

S.L.C.
Saxby Chambliss

AMENDMENT NO.

Calendar No.

Purpose: To modify the eligibility requirements for blue card status and to increase the fines to be paid by aliens granted such status or legal permanent resident status.

IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.

S. 2611

AMENDMENT No. 4084

7 By *Chambliss* id for

To: *S. 2611*

R *13* and

Page(s)

GPO: 2004 97-290(Mac)

AMENDMENT intended to be proposed by Mr. CHAMBLISS

Viz:

1 On page 397, strike line 21 and all that follows
2 through page 409, line 19, and insert the following:

3 (7) WORK DAY.—The term “work day” means
4 any day in which the individual is employed 8 or
5 more hours in agriculture.

1 **CHAPTER 1—PILOT PROGRAM FOR**
2 **EARNED STATUS ADJUSTMENT OF AG-**
3 **RICULTURAL WORKERS**

4 **SEC. 613. AGRICULTURAL WORKERS.**

5 (a) **BLUE CARD PROGRAM.**—

6 (1) **IN GENERAL.**—Notwithstanding any other
7 provision of law, the Secretary may confer blue card
8 status upon an alien who qualifies under this sub-
9 section if the Secretary determines that the alien—

10 (A) has performed agricultural employment
11 in the United States for at least 150 work days
12 per year during the 24-month period ending on
13 December 31, 2005;

14 (B) applied for such status during the 18-
15 month application period beginning on the first
16 day of the seventh month that begins after the
17 date of enactment of this Act; and

18 (C) is otherwise admissible to the United
19 States under section 212 of the Immigration
20 and Nationality Act (8 U.S.C. 1182), except as
21 otherwise provided under subsection (e)(2).

22 (2) **AUTHORIZED TRAVEL.**—An alien in blue
23 card status has the right to travel abroad (including
24 commutation from a residence abroad) in the same

1 manner as an alien lawfully admitted for permanent
2 residence.

3 (3) AUTHORIZED EMPLOYMENT.—An alien in
4 blue card status shall be provided an “employment
5 authorized” endorsement or other appropriate work
6 permit, in the same manner as an alien lawfully ad-
7 mitted for permanent residence.

8 (4) TERMINATION OF BLUE CARD STATUS.—

9 (A) IN GENERAL.—The Secretary may ter-
10 minate blue card status granted under this sub-
11 section only upon a determination under this
12 subtitle that the alien is deportable.

13 (B) GROUNDS FOR TERMINATION OF BLUE
14 CARD STATUS.—Before any alien becomes eligi-
15 ble for adjustment of status under subsection
16 (c), the Secretary may deny adjustment to per-
17 manent resident status and provide for termi-
18 nation of the blue card status granted such
19 alien under paragraph (1) if—

20 (i) the Secretary finds, by a prepon-
21 derance of the evidence, that the adjust-
22 ment to blue card status was the result of
23 fraud or willful misrepresentation (as de-
24 scribed in section 212(a)(6)(C)(i) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1182(a)(6)(C)(i)); or

3 (ii) the alien—

4 (I) commits an act that makes
5 the alien inadmissible to the United
6 States as an immigrant, except as
7 provided under subsection (e)(2);

8 (II) is convicted of a felony or 3
9 or more misdemeanors committed in
10 the United States; or

11 (III) is convicted of an offense,
12 an element of which involves bodily in-
13 jury, threat of serious bodily injury,
14 or harm to property in excess of \$500.

15 (5) RECORD OF EMPLOYMENT.—

16 (A) IN GENERAL.—Each employer of a
17 worker granted status under this subsection
18 shall annually—

19 (i) provide a written record of employ-
20 ment to the alien; and

21 (ii) provide a copy of such record to
22 the Secretary.

23 (B) SUNSET.—The obligation under sub-
24 paragraph (A) shall terminate on the date that

1 is 6 years after the date of the enactment of
2 this Act.

3 (6) REQUIRED FEATURES OF BLUE CARD.—The
4 Secretary shall provide each alien granted blue card
5 status and the spouse and children of each such
6 alien residing in the United States with a card that
7 contains—

8 (A) an encrypted, machine-readable, elec-
9 tronic identification strip that is unique to the
10 alien to whom the card is issued;

11 (B) biometric identifiers, including finger-
12 prints and a digital photograph; and

13 (C) physical security features designed to
14 prevent tampering, counterfeiting, or duplica-
15 tion of the card for fraudulent purposes.

