

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3692

To establish an entrepreneur-based immigrant category for alien entrepreneurs who have completed or are in the process of completing a degree in Science, Engineering, Math or a technology-related field.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2011

Mr. SCHIFF (for himself and Mr. BASS of New Hampshire) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To establish an entrepreneur-based immigrant category for alien entrepreneurs who have completed or are in the process of completing a degree in Science, Engineering, Math or a technology-related field.

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 “Immigration and Nat-  
5       uralization Investment Ventures for Engineering, Science,  
6       and Technology in America Act of 2011” or “INVEST  
7       in America Act.”

1 **SEC. 2. CONDITIONAL PERMANENT RESIDENT STATUS FOR**  
2 **CERTAIN STEM ALIEN ENTREPRENEURS,**  
3 **SPOUSES, AND CHILDREN.**

4 The Immigration and Nationality Act is amended by  
5 inserting after section 216A the following:

6 **“SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS**  
7 **FOR CERTAIN STEM ALIEN ENTREPRENEURS,**  
8 **SPOUSES, AND CHILDREN.**

9 “(a) IN GENERAL.—

10 “(1) ADJUSTMENT OF STATUS.—Each fiscal  
11 year, the status of not more than 9,940 aliens hav-  
12 ing status under section 101(a)(15)(F)(i) or  
13 101(a)(15)(H)(i)(b) shall be adjusted to that of an  
14 alien lawfully admitted for permanent residence if  
15 each such alien files an application, at such time and  
16 in such manner as the Secretary of Homeland Secu-  
17 rity may require, that includes information sufficient  
18 to prove that the alien has fulfilled the following re-  
19 quirements:

20 “(A) The alien is in the process of com-  
21 pleting, or has completed within the most re-  
22 cent 3 years preceding the date of application,  
23 a graduate level degree in science, technology,  
24 engineering, math or a related academic dis-  
25 cipline from an accredited United States col-

1           lege, university or other institute of higher edu-  
2           cation.

3           “(B) The alien establishes and engages in  
4           a new commercial enterprise (including a lim-  
5           ited partnership) that is relevant to the area of  
6           study of paragraph (1).

7           “(C) The alien submits a business plan  
8           (which may be updated and modified as a result  
9           of market conditions as long as the criteria  
10          specified in this section are met), which in-  
11          cludes the creation of no less than 5 new full-  
12          time jobs and a minimum of 90 total work  
13          months for United States citizens or aliens law-  
14          fully admitted for permanent residence or other  
15          immigrants lawfully authorized to be employed  
16          in the United States (other than the immigrant  
17          and the immigrant’s spouse, sons, or daughters)  
18          within 5 years and provides the prevailing wage  
19          level for the occupational classification in the  
20          area of employment.

21          “(D) The alien is admissible as an immi-  
22          grant, except that the numerical limitations of  
23          sections 201 and 202 shall not apply to the ad-  
24          justment of aliens to lawful permanent resident  
25          status under this subsection.

1           “(2) CONDITIONAL BASIS FOR STATUS.—Not-  
2     withstanding any other provision of this Act, an  
3     alien entrepreneur (as defined in subsection (g)(1)),  
4     alien spouse, and alien child (as defined in sub-  
5     section (g)(2)) shall be considered, at the time of ob-  
6     taining the status of an alien lawfully admitted for  
7     permanent residence, to have obtained such status  
8     on a conditional basis subject to the provisions of  
9     this section.

10           “(3) NOTICE OF REQUIREMENTS.—

11           “(A) AT TIME OF OBTAINING PERMANENT  
12     RESIDENCE.—At the time an alien entre-  
13     preneur, alien spouse, or alien child obtains per-  
14     manent resident status on a conditional basis  
15     under paragraph (1), the Secretary of Home-  
16     land Security shall provide for notice to such an  
17     entrepreneur, spouse, or child respecting the  
18     provisions of this section and the requirements  
19     of subsection (c)(1) to have the conditional  
20     basis of such status renewed, and the require-  
21     ments of subsection (d)(1) to have the condi-  
22     tional basis of such status removed.

