

115TH CONGRESS
1ST SESSION

H. R. 641

To reform the H-2A program for nonimmigrant agricultural workers, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. ALLEN (for himself, Mr. BOST, Mr. CARTER of Georgia, Mr. CRAMER,
Mr. MESSER, and Mr. RICE of South Carolina) introduced the following
bill; which was referred to the Committee on the Judiciary

A BILL

To reform the H-2A program for nonimmigrant agricultural
workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as—

5 (1) the “Better Agriculture Resources Now
6 Act”; or

7 (2) the “BARN Act”.

8 **SEC. 2. H-2A PROGRAM REFORMS.**

9 (a) DEFINITION OF AGRICULTURAL LABOR OR SERV-
10 ICES.—Section 101(a)(15)(H)(ii)(a) of the Immigration

1 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is
2 amended—

3 (1) by striking “Secretary of Labor” and in-
4 serting “Secretary of Agriculture”;

5 (2) by striking “and the pressing” and insert-
6 ing “the pressing”; and

7 (3) by striking “of a temporary” and all that
8 follows through the end and inserting “, and the
9 handling, planting, drying, packing, packaging, proc-
10 essing, freezing, grading, storing, or delivering to
11 storage or to market or to a carrier for transpor-
12 tation to market, in its unmanufactured state, any
13 agricultural or horticultural commodity, or”.

14 (b) ADMINISTERING OFFICIAL.—Section 218 of such
15 Act (8 U.S.C. 1188) is amended by striking “Secretary
16 of Labor” each place such term appears and inserting
17 “Secretary of Agriculture”.

18 (c) DEEMED APPROVAL.—Section 218(c)(3)(A) of
19 such Act (8 U.S.C. 1188(c)(3)(A)) is amended by insert-
20 ing before “In considering” the following: “The Secretary
21 of Agriculture shall review such application and shall pro-
22 vide a determination on the application within 15 days of
23 the date of the filing of the application. If the Secretary
24 does not comply with the deadline in the preceding sen-
25 tence, the application shall be deemed approved.”.

1 (d) EXPERIENCE REQUIREMENT.—Section
2 218(c)(3)(A) of such Act (8 U.S.C. 1188(c)(3)(A)), as
3 amended by subsection (b), is further amended by adding
4 at the end the following: “A job offer may contain an expe-
5 rience requirement as long as work performed in an illegal
6 status may not be counted towards such requirement.”.

7 (e) ELIMINATION OF 50-PERCENT RULE.—Section
8 218(c)(3) of such Act (8 U.S.C. 1188(c)(3)) is amended—
9 (1) by striking “(A)”; and
10 (2) by striking subparagraph (B).

11 (f) WAGE RATE.—Section 218(a)(1)(B) of such Act
12 (8 U.S.C. 1188(a)(1)(B)) is amended by striking the pe-
13 riod at the end and inserting “, except that no employer
14 shall be required to pay a wage rate greater than 115 per-
15 cent of the greatest of the Federal and State minimum
16 wage rates.”.

17 (g) DEADLINE FOR FILING APPLICATIONS.—Section
18 218(c)(1) of such Act (8 U.S.C. 1188(c)(1)) is amended
19 by striking “45” and inserting “30”.

20 (h) PERIOD OF AUTHORIZED NONIMMIGRANT STA-
21 TUS.—Section 218(h) of such Act (8 U.S.C. 1188(h)) is
22 amended by adding at the end the following:

23 “(3) The initial period of authorized status as a non-
24 immigrant described in section 101(a)(15)(H)(ii)(a) shall
25 not exceed 1 year. Such period may be extended once by

1 the Secretary of Homeland Security for a period of up
2 to 1 year, except that such extension may be granted only
3 if the Secretary of Agriculture determines that the em-
4 ployer has engaged in the positive recruitment efforts de-
5 scribed in subsection (b)(4) (including the obligation to
6 circulate the employer's job offer through the interstate
7 employment service system). In the case of a non-
8 immigrant who has remained in the United States for the
9 full 2-year period, the nonimmigrant shall be obliged to
10 depart the United States and shall not be eligible to re-
11 apply for a visa to re-enter the United States as such a
12 nonimmigrant for a period of 2 months. If at any time
13 during a period of authorized admission the alien has a
14 work lapse period of 60 days or more, the visa of the alien
15 shall be deemed revoked and the alien shall be required
16 to depart from the United States, except that if an em-
17 ployer has applied for a certification under subsection
18 (a)(1) with respect to an alien who has a work lapse of
19 60 days or less, such period shall not begin until after
20 the Secretary has made a determination on the application
21 consistent with subsection (c).”.

