

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER II - IMMIGRATION
Part IX - Miscellaneous

§ 1375c. Protections, remedies, and limitations on issuance for A–3 and G–5 visas

(a) Limitations on issuance of A–3 and G–5 visas

(1) Contract requirement

Notwithstanding any other provision of law, the Secretary of State may not issue—

(A) an A–3 visa unless the applicant is employed, or has signed a contract to be employed containing the requirements set forth in subsection (d)(2),¹ by an officer of a diplomatic mission or consular post; or

(B) a G–5 visa unless the applicant is employed, or has signed a contract to be employed by an employee in an international organization.

(2) Suspension requirement

Notwithstanding any other provision of law, the Secretary shall suspend, for such period as the Secretary determines necessary, the issuance of A–3 visas or G–5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that 1 or more employees of such mission or international organization have abused or exploited 1 or more nonimmigrants holding an A–3 visa or a G–5 visa, and that the diplomatic mission or international organization tolerated such actions.

(3) Action by diplomatic missions or international organizations

The Secretary may suspend the application of the limitation under paragraph (2) if the Secretary determines and reports to the appropriate congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.

(b) Protections and remedies for A–3 and G–5 nonimmigrants employed by diplomats and staff of international organizations

(1) In general

The Secretary may not issue or renew an A–3 visa or a G–5 visa unless—

(A) the visa applicant has executed a contract with the employer or prospective employer containing provisions described in paragraph (2); and

(B) a consular officer has conducted a personal interview with the applicant outside the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet required under section 1375b of this title.

(2) Mandatory contract

The contract between the employer and domestic worker required under paragraph (1) shall include—

(A) an agreement by the employer to abide by all Federal, State, and local laws in the United States;

(B) information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and

(C) an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.

(3) Training of consular officers

The Secretary shall provide appropriate training to consular officers on the fair labor standards described in the pamphlet required under section 1375b of this title, trafficking in persons, and the provisions of this section.

(4) Record keeping

(A) In general

The Secretary shall maintain records on the presence of nonimmigrants holding an A–3 visa or a G–5 visa in the United States, including—

- (i) information about when the nonimmigrant entered and permanently exited the country of residence;
- (ii) the official title, contact information, and immunity level of the employer; and
- (iii) information regarding any allegations of employer abuse received by the Department of State.

(c) Protection from removal during legal actions against former employers

(1) Remaining in the United States to seek legal redress

(A) Effect of complaint filing

Except as provided in subparagraph (B), if a nonimmigrant holding an A–3 visa or a G–5 visa working in the United States files a civil action under section 1595 of title 18 or a civil action regarding a violation of any of the terms contained in the contract or violation of any other Federal, State, or local law in the United States governing the terms and conditions of employment of the nonimmigrant that are associated with acts covered by such section, the Attorney General and the Secretary of Homeland Security shall permit the nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to such action.

(B) Exception

An alien described in subparagraph (A) may be deported before the conclusion of the legal proceedings related to a civil action described in such subparagraph if such alien is—

- (i) inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), (3)(C), or (3)(F) of section 1182 (a) of this title; or
- (ii) deportable under paragraph (2)(A)(ii), (2)(A)(iii), (4)(A)(i), (4)(A)(iii), (4)(B), or (4)(C) of section 1227 (a) of this title.

(C) Failure to exercise due diligence

If the Secretary of Homeland Security, after consultation with the Attorney General, determines that the nonimmigrant holding an A–3 visa or a G–5 visa has failed to exercise due diligence in pursuing an action described in subparagraph (A), the Secretary may terminate the status of the A–3 or G–5 nonimmigrant.

(2) Authorization to work

The Attorney General and the Secretary of Homeland Security shall authorize any nonimmigrant described in paragraph (1) to engage in employment in the United States during the period the nonimmigrant is in the United States pursuant to paragraph (1).

(d) Study and report

(1) Investigation report

(A) In general

Not later than 180 days after December 23, 2008, and every 2 years thereafter for the following 10 years, the Secretary shall submit a report to the appropriate congressional committees on the implementation of this section.

(B) Contents

The report submitted under subparagraph (A) shall include—

- (i) an assessment of the actions taken by the Department of State and the Department of Justice to investigate allegations of trafficking or abuse of nonimmigrants holding an A–3 visa or a G–5 visa; and
- (ii) the results of such investigations.

(2) Feasibility of oversight of employees of diplomats and representatives of other institutions report

Not later than 180 days after December 23, 2008, the Secretary shall submit a report to the appropriate congressional committees on the feasibility of—

- (A) establishing a system to monitor the treatment of nonimmigrants holding an A–3 visa or a G–5 visa who have been admitted to the United States;
- (B) a range of compensation approaches, such as a bond program, compensation fund, or insurance scheme, to ensure that such nonimmigrants receive appropriate compensation if their employers violate the terms of their employment contracts; and
- (C) with respect to each proposed compensation approach described in subparagraph (B), an evaluation and proposal describing the proposed processes for—
 - (i) adjudicating claims of rights violations;
 - (ii) determining the level of compensation; and
 - (iii) administering the program, fund, or scheme.

(e) Assistance to law enforcement investigations

The Secretary shall cooperate, to the fullest extent possible consistent with the United States obligations under the Vienna Convention on Diplomatic Relations, done at Vienna, April 18, 1961, (23 U.S.T. 3229),² with any investigation by United States law enforcement authorities of crimes related to abuse or exploitation of a nonimmigrant holding an A–3 visa or a G–5 visa.

(f) Definitions

In this section:

(1) A–3 visa

The term “A–3 visa” means a nonimmigrant visa issued pursuant to section 1101 (a)(15)(A)(iii) of this title.

(2) G–5 visa

The term “G–5 visa” means a nonimmigrant visa issued pursuant to section 1101 (a)(15)(G)(v) of this title.

(3) Secretary

The term “Secretary” means the Secretary of State.

(4) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and
- (B) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

Footnotes

¹ So in original. Probably should be “(b)(2),”.

² So in original. Probably should be “April 18, 1961 (23 U.S.T. 3227),”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Codification

Section was enacted as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Immigration and Nationality Act which comprises this chapter.