

117TH CONGRESS
1ST SESSION

H. R. 1037

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2021

Mr. ALLEN 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 (c), 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)”;

10 (2) by striking subparagraph (B); and

11 (3) by redesignating clauses (i) and (ii) as sub-
12 paragraphs (A) and (B).

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

19 (g) DEADLINE FOR FILING APPLICATIONS.—Section
20 218(c)(1) of such Act (8 U.S.C. 1188(c)(1)) is amended
21 by striking “45” and inserting “30”.

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

1 “(3) The initial period of authorized status as a non-
2 immigrant described in section 101(a)(15)(H)(ii)(a) shall
3 not exceed 1 year. Such period may be extended once by
4 the Secretary of Homeland Security for a period of up
5 to 1 year, except that such extension may be granted only
6 if the Secretary of Agriculture determines that the em-
7 ployer has engaged in the positive recruitment efforts de-
8 scribed in subsection (b)(4) (including the obligation to
9 circulate the employer’s job offer through the interstate
10 employment service system). In the case of a non-
11 immigrant who has remained in the United States for the
12 full 2-year period, the nonimmigrant shall be obliged to
13 depart the United States and shall not be eligible to re-
14 apply for a visa to re-enter the United States as such a
15 nonimmigrant for a period of 2 months. If at any time
16 during a period of authorized admission the alien has a
17 work lapse period of 60 days or more, the visa of the alien
18 shall be deemed revoked and the alien shall be required
19 to depart from the United States, except that if an em-
20 ployer has applied for a certification under subsection
21 (a)(1) with respect to an alien who has a work lapse of
22 60 days or less, such period shall not begin until after
23 the Secretary has made a determination on the application
24 consistent with subsection (c).”.

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

3 “(4) HOUSING REQUIREMENT.—

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

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

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

14 “(B) COMPLIANCE.—An employer meets
15 the requirement under subparagraph (A) if the
16 employer—

17 “(i) provides the workers with housing
18 that meets applicable Federal standards
19 for temporary labor camps; or

20 “(ii) secures housing for the workers
21 that—

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

1 “(II) in the absence of applicable
2 local standards, meets State stand-
3 ards for rental or public accommoda-
4 tion housing or other substantially
5 similar class of habitation.

6 “(C) INSPECTION.—

7 “(i) REQUEST.—At the time an em-
8 ployer that plans to provide housing de-
9 scribed in subparagraph (B) to H-2A
10 workers files an application for H-2A
11 workers with the Secretary of Agriculture,
12 the employer shall request a certificate of
13 inspection by an approved Federal or State
14 agency.

15 “(ii) INSPECTION; FOLLOWUP.—Not
16 later than 28 days after the receipt of a re-
17 quest under clause (i), the Secretary of Ag-
18 riculture shall ensure that—

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

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

1 “(iii) DELAY PROHIBITED.—The Sec-
2 retary of Agriculture may not delay the ap-
3 proval of an application for failing to com-
4 ply with the deadlines set forth in clause
5 (ii).

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

11 “(E) HOUSING ALLOWANCE.—

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

1 “(ii) ASSISTANCE IN LOCATING HOUS-
2 ING.—Upon the request of a worker seek-
3 ing assistance in locating housing, an em-
4 ployer providing a housing allowance under
5 clause (i) shall make a good faith effort to
6 assist the worker in identifying and locat-
7 ing housing in the area of intended em-
8 ployment.

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

20 “(iv) OTHER REQUIREMENTS.—

21 “(I) NONMETROPOLITAN COUN-
22 TY.—If the place of employment of
23 the workers provided an allowance
24 under this subparagraph is a non-
25 metropolitan county, the amount of

1 the housing allowance under this sub-
2 paragraph shall be equal to the state-
3 wide average fair market rental for
4 existing housing for nonmetropolitan
5 counties for the State, as established
6 by the Secretary of Housing and
7 Urban Development pursuant to sec-
8 tion 8(c) of the United States Hous-
9 ing Act of 1937 (42 U.S.C. 1437f(c)),
10 based on a 2-bedroom dwelling unit
11 and an assumption of 2 persons per
12 bedroom.

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

1 1437f(c)), based on a 2-bedroom
2 dwelling unit and an assumption of 2
3 persons per bedroom.

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

11 (j) LEGAL ASSISTANCE FROM THE LEGAL SERVICES
12 CORPORATION.—Section 218(h) of such Act (8 U.S.C.
13 1188(h)), as amended by subsection (h) of this Act, is fur-
14 ther amended by adding at the end the following:

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

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

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

1 “(B) If an employer and a nonimmigrant having sta-
2 tus under section 101(a)(15)(H)(ii)(a) have an arbitration
3 arrangement, the Legal Services Corporation shall respect
4 the arbitration process and outcome.

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

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

16 “(f) EFFECT OF VIOLATIONS.—

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

1 “(2) FRAUD.—An alien may not be admitted to
2 the United States as a nonimmigrant having status
3 under section 101(a)(15)(H)(ii)(a) if the alien was
4 admitted to the United States as such a non-
5 immigrant on the basis of fraud.

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

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

1 requirements of this Act has established an affirma-
2 tive defense in an action brought under this para-
3 graph.”.

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