

The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

`(B) DOCUMENTATION OF WORK HISTORY-

`(i) BURDEN OF PROOF- An alien applying for a Z-A visa or applying for adjustment of status described in subsection (j) has the burden of proving by a preponderance of the evidence that the alien has performed the requisite number of hours or days of agricultural employment required for such application or adjustment of status, as applicable.

`(ii) TIMELY PRODUCTION OF RECORDS- If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of such records under regulations to be promulgated by the Secretary.

`(iii) SUFFICIENT EVIDENCE- An alien may meet the burden of proof under clause (i) to establish that the alien has performed the requisite number of hours or days of agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

`(4) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES-

`(A) REQUIREMENTS- Each qualified designated entity shall agree--

`(i) to forward to the Secretary an application submitted to that entity pursuant to paragraph (2)(B) if the alien for whom the application is being submitted has consented to such forwarding;

`(ii) not to forward to the Secretary any such application if such an alien has not consented to such forwarding; and

`(iii) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

`(B) NO AUTHORITY TO MAKE DETERMINATIONS- No qualified designated entity may make a determination required by this section to be made by the Secretary.

`(5) APPLICATION FEES-

` (A) FEE SCHEDULE- The Secretary shall provide for a schedule of fees that--

` (i) shall be charged for applying for a Z-A visa under this section or for an adjustment of status described in subsection (j); and

` (ii) may be charged by qualified designated entities to help defray the costs of services provided to such aliens making such an application.

` (B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES- A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

` (6) LIMITATION ON ACCESS TO INFORMATION- Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to [X].

` (7) TREATMENT OF APPLICANTS-

(A) IN GENERAL- An alien who files an application under this section to receive a Z-A visa and any spouse or child of the alien seeking a Z-A dependant visa, on the date described in subparagraph (B)--

` (i) shall be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

` (ii) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

` (iii) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien is determined to be ineligible for Z-A visa; and

` (iv) may not be considered an unauthorized alien (as defined in section 274A) until the date on which [the alien's application for a Z-A visa] is denied.

` (B) TIMING OF PROBATIONARY BENEFITS-

` (i) IN GENERAL- Subject to clause (ii), an alien who submits an application for a Z-A visa under subsection (d), including any evidence required under such subsection, and any spouse or child of the alien seeking a Z-A dependent visa shall receive the probationary benefits described in clauses (i) through (iv) of subparagraph (A) at the earlier of--

` (I) the date and time that the alien has passed all appropriate background checks, including name and fingerprint checks; or

` (II) the end of the next business day after the date that the Secretary receives the alien's application for Z-A visa.

` (ii) EXCEPTION- If the Secretary determines that the alien fails the background checks referred to in clause (i)(I), the alien may not be granted probationary benefits described in clauses (i) through (iv) of subparagraph (A).

` (C) PROBATIONARY AUTHORIZATION DOCUMENT- The Secretary shall provide each alien granted probationary benefits described in clauses (i) through (iv) of subparagraph (A) with a counterfeit-resistant document that reflects the benefits and status set forth in subparagraph (A). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed.

` (D) CONSTRUCTION- Nothing in this section may be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under this paragraph.

` (8) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS-

` (A) BEFORE APPLICATION PERIOD- Beginning on the date of enactment of the AgJOBS Act of 2007, the Secretary shall provide that, in the case of an alien who is apprehended prior to the first date of the application period described in subsection (c)(1)(B) and who can establish a nonfrivolous case of eligibility for a Z-A visa (but for the fact that the alien may not apply for such status until the beginning of such period), the alien--

` (i) may not be removed; and

` (ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

` (B) DURING APPLICATION PERIOD- The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for Z-A visa during the application period described in subsection (c)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien--

` (i) may not be removed; and

` (ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

` (e) NUMERICAL LIMITATIONS-

` (1) Z-A VISA- The Secretary may not issue more than 1,500,000 Z-A visas.

` (2) Z-A DEPENDENT VISA- The Secretary may not count any Z-A dependent visa issued against the numerical limitation described in paragraph (1).

