9 FAM 41.53
TEMPORARY WORKERS AND TRAINEES

(TL:VISA-185; 02-26-1999)

(a) Requirements for H classification.

(TL:VISA-153; 9-10-96)

An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or; of the extension by INS of the period of authorized entry in such classification;

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

[Amended by 61 FR 1832, Jan. 24,1996.]

(b) Petition approval.

(TL:VISA-50; 11-15-91)

The approval of a petition by the Immigration and Naturalization Service does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) Validity of visa.

(TL:VISA-50; 11-15-91)

The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) or (a)(3) of this section.

(d) Alien not entitled to H classification.

(TL:VISA-50; 11-15-91)

The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not entitled to the classification as approved.

(e) Trainee defined.

(TL:VISA-50; 11-15-91)

The term trainee, as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions.

(f) Former exchange visitor.

(TL:VISA-2; 8-30-87)

Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

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9 FAM 41.53 Related Statutory Provisions

INA 101(a)(15)(H)

(TL:VISA-70; 11-15-92)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrants—...

(H) an alien (i)(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or

controlled by the employer) for which the alien will perform the services, or (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(I)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2), or in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1); or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor, if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

[Amended by sec. 207(B), sec. 303(A)(5)(A) and sec. 303(A)(7)(A) of Pub. L. 102-232, December 12, 1991.]

INA 101(a)(15)(O) and (P)

(TL:VISA-50; 11-15-91)

For provisions of INA 101(a)(15)(O) and (P), see sections 9 FAM 41.55 Related Statutory Provisions and 9 FAM 41.56 Related Statutory Provisions.

INA 101(a)(41)

(TL:VISA-50; 11-15-91)

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

[Added by sec. 601(e) of Pub. L. 94-484, October 12, 1976.]
[Amended by sec. 602(c) of Pub. L. 95-83, August 1, 1977.]

INA 212(j)(2)

(TL:VISA-70; 11-15-92)

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examinations determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

[Amended by sec. 303(A)(5)(B) of Pub. L. 102-232, December 12, 1991.]

INA 212(m), in part

(TL:VISA-50; 11-15-91)

(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(a), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(a) is an attestation as to the following:

(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such alien or aliens.

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses.... employed at the facility through posting in conspicuous locations. A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause....

(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions of the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition....

(4) The period of admission of an alien under section 101(a)(15)(H)(i)(a) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).

(5) For purposes of this subsection and section 101(a)(15)(H)(i)(a), the term "facility" includes an employer who employs registered nurses in a home setting.

[Added by sec. 3(b) of Pub. L. 101-238103, December 18, 1989.]
[Amended by sec. 162(f)(2)(B of Pub. L. 101-649,), November 29, 1990.]

INA 212(n)(1), in part

(TL:VISA-185; 02-26-1999)

(n)(1) No alien may be admitted or provided status *as an H-1B 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 H-1B nonimmigrant* wages that are at least–

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, 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.

(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 classification for which H-1B nonimmigrants are sought.*

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed....

(E) (i) In the case of an application described in clause (ii), 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 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before October 1, 2001, by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H-1B nonimmigrants sought in the application are exempt H-1B nonimmigrants.

(F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H-1B-dependent employer) where—

(i) the nonimmigrant performs duties in whole or in part at one or more worksites, owned, operated, or controlled by such other employer; and

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H-1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).

….

The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

….

(3)(A) For purposes of this subsection, the term "H-1B-dependent employer' means an employer that—

(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and

(II) employs more than 7 H-1B nonimmigrants;

(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and

(II) employs more that 12 H-1B nonimmigrants; or

(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States;

(II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For the purposes of this subsection—

(i) the term 'exempt H-1B nonimmigrant' means at H-1B nonimmigrant who—

(I) receives wages (including case bonuses and similar compensation) at an annual rate equal to at least $60,000; or

(II) has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term 'nonexempt H-1B nonimmigrant' means an H-1B nonimmigrant who is not an exempt H-1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H-1B nonimmigrants, exempt H-1B nonimmigrants shall not be taken into account during the longer of—

(I) the 6-month period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998; or

(II) the period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(4) For purposes of this subsection:

The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

In the case of an application with respect to one or more H-1B 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 sought. A job shall not be considered to be essentially equivalent of another job unless it involves 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.

