

110TH CONGRESS
1ST SESSION

H. R. 1358

To create a new nonimmigrant visa category for registered nurses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2007

Mr. SHADEGG (for himself, Mr. PASTOR, Mr. FLAKE, and Mr. RENZI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To create a new nonimmigrant visa category for registered nurses, 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 the “Nursing Relief Act
5 of 2007”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) There are more vacant nursing positions in
9 the United States than there are qualified registered

1 nurses and nursing school candidates to fill those
2 positions.

3 (2) According to the Department of Labor, the
4 current national nursing shortage exceeds 126,000.

5 (3) States in the West and Southwest have a
6 disproportionate number of nursing vacancies be-
7 cause of rapid population growth, which exacerbates
8 a widening gap in the number of facilities and staff
9 compared to patients that need care.

10 (4) Foreign countries such as the Philippines,
11 India, and China have an oversupply of nurses.

12 (5) Major hospital systems in the United States
13 spend hundreds of millions of dollars every year re-
14 cruiting foreign nurses under our current immigra-
15 tion system.

16 (6) Current law, with certain limited exceptions,
17 requires health care providers to sponsor desired
18 nurses for permanent resident status while the
19 nurses remain outside of the United States, which
20 can take as much as 3 years.

21 (7) This cost is passed on to consumers and
22 adds to the rising cost of health care.

23 (8) Health care providers cannot efficiently and
24 effectively recruit qualified foreign nurses through
25 the existing immigration process.

1 (9) Our health care system requires an imme-
2 diate modification of Federal laws relating to re-
3 cruitment of qualified foreign nurses in order to op-
4 erate at an efficient and effective level.

5 (b) PURPOSE.—The purpose of this Act is to create
6 a new nonimmigrant visa category for registered nurses
7 and establish admission requirements for such non-
8 immigrants.

9 **SEC. 3. REQUIREMENTS FOR ADMISSION OF NON-**
10 **IMMIGRANT NURSES.**

11 (a) ESTABLISHMENT OF A NEW NONIMMIGRANT
12 CATEGORY.—Section 101(a)(15) of the Immigration and
13 Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

14 (1) by striking “or” at the end of subparagraph
15 (U),

16 (2) by striking the period at the end of sub-
17 paragraph (V) and inserting “; or”; and

18 (3) by adding at the end the following:

19 “(W) an alien who is coming temporarily to the
20 United States to perform services as a professional
21 nurse, as described in section 212(v)(1)(A), who
22 meets the qualifications described in section
23 212(v)(1)(B), and with respect to whom the Sec-
24 retary of Labor determines and certifies to the Sec-
25 retary of Homeland Security and the Secretary of

1 State that the intending employer has filed with the
2 Secretary of Labor an attestation under section
3 212(v)(2), and the alien spouse and children of any
4 such principal alien, if accompanying or following to
5 join the principal alien.”.

6 (b) REQUIRING PETITION OF IMPORTING EM-
7 PLOYER.—Section 214(c) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1184(c)) is amended by adding at the
9 end the following:.

10 “(15)(A) The question of importing any alien as a
11 nonimmigrant under section 101(a)(15)(W) in any specific
12 case or specific cases shall be determined by the consular
13 officer, after consultation with appropriate agencies of the
14 Government, upon petition of the importing employer.
15 Such petition shall be made and approved before the visa
16 is granted. The petition shall be in such form and contain
17 such information as the Secretary of Homeland Security
18 shall prescribe by regulation. The approval of such a peti-
19 tion shall not, of itself, be construed as establishing that
20 the alien is a nonimmigrant.

21 “(B) The following petitions shall be determined by
22 the Secretary of Homeland Security, after consultation
23 with appropriate agencies of the Government:

24 “(i) A petition for an alien lawfully present in
25 the United States to be initially granted non-

1 immigrant status described in section
2 101(a)(15)(W).

3 “(ii) A petition for an alien having such status
4 to obtain an extension of stay.

5 “(iii) A petition to obtain authorization for an
6 alien having such status to change employers.”.

