

112TH CONGRESS
1ST SESSION

H. R. 3119

To amend the Immigration and Nationality Act to remove the per-country limitation on employment-based immigrant visas, to adjust the per-country limitation on family-sponsored immigrant visas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2011

Ms. ZOE LOFGREN of California (for herself and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to remove the per-country limitation on employment-based immigrant visas, to adjust the per-country limitation on family-sponsored immigrant visas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting American
5 Families and Businesses Act of 2011”.

1 **SEC. 2. EQUAL TREATMENT AMONG FOREIGN STATES.**

2 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
3 EIGN STATE.—Section 202(a)(2) of the Immigration and
4 Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

5 (1) in the paragraph heading, by striking “AND
6 EMPLOYMENT-BASED”;

7 (2) by striking “(3), (4), and (5),” and insert-
8 ing “(3) and (4),”;

9 (3) by striking “subsections (a) and (b) of sec-
10 tion 203” and inserting “section 203(a)”;

11 (4) by striking “7” and inserting “15”; and

12 (5) by striking “such subsections” and inserting
13 “such section”.

14 (b) CONFORMING AMENDMENTS.—Section 202 of the
15 Immigration and Nationality Act (8 U.S.C. 1152) is
16 amended—

17 (1) in subsection (a)(3), by striking “both sub-
18 sections (a) and (b) of section 203” and inserting
19 “section 203(a)”;

20 (2) by striking subsection (a)(5); and

21 (3) by amending subsection (e) to read as fol-
22 lows:

23 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

24 If it is determined that the total number of immigrant
25 visas made available under section 203(a) to natives of
26 any single foreign state or dependent area will exceed the

1 numerical limitation specified in subsection (a)(2) in any
2 fiscal year, in determining the allotment of immigrant visa
3 numbers to natives under section 203(a), visa numbers
4 with respect to natives of that state or area shall be allo-
5 cated (to the extent practicable and otherwise consistent
6 with this section and section 203) in a manner so that,
7 except as provided in subsection (a)(4), the proportion of
8 the visa numbers made available under each of paragraphs
9 (1) through (4) of section 203(a) is equal to the ratio of
10 the total number of visas made available under the respec-
11 tive paragraph to the total number of visas made available
12 under section 203(a).”.

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

16 (1) in subsection (a), by striking “subsection
17 (e)” and inserting “subsection (d)”; and

18 (2) by striking subsection (d) and redesignating
19 subsection (e) as subsection (d).

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to fiscal years beginning with fiscal
22 year 2013.

23 (e) TRANSITION RULES FOR EMPLOYMENT-BASED
24 IMMIGRANTS.—

1 (1) IN GENERAL.—Subject to the succeeding
2 paragraphs of this subsection and notwithstanding
3 title II of the Immigration and Nationality Act (8
4 U.S.C. 1151 et seq.), the following rules shall apply:

5 (A) For fiscal year 2013, 15 percent of the
6 total number of immigrant visas made available
7 under section 203(b) of such Act (8 U.S.C.
8 1153(b)) shall be allotted to immigrants who
9 are natives of a foreign state or dependent area
10 that was not one of the two states with the
11 largest numbers of natives obtaining lawful per-
12 manent resident status during fiscal year 2011
13 under such section 203(b).

14 (B) For fiscal year 2014, 10 percent of the
15 total number of immigrant visas made available
16 under such section 203(b) shall be allotted to
17 immigrants who are natives of a foreign state
18 or dependent area that was not one of the two
19 states with the largest numbers of natives ob-
20 taining lawful permanent resident status during
21 fiscal year 2012 under such section 203(b).

22 (C) For fiscal year 2015, 10 percent of the
23 total number of immigrant visas made available
24 under such section 203(b) shall be allotted to
25 immigrants who are natives of a foreign state

1 or dependent area that was not one of the two
2 states with the largest numbers of natives ob-
3 taining lawful permanent resident status during
4 fiscal year 2013 under such section 203(b).

5 (2) PER-COUNTRY LEVELS.—

6 (A) RESERVED VISAS.—With respect to
7 the visas reserved under each of subparagraphs
8 (A) through (C) of paragraph (1), the number
9 of such visas made available to natives of any
10 single foreign state or dependent area in the ap-
11 propriate fiscal year may not exceed 25 percent
12 (in the case of a single foreign state) or 2 per-
13 cent (in the case of a dependent area) of the
14 total number of such visas.

15 (B) UNRESERVED VISAS.—

16 (i) IN GENERAL.—With respect to the
17 immigrant visas made available under such
18 section 203(b) and not reserved under
19 paragraph (1), for each of fiscal years
20 2013, 2014, and 2015, not more than the
21 number of such visas calculated under
22 clause (ii) shall be allotted to immigrants
23 who are natives of any single foreign state.

24 (ii) CALCULATION OF NUMBER.—The
25 numbers of visas calculated under this

1 clause for a fiscal year is the number that
2 is equal to 70 percent of the total number
3 of immigrant visas made available under
4 such section 203(b) for such fiscal year.

5 (3) RULES FOR CHARGEABILITY.—Section
6 202(b) of such Act (8 U.S.C. 1152(b)) shall apply
7 in determining the foreign state to which an alien is
8 chargeable for purposes of this subsection.