` (f) EVIDENCE OF NONIMMIGRANT STATUS-

` (1) IN GENERAL- Documentary evidence of nonimmigrant status shall be issued to each alien granted a Z-A visa or a Z-A dependent visa.

` (2) FEATURES OF DOCUMENTATION- Documentary evidence of a Z-A visa or a Z-A dependent visa--

` (A) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and other biometric identifiers that can be authenticated;

` (B) shall be designed in consultation with U.S. Immigration and Customs Enforcement's Forensic Document Laboratory;

` (C) shall serve as a valid travel and entry document for an alien granted a Z-A visa or a Z-A dependent visa for the purpose of applying for admission to the United States where the alien is applying for admission at a port of entry;

` (D) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A; and

` (E) shall be issued to the alien granted the visa by the Secretary promptly after final adjudication of such alien's application for the visa, except that an alien may not be granted a Z-A visa or a Z-A dependent visa until all appropriate background checks on each alien are completed to the satisfaction of the Secretary.

` (g) FINE- An alien granted a Z-A visa shall pay a fine of \$100 to the Secretary.

` (h) TREATMENT OF ALIENS GRANTED A Z-A VISA-

` (1) IN GENERAL- Except as otherwise provided under this subsection, an alien granted a Z-A visa or a Z-A dependent visa shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of this Act.

` (2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS- An alien granted a Z-A visa shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under subsection (d).

` (3) TERMS OF EMPLOYMENT-

` (A) PROHIBITION- No alien granted a Z-A visa may be terminated from employment by any employer during the period of a Z-A visa except for just cause.

` (B) TREATMENT OF COMPLAINTS-

` (i) ESTABLISHMENT OF PROCESS- The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted a Z-A visa who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

` (ii) INITIATION OF ARBITRATION- If the Secretary finds that an alien has filed a complaint in accordance with clause (i) and there is reasonable cause to believe that the alien was terminated from

employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

` (iii) ARBITRATION PROCEEDINGS- The arbitrator shall conduct the proceeding under this subparagraph in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

` (iv) EFFECT OF ARBITRATION FINDINGS- If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted a Z-A visa without just cause, the Secretary shall credit the alien for the number of days of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of subsection (f)(2).

` (v) TREATMENT OF ATTORNEY'S FEES- Each party to an arbitration under this subparagraph shall bear the cost of their own attorney's fees for the arbitration.

` (vi) NONEXCLUSIVE REMEDY- The complaint process provided

for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

` (vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS- Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

` (4) RECORD OF EMPLOYMENT-

` (A) IN GENERAL- Each employer of an alien who is granted a Z-A visa shall annually--

` (i) provide a written record of employment to the alien; and

` (ii) provide a copy of such record to the Secretary.

` (B) CIVIL PENALTIES-

` (i) IN GENERAL- If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted a Z-A visa has failed to provide the record of employment required under subparagraph (A) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed \$1,000 per violation.

` (ii) LIMITATION- The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this subsection.

` (i) TERMINATION OF A GRANT OF Z-A VISA-

` (1) IN GENERAL- The Secretary may terminate a Z-A visa or a Z-A dependent visa granted to an alien only if the Secretary determines that the alien is deportable.

` (2) GROUNDS FOR TERMINATION- Prior to the date that an alien granted a Z-A visa or a Z-A dependent visa becomes eligible for adjustment of status described in subsection (j), the Secretary may deny adjustment to permanent resident status and provide for termination of the alien's Z-A visa or Z-A dependent visa if--

` (A) the Secretary finds, by a preponderance of the evidence, that the grant of a Z-A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

` (B) the alien--

` (i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(4);

` (ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

` (iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500; or

` (iv) in the case of an alien granted a Z-A visa, fails to perform the agricultural employment described in subsection (j)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in subsection (j)(1)(A)(iii).

` (3) REPORTING REQUIREMENT- The Secretary shall promulgate regulations to ensure that the alien granted a Z-A visa complies with the qualifying agricultural employment described in subsection (j)(1)(A) at the end of the 5-year work period, which may include submission of an application pursuant to this subsection.

