I

108TH CONGRESS
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H. R. 2702

To amend the Immigration and Nationality Act with respect to the admission of L–1 intra-company transferee nonimmigrants.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2003

Ms. DELAURO (for herself, Mr. SHAYS, Mr. GEORGE MILLER of California, Mr. TIERNEY, Mr. MCGOVERN, Mr. SANDERS, Mr. OWENS, Mr. FRANK of Massachusetts, and Mr. GREEN of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act with respect to the admission of L–1 intra-company transferee nonimmigrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''L–1 Nonimmigrant Reform Act''.

SEC. 2. REVISION OF L–1 NONIMMIGRANT PROGRAM.

(a) IN GENERAL.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) by redesignating the second subsection (p) as subsection (s); and

(2) by adding at the end the following new subsection:

''(t)(1) No alien may be admitted or provided status as an L–1 nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

''(A) The employer—

''(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an L–1 nonimmigrant wages that are at least—

''(I) the locally determined prevailing wage level for the occupational classification in the area of employment,

''(II) the median average wage for all workers in the occupational classification in the area of employment,

''(III) the median wage for skill level two in the occupational classification found in the most recent Occupation Employment Statistics survey,

whichever is greatest, based on the best information available as of the time of filing the application, and

''(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

The wage determination methodology used under clause (i) shall be submitted with the application.

''(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

''(C) The employer, at the time of filing the application—

''(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

''(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classi-

fication for which L–1 nonimmigrants are sought.

''(D) The application shall contain a specification of the occupational classification in which the worker will be employed and wage rate and conditions under which the worker will be employed.

''(E) The employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 180 days before and ending 180 days after the date of filing of any visa petition supported by the application.

''(F) The employer may not out-source, lease, or otherwise contract for the placement of a worker with another firm.

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, their country of origin, period of intended employment,

and date of need. The Secretary shall make such list available for public examination in Washington, D.C.

''(2)(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred. In addition, the Secretary may conduct surveys of the level of compliance by employers with the provisions and requirements of this subsection and may conduct annual compliance audits in the case of employers that employ L–1 nonimmigrants.

''(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph

(C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

''(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

''(I) the Secretary shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Homeland Security shall not approve petitions filed with respect to that em-

ployer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

''(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

''(I) the Secretary shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Homeland Security shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

''(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date

of filing of any visa petition supported by the application—

''(I) the Secretary shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Homeland Security shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

''(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance

with the requirements of this subsection or any rule or regulation pertaining to this subsection.

''(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which an L–1 nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an L–1 nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

''(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 214(c)(1), for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to ac-

cept such reimbursement or compensation from such an alien.

''(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of $1,000 for each such violation (or $5,000 in the case of a second such violation by an employer or $10,000 for any subsequent such violation by the employer) and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

''(vii) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an L–1 nonimmigrant designated as a full-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive or part-time status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

''(III) In the case of an L–1 nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

''(IV) This clause does not apply to a failure to pay wages to an L–1 nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

''(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an L–1 nonimmigrant an established salary practice of the employer, under which the employer pays to L–1 nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

''(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

''(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

''(VI) This clause shall not be construed as superseding clause (viii).

''(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an L–1 nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

''(D)(i) If the Secretary finds, after notice and opportunity for a hearing, that an employer has willfully not paid wages at the wage level specified under the applica-

tion and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of double back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

''(ii) If the Secretary finds, after notice and opportunity for a hearing, that an employer willfully lays off a worker in violation of the terms of the application and this section, the Secretary shall order the employer to provide for payment of such amounts of double back pay for the workers so laid off.

''(E) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the L–1 Nonimmigrant Reform Act) when the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(F)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

''(F)(i) If the Secretary receives specific credible information from a source, who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(E), or (1)(F)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary may conduct a 30-day investigation into the alleged failure or failures. The Secretary (or the Acting Secretary in the case of the Secretary's absence or disability) shall personally certify that the requirements for conducting such an investigation have been met and shall approve commencement of the investigation. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

''(ii) The Secretary shall establish a procedure for any person, desiring to provide to the Secretary information described in clause (i) that may be used, in whole or in part, as the basis for commencement of an investiga-

tion described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

''(iii) Any investigation initiated or approved by the Secretary under clause (i) shall be based on information that satisfies the requirements of such clause.

''(iv) No investigation described in clause (i) (or hearing described in clause (vi)) may be conducted with respect to information about a failure to meet a condition described in clause (i), unless the Secretary receives the information not later than 12 months after the date of the alleged failure.

''(v) The Secretary shall provide notice to an employer with respect to whom the Secretary has received information described in clause (i), prior to the commencement of an investigation under such clause, of the receipt of the information and of the potential for an investigation.

''(vi) If the Secretary determines under this subparagraph that a reasonable basis exists to make a finding that a failure described in clause (i) has occurred, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such

a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing.

''(G) The Secretary of Homeland Security and the Secretary of Labor shall jointly submit to Congress an annual report on the use of L–1 workers. Such report shall include the following:

''(i) Information on violations of conditions of entry of such workers by their employers, including information on complaints of such violations and their disposition, the imposition of civil penalties and disbarments, back pay awards, and other remedies obtained.