7 (c) SHIFTING BURDEN OF PROOF FOR NON-
8 IMMIGRANT STATUS.—Section 214(b) of the Immigration
9 and Nationality Act (8 U.S.C. 1184(b)) is amended by
10 striking “(L) or (V)” and inserting “(L), (V), or (W)”.

11 (d) ALLOWING PETITION FOR PERMANENT RESI-
12 DENCE WHILE IN NONIMMIGRANT STATUS.—Section
13 214(h) of the Immigration and Nationality Act (8 U.S.C.
14 1184(h)) is amended by striking “(L), or (V)” and insert-
15 ing “(L), (V), or (W)”.

16 (e) OTHER ADMISSION REQUIREMENTS.—Section
17 212 of the Immigration and Nationality Act (8 U.S.C.
18 1182) is amended—

19 (1) by redesignating the second subsection (t)
20 (added by section 1(b)(2)(B) of Public Law 108–449
21 (118 Stat. 3470)) as subsection (u); and

22 (2) by adding at the end the following:

23 “(v)(1)(A) For purposes of section 101(a)(15)(W)
24 and this subsection—

1 “(i) the term ‘professional nurse’ means a
2 person who applies the art and science of pro-
3 fessional nursing in a manner that reflects com-
4 prehension of principles derived from the phys-
5 ical, biological, and behavioral sciences; and

6 “(ii) the term ‘professional nursing’ in-
7 cludes—

8 “(I) making clinical judgments involv-
9 ing the observation, care, and counsel of
10 persons requiring nursing care;

11 “(II) administering of medicines and
12 treatments prescribed by the physician or
13 dentist; and

14 “(III) participation in the activities
15 for the promotion of health and prevention
16 of illness in others.

17 “(B) The qualifications referred to in section
18 101(a)(15)(W) are that the alien is qualified, under the
19 laws (including such temporary or interim licensing provi-
20 sions or nurse licensure compact provisions which author-
21 ize the nurse to be employed) governing the place of in-
22 tended employment, to engage in the practice of profes-
23 sional nursing as a registered nurse immediately upon ad-
24 mission to the United States and is authorized under such
25 laws to be employed, except that if the alien has completed

1 all licensing requirements except for submission of a social
2 security account number, the alien may provide a letter
3 from the State Board of Nursing of the State of intended
4 employment which confirms that the alien is eligible for
5 license issuance upon presentation of such number.

6 “(2)(A) The attestation referred to in section
7 101(a)(15)(W) is an attestation by the employer to the
8 following:

9 “(i) The employer is offering and will offer dur-
10 ing the period of authorized employment to aliens
11 admitted or provided status under section
12 101(a)(15)(W) wages that are at least—

13 “(I) the actual wage level paid by the em-
14 ployer to all other individuals with similar expe-
15 rience and qualifications for the specific em-
16 ployment in question; or

17 “(II) the prevailing wage level for the occu-
18 pational classification in the area of employ-
19 ment;

20 whichever is greater, based on the best information
21 available as of the time of the attestation.

22 “(ii) The employment of the alien will not ad-
23 versely affect the wages and working conditions of
24 registered nurses similarly employed at the worksite.

1 “(iii) The alien will be paid the wage rate for
2 registered nurses similarly employed at the worksite.

3 “(iv) There is not a strike or lockout in the
4 course of a labor dispute in the registered nurse
5 classification at the worksite.

6 “(v) The employer has provided notice of the
7 filing of the attestation to the bargaining representa-
8 tive of the registered nurses at the worksite or, if
9 there is no such bargaining representative, notice of
10 the filing has been provided to the registered nurses
11 employed at the worksite through physical posting in
12 a conspicuous location at the worksites.

13 “(vi) The number of workers sought, the work
14 locations, and the wage rate and conditions under
15 which they will be employed.

16 “(B) The employer shall make a copy of the attesta-
17 tion available for public examination, within 10 working
18 days after the date on which the attestation is filed, at
19 the employer’s principal place of business or worksite
20 (along with such accompanying documents as are nec-
21 essary).

22 “(C) The Secretary of Labor shall review the attesta-
23 tion only for completeness and obvious inaccuracies. Un-
24 less such Secretary finds that the attestation is incomplete
25 or obviously inaccurate, the Secretary shall provide the

1 certification described in section 101(a)(15)(W) within 7
2 days of the date of the filing of the attestation.