22 (i) HOUSING.—Section 218(c)(4) of such Act (8
23 U.S.C. 1188(c)(4)) is amended to read as follows:

24 “(4) HOUSING REQUIREMENT.—

1 “(A) IN GENERAL.—Except as provided
2 under subparagraph (F), each employer apply-
3 ing for workers under subsection (b) shall offer
4 to provide housing at no cost to—

5 “(i) all workers in job opportunities
6 for which the employer has applied; and

7 “(ii) all other workers in the same oc-
8 cupation at the same place of employment
9 whose place of residence is beyond normal
10 commuting distance.

11 “(B) COMPLIANCE.—An employer meets
12 the requirement under subparagraph (A) if the
13 employer—

14 “(i) provides the workers with housing
15 that meets applicable Federal standards
16 for temporary labor camps; or

17 “(ii) secures housing for the workers
18 that—

19 “(I) meets applicable local stand-
20 ards for rental or public accommoda-
21 tion housing, or other substantially
22 similar class of habitation; or

23 “(II) in the absence of applicable
24 local standards, meets State stand-
25 ards for rental or public accommoda-

tion housing or other substantially similar class of habitation.

“(C) INSPECTION.—

“(i) REQUEST.—At the time an employer that plans to provide housing described in subparagraph (B) to H-2A workers files an application for H-2A workers with the Secretary of Agriculture, the employer shall request a certificate of inspection by an approved Federal or State agency.

“(ii) INSPECTION; FOLLOWUP.—Not later than 28 days after the receipt of a request under clause (i), the Secretary of Agriculture shall ensure that—

“(I) such an inspection has been conducted; and

“(II) any necessary followup has been scheduled to ensure compliance with the requirements under this paragraph.

“(iii) DELAY PROHIBITED.—The Secretary of Agriculture may not delay the approval of an application for failing to com-

1 ply with the deadlines set forth in clause
2 (ii).

3 “(D) RULEMAKING.—The Secretary of Ag-
4 riculture shall issue regulations that address
5 the specific requirements for the provision of
6 housing to workers engaged in the range pro-
7 duction of livestock.

8 “(E) HOUSING ALLOWANCE.—

9 “(i) AUTHORITY.—If the Governor of
10 a State certifies to the Secretary of Agri-
11 culture that there is adequate housing
12 available in the area of intended employ-
13 ment for migrant farm workers and H-2A
14 workers who are seeking temporary hous-
15 ing while employed in agricultural work, an
16 employer in such State may provide a rea-
17 sonable housing allowance instead of offer-
18 ing housing pursuant to subparagraph (A).
19 An employer who provides a housing allow-
20 ance to a worker shall not be required to
21 reserve housing accommodations for the
22 worker.

23 “(ii) ASSISTANCE IN LOCATING HOUS-
24 ING.—Upon the request of a worker seek-
25 ing assistance in locating housing, an em-

1 employer providing a housing allowance under
2 clause (i) shall make a good faith effort to
3 assist the worker in identifying and locat-
4 ing housing in the area of intended em-
5 ployment.

6 “(iii) LIMITATION.—A housing allow-
7 ance may not be used for housing that is
8 owned or controlled by the employer. An
9 employer who offers a housing allowance to
10 a worker, or assists a worker in locating
11 housing which the worker occupies under
12 this subparagraph shall not be deemed a
13 housing provider under section 203 of the
14 Migrant and Seasonal Agricultural Worker
15 Protect Act (29 U.S.C. 1823) solely by vir-
16 tue of providing such housing allowance.

17 “(iv) OTHER REQUIREMENTS.—

18 “(I) NONMETROPOLITAN COUN-
19 TY.—If the place of employment of
20 the workers provided an allowance
21 under this subparagraph is a non-
22 metropolitan county, the amount of
23 the housing allowance under this sub-
24 paragraph shall be equal to the state-
25 wide average fair market rental for

1 existing housing for nonmetropolitan
2 counties for the State, as established
3 by the Secretary of Housing and
4 Urban Development pursuant to sec-
5 tion 8(c) of the United States Hous-
6 ing Act of 1937 (42 U.S.C. 1437f(c)),
7 based on a 2-bedroom dwelling unit
8 and an assumption of 2 persons per
9 bedroom.

