

AGRICULTURAL WORKER PROGRAM ACT OF 2019

Section-by-Section Summary

Sec. 1. Title. Sets short title as the “Agricultural Worker Program Act of 2019.”

I. PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

Sec. 101. Blue Card Status.

101(a). Requirements.

To apply for blue card status, individuals must submit an application during the application period showing that they have completed qualified agricultural work and that they are not ineligible for status under subsection (d). They must also pass national security and law enforcement checks and pay proper fees and penalties. Former H-2A workers may participate.

For Spouses and Children: Must have been physically present on or before the date of enactment and must maintain continuous presence until status is granted.

101(b). Application.

The application must be submitted to DHS or to an organization recognized by the BIA within the 18-month application period. Applicants may also be interviewed.

If an application is granted, DHS must provide documentary evidence of blue card status, which serves as a valid travel and entry document into the United States. If denied, the applicant must be notified and given the chance to cure deficiencies.

101(c). Special Rules for Blue Card Applicants and Aliens Eligible for Blue Card Status.

For Individuals Apprehended Before or During the Application Period: DHS must provide a reasonable opportunity for the individual to file an application if he or she appears prima facie eligible for blue card status. DHS may not remove the individual until a final determination is made.

For Individuals in Removal Proceedings: Upon motion by DHS and with the individual’s consent, or upon motion by the individual, the removal proceeding must be terminated and the individual must be permitted to apply for blue card status if the individual is prima facie eligible.

For Individuals Previously Ordered Removed: The individual may apply for blue card status notwithstanding the removal order. If status is granted, the individual may file a motion to reopen the order, which must be granted.

Pending Applications: The applicant is eligible to apply for advanced parole. DHS may not detain or remove an applicant unless DHS makes a prima facie determination that he or she is ineligible for blue card status. During this time, the applicant is not considered to be “unlawfully present” or an “unauthorized alien.”

During Blue Card Status: DHS may not detain or remove an individual granted blue card status unless he or she is or becomes ineligible or the status is revoked. Blue card status lasts for 8 years.

101(d). Required Background Investigations and Ineligibility.

Background Investigations: The applicant must submit biometric and biographic data for DHS to conduct a background investigation.

Grounds for Ineligibility:

- Having criminal convictions for: a felony other than those for which immigration status is an essential element of the offense; an aggravated felony; three or more misdemeanor offenses, excluding minor traffic offenses or offenses for which an essential element is immigration status; any offense under foreign law that would render the applicant ineligible if committed in the United States; and unlawful voting.
- Having triggered relevant grounds of inadmissibility under section 212(a) the Immigration and Nationality Act (INA).
- Terrorist activity, where DHS knows or has reasonable grounds to believe the applicant is engaged or likely to engage in any terrorist activity.
- Having status as a lawful permanent resident, refugee, or asylee.

Waiver: DHS may waive ineligibility on misdemeanor grounds, or on inadmissibility grounds for humanitarian purposes, to ensure family unity, or if waiver is otherwise in the public interest.

101(e). Fees & Penalties.

DHS is required to set the standard processing fee for applicants who are at least 16 years old. Applicants who are 21 years old or older must also pay a \$100 penalty.

101(f). Terms and Conditions of Blue Card Status.

Individuals granted blue card status may work in the United States. They may also travel outside and return to the United States if they possess documentary evidence of blue card status and do nothing to trigger inadmissibility. Travel is authorized for up to 180 days, unless there are extenuating circumstances.

Revocation: DHS may revoke blue card status if the individual becomes ineligible; knowingly uses status for an unlawful or fraudulent purpose; is absent from the country for more than 180 consecutive days; or is absent for more than 180 days in a calendar year, except in cases of extenuating circumstances.

Public Benefits: Individuals granted blue card status are ineligible for means-tested public benefits unavailable to qualified aliens.

Treatment: Individuals with blue card status must be considered lawfully present in the United States for all purposes, except that they are not entitled to ACA subsidies for health care coverage.

101(g). Provisions Involving Employers.

Employment Records: Employers of blue card workers must provide employment records to the workers and DHS.

Civil Penalties: Employers must pay a civil penalty (up to \$500 per violation) for any failure to provide employment records or for providing records containing false statements of material fact.

Continuing Employment: An employer may continue to employ a worker pending adjudication of his or her application for blue card status.

Employer Protections: Evidence of employment provided by an employer will not be used in a civil or criminal prosecution against that employer for the prior unlawful employment of an individual, regardless of whether the application is granted or denied, except where those records are deemed fraudulent.