3 “(D) An attestation under subparagraph (A)—

4 “(i) shall expire on the date that is the later
5 of—

6 “(I) the end of the 3-year period beginning
7 on the date on which it is filed; or

8 “(II) the end of the period of admission
9 under section 101(a)(15)(W) of the last alien
10 with respect to whose admission it applied (in
11 accordance with clause (ii)); and

12 “(ii) shall apply to petitions described in section
13 214(c)(15) filed during the 3-year period beginning
14 on the date on which it is filed if the employer states
15 in each such petition that it continues to comply
16 with the conditions in the attestation.

17 “(E) An employer may meet the requirements of this
18 paragraph with respect to more than one professional
19 nurse in a single attestation.

20 “(F) An employer may meet the requirements of this
21 paragraph with respect to more than one work location
22 in a single attestation.

23 “(3)(A) The Secretary of Labor shall compile, and
24 make available for public examination in a timely manner,
25 a list identifying employers that have filed attestations

1 under paragraph (2)(A). Such list shall include, with re-
2 spect to each attestation, the wage rate, number of aliens
3 sought, and period of intended employment.

4 “(B) The Secretary of Labor shall establish a process
5 for the receipt, investigation, and disposition of complaints
6 respecting an employer’s failure to meet a condition speci-
7 fied in an attestation submitted under paragraph (2)(A)
8 or a misrepresentation of a material fact in an attestation.
9 Complaints may be filed by any aggrieved person or orga-
10 nization (including bargaining representatives). The Sec-
11 retary shall conduct an investigation under this subpara-
12 graph if there is reasonable cause to believe that an em-
13 ployer willfully failed to meet a condition or willfully mis-
14 represented a material fact. No investigation or hearing
15 shall be conducted on a complaint concerning such a fail-
16 ure or misrepresentation unless the complaint was filed
17 not later than 12 months after the date of the failure or
18 misrepresentation, respectively.

19 “(C) Under such process, the Secretary of Labor
20 shall provide, within 30 days after the date such a com-
21 plaint is filed, for a determination as to whether or not
22 a basis exists to make a finding described in subparagraph
23 (B). If the Secretary determines that such a basis exists,
24 the Secretary shall provide for notice of such determina-
25 tion to the interested parties and an opportunity for a

1 hearing on the complaint within 60 days of the date of
2 the determination. If such a hearing is requested, the Sec-
3 retary of Labor shall make a finding concerning the mat-
4 ter by not later than 60 days after the date of the hearing.
5 In case of similar complaints respecting the same appli-
6 cant, the Secretary of Labor may consolidate the hearings
7 under this clause on such complaints.

8 “(D) If the Secretary of Labor finds, after notice and
9 opportunity for a hearing, that an employer has willfully
10 failed to meet a condition specified in an attestation or
11 that there was a willful misrepresentation of material fact
12 in the attestation, the Secretary shall notify the Secretary
13 of State and the Secretary of Homeland Security of such
14 finding and may, in addition, impose such other adminis-
15 trative remedies (including civil monetary penalties in an
16 amount not to exceed \$1,000 per nurse per violation, with
17 the total penalty not to exceed \$10,000 per violation) as
18 the Secretary determines to be appropriate. Upon receipt
19 of such notice, the Secretary of Homeland Security shall
20 not approve petitions described in section 214(c)(15) by
21 the employer during a period of at least 1 year for nurses
22 to be employed by the employer.

23 “(4)(A) A nonimmigrant alien described in subpara-
24 graph (B) who was previously issued a visa or otherwise
25 provided nonimmigrant status under section

1 101(a)(15)(W) is authorized to accept new employment
2 upon the filing by the prospective employer of a petition
3 described in section 214(c)(15)(B)(iii) on behalf of such
4 nonimmigrant. Employment authorization shall continue
5 for such alien until such petition is adjudicated. If such
6 petition is denied, such authorization shall cease.