16 (7) FINE.—An alien granted blue card status
17 shall pay a fine to the Secretary in an amount equal
18 to \$1,000.

19 (8) MAXIMUM NUMBER.—The Secretary may
20 issue not more than 1,500,000 blue cards during the
21 5-year period beginning on the date of the enact-
22 ment of this Act.

23 (b) RIGHTS OF ALIENS GRANTED BLUE CARD STA-
24 TUS.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided under this subsection, an alien in blue card
3 status shall be considered to be an alien lawfully ad-
4 mitted for permanent residence for purposes of any
5 law other than any provision of the Immigration and
6 Nationality Act (8 U.S.C. 1101 et seq.).

7 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
8 ERAL PUBLIC BENEFITS.—An alien in blue card sta-
9 tus shall not be eligible, by reason of such status, for
10 any form of assistance or benefit described in section
11 403(a) of the Personal Responsibility and Work Op-
12 portunity Reconciliation Act of 1996 (8 U.S.C.
13 1613(a)) until 5 years after the date on which the
14 Secretary confers blue card status upon that alien.

15 (3) TERMS OF EMPLOYMENT FOR ALIENS AD-
16 MITTED UNDER THIS SECTION.—

17 (A) PROHIBITION.—No alien granted blue
18 card status may be terminated from employ-
19 ment by any employer during the period of blue
20 card status except for just cause.

21 (B) TREATMENT OF COMPLAINTS.—

22 (i) ESTABLISHMENT OF PROCESS.—
23 The Secretary shall establish a process for
24 the receipt, initial review, and disposition
25 of complaints by aliens granted blue card

1 status who allege that they have been ter-
2 minated without just cause. No proceeding
3 shall be conducted under this subpara-
4 graph with respect to a termination unless
5 the Secretary determines that the com-
6 plaint was filed not later than 6 months
7 after the date of the termination.

8 (ii) INITIATION OF ARBITRATION.—If
9 the Secretary finds that a complaint has
10 been filed in accordance with clause (i) and
11 there is reasonable cause to believe that
12 the complainant was terminated without
13 just cause, the Secretary shall initiate
14 binding arbitration proceedings by request-
15 ing the Federal Mediation and Conciliation
16 Service to appoint a mutually agreeable ar-
17 bitrator from the roster of arbitrators
18 maintained by such Service for the geo-
19 graphical area in which the employer is lo-
20 cated. The procedures and rules of such
21 Service shall be applicable to the selection
22 of such arbitrator and to such arbitration
23 proceedings. The Secretary shall pay the
24 fee and expenses of the arbitrator, subject

1 to the availability of appropriations for
2 such purpose.

3 (iii) ARBITRATION PROCEEDINGS.—

4 The arbitrator shall conduct the pro-
5 ceeding in accordance with the policies and
6 procedures promulgated by the American
7 Arbitration Association applicable to pri-
8 vate arbitration of employment disputes.
9 The arbitrator shall make findings respect-
10 ing whether the termination was for just
11 cause. The arbitrator may not find that
12 the termination was for just cause unless
13 the employer so demonstrates by a prepon-
14 derance of the evidence. If the arbitrator
15 finds that the termination was not for just
16 cause, the arbitrator shall make a specific
17 finding of the number of days or hours of
18 work lost by the employee as a result of
19 the termination. The arbitrator shall have
20 no authority to order any other remedy, in-
21 cluding, but not limited to, reinstatement,
22 back pay, or front pay to the affected em-
23 ployee. Within 30 days from the conclusion
24 of the arbitration proceeding, the arbi-
25 trator shall transmit the findings in the

1 form of a written opinion to the parties to
2 the arbitration and the Secretary. Such
3 findings shall be final and conclusive, and
4 no official or court of the United States
5 shall have the power or jurisdiction to re-
6 view any such findings.

7 (iv) EFFECT OF ARBITRATION FIND-
8 INGS.—If the Secretary receives a finding
9 of an arbitrator that an employer has ter-
10 minated an alien granted blue card status
11 without just cause, the Secretary shall
12 credit the alien for the number of days or
13 hours of work lost for purposes of the re-
14 quirement of subsection (c)(1).

