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112TH CONGRESS
1ST SESSION

H. R. 2161

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Ms. ZOE LOFGREN of California (for herself, Mr. CAPUANO, Ms. CHU, Mr. CONYERS, Ms. ESHOO, Mr. GUTIERREZ, Mr. HEINRICH, Mr. HONDA, Mrs. MALONEY, Mr. GEORGE MILLER of California, Mr. POLIS, Ms. LINDA T. SÁNCHEZ of California, Mr. SCHIFF, and Mr. RUSH) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as—

(1) the ''Immigration Driving Entrepreneurship in America Act of 2011''; or

(2) the ''IDEA Act of 2011''.

TITLE I—ATTRACTING AND RETAINING INNOVATORS AND JOB CREATORS

SEC. 101. U.S. GRADUATES IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS.

(a) ADVANCED STEM GRADUATES.—Section 203(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(1)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''(A) through (C)'' and inserting ''(A) through (D)''; and

(2) by adding at the end the following:

''(D) ADVANCED GRADUATES IN SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS.—An alien is described in this subparagraph if—

''(i) the alien possesses a graduate degree at the level of master's or higher in a field of science, technology, engineering, or mathematics from a United States institution of higher education that has been designated by the Director of the National Science Foundation as a research institu-

tion or as otherwise excelling at instruction in such fields;

''(ii) the alien has an offer of employment from a United States employer in a field related to such degree; and

''(iii) the employer is offering and will offer wages that are at least—

''(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications in the same occupational classification; or

''(II) the prevailing wage level for the occupational classification in the area of employment;

whichever is greater, based on the best information available as of the time of filing the petition.''.

(b) CAP EXEMPTION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

''(F) Aliens described in paragraph (1)(B) or (1)(D) of section 203(b).''.

(c) REMOVING VISA HURDLES FOR STUDENTS.—

(1) PROVIDING DUAL INTENT.—

(A) IN GENERAL.—Section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) is amended by striking ''an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who'' and inserting ''an alien who is a bona fide student qualified to pursue a full course of study, who (except for a student qualified to pursue a full course of study at an institution of higher education) has a residence in a foreign country which the alien has no intention of abandoning, and who''.

(B) CONFORMING AMENDMENTS.—

(i) Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking ''(other than a nonimmigrant'' and inserting ''(other than a nonimmigrant described in section 101(a)(15)(F) if the alien is qualified to pursue a full course of study at an institution of higher education, other than a nonimmigrant''.

(ii) Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting ''(F) (if the alien is qualified to pursue a full course of study at an institution of higher education),'' before ''H(i)(b)''.

(2) EXTENSIONS IN CASES OF LENGTHY ADJUDICATIONS.—

(A) IN GENERAL.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

''(s) EXTENSIONS IN CASES OF LENGTHY ADJUDICATIONS.—

''(1) EXEMPTION FROM LIMITATIONS.—Notwithstanding subsection (c)(2)(D), (g)(4) and (m), the authorized stay of an alien described in paragraph (2) may be extended pursuant to paragraph (3) if 365 days or more have elapsed since the filing of any of the following:

''(A) An application for labor certification under section 212(a)(5)(A), in a case in which certification is required or used by an alien to obtain status under section 203(b).

''(B) A petition described in section 204(b) to accord the alien a status under section 203(b).

''(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien was previously issued a visa or otherwise provided nonimmigrant status under—

''(A) section 101(a)(15)(F);

''(B) section 101(a)(15)(H)(i)(b); or

''(C) section 101(a)(15)(L).

''(3) EXTENSION OF STATUS.—The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an extension under paragraph (1) in one-year increments until such time as a final decision is made—

''(A) to deny the application described in paragraph (1)(A), or, in a case in which such application is granted, to deny a petition described in paragraph (1)(B) filed on behalf of the alien pursuant to such grant;

''(B) to deny the petition described in paragraph (1)(B); or

''(C) to grant or deny the alien's application for an immigrant visa or adjustment of

status to that of an alien lawfully admitted for permanent residence.

Work authorization shall be provided to an alien whose stay is extended under this paragraph.''.

(B) CONFORMING AMENDMENT.—Section 106 of the American Competitiveness in the 21st Century Act is amended by striking subsections (a) and (b).

(3) DEFINITIONS.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(52) The term 'institution of higher education' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(53) The term 'employer' shall include any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.''.

(d) CONFORMING AMENDMENTS.—Section 204(a)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F)) is amended—

(1) by inserting ''203(b)(1)(D),'' after ''203(b)(1)(C),''; and

(2) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''.

SEC. 102. ENTREPRENEURS WHO ESTABLISH BUSINESSES AND CREATE JOBS IN THE UNITED STATES.

(a) START-UP BUSINESS AND JOB CREATION VISAS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following:

''(6) START-UP ENTREPRENEURS.—

''(A) IN GENERAL.—Visas shall be made available, notwithstanding subsection (a)(2) or (d) of section 201 or the matter preceding paragraph (1) of this subsection, to qualified immigrants who are described in subparagraph (B) or (C).

''(B) VENTURE CAPITAL-BACKED START-UP ENTREPRENEURS.—An alien is described in this subparagraph if the alien intends to engage in a new commercial enterprise (including a limited partnership or similar entity) in the United States—

''(i) with respect to which the alien has completed an investment agreement requiring an investment in the enterprise in an amount not less than $500,000 on the part of—

''(I) a qualified venture capital operating company;

''(II) 1 or more qualified angel investors (of which at least 1 such investor is providing $100,000 of the required investment); or

''(III) a qualified business entity; and

''(ii) which will benefit the United States economy and, during the 2-year period beginning on the date on which the visa is issued under this paragraph, will—

''(I) create full-time employment for at least 3 United States workers;

''(II) raise not less than an additional $1,000,000 in capital investment; or

''(III) generate not less than $1,000,000 in revenue.

''(C) SELF-SPONSORED START-UP ENTREPRENEURS.—An alien is described in this subparagraph if—

''(i) the alien has engaged in a new commercial enterprise (including a limited partnership or similar entity) in the United States that benefits the United States economy;

''(ii) the enterprise has created full-time employment for at least 3 United States workers; and

''(iii) by not later than the end of the 2-year period beginning on the date on which the visa is issued under this paragraph, the enterprise will create full-time employment for a total of at least 10 United States workers (which total may include the employment described in clause (ii)).

