



FEDERATION FOR AMERICAN IMMIGRATION REFORM

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## Short Summary of H.R. 1773

### THE AGRICULTURAL GUESTWORKER ACT

H.R. 1773, the Agricultural Guestworker Act (AG Act) scraps the current **seasonal** H-2A agricultural nonimmigrant visa and replaces it with a new H-2C visa program that significantly expands the scope and duration of “temporary” agricultural work.

- Dairies, food processors, and other **non-seasonal** agricultural employers are eligible to use the H-2C program.
- Expands the length of the visa from 12 months to 18- and 36- month visas.
- Allows for 500,000 H-2Cs/year while the current H-2A program only admits around 55,000/year despite being uncapped.
  - The Secretary of Agriculture has discretionary authority to increase the cap based on certain “market” factors or on an emergency basis for severe shortages of ag labor/services.
- Spouses and children cannot accompany H-2C workers unless they independently qualify as guestworkers.
- Shepherders never have to leave the country, in effect creating a permanently revolving nonimmigrant visa program for one particular industry.

The AG Act also grants amnesty in the form of H-2C work authorization for illegal aliens currently in the agricultural workforce.

- H.R. 1773 grants amnesty to illegal aliens physically present in the U.S. as of April 25, 2013 and engaged in agricultural work as long as they remain in agriculture.
- H.R. 1773 waives the following grounds of inadmissibility:
  - Alien workers without labor certification (INA 212(a)(5));
  - Aliens present without permission or parole (INA 212(a)(6)(A));
  - Aliens who fail to attend removal proceedings (absconders) (INA 212(a)(6)(B));
  - Aliens who obtain immigration documents through fraud (INA 212(a)(6)(C)(i));
  - Aliens who falsely claim citizenship (INA 212(a)(6)(C)(ii));
  - Stowaway aliens (INA 212(a)(6)(D));
  - Alien smugglers (INA 212(a)(6)(E));
  - Aliens subject to a final order of removal for document fraud (INA 212(a)(6)(F));
  - Alien students who violate terms of their visas (INA 212(a)(6)(G));
  - Immigrants who do not possess proper documents (INA 212(a)(7)(A));
  - Nonimmigrants who do not possess proper documents (INA 212(a)(7)(B)); and
  - The 3 and 10-year bars based on the duration of unlawful presence in the U.S. (INA 212(a)(9)(B))
    - For only this provision, the bill grants the Secretary of DHS discretionary authority to waive the 3 and 10-year bars to admission for **previously removed** illegal aliens who are the spouses or children of U.S. citizens or

LPRs. They will receive amnesty as an H-2C worker unless the unlawful presence occurred after the alien was granted H-2C status.

- H.R. 1773 exempts amnestied illegal aliens from the H-2C cap if they work 575 hours of ag work within 2 years of enactment.

H.R. 1773 creates two categories of H-2C visas: contract employment and at-will employment.

#### Contract-based employment

- H-2C employers cannot displace U.S. workers 30 days prior to hiring H-2C workers.
- Employers must attest that they have/will offer the job to any eligible U.S. worker who applies and is qualified before the H-2C worker starts. However, employers are not required to offer the job to U.S. workers after the H-2C worker starts the job.
  - This eliminates the “50-percent” rule under current law that requires an employer to replace an H-2A worker with a qualified U.S. worker who applies up until 50 percent of the work/contract is complete.
- Employers pay a \$100 fee plus \$10 for each approved H-2C worker; max fee is \$1,000.
- Employers must pay the greater of the prevailing wage or the greatest applicable minimum wage. Employers must guarantee 50 percent of contract wages unless the worker voluntarily abandons employment or the worker is terminated for cause.
- An H-2C worker has 7 days to arrive at his/her job site upon entering the country, and 14 days to depart after employment ends (30 days if seeking new employment). Failure to depart within that time is treated as having been unlawfully present for 180 days for purposes of the 3 and 10-year bars.
- Employers must notify DHS within 24 hours if an H-2C worker abandons employment.
- Temporary workers must return home for 1/6 duration of time they worked in the U.S. before being eligible to apply for a new H-2C visa. Non-seasonal workers must depart for the lesser of 3 months or 1/6 duration before being eligible to apply for a new H-2C visa.
- Creates a Trust Fund to incentivize H-2C workers to return home after visa expires by withholding 10% of wages.
  - Workers may collect withheld wages from the U.S. embassy/consulate in home country within 30 days after visa expires if they (1) establish compliance with the H-2C program and (2) confirm their identity.
- Employers are not required to reimburse H-2C workers’ transportation expenses and are not required to provide housing.

#### At-will employment

- At-will H-2C employment is permissible once E-Verify is mandatory for all employers and the database is capable of indicating whether a person is work authorized for all occupations or just agriculture.
- At-will workers are given a 30-day grace period to find new employment.
- Employers must register to be an H-2C employer. Designation is good for 3 years with unlimited 3 year renewals.
- The Secretary shall revoke the designation if the employer is subject to disqualification.
- Mediation/arbitration to protect employers from frivolous lawsuits.