15 (v) TREATMENT OF ATTORNEY'S
16 FEES.—The parties shall bear the cost of
17 their own attorney's fees involved in the
18 litigation of the complaint.

19 (vi) NONEXCLUSIVE REMEDY.—The
20 complaint process provided for in this sub-
21 paragraph is in addition to any other
22 rights an employee may have in accordance
23 with applicable law.

24 (vii) EFFECT ON OTHER ACTIONS OR
25 PROCEEDINGS.—Any finding of fact or

1 law, judgment, conclusion, or final order
2 made by an arbitrator in the proceeding
3 before the Secretary shall not be conclusive
4 or binding in any separate or subsequent
5 action or proceeding between the employee
6 and the employee's current or prior em-
7 ployer brought before an arbitrator, admin-
8 istrative agency, court, or judge of any
9 State or the United States, regardless of
10 whether the prior action was between the
11 same or related parties or involved the
12 same facts, except that the arbitrator's
13 specific finding of the number of days or
14 hours of work lost by the employee as a re-
15 sult of the employment termination may be
16 referred to the Secretary pursuant to
17 clause (iv).

18 (C) CIVIL PENALTIES.—

19 (i) IN GENERAL.—If the Secretary
20 finds, after notice and opportunity for a
21 hearing, that an employer of an alien
22 granted blue card status has failed to pro-
23 vide the record of employment required
24 under subsection (a)(5) or has provided a
25 false statement of material fact in such a

1 record, the employer shall be subject to a
2 civil money penalty in an amount not to
3 exceed \$1,000 per violation.

4 (ii) LIMITATION.—The penalty appli-
5 cable under clause (i) for failure to provide
6 records shall not apply unless the alien has
7 provided the employer with evidence of em-
8 ployment authorization granted under this
9 section.

10 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

11 (1) AGRICULTURAL WORKERS.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), the Secretary shall adjust
14 the status of an alien granted blue card status
15 to that of an alien lawfully admitted for perma-
16 nent residence if the Secretary determines that
17 the following requirements are satisfied:

18 (i) QUALIFYING EMPLOYMENT.—The
19 alien has performed at least—

20 (I) 5 years of agricultural em-
21 ployment in the United States, for at
22 least 100 work days or 575 hours, but
23 in no case less than 575 hours per
24 year, during the 5-year period begin-

1 ning on the date of the enactment of
2 this Act; or

3 (II) 3 years of agricultural em-
4 ployment in the United States, for at
5 least 150 work days or 863 hours, but
6 in no case less than 863 hours per
7 year, during the 5-year period begin-
8 ning on the date of the enactment of
9 this Act.

10 (ii) PROOF.—An alien may dem-
11 onstrate compliance with the requirement
12 under clause (i) by submitting—

13 (I) the record of employment de-
14 scribed in subsection (a)(5); or

15 (II) such documentation as may
16 be submitted under subsection (d)(3).

17 (iii) EXTRAORDINARY CIR-
18 CUMSTANCES.—In determining whether an
19 alien has met the requirement under clause
20 (i)(I), the Secretary may credit the alien
21 with not more than 12 additional months
22 to meet the requirement under clause (i) if
23 the alien was unable to work in agricul-
24 tural employment due to—

1 (I) pregnancy, injury, or disease,
2 if the alien can establish such preg-
3 nancy, disabling injury, or disease
4 through medical records;

5 (II) illness, disease, or other spe-
6 cial needs of a minor child, if the alien
7 can establish such illness, disease, or
8 special needs through medical records;
9 or

10 (III) severe weather conditions
11 that prevented the alien from engag-
12 ing in agricultural employment for a
13 significant period of time.

14 (iv) APPLICATION PERIOD.—The alien
15 applies for adjustment of status not later
16 than 7 years after the date of the enact-
17 ment of this Act.

18 (v) FINE.—The alien pays a fine to
19 the Secretary in an amount equal to
20 \$1,000.

21 (vi) ENGLISH LANGUAGE.—The alien
22 has demonstrated an understanding of the
23 English language, as required under sec-
24 tion 312(a)(1) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1423(a)(1)).