''(D) METHODOLOGIES.—The Secretary of Homeland Security, in consultation with the Secretary of Commerce, shall recognize reasonable methodologies for determining the number of direct and indirect jobs created by a commercial enterprise, including such jobs that are es-

timated to have been created indirectly through revenues generated from increased exports, improved regional productivity, or increased domestic capital investment resulting from the commercial enterprise.

''(E) DEFINITIONS.—For purposes of this paragraph:

''(i) FULL-TIME EMPLOYMENT.—The term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position. Such employment may be satisfied on a full-time equivalent basis by calculating the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. Full-time equivalent employment shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.

''(ii) INVESTMENT.—The term 'investment' does not include any assets acquired, directly or indirectly, by unlawful means.

"(iii) QUALIFIED ANGEL INVESTOR.—The term 'qualified angel investor' means, with respect to a qualified immigrant, an individual who—

"(I) is an accredited investor (as defined in section 230.501(a) of title 17, Code of Federal Regulations (as in effect on April 1, 2010));

"(II) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; and

"(III) has made at least 2 equity investments of not less than $50,000 in each of the 3 years before the date of a petition by the qualified immigrant for classification under this paragraph.

"(iv) QUALIFIED BUSINESS ENTITY.—The term 'qualified business entity' means, with respect to a qualified immigrant, an entity that—

"(I) has been operating for a period beginning on a date that is not less than 2 years before the date of

the petition for classification under this paragraph;

''(II) employs not fewer than 10 United States workers in the United States; and

''(III) has employed the alien for not less than 1 year on the date of the petition for classification under this paragraph.

''(v) QUALIFIED VENTURE CAPITAL OPERATING COMPANY.—The term 'qualified venture capital operating company' means, with respect to a qualified immigrant, an entity that—

''(I) is classified as a 'venture capital operating company' under section 2510.3–101(d) of title 29, Code of Federal Regulations (as in effect on July 1, 2009);

''(II) is based in the United States;

''(III) in the determination of the Secretary of Homeland Security, is owned and controlled by United States citizens or aliens lawfully ad-

mitted to the United States for permanent residence;

''(IV) has capital commitments of not less than $10,000,000;

''(V) has been operating for a period of at least 2 years before the date of the petition for classification under this paragraph; and

''(VI) has made at least 2 investments of not less than $500,000 in each of the 2 years before the date of the petition for classification under this paragraph.

''(vi) UNITED STATES WORKER.—The term 'United States worker' means an employee (other than the immigrant or the immigrant's spouse, sons, or daughters) who—

''(I) is a citizen or national of the United States; or

''(II) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise au-

thorized to be employed in the United States.''.

(b) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) is amended by striking ''section 203(b)(5)'' and inserting ''paragraph (5) or (6) of section 203(b)''.

(c) CONDITIONAL PERMANENT RESIDENT STATUS.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (b)(1)—

(A) in subparagraph (A), by striking ''investment'' and inserting ''investment or engagement'';

(B) by amending subparagraph (B) to read as follows:

''(B) the requisite investment or engagement was not made or was not sustained throughout the period of the alien's residence in the United States; or''; and

(C) in subparagraph (C), by striking ''section 203(b)(5)'' and inserting ''paragraph (5) or 6 of section 203(b), as applicable'';

(3) in subsection (d)(1)—

(A) in the matter preceding subparagraph (A), by striking ''the alien'';

(B) by amending subparagraph (A) to read as follows:

''(A) the requisite investment or engagement was made and was sustained throughout the period of the alien's residence in the United States; and'';

(C) in subparagraph (B), by striking ''section 203(b)(5)'' and inserting ''paragraph (5) or (6) of section 203(b), as applicable''; and

(4) in subsection (f)—

(A) in paragraph (1), by striking ''section 203(b)(5)'' and inserting ''paragraph (5) or (6) of section 203(b)''; and

(B) in paragraph (3), by inserting ''or similar entity'' before the period.

(d) CAP EXEMPTION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by section 101(b) of this Act, is further amended

by striking the period at the end and inserting ''or section 203(b)(6).''.

SEC. 103. ELIMINATING GREEN CARD BACKLOGS.

(a) RECAPTURING IMMIGRANT VISAS LOST TO BUREAUCRATIC DELAY.—

(1) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

''(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

''(1) IN GENERAL.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

''(A) 140,000;

''(B) the number computed under paragraph (2); and

''(C) the number computed under paragraph (3).

''(2) PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between the maximum number of visas which may be issued under section 203(a) (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

''(3) UNUSED VISAS.—The number computed under this paragraph is the difference, if any, between—

''(A) the difference, if any, between—

''(i) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through 2011; and

''(ii) the number of visas actually issued under section 203(b), subject to this subsection, during such fiscal years; and

''(B) the number of visas actually issued after fiscal year 2011 pursuant to an immigrant visa number issued under section 203(b), subject to this subsection, during fiscal years 1992 through 2011.''.

(2) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

''(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

''(1) IN GENERAL.—

''(A) Subject to subparagraph (B), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to—

"(i) 480,000 minus the number computed under paragraph (2); plus

"(ii) the sum of the number computed under paragraph (3) and the number computed under paragraph (4).

"(B) In no case shall the number computed under subparagraph (A)(i) be less than 226,000.

"(2) IMMEDIATE RELATIVES.—The number computed under this paragraph for a fiscal year is the number of aliens described in subparagraph (A) or (B) of subsection (b)(2) who were issued immigrant visas, or who otherwise acquired the status of an alien lawfully admitted to the United States for permanent residence, in the previous fiscal year.

"(3) PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between the maximum number of visas which may be issued under section 203(b) (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

"(4) UNUSED VISAS.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through 2011; and

"(ii) the number of visas actually issued under section 203(a), subject to this subsection, during such fiscal years; and

"(B) the number of visas actually issued after fiscal year 2011 pursuant to an immigrant visa number issued under section 203(a), subject to this subsection, during fiscal years 1992 through 2011.".

(b) SPOUSES AND MINOR CHILDREN.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by this Act, is further amended by adding at the end the following:

"(G) Aliens who are the spouse or child of an alien admitted as an employment-based immigrant under section 203(b).".

(c) ELIMINATING EMPLOYMENT-BASED PER COUNTRY LEVELS.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking ", (4), and (5)" and inserting "and (4)";

(B) by striking ''subsections (a) and (b) of section 203'' and inserting ''section 203(a)'';

(C) by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''; and

(D) by striking ''such subsections'' and inserting ''such section''; and

(2) by striking paragraph (5).