23           “(B) AT TIME OF REQUIRED PETITION.—

24     In addition, the Secretary of Homeland Secu-  
25     rity shall attempt to provide notice to such an

1 entrepreneur, spouse, or child, at or about the  
2 beginning of the 90-day period described in  
3 subsection (e)(2)(A), of the requirements of  
4 subsection (c)(1) and (d)(1).

5 “(C) EFFECT OF FAILURE TO PROVIDE  
6 NOTICE.—The failure of the Secretary of  
7 Homeland Security to provide a notice under  
8 this paragraph shall not affect the enforcement  
9 of the provisions of this section with respect to  
10 such an entrepreneur, spouse, or child.

11 “(b) TERMINATION OF STATUS IF FINDING THAT  
12 QUALIFYING ENTREPRENEURSHIP IMPROPER.—

13 “(1) IN GENERAL.—In the case of an alien en-  
14 trepreneur with permanent resident status on a con-  
15 ditional basis under subsection (a), if the Secretary  
16 of Homeland Security determines, before the 60-  
17 month anniversary of the alien’s obtaining the status  
18 of lawful admission for permanent residence, that—

19 “(A) the establishment of the commercial  
20 enterprise was intended solely as a means of  
21 evading the immigration laws of the United  
22 States;

23 “(B)(i) the alien did not establish and en-  
24 gage in a new commercial enterprise relevant to  
25 the graduate level degree in science, technology,

1           engineering, math or a related academic dis-  
2           cipline; or

3           “(ii) the alien was not sustaining the ac-  
4           tions described in clause (i) throughout the pe-  
5           riod of the alien’s residence in the United  
6           States; or

7           “(C) the alien was otherwise not con-  
8           forming to the requirements of this section,  
9           then the Secretary of Homeland Security shall  
10          so notify the alien involved and, subject to para-  
11          graph (2), shall terminate the permanent resi-  
12          dent status of the alien (and the alien spouse  
13          and alien child) involved as of the date of the  
14          determination.

15          “(2) HEARING IN REMOVAL PROCEEDING.—Any  
16          alien whose permanent resident status is terminated  
17          under paragraph (1) may request a review of such  
18          determination in a proceeding to remove the alien.  
19          In such proceeding, the burden of proof shall be on  
20          the Secretary of Homeland Security to establish, by  
21          a preponderance of the evidence, that a condition de-  
22          scribed in paragraph (1) is met.

23          “(c) REQUIREMENTS OF TIMELY PETITION AND  
24          INTERVIEW FOR RENEWAL OF CONDITION.—

1           “(1) IN GENERAL.—In order for the conditional  
2 basis established under subsection (a) for an alien  
3 entrepreneur, alien spouse, or alien child to be re-  
4 newed—

5           “(A) the alien entrepreneur must submit  
6 to the Secretary of Homeland Security, during  
7 the period described in subsection (e)(2), a peti-  
8 tion which requests the renewal of such condi-  
9 tional basis and which states, under penalty of  
10 perjury, the facts and information described in  
11 subsection (e)(1); and

12           “(B) in accordance with subsection (e)(3),  
13 the alien entrepreneur must appear for a per-  
14 sonal interview before an officer or employee of  
15 the Service respecting the facts and information  
16 described in subsection (e)(1).

17           “(2) TERMINATION OF PERMANENT RESIDENT  
18 STATUS FOR FAILURE TO FILE PETITION OR HAVE  
19 PERSONAL INTERVIEW.—

20           “(A) IN GENERAL.—In the case of an alien  
21 with permanent resident status on a conditional  
22 basis under subsection (a), if—

23           “(i) no petition is filed with respect to  
24 the alien in accordance with the provisions  
25 of paragraph (1)(A); or

1           “(ii) unless there is good cause shown,  
2           the alien entrepreneur fails to appear at  
3           the interview described in paragraph  
4           (1)(B) (if required under subsection  
5           (e)(3)), the Secretary of Homeland Secu-  
6           rity shall terminate the permanent resident  
7           status of the alien (and the alien’s spouse  
8           and children if it was obtained on a condi-  
9           tional basis under this section) as of the  
10          30 month anniversary of the alien’s lawful  
11          admission for permanent residence.