` (j) ADJUSTMENT TO PERMANENT RESIDENCE-

` (1) Z-A VISA- Except as provided in this subsection, the Secretary shall award the maximum number of points available pursuant to section 203(b)(1) and adjust the status of an alien granted a Z-A visa to that of an alien lawfully admitted for permanent residence under this Act, if the Secretary determines that the following requirements are satisfied:

` (A) QUALIFYING EMPLOYMENT-

` (i) IN GENERAL- Subject to clauses (ii) and (iii), the alien has performed at least--

` (I) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of enactment of the AgJobs Act of 2007; or

` (II) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on such date of enactment.

` (ii) FOUR-YEAR PERIOD OF EMPLOYMENT- An alien shall be considered to meet the requirements of clause (i) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on such date of enactment.

` (iii) EXTRAORDINARY CIRCUMSTANCES- In determining whether an alien has met the requirement of clause (i), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that clause if the alien was unable to work in agricultural employment due to--

` (I) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

` (II) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

` (III) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

` (B) PROOF- An alien may demonstrate compliance with the requirements of subparagraph (A) by submitting--

` (i) the record of employment described in subsection (h)(4); or

` (ii) such documentation as may be submitted under subsection (d)(3).

` (C) APPLICATION PERIOD- Not later than 8 years after the date of the enactment of the AgJOBS Act of 2007, the alien must--

` (i) apply for adjustment of status; or

` (ii) renew the alien's Z visa status as described in section 601(k)(2).

` (D) FINE- The alien pays to the Secretary a fine of \$400; or

` (2) SPOUSES AND MINOR CHILDREN- Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under paragraph (1), including any individual who was a minor child on the date such alien was granted a Z-A visa, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

` (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS- The Secretary may deny an alien granted a Z-A visa or a Z-A dependent visa an adjustment of status under this Act and provide for termination of such visa if--

` (A) the Secretary finds by a preponderance of the evidence that grant of the Z-A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

` (B) the alien--

` (i) commits an act that makes the alien inadmissible to the United States under section 212, except as provided under subsection (c)(4);

` (ii) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

` (iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500.

` (4) GROUNDS FOR REMOVAL- Any alien granted Z-A visa status who does not apply for adjustment of status or renewal of Z status under section 601(k)(2) prior to the expiration of the application period described in subsection (c)(1)(B) or who fails to meet the other requirements of

paragraph (1) by the end of the application period, is deportable and may be removed under section 240.

` (5) PAYMENT OF TAXES-

` (A) IN GENERAL- Not later than the date on which an alien's status is adjusted as described in this subsection, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that--

` (i) no such tax liability exists;

` (ii) all such outstanding tax liabilities have been paid; or

` (iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

` (B) APPLICABLE FEDERAL TAX LIABILITY- In this paragraph, the term 'applicable Federal tax liability' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under paragraph (1)(A) for which the statutory period for assessment of any deficiency for such taxes has not expired.

` (C) IRS COOPERATION- The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

` (6) ENGLISH LANGUAGE-

` (A) IN GENERAL- Not later than the date on which a Z-A nonimmigrant's status is adjusted or renewed under section 601(k)(2), a Z-A nonimmigrant who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2).

` (B) EXCEPTION- The requirement of subparagraph (A) shall not apply to any person who, on the date of the filing of the person's application for an extension of Z-A nonimmigrant status--

(i) is unable because of physical or developmental disability or mental impairment to comply therewith;

(ii) is over fifty years of age and has been living in the United States for periods totaling at least twenty years, or

(iii) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years.

` (7) PRIORITY OF APPLICATIONS-

` (A) BACK OF LINE- An alien may not adjust status to that of a lawful permanent resident under this subsection until 30 days after the date on which an immigrant visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act that were filed before May 1, 2005 (referred to in this paragraph as the `processing date').

` (B) OTHER APPLICANTS- The processing of applications for an adjustment of status under this subsection shall be processed not later than 1 year after the processing date.

` (C) CONSULAR APPLICATION-

(i) IN GENERAL- A Z-A nonimmigrant's application for adjustment of status to that of an alien lawfully admitted for permanent residence must be filed in person with a United States consulate abroad.

(ii) PLACE OF APPLICATION- Unless otherwise directed by the Secretary of State, a Z-A nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular office in the alien's country of origin.