(d) COUNTRY-SPECIFIC OFFSET.—Section 2 of the Chinese Student Protection Act of 1992 (8 U.S.C. 1255 note) is amended—

(1) in subsection (a), by striking ''subsection (e)'' and inserting ''subsection (d)'';

(2) by striking subsection (d); and

(3) by redesignating subsection (e) as subsection (d).

SEC. 104. IMMIGRANT ENTREPRENEURS AND INNOVATORS PRESENT IN THE UNITED STATES.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) IMMIGRANT ENTREPRENEURS AND INNOVATORS PRESENT IN THE UNITED STATES.—An alien who is eligible to receive an immigrant visa under paragraph (1)(D)

or (6) of section 203(b) may adjust status pursuant to subsection (a) and notwithstanding paragraph (2), (7), or (8) of subsection (c) and paragraphs (6)(A) and (7) of section 212(a), if the alien was present in the United States on the date of the enactment of the IDEA Act of 2011 and has been continuously present since that date.''.

TITLE II—INVESTING IN THE NEXT GENERATION OF INNOVATORS AND JOB CREATORS

SEC. 201. INVESTING IN STEM EDUCATION FOR U.S. STUDENTS.

Section 204(a)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F)), as amended by this Act, is further amended—

(1) by striking ''(F)'' and inserting ''(F)(i)''; and

(2) by adding at the end the following:

''(ii)(I) The Secretary of Homeland Security shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established cur-

riculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing a petition under clause (i) to employ an alien entitled to classification under subparagraph (B) or (D) of section 203(b)(1), section 203(b)(2), clause (i) or (ii) of section 203(b)(3)(A), section 203(b)(5) or section 203(b)(6).

''(II) The amount of the fee shall be $2,000 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States.

''(III) Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(s).''.

SEC. 202. U.S. STEM EDUCATION AND TRAINING ACCOUNT.

Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended to read as follows:

''(s) STEM EDUCATION AND TRAINING ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'STEM Education and

Training Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 204(a)(1)(F)(ii) and paragraphs (9) and (11) of section 214(c).

''(2) LOW-INCOME STEM SCHOLARSHIP PROGRAM.—Sixty percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 for low-income students enrolled in a program of study leading to a degree in science, technology, engineering, or mathematics.

''(3) NATIONAL SCIENCE FOUNDATION COMPETITIVE GRANT PROGRAM FOR K–12 SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS EDUCATION.—

''(A) IN GENERAL.—Fifteen percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct or matching grant program to support improve-

ment in K–12 education, including through private-public partnerships.

"(B) TYPES OF PROGRAMS COVERED.—The Director shall award grants to such programs, including those which support the development and implementation of standards-based instructional materials models and related student assessments that enable K–12 students to acquire an understanding of science, technology, engineering, and mathematics, as well as to develop critical thinking skills; provide systemic improvement in training K–12 teachers and education for students in science, technology, engineering, and mathematics, including by supporting efforts to promote gender-equality among students receiving such instruction; support the professional development of K–12 science, technology, engineering and mathematics teachers in the use of technology in the classroom; stimulate system-wide K–12 reform of science, technology, engineering, and mathematics in rural, economically disadvantaged regions of the United States; provide externships and other opportunities for students to increase their appreciation and understanding of science,

technology, engineering, and mathematics (including summer institutes sponsored by an institution of higher education for students in grades 7–12 that provide instruction in such fields); involve partnerships of industry, educational institutions, and community organizations to address the educational needs of disadvantaged communities; provide college preparatory support to expose and prepare students for careers in science, technology, engineering, and mathematics; and provide for carrying out systemic reform activities under section 3(a)(1) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a)(1)).

''(4) STEM CAPACITY BUILDING AT MINORITY-SERVING INSTITUTIONS.—

''(A) IN GENERAL.—Twelve percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Director of the National Science Foundation until expended to establish or expand programs to award grants on a competitive, merit-reviewed basis to enhance the quality of undergraduate science, technology, engineering, and mathematics education at minority-serving in-

stitutions of higher education and to increase the retention and graduation rates of students pursuing degrees in such fields at such institutions.

''(B) TYPES OF PROGRAMS COVERED.—Grants awarded under this paragraph shall be awarded to—

''(i) minority-serving institutions of higher education for—

''(I) activities to improve courses and curriculum in science, technology, engineering, and mathematics;

''(II) efforts to promote gender equality among students enrolled in such courses;

''(III) faculty development;

''(IV) stipends for undergraduate students participating in research; and

''(V) other activities consistent with subparagraph (A), as determined by the Director; and

''(ii) to other institutions of higher education to partner with the institutions described in clause (i) for—

"(I) faculty and student development and exchange;

"(II) research infrastructure development;

"(III) joint research projects; and

"(IV) identification and development of minority and low-income candidates for graduate studies in science, technology, engineering and mathematics degree programs.

"(C) INSTITUTIONS INCLUDED.—In this paragraph, the term 'minority-serving institutions of higher education' shall include—

"(i) colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326a and 328), including Tuskegee University;

"(ii) 1994 Institutions, as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); and

"(iii) Hispanic-serving institutions, as defined in section 502(a)(5) of the Higher

Education Act of 1965 (20 U.S.C. 1101a(a)(5)).

''(5) STEM JOB TRAINING.—Ten percent of amounts deposited into the STEM Education and Training Account shall remain available to the Secretary of Labor until expended for—

''(A) demonstration programs and projects described in section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998; and

''(B) training programs in the fields of science, technology, engineering, and mathematics for persons who have served honorably in the Armed Forces of the United States and have retired or are retiring from such service.

''(6) USE OF FEES FOR DUTIES RELATING TO PETITIONS.—One and one-half percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Secretary of Homeland Security until expended to carry out duties under paragraphs (1) (E) or (F) of section 204(a) (related to petitions for immigrants described in section 203(b)) and under paragraphs (1) and (9) of section 214(c) (related to petitions made

for nonimmigrants described in section 101(a)(15)(H)(i)(b)).

''(7) USE OF FEES FOR APPLICATION PROCESSING AND ENFORCEMENT.—One and one-half percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(a)(5)(A) and section 212(n)(1).''.

SEC. 203. ACCESS TO STUDENT VISAS FOR IMMIGRANT STUDENTS PRESENT IN THE UNITED STATES.

Notwithstanding paragraphs (6)(A) and (7) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), the Secretary of Homeland Security may adjust an alien's status to that of a nonimmigrant student under section 101(a)(15)(F) of such Act (8 U.S.C. 1101(a)(15)(F)) if the alien—

(1) is a bona fide student enrolled in a full course of study at a United States institution of higher education;

(2) was present in the United States on the date of the enactment of this Act and has been continuously present since that date; and

(3) was 15 years of age or younger on the date the alien initially entered the United States.