12          “(B) HEARING IN REMOVAL PRO-  
13          CEEDING.—In any removal proceeding with re-  
14          spect to an alien whose permanent resident sta-  
15          tus is terminated under subparagraph (A), the  
16          burden of proof shall be on the alien to estab-  
17          lish compliance with the conditions of para-  
18          graphs (1)(A) and (1)(B).

19          “(3) DETERMINATION AFTER PETITION AND  
20          INTERVIEW.—

21                 “(A) IN GENERAL.—If—

22                         “(i) a petition is filed in accordance  
23                         with the provisions of paragraph (1)(A);  
24                         and



1           “(ii) the alien entrepreneur appears at  
2           any interview described in paragraph  
3           (1)(B), the Secretary of Homeland Secu-  
4           rity shall make a determination, within 90  
5           days of the date of the such filing or inter-  
6           view (whichever is later), as to whether the  
7           facts and information described in sub-  
8           section (e)(1) and alleged in the petition  
9           are true with respect to the qualifying  
10          commercial enterprise.

11          “(B) RENEWAL OF CONDITIONAL BASIS IF  
12          FAVORABLE DETERMINATION.—If the Secretary  
13          of Homeland Security determines that such  
14          facts and information are true, the Secretary of  
15          Homeland Security shall so notify the alien in-  
16          volved and shall renew the conditional basis of  
17          the alien’s status effective as of the 30 month  
18          anniversary of the alien’s lawful admission for  
19          permanent residence.

20          “(C) TERMINATION IF ADVERSE DETER-  
21          MINATION.—If the Secretary of Homeland Se-  
22          curity determines that such facts and informa-  
23          tion are not true, the Secretary of Homeland  
24          Security shall so notify the alien involved and,  
25          subject to subparagraph (D), shall terminate

1 the permanent resident status of an alien entre-  
2 preneur, alien spouse, or alien child as of the  
3 date of the determination.

4 “(D) HEARING IN REMOVAL PRO-  
5 CEEDING.—Any alien whose permanent resident  
6 status is terminated under subparagraph (C)  
7 may request a review of such determination in  
8 a proceeding to remove the alien. In such pro-  
9 ceeding, the burden of proof shall be on the  
10 Secretary of Homeland Security to establish, by  
11 a preponderance of the evidence, that the facts  
12 and information described in subsection (e)(1)  
13 and alleged in the petition are not true with re-  
14 spect to the qualifying commercial enterprise.

15 “(d) REQUIREMENTS OF TIMELY PETITION AND  
16 INTERVIEW FOR REMOVAL OF CONDITION.—

17 “(1) IN GENERAL.—In order for the conditional  
18 basis established under subsection (a) for an alien  
19 entrepreneur, alien spouse, or alien child to be re-  
20 moved—

21 “(A) the alien entrepreneur must submit  
22 to the Secretary of Homeland Security, during  
23 the period described in subsection (e)(2), a peti-  
24 tion which requests the removal of such condi-  
25 tional basis and which states, under penalty of

1           perjury, the facts and information described in  
2           subsection (e)(1); and

3           “(B) in accordance with subsection (e)(3),  
4           the alien entrepreneur must appear for a per-  
5           sonal interview before an officer or employee of  
6           the Service respecting the facts and information  
7           described in subsection (e)(1).

8           “(2) TERMINATION OF PERMANENT RESIDENT  
9           STATUS FOR FAILURE TO FILE PETITION OR HAVE  
10          PERSONAL INTERVIEW.—

11          “(A) IN GENERAL.—In the case of an alien  
12          with permanent resident status on a conditional  
13          basis under subsection (a), if—

14                 “(i) no petition is filed with respect to  
15                 the alien in accordance with the provisions  
16                 of paragraph (1)(A); or

17                 “(ii) unless there is good cause shown,  
18                 the alien entrepreneur fails to appear at  
19                 the interview described in paragraph  
20                 (1)(B) (if required under subsection  
21                 (e)(3)), the Secretary of Homeland Secu-  
22                 rity shall terminate the permanent resident  
23                 status of the alien (and the alien’s spouse  
24                 and children if it was obtained on a condi-  
25                 tional basis under this section) as of the

1           60 month anniversary of the alien’s lawful  
2           admission for permanent residence.

