

1 (2) by renumbering paragraph (2) as paragraph (3), and
2 renumbering all subsequent paragraphs accordingly, and
3 inserting the following as paragraph (2):
4

5 (2) Market-Based Adjustment.—With respect to the numerical
6 limitation set in subparagraph (A)(ii), (B)(ii), or (D)(ii) of
7 paragraph (1)--
8

9 (A) if the total number of visas allocated for that fiscal
10 year are allotted within the first half of that fiscal year,
11 then an additional 15 percent of the allocated number shall
12 be made available immediately and the allocated amount
13 for the following fiscal year shall increase by 15 percent of
14 the original allocated amount in the prior fiscal year;
15

16 (B) if the total number of visas allocated for that fiscal
17 year are allotted within the second half of that fiscal year,
18 then the allocated amount for the following fiscal year shall
19 increase by 10 percent of the original allocated amount in
20 the prior fiscal year; and
21

22 (C) with the exception of the first subsequent fiscal year
23 to the fiscal year in which the program is implemented, if
24 fewer visas were allotted the previous fiscal year than the
25 number of visas allocated for that year and the reason was
26 not due to processing delays or delays in promulgating
27 regulations, then the allocated amount for the following
28 fiscal year shall decrease by 10 percent of the allocated
29 amount in the prior fiscal year.'

30 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.**

31 (a) In General- The Secretary of State, in cooperation with the
32 Secretary and the Attorney General, may, as a condition of authorizing
33 the grant of nonimmigrant visas for Y nonimmigrants who are citizens
34 or nationals of any foreign country, negotiate with each such country
35 to enter into a bilateral agreement with the United States that
36 conforms to the requirements under subsection (b).
37

38 (b) Requirements of Bilateral Agreements- It is the sense of Congress
39 that each agreement negotiated under subsection (a) shall require the
40 participating home country to--
41

(3) in paragraph (9)(A) -

"by striking 'an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not be again be counted toward such limitation or during fiscal year 2007.' and inserting 'an alien who has been present in the United States as an H-2B nonimmigrant during any 1 of 3 fiscal years immediately preceding the fiscal year of the approved start date of a petition for a nonimmigrant worker described in

Section 101(a)(15)(H)(ii)(b) shall not be counted toward such limitation for the fiscal year in which the petition is approved. Such alien shall be considered a returning worker!.