''(ii) Information on the list compiled under paragraph (1) on applications under this subsection.

''(H) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

''(3) For purposes of this subsection:

''(A) The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the L–1 nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statis-

tical Area, any place within such area is deemed to be within the area of employment.

''(B) In the case of an application with respect to one or more L–1 nonimmigrants by an employer, the employer is considered to 'displace' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

''(C) The term 'L–1 nonimmigrant' means an alien admitted or provided status as a principal nonimmigrant described in section 101(a)(15)(L)(i).

''(D)(i) The term 'lays off', with respect to a worker—

''(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or con-

tract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) of paragraph (1));

''(II) includes a significant change or diminution of duties of employment; but

''(III) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with no significant change or diminution of duties with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(E) The term 'United States worker' means an employee who—

''(i) is a citizen or national of the United States; or

''(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum

under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

''(4)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Secretary of Homeland Security with respect to any other violation.

''(B) The Secretary of Homeland Security shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer's failure to meet the condition of paragraph (1)(F)(i)(II) or a petitioner's misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a résumé or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Secretary of Homeland Security determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.''.

(b) LIABILITY FOR COSTS OF RETURN.—Section 214(c)(5)(A) of such Act (8 U.S.C. 1184(c)(5)(A)) is amended by inserting ''or 101(a)(15)(L)'' after ''101(a)(15)(H)(ii)(b)''.

(c) APPLICATION OF FEE.—

(1) IMPOSITION OF FEE.—Section 214(c)(9) of such Act (8 U.S.C. 1184(c)(9)) is amended by adding at the end the following new subparagraph:

''(D) The previous provisions of this paragraph shall apply to a nonimmigrant status described in section 101(a)(15)(L) in the same manner as it applies to a nonimigrant status described in section 101(a)(15)(H)(i), except that fees so collected shall be deposited in the Treasury in accordance with section 286(v).''.

(2) DEPOSIT AND USE OF FEES.—Section 286 of such Act (8 U.S.C. 1356) is amended—

(A) in subsection (s)(1), by inserting ''(other than under subparagraph (D) thereof)'' after ''214(c)(9)''; and

(B) by adding at the end the following new subsection:

''(v) L–1B NONIMMIGRANT PETITIONER ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account,

which shall be known as the 'L–1 Nonimmigrant Petitioner Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9)(D).

''(2) USE OF FEES FOR DATA PROCESSING.—30 percent of amounts deposited into the L–1 Nonimmigrant Petitioner Account shall remain available to the Bureau of Citizenship and Immigration Services in the Department of Homeland Security for processing and data collection.

''(3) USE OF FEES FOR LABOR ENFORCEMENT.—40 percent of amounts deposited into the L–1 Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor for enforcement activities.

''(4) USE OF FEES FOR TRAINING AND EDUCATION OF US WORKERS.—30 percent of amounts deposited into the L–1 Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor for training and education of United States workers.''.

(d) APPLICATION OF ANNUAL CAP.—Section 214 of such Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

''(q)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 2004) under section 101(a)(15)(L, may not exceed 35,000.

''(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

''(3) In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 3 years.

''(4) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(L) who is employed (or has received an offer of employment) at—

''(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity; or

''(B) a nonprofit research organization or a governmental research organization.''.

(e) CORPORATE RESTRUCTURING.—Section 214(c)(10) of such Act (8 U.S.C. 1184(c)(10)) is amended by inserting ''or L–1 petition'' after ''H–1B petition''.

(f) STRIKING OUT BLANKET VISAS.—Section 214(c)(2) of such Act (8 U.S.C. 1184(c)(2)) is amended by amending subparagraph (A) to read as follows:

''(2)(A) The Secretary of Homeland Security shall not permit the use of blanket petitions to import aliens as nonimmigrants under section 101(a)(15)(L).''.

(g) QUALIFICATIONS.—Section 214(c)(2)(B) of such Act (8 U.S.C. 1184(c)(2)(B)) is amended by striking the period at the end and inserting the following: ''and has attained a bachelor's or higher degress in the area of special knowledge. For purposes of this subparagraph, the term 'bachelor's degree (or higher degree)' includes a foreign degree that is a recognized foreign equivalent of a bachelor's degree (or higher degree). In the case of an alien obtaining a foreign degree, any determination with respect to the equivalence of that degree to a degree obtained in the United States shall be made by the Secretary of State. In carrying out the preceding sentence, the Secretary of State shall verify the authenticity of any foreign educational credential proffered by an alien.''.

(h) PRIOR EMPLOYMENT REQUIREMENT.—Section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)) is amended—

(1) by striking ''within 3 years'' and inserting ''during 2 of the past 3 years''; and

(2) by striking ''has been employed continuously for one year by a firm or corporation'' and inserting ''has been employed continuously on a full-time basis for 2 years by the firm or corporation''.

(i) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to applications for nonimmigrant status filed on or after the first day of the first fiscal year beginning after the date of the enactment of this Act.

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