Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 427 (as enacted) **PUBLIC ACT 510 of 2014**
Sponsor: Senator Howard C. Walker
Senate Committee: Reforms, Restructuring and Reinventing
House Committee: Commerce

Date Completed: 3-19-15

CONTENT

The bill amended provisions of the Michigan Employment Security Act that exclude from the definition of "employment" service performed by an individual who is an alien admitted to the United States to perform that service under an H-2B visa or a J-1 Exchange Visitor Program visa.

Under the Act, beginning January 1, 2014, "employment" does not include services described in Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act or services described in specific Federal regulations (22 CFR 62.28 to 62.32) that are performed by the holder of a J-1 Exchange Visitor Program visa issued under Section 101(a)(15)(J) of that Act and the Mutual Educational and Cultural Exchange Act (also known as the Fulbright-Hays Act).

(Section 101(a)(15)(H)(ii)(b) applies to an alien--a person who is not a citizen or national of the United States--who has a residence in a foreign country that he or she has no intention of abandoning and who is coming temporarily to the U.S. to perform temporary nonagricultural service or labor if unemployed people capable of performing the service or labor cannot be found in this country. Section 101(a)(15)(J) applies to an alien who has a residence in a foreign country that he or she has no intention of abandoning and who is a bona fide student, scholar, trainee, teacher professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or similar person, who is coming temporarily to the U.S. as a participant in a program designated by the Director of the U.S. Information Agency for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.)

Originally, these provisions of the Michigan Employment Security Act (which were added by Public Act 241 of 2014) required the employer claiming the exclusion to be the petitioner of the H-2B visa holder, as documented on an approved I-129 petition for a nonimmigrant worker, or the sponsor of the J-I Exchange Visitor Program visa holder, as documented in the DS-2019 form.

The bill requires the employer claiming the exclusion to be the employer (rather than the petitioner) of the H-2B visa holder, as documented on an approved I-129 petition or successor form for a nonimmigrant worker, or the employer (rather than the sponsor) of the J-1 Exchange Visitor Program visa holder, as documented in the DS-2019 or successor form.

The bill took effect on January 14, 2015.

MCL 421.43

BACKGROUND

H-2B Visa

The Immigration and Nationality Act originally authorized the H-2 temporary worker program, which established visas for foreign workers to perform temporary services or labor in the United States. The H-2 program currently includes two components: the H-2A program for agricultural workers and the H-2B program for nonagricultural workers.

According to the U.S. Department of Homeland Security, the H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to perform temporary nonagricultural jobs. The employer or agent must file a petition on the prospective worker's behalf, and establish the following:

-- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
-- The employment of H-2B workers will not adversely affect the wages or working conditions of similarly employed U.S. workers.
-- The need for the prospective worker's services or labor is temporary (because it is a one-time occurrence, seasonal need, peakload need, or intermittent need).

As a rule, H-2B petitions may be approved only for foreign nationals from countries that the Department of Homeland Security, with the concurrence of the U.S. Secretary of State, has designated as eligible to participate in the program.

J-1 Visa

According to the U.S. Department of State, the J-1 visa category is for nonimmigrants approved to participate in work- and study-based exchange programs. The Department designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs. To participate, foreign nationals must be sponsored by one of the designated entities.

Part 62 of Title 22 of the Code of Federal Regulations provides for the implementation of the J-1 visa program, and includes provisions specific to different categories of programs. Those covered by Sections 62.28 to 62.32 are the following:

-- International visitors (foreign nationals who are recognized or potential leaders and are selected by the U.S. Department of State).
-- Government visitors (foreign nationals who are recognized as influential or distinguished individuals and are selected by U.S. Federal, state, or local government agencies).
-- Camp counselors (foreign nationals designated by the U.S. Department of State to serve as counselors in U.S. summer camps).
-- Au pairs (foreign nationals who live with an American host family, provide child care, and pursue academic credit).
-- Foreign college and university students participating in the summer work travel program.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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