TITLE III—REDUCING ADMINISTRATIVE HURDLES TO FOSTER INNOVATION AND JOB CREATION

SEC. 301. STREAMLINING LABOR CERTIFICATIONS.

(a) IN GENERAL.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8. U.S.C. 1182(a)(5)(A)) is amended—

(1) in clause (ii)—

(A) in subclause (I), by striking ''or'';

(B) in subclause (II), by striking the period and inserting '', or'';

(C) by adding at the end the following new subclause:

''(III) is the beneficiary of a labor certification application filed by an employer designated as an Established U.S. Recruiter under clause (vii).''; and

(2) by adding at the end the following new clauses:

''(v) PROCESSING STANDARDS.—

''(I) TIMEFRAMES.—The Secretary of Labor shall adjudicate an application for certification under

clause (i) not later than 120 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Secretary during such 120-day period, the Secretary shall adjudicate the application not later than 60 days after the date on which such information or documentation is received.

''(II) NOTICE WITHIN 30 DAYS OF DEFICIENCIES.—The employer shall be notified in writing within 30 days of the date of filing if the application does not meet the standards (other than that described in clause (i)(I)) for approval. If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

''(vi) FEES.—

''(I) APPLICATION FEE.—In addition to any other fees authorized by

law, the Secretary of Labor shall impose a fee on an employer that submits an application for certification under clause (i). The amount of the fee shall be $295 for each such application.

"(II) PREMIUM PROCESSING.—The Secretary of Labor is authorized to establish and collect an optional premium fee for processing of applications for certification under clause (i). This fee shall be set at $1,000 and shall be paid in addition to the application fee under subclause (I). For an application in which the premium processing fee is paid, the Secretary shall adjudicate the application not later than 30 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Secretary with respect to such application during the 30-day period, the Secretary shall adjudicate the application not later than 30 days after the

date on which such information or documentation is received. If the Secretary does not comply with these timeframes, the Secretary shall refund the premium processing fee to the applicant.

''(III) DEPOSIT OF FEES.—Fees collected under subclauses (I) and (II) shall be deposited in the Treasury in accordance with section 286(w).

''(IV) PROHIBITION ON EMPLOYER ACCEPTING REIMBURSEMENT OF FEE.—An employer subject to a fee under this clause shall not require or accept reimbursement of or other compensation for all or part of the cost of such fee, directly or indirectly, from the alien on whose behalf the application is filed.

''(vii) ESTABLISHED U.S. RECRUITERS.—

''(I) IN GENERAL.—The Secretary of Labor shall establish a process for employers to apply for designation as an Established U.S. Re-

cruiter. An employer seeking such designation must file an application with the Secretary stating the following:

"(aa) At least 80 percent of the employer's workforce in the United States are United States workers.

"(bb) At least 80 percent of the employer's new hires in the United States in the 5 years preceding the filing of the application are United States workers.

"(cc) The employer regularly posts employment opportunities on a publicly accessible Internet Web site and has engaged in at least 3 other forms of active recruitment on an annual basis over the preceding 3 years.

"(dd) The employer will continue to engage in the recruitment efforts described in item (cc) during the certification period.

For the purposes of this clause, the term 'United States worker' shall include an alien with a pending or approved petition under subparagraph (E) or (F) of section 204(a)(1).

"(II) DESIGNATION.—

"(aa) TIMELY ADJUDICATIONS.—The Secretary of Labor shall adjudicate an application for designation under subclause (I) not later than 30 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Secretary, the Secretary shall adjudicate the application not later than 30 days after the receipt of such information or documentation.

"(bb) APPLICATION FEE.—In addition to any other fees authorized by law, the Secretary of Labor may impose a fee on an employer that submits an appli-

cation for designation under subclause (I). The amount of the fee shall be $500 for each such application. Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(w).

''(cc) PERIOD OF DESIGNATION.—Unless terminated under item (dd), a designation issued under this clause shall be valid for 3 years.

''(dd) TERMINATION.—The Secretary of Labor may terminate a designation under subclause (I) if the Secretary determines that the employer—

''(AA) did not fulfill the requirements of such subclause at the time the certification was issued; or

''(BB) failed to meet the requirements under subclause (I)(ee) during the

designation period described in item (cc).

"(III) ACTIVE RECRUITMENT.—For the purposes of this clause 'active recruitment' means any of the following:

"(aa) EMPLOYEE REFERRAL PROGRAM.—The employer operates an employee referral program that includes meaningful incentives for employees to refer workers for job openings.

"(bb) IN-HOUSE RECRUITERS.—The employer retains an in-house recruiter on a full-time basis to recruit workers for job openings.

"(cc) JOB FAIRS.—The employer recruits workers at job fairs that are advertised in newspaper advertisements in which the employer is named as a participant in such fairs.

"(dd) MILITARY RECRUITING.—The employer recruits

workers during recruiting events that are organized by the Armed Forces of the United States.

"(ee) ON-CAMPUS RECRUITING.—The employer recruits workers at institutions of higher education during recruiting events that are organized by such institutions.

"(ff) PRIVATE EMPLOYMENT FIRMS.—The employer regularly engages private employment firms or placement agencies to recruit workers for job openings.

"(gg) TRADE OR PROFESSIONAL ORGANIZATIONS.—The employer regularly advertises with trade or professional organizations to recruit workers for job openings.".

(b) ESTABLISHMENT OF ACCOUNT AND USE OF FUNDS.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(w) LABOR CERTIFICATION APPLICATION FEE ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Labor Certification Application Fee Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 212(a)(5)(A).

''(2) USE OF FEES.—Amounts deposited into the Labor Certification Application Fee Account shall remain available to the Secretary of Labor until expended for carrying out labor certification activities under section 212(a)(5)(A) (including providing premium processing services) and to make infrastructure improvements in the adjudications and customer-service processes related to such activities.''.

SEC. 302. STREAMLINING PETITIONS FOR ESTABLISHED EMPLOYERS.

Section 214(c) of the Immigration and Nationality Act (8. U.S.C. 1184) is amended by adding at the end the following:

''(15) The Secretary of Homeland Security shall establish a pre-certification procedure for employers who file

multiple petitions described in this subsection or section 203(b). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish, through a single filing, criteria relating to the employer and the offered employment opportunity.''.

SEC. 303. PREMIUM PROCESSING.

Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended—

(1) by striking ''is authorized to'' and inserting ''shall''; and

(2) at the end of the first sentence, by striking ''applications.'' and inserting ''applications, including an administrative appeal of any decision on an employment-based immigrant petition.''.

TITLE IV—PROTECTING AMERICAN WORKERS

SEC. 401. STRENGTHENING THE PREVAILING WAGE SYSTEM TO PROTECT AMERICAN WORKERS.

Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended to read as follows:

''(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

''(1) The Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational clas-

sification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

''(A) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

''(B) The second level shall be the mean of wages surveyed.

''(C) The third level shall be the mean of the highest two-thirds of wages surveyed.

''(2) The prevailing wage level required to be paid pursuant to section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section shall be 100 percent of the wage level determined pursuant to those sections.

''(3) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and

(t)(1)(A)(i)(II) of this section in the case of an employee of—

"(A) an institution of higher education, or a related or affiliated nonprofit entity, or

"(B) a nonprofit research organization or a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

"(4) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.".

SEC. 402. REFORMING THE H–1B VISA PROGRAM TO PROTECT AMERICAN WORKERS.

(a) STRENGTHENING WAGE PROTECTIONS.—Section 214(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(3)) is amended—

(1) by striking "Aliens who" and inserting "(A) Aliens who"; and

(2) by adding at the end the following:

''(B) If, on any given date, the number of petitions filed under subparagraph (A) exceeds the number of visas remaining under paragraph (1), the Secretary shall consider such petitions in the following order:

''(i) petitions in which the offered wage level meets or exceeds the wage set by section 212(p)(1)(C);

''(ii) petitions in which the offered wage level meets or exceeds the wage set by section 212(p)(1)(B); and

''(iii) any remaining petitions.''.

(b) PROHIBITING DISPLACEMENT OF U.S. WORKERS.—

(1) PROHIBITING DISPLACEMENT BY EMPLOYER.—Section 212(n)(1)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)) is amended—

(A) in clause (i) by striking ''In the case of an application described in clause (ii), the'' and inserting ''The''; and

(B) by striking clause (ii).

(2) PROHIBITING DISPLACEMENT BY THIRD-PARTY EMPLOYER.—Section 212(n)(1)(F) of the Immigration and Nationality Act (8 U.S.C.

1182(n)(1)(F)) is amended by striking ''In the case of an application described in subparagraph (E)(ii), the'' and inserting ''The''.

(3) DEFINITION OF DISPLACE.—Section 212(n)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(B)) is amended by—

(A) inserting ''and skills'' after ''responsibilities''; and

(B) inserting ''working in the same division, project or product line'' after ''experience''.

(c) STRENGTHENING RECRUITMENT REQUIREMENTS.—

(1) REQUIRING RECRUITMENT OF U.S. WORKERS.—

(A) IN GENERAL.—Section 212(n)(1)(G)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(G)(i)) is amended by striking ''In the case of an application described in subparagraph (E)(ii), subject to clause (ii)'' and inserting ''Subject to clauses (ii) and (iii)''.

(B) DEPENDENT EMPLOYERS.—Section 212(n)(1)(G)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(G)(ii)) is amended to read as follows:

"(ii) The employer shall be required to comply with additional supervised recruitment activities as specified by the Secretary of the Labor if the employer—

"(I) employs 50 or more employees in the United States and less than 50 percent of such employees are United States workers; and

"(II) is offering wages below the wage level set by subsection (p)(1)(B) (relating to the mean wage for the occupational classification in the area of employment).

For purposes of this clause, the term 'United States worker' shall include an alien with a pending or approved petition under subparagraph (E) or (F) of section 204(a)(1).".

(C) RECRUITMENT REPORT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended, in the flush text following subparagraph (G), by striking "Nothing in subparagraph (G)" and inserting "An employer required to recruit under subparagraph (G) shall submit to the Secretary,

along with an application under this paragraph, a recruitment report containing evidence that the employer posted the employment opportunity on a publicly accessible Internet Web site and engaged in at least 3 other forms of active recruitment (as defined in subsection (a)(5)(A)(vii)(III)). The employer shall maintain an audit file of recruitment activities, including information on United States worker applicants, for 3 years after the date the application was filed with the Secretary. Nothing in Subparagraph (G)''.

(2) EXCEPTION FOR EMPLOYERS WHO PAY INCREASED WAGES.—Section 212(n)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(G)), as amended by this subsection, is further amended by adding at the end the following:

''(iii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H–1B nonimmigrant—

''(I) who is described in subparagraph (A), (B), or (C) of section 203(b)(1); or

''(II) if the wages being offered to such nonimmigrant meet or exceed the wage level set by subsection (p)(1)(B) (relating to the mean wage for the occupational classification in the area of employment) and the applicant is designated as an Established U.S. Recruiter under section 212(a)(5)(A)(vii).''.

(3) ELIMINATING REDUNDANT TESTING OF LABOR MARKET.—Section 212(a)(5)(D) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(D)) is amended—

(A) by striking ''The grounds'' and inserting ''(i) Except as provided in clause (ii), the grounds''; and

(B) by adding at the end the following:

''(ii) Clause (i) shall not apply to an alien seeking admission or adjustment of status who is presently a nonimmigrant described under section 101(a)(15)(H)(i)(b) if—

''(I) the alien obtained such nonimmigrant status based on a petition filed after the effective date of the IDEA Act of 2011;

"(II) the alien is the subject of a petition described in section 204(a)(1)(F) and is seeking admission or adjustment of status through such petition; and

"(III) the petition described in subclause (II) was filed by the alien's employer within 18 months after the date on which the alien obtained nonimmigrant status under section 101(a)(15)(H)(i)(b).".

(d) IMPROVING PROTECTIONS FOR U.S. WORKERS.—

(1) IN GENERAL.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

"(2)(A) IN GENERAL.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints, which may be filed by any aggrieved person or organization (including bargaining representatives), respecting an employer's compliance with this subsection. The Secretary, either pursuant to this complaint process or otherwise, may investigate employers as necessary to determine such compliance. The Secretary shall audit at least 5 percent of the employers who file applications under paragraph (1) in a given year to determine compliance with this subsection.

''(B) PENALTIES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing—

''(i) a substantial failure to meet any of the conditions of the application described under paragraph (1), a misrepresentation of a material fact in such application, or a violation of subparagraph (C) or (D)—

''(I) the Secretary of Labor shall, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Labor may not approve applications with respect to that employer under paragraph (1) during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer; and

''(ii) a substantial failure to meet any of the conditions of the application described under paragraph (1) or a misrepresentation of a material fact in such application, in the

course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of filing of any visa petition supported by the application—

''(I) the Secretary of Labor shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Labor may not approve applications with respect to that employer under paragraph (1) during a period of at least 5 years for aliens to be employed by the employer.