10 “(II) METROPOLITAN COUNTY.—

11 If the place of employment of the
12 workers provided an allowance under
13 this subparagraph is in a metropolitan
14 county, the amount of the housing al-
15 lowance under this subparagraph shall
16 be equal to the statewide average fair
17 market rental for existing housing for
18 metropolitan counties for the State, as
19 established by the Secretary of Hous-
20 ing and Urban Development pursuant
21 to section 8(c) of the United States
22 Housing Act of 1937 (42 U.S.C.
23 1437f(c)), based on a 2-bedroom
24 dwelling unit and an assumption of 2
25 persons per bedroom.

1 “(v) INFORMATION.—If the employer
2 provides a housing allowance to H-2A em-
3 ployees, the employer shall provide a list of
4 the names and local addresses of such
5 workers to the Secretary of Agriculture
6 and the Secretary of Homeland Security
7 once per contract period.”.

8 (j) LEGAL ASSISTANCE FROM THE LEGAL SERVICES
9 CORPORATION.—Section 218(h) of such Act (8 U.S.C.
10 1188(h)), as amended by subsection (g), is further amend-
11 ed by adding at the end the following:

12 “(4)(A) The Legal Services Corporation may not pro-
13 vide legal assistance for, or on behalf of, any alien, and
14 may not provide financial assistance to any person or enti-
15 ty that provides legal assistance for, or on behalf of, any
16 alien, unless—

17 “(i) the alien is present in the United States at
18 the time the legal assistance is provided; and

19 “(ii) the parties to the dispute have attempted,
20 in good faith, mediation or other non-binding dis-
21 pute resolution of all issues involving all such par-
22 ties.

23 “(B) If an employer and a nonimmigrant having sta-
24 tus under section 101(a)(15)(H)(ii)(a) have an arbitration

1 arrangement, the Legal Services Corporation shall respect
2 the arbitration process and outcome.

3 “(C) No employer of a nonimmigrant having status
4 under section 101(a)(15)(H)(ii)(a) shall be required to
5 permit any recipient of a grant or contract under section
6 1007 of the Legal Services Corporation Act (42 U.S.C.
7 2996f), or any employee of such a recipient, to enter upon
8 the employer’s property, unless such recipient or employee
9 has a pre-arranged appointment with a specific non-
10 immigrant having such status.”.

11 (k) EFFECT OF VIOLATIONS WHILE IN UNITED
12 STATES.—Section 218(f) of such Act (8 U.S.C. 1188(f))
13 is amended to read as follows:

14 “(f) EFFECT OF VIOLATIONS.—

15 “(1) OVERSTAYS.—An alien may not be admit-
16 ted to the United States as a nonimmigrant having
17 status under section 101(a)(15)(H)(ii)(a) if the alien
18 was admitted to the United States as such a non-
19 immigrant within the previous 5-year period and the
20 alien remained after the alien’s period of authorized
21 admission expired or otherwise violated a term or
22 condition of such previous admission.

23 “(2) FRAUD.—An alien may not be admitted to
24 the United States as a nonimmigrant having status
25 under section 101(a)(15)(H)(ii)(a) if the alien was

1 admitted to the United States as such a non-
2 immigrant on the basis of fraud.

3 “(3) OTHER CRIMES.—An alien may not be ad-
4 mitted to the United States as a nonimmigrant hav-
5 ing status under section 101(a)(15)(H)(ii)(a) if the
6 alien was admitted to the United States as such a
7 nonimmigrant and committed an offense that ren-
8 dered the alien deportable while in the United States
9 pursuant to such admission.

10 “(4) EMPLOYER BAR.—The Secretary of Agri-
11 culture may not issue a certification under sub-
12 section (a) with respect to an employer if the Sec-
13 retary finds, after notice and an opportunity for a
14 hearing, that the employer knowingly hired an H-2A
15 worker whose period of authorized admission had ex-
16 pired or that the employer otherwise engaged in
17 fraud or misrepresentation with respect to the pro-
18 gram for the admission of such workers into the
19 United States. The Secretary of Homeland Security
20 shall not thereafter approve petitions filed by such
21 employer under section 214(c). An employer that es-
22 tablishes that it has complied in good faith with the
23 requirements of this Act has established an affirma-

- 1 tive defense in an action brought under this para-
- 2 graph.”.

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