to an alien described in section 214(s) who is seeking to enter as a temporary

visitor for pleasure;'

(b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

`(s) Parent Visitor Visas-

`(1) IN GENERAL- The parent of a United States citizen at least 21 years of age, or the spouse or child of an alien in nonimmigrant status under 101(a)(15)(Y)(i), demonstrating satisfaction of the requirements of this subsection may be granted a nonimmigrant visa under section 101(a)(15)(B) as a temporary visitor for pleasure.

`(2) REQUIREMENTS- An alien seeking a nonimmigrant visa under this subsection must demonstrate through presentation of such documentation as the Secretary may by regulations prescribe, that--

`(A) the alien's United States citizen son or daughter who is at least 21 years of age or the alien's spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), is sponsoring the alien's visit to the United States;

`(B) the sponsoring United States citizen, or spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), has, according to such procedures as the Secretary may by regulations prescribe, posted on behalf of the alien a bond in the amount of \$1,000, which shall be forfeit if the alien overstays the authorized period of admission (except as provided in subparagraph (5)(B)) or otherwise violates the terms and conditions of his or her nonimmigrant status; and

`(C) the alien, the sponsoring United States citizen son or daughter, or the spouse or parent in nonimmigrant status under 101(a)(15)(Y)(i), possesses the ability and financial means to return the alien to his or her country of residence.

`(3) TERMS AND CONDITIONS- An alien admitted as a visitor for pleasure under the provisions of this subsection--

`(A) may not stay in the United States for an aggregate period in excess of 30 days within any calendar year;

`(B) must, according to such procedures as the Secretary may by regulations prescribe, register with the Secretary upon departure from the United States; and

` (C) may not be issued employment authorization by the Secretary or be employed.

` (4) Certification-

` (A) REPORT- No later than January 1 of each year, the Secretary of Homeland Security shall submit a written report to Congress estimating the percentage of aliens admitted to the United States during the preceding fiscal year as visitors for pleasure under the terms and conditions of this subsection who have remained in the United States beyond their authorized period of admission (except as provided in subparagraph (5)(B)). When preparing this report, the Secretary shall determine which countries, if any, have a disproportionately high rate of nationals overstaying their period of authorized admission under this subsection.

` (B) TERMINATION OF ELIGIBILITY OF NATIONALS OF CERTAIN COUNTRIES- Except as provided in subparagraph (C), if the Secretary reports under subparagraph (A) for two consecutive fiscal years that the percentage of aliens overstaying their period of authorized admission exceeds 7 percent, the Secretary may, in his discretion, determine that no more visas under this section may be issued for those countries whose nationals have a disproportionately high rate of aliens overstaying their period of authorized admission under this subsection.

` (C) TERMINATION OF THE PROGRAM- Notwithstanding subparagraph (B), if the Secretary reports under subparagraph (A) for two consecutive fiscal years that the percentage of aliens overstaying their period of authorized admission under this subsection exceeds 7 percent 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 percent.

` (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 a 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 circumstances; 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 a 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 a 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.'

## **SEC. 509. EXEMPTION FROM IMMIGRANT VISA LIMIT.**

Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by inserting after subparagraph (G), as added by section 503 of this Act, the following:

` (H) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and who have a parent who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).'

## **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 Z 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 introduced, 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.