''(C) DISCRIMINATION OR RETALIATION PROHIBITED.—It is a violation of this subparagraph for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, discharge, or in any other manner discriminate or retaliate against an employee (including a former employee or an applicant for employment) because the employee—

"(i) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(ii) seeks legal assistance or counsel related to any such violation, or cooperates, or seeks to cooperate, in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which an H–1B nonimmigrant who files a complaint regarding a violation of this subparagraph and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

"(D) PROHIBITED FEES.—It is a violation of this subparagraph for an employer who has filed an application under this subsection—

"(i) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer; or

"(ii) to require or accept reimbursement or any other form of compensation from an alien with respect to a fee imposed on the employer under section 214(c)(9).

"(E) BENCHING PROHIBITED.—

"(i) IN GENERAL.—It is a violation of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(a) for all such nonproductive time (if the nonimmigrant was designated as a full-time employee on the petition filed under section 214(c)(1)) or otherwise for such hours as are designated on such peti-

tion consistent with the rate of pay identified on such petition.

"(ii) EXCEPTIONS.—

"(I) In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, subclause (i) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

"(II) Clause (i) does not apply to a failure to pay wages to an H–1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

"(III) Clause (i) shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H–1B nonimmigrant an established salary practice of the employer, under which the employer pays to H–1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

"(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

"(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this chapter to remain in the United States.

"(iii) RELATION TO SUBPARAGRAPH (G).—This subparagraph shall not be construed as superseding subparagraph (G).

''(F) TREATMENT.—It is a violation of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

''(G) BACK WAGES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing, that recovery of back wages, fees or costs is necessary to address a violation of this subsection or any other law, the Secretary of Labor may recover such back wages, fees or costs on behalf of the worker.

''(H) GOOD FAITH COMPLIANCE.—

''(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or proce-

dural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

''(ii) Clause (i) shall not apply if—

''(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

''(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct such failure; and

''(III) the person or entity has not corrected the failure voluntarily within such period.

''(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

''(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this paragraph.

''(I) AUTHORITY TO ENSURE COMPLIANCE.—The Secretary of Labor is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions under this subsection. The rights and remedies provided to H–1B nonimmigrants by this subsection are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such nonimmigrants, and are not intended to alter or affect such rights and remedies.

''(J) SUBSTANTIAL FAILURE DEFINED.—The term 'substantial failure' means the repeated, reckless or willful failure to comply with the requirements of this section that constitute a significant deviation from the requirements of this section or the terms and conditions of an application filed under this section.''.

(2) CONFORMING AMENDMENT.—Section 212(n) of the Immigration and Nationality Act (8

U.S.C. 1182(n)) is amended by striking paragraphs (3) and (5) and redesignating paragraph (4), as amended by this section, as paragraph (3).

(e) ELIMINATING H–1B EXTENSIONS FOR EXCLUSIVELY TEMPORARY WORKERS.—Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) is amended by striking ''6'' and inserting ''3''.

(f) INCREASED PORTABILITY FOR H–1B EMPLOYEES.—

(1) GRACE PERIOD.—Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)), as amended by this Act, is further amended by adding at the end the following:

''(C) If a nonimmigrant described in section 101(a)(15)(H)(i)(b) is terminated or laid off by the nonimmigrant's employer, or otherwise ceases employment with the employer, the nonimmigrant's status shall continue for 60 days or until the last date of the previously approved status, whichever is earlier.''.

(2) ALLOWING PROMOTIONS.—Section 204(j) of the Immigration and Nationality Act (8 U.S.C. 1154(j)) is amended by—

(A) striking ''(a)(1)(D)'' and inserting ''(a)(1)(F)'';

(B) striking ''if the new job is in the same or similar occupational classification as the job for which the petition was filed.'' and inserting ''if the new job—''; and

(C) inserting at the end the following:

''(1) is in the same or similar occupational classification as the job for which the petition was filed; or

''(2) is in a different occupational classification that is in a field related to the job for which the petition was filed and involves an increase in wages of at least 5 percent.''.

(3) RETENTION OF PRIORITY DATE.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153), as amended by this Act, is further amended by adding at the end the following new subsection:

''(i) RETENTION OF PRIORITY DATE.—The priority date for any immigrant petition shall be the date of filing with the Secretary of Homeland Security or the Secretary of State, unless the filing was preceded by the filing of a labor certification with the Secretary of Labor, in which case the date of filing of such labor certification shall constitute the priority date. The beneficiary of any petition shall retain the earliest priority date based on any ap-

proved petition filed on the beneficiary's behalf, regardless of the category of subsequent petitions.''.

(4) EMPLOYMENT OF SPOUSES.—Section 214(c)(2)(E) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(E)) is amended by striking ''section 101(a)(15)(L)'' and inserting ''subparagraph (H) or (L) of section 101(a)(15)''.

(g) ELIMINATION OF H–1B CLASSIFICATION FOR FASHION MODELS.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended—

(A) by striking ''or as a fashion model''; and

(B) by striking ''or, in the case of a fashion model, is of distinguished merit and ability''.

(2) ADDITION TO P NONIMMIGRANT CLASSIFICATION.—

(A) NEW CLASSIFICATION.—Section 101(a)(15)(P) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(P)) is amended—

(i) in clause (iii), by striking ''or'' at the end;

(ii) in clause (iv), by striking ''clause (i), (ii), or (iii)'' and inserting ''clause (i), (ii), (iii), or (iv)'';

(iii) by redesignating clause (iv) as clause (v);

(iv) by inserting after clause (iii) the following:

''(iv) is a fashion model who is of distinguished merit and ability and who is seeking to enter the United States temporarily to perform fashion modeling services that involve events or productions which have a distinguished reputation or that are performed for an organization or establishment that has a distinguished reputation for, or a record of, utilizing prominent modeling talent; or''; and

(v) by striking ''having a foreign residence which the alien has no intention of abandoning''.

(B) AUTHORIZED PERIOD OF STAY.—Section 214(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(2)) is amended—

(i) in paragraph (B) by inserting ''(i), (ii), and (iii)'' after ''1101(a)(15)(P)'' each place that term appears; and

(ii) by inserting ''or fashion model'' after ''athlete''.

(C) CONSULTATION.—

(i) IN GENERAL.—Section 214(c)(4)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(4)(D)) is amended by striking ''clause (i) or (iii)'' and inserting ''clause (i), (iii), or (iv)''.