The term 'H-1B nonimmigrant' means an alien admitted or provided status as an H-1B nonimmigrant.

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

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) 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 resident, 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 Attorney General, to be employed.

….

[Added by sec. 205(c)(3) of Pub. L. 101-649, November 19, 1990.]
[Amended by sec. 303(A)(7)(B) of Pub. L. 102-232, December 12, 1991.]
[Amended by secs. 410, 411 and 412 of Title IV of Pub. L. 105-277, Oct. 21, 1998.]

INA 214(b), in part

(TL:VISA-50; 11-15-91)

(b) Every alien (other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15)) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15)...

[Amended by sec. 205(b)(1) of Pub. L. 101-649, November 29, 1990.]

INA 214(c)

(TL:VISA-70; 11-15-92)

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H), (L), (O), or (P)(i) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a)....

(5)(A) In the case of an alien who is provided nonimmigrant status under section 101(s)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

[Amended by sec. 301(b) of Pub. L. 99-603 November 6, 1986.]
[Amended by sec. 2(l)(1) of Pub. L. 101-525, October 24, 1988.
[Amended by sec. 207(b)(2)(A) and (B) of Pub. L. 101-649, November 29, 1990.]
[Amended by sec. 303(a)(12) of Pub. L. 102-232, December 12, 1991.]

INA 214(g), in part

(TL:VISA-185; 02-26-1999)

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

65,000 in each fiscal year before fiscal year 1999;

115,000 in fiscal year 1999;

115,000 in fiscal year 2000;

107,500 in fiscal year 2001; and

65,000 in each succeeding fiscal year; or

(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000.

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

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

(4) 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 6 years.

[Added by sec. 205(a) of Pub. L. 101-649, November 29, 1990.]
[Amended by sec. 202(A) of Pub. L. 102-232, December 12, 1991.]
[Amended by sec. 411 of Title IV of Pub. L. 105-277, Oct. 21, 1998.]

INA 214(h)

(TL:VISA-50; 11-15-91)

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

[Added by sec. 205(b)(2) of Pub. L. 101-649, November 29, 1990.]

INA 214(i)

(TL:VISA-50; 11-15-91)

(i)(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph (2), the term "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

[Added by sec. 205(c)(2) of Pub. L. 101-649, November 29, 1990.]

INA 218, in part

(TL:VISA-70; 11-15-92)

Sec. 218. (a) CONDITIONS FOR APPROVAL OF H-2A PETITIONS.—Section (1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed....

(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment. c) Special Rules for Consideration of Applications.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications.-The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H-2A worker.

(2) Notice within seven days of deficiencies.—(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of Certification.—(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-2A-employers in the same or comparable occupations and crops...

(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) TREATMENT OF VIOLATIONS.—

(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—if an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member....

(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission....

(h) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A...

(i) DEFINITIONS—For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to that employment.

(2) The term "H-2A worker" means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

[Added by sec. 301(c) of, Pub. L. 99-603, November 6, 1986.]
[Amended by sec. 2(l)(2) of Pub. L. 100-525, October 24, 1988.]
[Amended by sec. 309(A)(8) of Pub. L. 102-232, December 12, 1991.]

Sec. 222 of the Immigration Act of 1990 (Pub. L. 101-649)

(TL:VISA-70; 11-15-92)

(a) IN GENERAL.—Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who—

(1) has a residence in a foreign country which the alien has no intention of abandoning, and

(2) is coming to the United States, upon a basis of reciprocity, to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense, but not to exceed a period of more than 10 years, or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—the number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section at any time may not exceed 100.

[Added by sec. 222 of Pub. L. 101-649, November 29, 1990.]
[Amended by sec. 303(B)(3) of Pub. L. 102-232, December 12, 1991.]

Sec. 223 of the Immigration Act of 1990 (Pub. L. 101-649)

(TL:VISA-70; 11-15-92)

Sec. 223. ESTABLISHMENT OF SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM.

(a) IN GENERAL—Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who—

(1) has a residence in a foreign country which the alien has no intention of abandoning, and

(2) is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in a special education training program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities, or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section in any fiscal year may not exceed 50.

[Added by sec. 223 of Pub. L. 101-649, November 29, 1990.]
[Amended by sec. 303(B)(4), Pub. L. 102-232, December 12, 1991.]