7 “(B) A nonimmigrant alien described in this subpara-
8 graph is a nonimmigrant alien—

9 “(i) who has been lawfully admitted into the
10 United States;

11 “(ii) on whose behalf an employer has filed a
12 nonfrivolous petition for new employment before the
13 date of expiration of the period of stay authorized by
14 the Secretary of Homeland Security; and

15 “(iii) who, subsequent to such lawful admission,
16 has not been employed without authorization in the
17 United States before the filing of such petition.

18 “(5)(A) The initial period of authorized admission for
19 a nonimmigrant under section 101(a)(15)(W) may not ex-
20 ceed 3 years, and may be extended, except that the total
21 period of authorized admission as such a nonimmigrant
22 may not exceed 6 years.

23 “(B)(i) Subparagraph (A) shall not apply to any non-
24 immigrant on whose behalf a petition under section 204(b)
25 to accord the alien immigrant status under section 203(b),

1 or an application for adjustment of status under section
2 245 to accord the alien status under section 203(b), has
3 been filed, if 365 days or more have elapsed since the fil-
4 ing of such petition or application.

5 “(ii) The Secretary of Homeland Security shall ex-
6 tend the stay of an alien who qualifies for an exemption
7 under clause (i) in 1-year increments until such time as
8 a final decision is made on the alien’s lawful permanent
9 residence.

10 “(iii) Notwithstanding subparagraph (A) and clause
11 (ii), any alien who is the beneficiary of an approved peti-
12 tion filed under section 204(b) for a status under para-
13 graph (1), (2), or (3) of section 203(b), and who is eligible
14 to be granted that status but for application of the per-
15 country limitations on immigrants under such paragraph,
16 may apply for, and the Secretary of Homeland Security
17 may grant, one or more extensions of nonimmigrant status
18 under section 101(a)(15)(W) until such time as an immi-
19 grant visa is immediately available to the alien and a deci-
20 sion on the alien’s application for adjustment of status is
21 made.

22 “(6) In the case of an alien spouse, who is accom-
23 panying or following to join a principal alien admitted
24 under section 101(a)(15)(W), the Secretary of Homeland
25 Security shall authorize the alien spouse to engage in em-

1 ployment in the United States and shall provide the
2 spouse with an ‘employment authorized’ endorsement or
3 other appropriate work permit.

4 “(7)(A)(i) The total number of aliens who may be
5 issued visas or otherwise provided nonimmigrant status
6 under section 101(a)(15)(W) during any fiscal year is
7 50,000.

8 “(ii) If the numerical limitation in clause (i)—

9 “(I) is reached during a fiscal year, the numer-
10 ical limitation applicable to the subsequent fiscal
11 year shall be 120 percent of the preceding numerical
12 limitation; or

13 “(II) is not reached during a fiscal year, the
14 numerical limitation shall remain the same during
15 the subsequent fiscal year.

16 “(B) Notwithstanding subparagraph (A), aliens may
17 be issued visas or otherwise provided nonimmigrant status
18 under such section without regard to numerical limitation
19 if they are only working in the geographic area or areas
20 which are designated by the Secretary of Health and
21 Human Services as having a shortage of health care pro-
22 fessionals.

23 “(C) The numerical limitations in subparagraph (A)
24 shall only apply to principal aliens and not to the spouse
25 or children of such aliens.”

1 **SEC. 4. REGULATIONS; EFFECTIVE DATE.**

2 (a) REGULATIONS.—Not later than 90 days after the
3 date of the enactment of this Act, the following shall pro-
4 mulgate regulations to carry out the amendments made
5 by section 3:

6 (1) The Secretary of Labor, in consultation
7 with the Secretary of Health and Human Services
8 and the Secretary of Homeland Security.

9 (2) The Secretary of Homeland Security, in
10 consultation with the Secretary of State.

11 (b) EFFECTIVE DATE.—Notwithstanding subsection
12 (a), the amendments made by section 3 shall take effect
13 90 days after the date of the enactment of this Act, re-
14 gardless of whether the regulations promulgated under
15 subsection (a) are in effect on such date.

16 **SEC. 5. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**
17 **FOR ENACTMENT OF LAW.**

18 This Act is enacted pursuant to the power granted
19 to Congress under article I, section 8, clause 4, to estab-
20 lish an uniform rule naturalization, and under article I,
21 section 8, clause 18, of the United States Constitution.

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