(ii) ADVISORY OPINION.—Section 214(c)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(6)(A)) is amended by inserting at the end new clause to read as follows—

''(iv) To meet the consultation requirement of paragraph (4)(D), in the case of a petition for a nonimmigrant described in section 101(a)(15)(P)(iv) of this Act, the petitioner shall submit with the petition an advisory opinion from a peer group, labor organization, or other person or persons of its choosing with expertise in the field of fashion modeling.''

(iii) EXPEDITED PROCEDURES.—Section 214(c)(6)(E)(i) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(6)(E)(i)) is amended by striking ''artists or entertainers'' and inserting ''artists, entertainers, or fashion models''.

(3) CONFORMING AMENDMENTS.—Section 214 (a) and (c) of the Immigration and Nationality Act (8 U.S.C. 1184 (a) and (c)) are amended by striking the term ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

(4) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing an alien who is a fashion model from obtaining nonimmigrant status under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)(i)) if such alien is otherwise qualified for such status.

SEC. 403. REFORMING THE L VISA PROGRAM TO PROTECT AMERICAN WORKERS.

(a) REQUIRING PREVAILING WAGE FOR CERTAIN L–1B NONIMMIGRANTS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G)(i) No alien described in clause (ii) may be admitted or provided status under section 101(a)(15)(L) unless the employer has filed with the Secretary of Labor an application stating that the employer—

"(I) is offering and will offer during the period of authorized employment wages that are at least—

"(aa) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

"(bb) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the application; and

"(II) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(ii) An alien is described in this clause if the alien will serve in a capacity involving spe-

cialized knowledge under section 101(a)(15)(L) and the alien—

"(I) will be employed in the United States for a cumulative period of time in excess of 18 months over a 3-year period, or

"(II) will be employed in the United States for a cumulative period of time in excess of 90 days over a 3-year period and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.

"(iii) An employer may comply with the requirements of clause (i) by establishing that the total amount of compensation to be paid by the employer to the alien (including the value of benefits paid by the employer to the alien in the alien's home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States) meets or exceeds the total amount of compensation paid

by the employer to all other employees with similar experience and qualifications working in the same occupational classification.''.

(b) INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by adding at the end the following:

''(H)(i) The Secretary of Labor shall establish a process for the receipt, investigation and disposition of complaints, which may be filed by any aggrieved person or organization (including bargaining representatives), respecting an employer's compliance with this paragraph and the conditions of an application under paragraph (1) for a nonimmigrant under section 101(a)(15)(L). The Secretary, either pursuant to this complaint process or otherwise, may investigate employers as necessary to determine such compliance. The Secretary shall audit at least 5 percent of the employers who file applications under subparagraph (G) in a given year to determine compliance with this subsection.

"(ii) If the Secretary finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of this paragraph, a misrepresentation of a material fact in an application under paragraph (1) for a nonimmigrant under section 101(a)(15)(L), or a violation of clause (iii) or (iv)—

"(I) the Secretary shall, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Secretary may not approve applications with respect to that employer under paragraph (1) for a nonimmigrant under section 101(a)(15)(L) during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

"(iii) It is a violation of this subparagraph for an employer who has filed an application under paragraph (1) for a nonimmigrant under section 101(a)(15)(L) to intimidate, threaten,

restrain, coerce, discharge, or in any other manner discriminate or retaliate against an employee (including a former employee or an applicant for employment) because the employee—

"(I) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(II) seeks legal assistance or counsel related to any such violation, or cooperates, or seeks to cooperate, in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

The Secretary shall devise a process under which a nonimmigrant under section 101(a)(15)(L) who files a complaint regarding a violation of this subparagraph and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period

not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(iv) It is a violation of this subparagraph for an employer who has filed an application under paragraph (1) for a nonimmigrant under section 101(a)(15)(L)—

''(I) to require such nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer; or

''(II) to require or accept reimbursement or any other form of compensation from an alien with respect to a fee imposed on the employer related to such application.

''(v) If the Secretary finds, after notice and an opportunity for a hearing, that recovery of back wages, fees or costs is necessary to address a violation of this subparagraph or any other law, the Secretary may recover such back wages, fees or costs on behalf of the worker.

''(vi) The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations,

as may be necessary to assure employer compliance with the terms and conditions under this paragraph. The rights and remedies provided to nonimmigrants under section 101(a)(15)(L) by this paragraph are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such nonimmigrants, and are not intended to alter or affect such rights and remedies.

''(vii)(I) Except as provided in subclauses (II) and (III), a person or entity is considered to have complied with the requirements of this paragraph, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

''(II) Subclause (I) shall not apply if—

''(aa) the Secretary of Homeland Security (or another enforcement agency) has explained to the person or entity the basis for the failure;

''(bb) the person or entity has been provided a period of not less than 10 business days (beginning

after the date of the explanation) within which to correct such failure; and

''(cc) the person or entity has not corrected the failure voluntarily within such period.

''(III) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in subparagraph (G), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

''(IV) Subclauses (I) and (III) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this paragraph.

''(viii) The term 'substantial failure' means the repeated, reckless or willful failure to comply with the requirements of this paragraph that constitute a significant deviation from the

requirements of this paragraph or the terms and conditions of an application filed under paragraph (1) for nonimmigrants under section 101(a)(15)(L).''.

(c) TECHNICAL AMENDMENT.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security''.

(d) REPORT ON L–1 NONIMMIGRANTS.—Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended—

(1) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security or Secretary of State, as appropriate,'';

(2) by inserting ''(L),'' after ''(H),''; and

(3) by adding at the end the following:

''(F) The number of applications for nonimmigrants described under section 101(a)(15)(L), based on an approved blanket petition under paragraph (2)(A), which have been filed.

''(G) The number of applications for nonimmigrants described under section 101(a)(15)(L), based on an approved blanket

petition under paragraph (2)(A), which have been approved.''.

(e) REPORT ON L–1 BLANKET PETITION PROCESS.—Not later than 12 months after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security, in cooperation with the Inspector General of the Department of State, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the efficiency and reliability of the process for reviewing such blanket petitions and adjudicating visa applications filed under an approved blanket petition, including whether the process includes adequate safeguards against fraud and abuse.

TITLE V—PROMOTING INVESTMENT IN THE AMERICAN ECONOMY

SEC. 501. EB–5 EMPLOYMENT CREATION INVESTOR PROGRAM.

(a) AUTHORIZATION OF EB–5 EMPLOYMENT CREATION REGIONAL CENTER PROGRAM.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C.

