

Purpose: To amend section 212(n) and 214(c) of the Immigration and Nationality Act to modify the procedures relating to the investigation of employers' compliance with applicable immigration laws.

H. R. 3012

To amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT INTENDED TO BE PROPOSED BY MR. GRASSLEY

Viz:

On page 6, after line 16, add the following:

SEC. 3. LABOR CONDITION APPLICATION.

(a) Application Review Requirements.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended, in the undesignated matter at the end—

(1) by inserting “and through the Department of Labor’s website, without charge.” after “D.C.”;

(2) by striking “only for completeness” and inserting “for completeness, clear indicators of fraud or misrepresentation of material fact,”;

(3) by striking “or obviously inaccurate” and inserting “, presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate”; and

(4) by adding at the end the following: “If the Secretary’s review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).”.

(b) Initiation of Investigations.—Section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

(1) in clause (i), by striking “In the case of an investigation” and all that follows;

(2) in clause (ii), by striking “and whose identity” and all that follows through “failure or

failures.” and inserting “the Secretary of Labor may conduct an investigation into the employer’s compliance with the requirements of this subsection.”;

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as redesignated, by striking “meet a condition described in clause (ii)” and inserting “comply with the requirements under this subsection”;

(7) by amending clause (v), as redesignated, to read as follows:

“(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.”;

(8) in clause (vi), as redesignated, by striking “An investigation” and all that follows through “the determination.” and inserting “If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 60 days after the date of such determination.”; and

(9) by adding at the end the following:

“(vii) If the Secretary of Labor, after a hearing, finds that the employer has violated a requirement under this subsection, the Secretary shall impose a penalty pursuant to subparagraph (C).”.

(c) General Modification of Procedures for Investigation and Disposition.—Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) by striking “(A) Subject” and inserting the following:

“(A)(i) Subject”;

(2) by striking the last sentence; and

(3) by adding at the end the following:

“(ii)(I) Upon the receipt of a complaint under clause (i), the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

“(II) The Secretary may conduct—

“(aa) surveys of the degree to which employers comply with the requirements of this subsection; and

“(III) The Secretary—

1 “(aa) subject to the limitation in subsection (IV), may conduct annual compliance
2 audits of any employer that employs H–1B nonimmigrants during the applicable
3 calendar year;

4 “(bb) subject to the limitation in subsection (IV), shall conduct annual compliance
5 audits of each employer with more than 100 full-time equivalent employees who are
6 employed in the United States if more than 15 percent of the number of such full-time
7 employees are H–1B nonimmigrants; and

8 “(cc) make available to the public an executive summary or report describing the
9 general findings of the audits carried out pursuant to this subclause.”.

10 (IV) In the event an employer is subject to any annual compliance audit in which
11 there was no finding of a willful failure to meet a condition under 8 U.S.C.
12 1182(n)(2)(C)(ii), no further annual compliance audit shall be conducted with respect
13 to that employer for a period of at least 4 years, absent evidence of misrepresentation
14 or fraud.