9 **SEC. 3. SPECIAL PROVISIONS IN CASES OF LENGTHY ADJU-**
10 **DICATIONS.**

11 (a) EMPLOYMENT-BASED IMMIGRANTS.—

12 (1) IN GENERAL.—Section 214 of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1154) is amend-
14 ed by adding at the end the following:

15 “(s) SPECIAL PROVISIONS IN CASES OF LENGTHY
16 ADJUDICATIONS.—

17 “(1) EXEMPTION FROM LIMITATIONS.—Not-
18 withstanding subsections (c)(2)(D), (g)(4) and (m),
19 the authorized stay of an alien described in para-
20 graph (2) may be extended pursuant to paragraph
21 (3) if 365 days or more have elapsed since the filing
22 of any of the following:

23 “(A) An application for labor certification
24 under section 212(a)(5)(A), in a case in which

1 certification is required or used by an alien to
2 obtain status under section 203(b).

3 “(B) A petition described in section 204(b)
4 to accord the alien a status under section
5 203(b).

6 “(2) ALIENS DESCRIBED.—An alien is de-
7 scribed in this paragraph if the alien was previously
8 issued a visa or otherwise provided nonimmigrant
9 status under—

10 “(A) section 101(a)(15)(F);

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

12 “(C) section 101(a)(15)(L).

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

18 “(A) to deny the application described in
19 paragraph (1)(A), or, in a case in which such
20 application is granted, to deny a petition de-
21 scribed in paragraph (1)(B) filed on behalf of
22 the alien pursuant to such grant;

23 “(B) to deny the petition described in
24 paragraph (1)(B); or

1 “(C) to grant or deny the alien’s applica-
2 tion for an immigrant visa or adjustment of
3 status to that of an alien lawfully admitted for
4 permanent residence.”.

5 (2) PROVIDING DUAL INTENT FOR STU-
6 DENTS.—Section 101(a)(15)(F)(i) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1101(a)(15)(F)(i)) is amended by striking “having a
9 residence in a foreign country which he has no in-
10 tention of abandoning,”.

11 (3) CONFORMING AMENDMENTS.—

12 (A) Section 106 of the American Competi-
13 tiveness in the 21st Century Act is amended by
14 striking subsections (a) and (b).

15 (B) Section 214(b) of the Immigration and
16 Nationality Act (8 U.S.C. 1184(b)) is amended
17 by striking “(L) or (V)” and inserting “(F),
18 (L) or (V)”.

19 (C) Section 214(h) of the Immigration and
20 Nationality Act (8 U.S.C. 1184(h)) is amended
21 by striking “(H)(i)(b)” and inserting “(F),
22 (H)(i)(b)”.

23 (b) FAMILY-BASED IMMIGRANTS.—Section
24 101(a)(15) of the Immigration and Nationality Act (8

1 U.S.C. 1101(a)(15)) is amended by adding at the end the
2 following:

3 “(W) an alien who is the beneficiary (in-
4 cluding a child of the principle alien, if eligible
5 to receive a visa under section 203(d)) of an ap-
6 proved petition to accord a status under section
7 203(a)(2)(A) if 180 days or more have elapsed
8 since the filing of such petition and—

9 “(i) an immigrant visa is not imme-
10 diately available to the alien because of a
11 waiting list of applicants for visas under
12 section 203(a)(2)(A); or

13 “(ii) the alien’s application for an im-
14 migrant visa, or the alien’s application for
15 adjustment of status under section 245,
16 pursuant to the approval of such petition,
17 remains pending.”.

18 **SEC. 4. RECAPTURING IMMIGRANT VISAS LOST TO BU-**
19 **REAUCRATIC DELAY.**

20 (a) **EMPLOYMENT-BASED IMMIGRANTS.**—Section
21 201(d) of the Immigration and Nationality Act (8 U.S.C.
22 1151(d)) is amended to read as follows:

23 “(d) **WORLDWIDE LEVEL OF EMPLOYMENT-BASED**
24 **IMMIGRANTS.**—

1 “(1) IN GENERAL.—The worldwide level of em-
2 ployment-based immigrants under this subsection for
3 a fiscal year is equal to the sum of—

4 “(A) 140,000;

5 “(B) the number computed under para-
6 graph (2); and

7 “(C) the number computed under para-
8 graph (3).

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

16 “(3) UNUSED VISAS.—The number computed
17 under this paragraph is the difference, if any, be-
18 tween—

19 “(A) the difference, if any, between—

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

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

1 “(B) the number of visas actually issued
2 after fiscal year 2011 pursuant to an immi-
3 grant visa number issued under section 203(b),
4 subject to this subsection, during fiscal years
5 1992 through 2011.”.

6 (b) FAMILY-SPONSORED IMMIGRANTS.—Section
7 201(c) of the Immigration and Nationality Act (8 U.S.C.
8 1151(c)) is amended to read as follows:

9 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
10 IMMIGRANTS.—

11 “(1) IN GENERAL.—

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

16 “(i) 480,000 minus the number com-
17 puted under paragraph (2); plus

18 “(ii) the sum of the number computed
19 under paragraph (3) and the number com-
20 puted under paragraph (4).

21 “(B) In no case shall the number com-
22 puted under subparagraph (A)(i) be less than
23 226,000.

24 “(2) IMMEDIATE RELATIVES.—The number
25 computed under this paragraph for a fiscal year is

1 the number of aliens described in subparagraph (A)
2 or (B) of subsection (b)(2) who were issued immi-
3 grant visas, or who otherwise acquired the status of
4 an alien lawfully admitted to the United States for
5 permanent residence, in the previous fiscal year.

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

13 “(4) UNUSED VISAS.—The number computed
14 under this paragraph is the difference, if any, be-
15 tween—

16 “(A) the difference, if any, between—

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

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

23 “(B) the number of visas actually issued
24 after fiscal year 2011 pursuant to an immi-
25 grant visa number issued under section 203(a),

1 subject to this subsection, during fiscal years
2 1992 through 2011.”.

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