1153(b)(5)) is amended by adding at the end the following new subparagraph:

''(E) SET-ASIDE FOR EMPLOYMENT CREATION REGIONAL CENTERS.—

''(i) IN GENERAL.—Of the visas otherwise available under this paragraph, the Secretary of State, together with the Secretary of Homeland Security, shall set aside at least 5,000 visas for a program involving regional centers designated by the Secretary of Homeland Security, on the basis of a general proposal, for the promotion of economic growth, including improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a specific geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center under this subparagraph may be based on general predictions, contained in the proposal, concerning the kinds of new commercial enterprises that will receive capital from

aliens under this paragraph, the jobs that will be created (directly or indirectly) as a result of such capital investments and the other positive economic effects such capital investments will have.

''(ii) METHODOLOGIES.—In determining compliance with this subparagraph, and notwithstanding requirements applicable to investors not involving regional centers, the Secretary of Homeland Security, in consultation with the Secretary of Commerce, shall recognize reasonable methodologies for determining the number of jobs created by a designated regional center, including such jobs that are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, or increased domestic capital investment resulting from the regional center. The Secretary may consider estimated job creation outside the geographic boundary of a designated regional center if such estimate is supported by substantial evidence and constitutes no more than 50 percent of the

overall number of jobs estimated to be created by such regional center.

''(iii) PREAPPROVAL OF NEW COMMERCIAL ENTERPRISES.—The Secretary of Homeland Security shall establish a preapproval procedure for commercial enterprises that—

''(I) allows a regional center to apply to the Secretary for approval of a new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in the new commercial enterprise;

''(II) in considering an application under subclause (I), requires that the Secretary make final decisions on all issues under this paragraph other than those issues unique to each individual investor in the new commercial enterprise; and

''(III) requires that the Secretary eliminate the need for the repeated submission of documentation that is common to multiple petitions for clas-

sification under this paragraph through a regional center.

"(iv) FEE FOR REGIONAL CENTER DESIGNATION.—In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fee to apply for designation as an EB–5 regional center under this paragraph. Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(y).".

(b) TARGETED EMPLOYMENT AREAS.—Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

(1) TARGETED EMPLOYMENT AREA DEFINED.—In clause (ii), to read as follows:

"(ii) TARGETED EMPLOYMENT AREA DEFINED.—In this paragraph, the term 'targeted employment area' means—

"(I) a rural area;

"(II) an area that has experienced high unemployment (of at least 150 percent of the national average rate) within the preceding 12 months;

''(III) a county that has had a 20 percent or more decrease in population since 1970; or

''(IV) an area that is within the boundaries established for purposes of a State or Federal economic development incentive program, including areas defined as Enterprise Zones, Renewal Communities and Empowerment Zones.''.

(2) RURAL AREA DEFINED.—In clause (iii), by striking ''within a metropolitan statistical area or''.

(3) EFFECT OF PRIOR DETERMINATION.—By adding at the end the following:

''(iv) EFFECT OF PRIOR DETERMINATION.—In a case in which a geographic area is determined under clause (ii) to be a targeted employment area, such determination shall remain in effect during the 2-year period beginning on the date of the determination for purposes of any alien seeking a visa reserved under this subparagraph.''.

(c) CALCULATING JOB CREATION.—Section 203(b)(5)(D) of such Act (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

"(D) FULL-TIME EMPLOYMENT.—In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position. Such employment may be satisfied on a full-time equivalent basis by calculating the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. Full-time equivalent employment shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.".

(d) CAPITAL.—Section 203(b)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(C)) is amended by adding at the end the following:

"(iv) CAPITAL DEFINED.—For purposes of this paragraph, the term 'capital' does not include any assets acquired, directly or indirectly, by unlawful means.".

(e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)), is amended by adding ''or similar entity'' after ''including a limited partnership''.

(f) EXTENSION.—Subparagraph (A) of section 216A(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end the following: ''A date specified by the applicant (but not later than the fourth anniversary) shall be substituted for the second anniversary in applying the preceding sentence if the applicant demonstrates that the applicant has attempted to follow the applicant's business model in good faith, provides an explanation for the delay in filing the petition that is based on circumstances outside of the applicant's control, and demonstrates that such circumstances will be able to be resolved within the specified period.''.

(g) STUDY.—

(1) IN GENERAL.—The Secretary of Homeland Security, in appropriate consultation with the Secretary of Commerce and other interested parties, shall conduct a study concerning—

(A) current job creation counting methodology and initial projections under section

203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)); and

(B) how to best promote the employment creation program described in such section overseas to potential immigrant investors.

(2) REPORT.—The Secretary of Homeland Security shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate not later than 1 year after the date of the enactment of this Act containing the results of the study conducted under paragraph (1).

(h) BIENNIAL REPORT.—Beginning on the date that is one year after the date of enactment of this Act, and every 2 years thereafter, the Secretary of Homeland Security shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate that measures the economic impact of the regional center program described in section 203(b)(5)(E) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)), including—

(1) foreign and domestic capital investment;

(2) the number of jobs directly and indirectly created;

(3) any other economic benefits related to foreign investment under such program; and

(4) the number of petitions under such section approved or denied for each regional center.

(i) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations to implement the amendments made by this section.

SEC. 502. CONCURRENT FILING; ADJUSTMENT OF STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(1) in subsection (k), in the matter preceding paragraph (1), by striking ''(1), (2), or (3)'' and inserting ''(1), (2), (3), (5), or (6)''; and

(2) by adding at the end the following:

''(n) If, at the time a petition is filed under section 204 for classification under paragraph (5) or (6) of section 203(b), approval of the petition would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.''.

SEC. 503. FEES; PREMIUM PROCESSING.

(a) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as amended by this Act, is further amended by adding at the end the following:

''(y) IMMIGRANT ENTREPRENEUR ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Immigrant Entrepreneur Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (5) or (6) of section 203(b) of this Act or section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note).

''(2) USE OF FEES.—Fees collected under this section may only be used by the Secretary of Homeland Security to administer and operate the employment creation program described in paragraph (5) or (6) of section 203(b).''.

(b) PREMIUM PROCESSING.—Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended by adding at the end the following: ''In the case of a petition filed under section 204(a)(1)(H) for classification under paragraph (5) or (6) of section 203(b), if

the petitioner desires a guarantee of a decision on the petition in 60 days or less, the premium processing fee under this subsection shall be set at $2,500 and shall be deposited as offsetting receipts in the Immigrant Entrepreneur Account established under subsection (y).''.

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