101(h). Administrative and Judicial Review.

Administrative Review: DHS must establish a single level of administrative appellate authority. Review may only be based on the administrative record established at the time and any additional or newly discovered evidence.

Judicial Review: Judicial review is limited to the review of an order of removal under section 242 of the INA.

101(i). Disclosures and Privacy.

Information provided in an application for blue card status, or an application to adjust to lawful permanent residence, may only be used to make a determination on the application. That information may not be published, and it may only be examined by authorized officers and employees.

Required Disclosures: DHS must provide application information to law enforcement in connection with any criminal investigation or prosecution of a felony (not related to immigration status) or any national security investigation or prosecution. That information must also be provided in the case of identifying a deceased individual.

Auditing and Evaluation of Information: DHS may audit and evaluate application information for purposes of identifying fraud or fraud schemes.

Privacy and Civil Liberties: DHS must require administrative and physical safeguards to protect the privacy of personally identifiable information. DHS must also conduct a privacy impact assessment and a civil liberties impact assessment.

101(j). Rulemaking.

DHS must issue final regulations to implement section 101 within 1 year of enactment.

Sec. 102. Adjustment to Permanent Resident Status.

Section 102 amends the INA to add new section 245B, “Adjustment to Permanent Resident Status for Agricultural Workers.”

102(a). Requirements.

Five years after enactment, DHS can begin to adjust blue card workers to lawful permanent residence if the workers have performed either 100 days of agricultural work each year for 5 years, or 150 days of such work each year for 3 years.

Extraordinary Circumstances: DHS may credit an applicant with up to 12 months of agricultural work if he or she was unable to work for a period of time due to: pregnancy, disabling injury, or disease; the illness, disease, or other special needs of a child; severe weather conditions; or termination from agricultural employment if the termination was without just cause and the applicant was unable to find alternative employment.

Application Period: An application for lawful permanent resident status must be submitted before the applicant’s blue card status expires.

Fine: Workers must pay a fine of \$400.

102(b). Grounds for Denial of Adjustment of Status.

Adjustment of status may be denied if the applicant fails to meet the qualifying employment requirement or if he or she becomes ineligible for blue card status.

An applicant may not obtain adjustment of status unless he or she has satisfied any applicable federal tax liability.

102(c). Spouses and Children.

The eligible spouse or child of an applicant who receives lawful permanent residence may also be granted such status if included in the principal applicant's application.

102(d). Numerical Limitations.

Numerical limitations under sections 201 and 202 of the INA do not apply to adjustment of status under this Act.

102(e). Submission of Application.

DHS may interview applicants. Applicants must pay a processing fee. Applicants must also provide evidence that they have worked the requisite number of hours under section 102(a).

102(f). Penalties for False Statements in Applications.

Knowingly or willfully falsifying, concealing, or covering up a material fact or making any false, fictitious, or fraudulent statements or representations is punishable by a fine, up to 5 years' imprisonment, or both. An alien convicted of this crime is inadmissible to the United States.

102(g). Eligibility for Legal Services.

A recipient of funds under the Legal Services Corporation Act may directly provide legal assistance to an applicant for blue card status, a worker holding blue card status, or an applicant for adjustment of status under this Act.

102(h). Administrative and Judicial Review.

Applicants may only obtain judicial review pursuant to the provisions governing judicial review of removal proceedings under section 242 of the INA.

Sec. 103. Use of Information.

DHS must broadly disseminate information regarding the benefits available under this Act and the requirements for receiving those benefits.

Sec. 104. Reports on Blue Cards.

DHS must report annually to Congress the number of applicants for blue card status, the number of applicants for adjustment of status, and the number of such applications granted.

Sec. 105. Authorization of Appropriations.

DHS is authorized to be appropriated sufficient amounts to implement the Act.

II. CORRECTION OF SOCIAL SECURITY RECORDS

Sec. 201. Correction of Social Security Records.

Section 208(e)(1) of the Social Security Act is amended to include an exception for individuals granted blue card status from prosecution for certain previous violations related to unauthorized employment.

III. DEFINITIONS

Sec. 301. Definitions.

Agricultural Employment: Farming in all its branches, and the cultivation and tillage of soil, dairying, production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering) performed by a farmer or on a farm. Also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

Blue Card Status: Any admission for temporary residence under this Act.

Continuous Presence: Continuous physical presence, with an exception for any brief, casual, and innocent absences, whether or not authorized by DHS.

Qualified Work: Work performed in agricultural employment in the United States for at least 575 hours, or 100 work days, during the 2-years from the date of enactment of the Act.