3           “(B) HEARING IN REMOVAL PRO-  
4           CEEDING.—In any removal proceeding with re-  
5           spect to an alien whose permanent resident sta-  
6           tus is terminated under subparagraph (A), the  
7           burden of proof shall be on the alien to estab-  
8           lish compliance with the conditions of para-  
9           graphs (1)(A) and (1)(B).

10          “(3) DETERMINATION AFTER PETITION AND  
11          INTERVIEW.—

12                 “(A) IN GENERAL.—If—

13                         “(i) a petition is filed in accordance  
14                         with the provisions of paragraph (1)(A);  
15                         and

16                         “(ii) the alien entrepreneur appears at  
17                         any interview described in paragraph  
18                         (1)(B), the Secretary of Homeland Secu-  
19                         rity shall make a determination, within 90  
20                         days of the date of the such filing or inter-  
21                         view (whichever is later), as to whether the  
22                         facts and information described in sub-  
23                         section (e)(1) and alleged in the petition  
24                         are true with respect to the qualifying  
25                         commercial enterprise.

1           “(B) REMOVAL OF CONDITIONAL BASIS IF  
2 FAVORABLE DETERMINATION.—If the Secretary  
3 of Homeland Security determines that such  
4 facts and information are true, the Secretary of  
5 Homeland Security shall so notify the alien in-  
6 volved and shall remove the conditional basis of  
7 the alien’s status effective as of the 60 month  
8 anniversary of the alien’s lawful admission for  
9 permanent residence.

10           “(C) TERMINATION IF ADVERSE DETER-  
11 MINATION.—If the Secretary of Homeland Se-  
12 curity determines that such facts and informa-  
13 tion are not true, the Secretary of Homeland  
14 Security shall so notify the alien involved and,  
15 subject to subparagraph (D), shall terminate  
16 the permanent resident status of an alien entre-  
17 preneur, alien spouse, or alien child as of the  
18 date of the determination.

19           “(D) HEARING IN REMOVAL PRO-  
20 CEEDING.—Any alien whose permanent resident  
21 status is terminated under subparagraph (C)  
22 may request a review of such determination in  
23 a proceeding to remove the alien. In such pro-  
24 ceeding, the burden of proof shall be on the  
25 Secretary of Homeland Security to establish, by

1 a preponderance of the evidence, that the facts  
2 and information described in subsection (e)(1)  
3 and alleged in the petition are not true with re-  
4 spect to the qualifying commercial enterprise.

5 “(e) DETAILS OF PETITION AND INTERVIEW.—

6 “(1) CONTENTS OF PETITION.—

7 “(A) Each petition under subsection  
8 (e)(1)(A) shall contain facts and information  
9 demonstrating that the alien—

10 “(i) established and engaged in a new  
11 commercial enterprise relevant to the grad-  
12 uate level degree in science, technology, en-  
13 gineering, math or a related academic dis-  
14 cipline;

15 “(ii) sustained the actions described  
16 in clause (i) throughout the period of the  
17 alien’s residence in the United States; and

18 “(iii) either—

19 “(I) created no less than 2 new  
20 full-time jobs for United States citi-  
21 zens or aliens lawfully admitted for  
22 permanent residence or other immi-  
23 grants lawfully authorized to be em-  
24 ployed in the United States (other  
25 than the immigrant and the immi-

1 grant's spouse, sons, or daughters) for  
2 the duration of a 6-month minimum  
3 prior to the filing of the petition and  
4 provides the prevailing wage level for  
5 the occupational classification in the  
6 area of employment; or

7 “(II) invested not less than  
8 \$200,000 in the new commercial en-  
9 terprise.

10 “(B) Each petition under subsection  
11 (d)(1)(A) shall contain facts and information  
12 demonstrating that the alien—

13 “(i) established and engaged in a new  
14 commercial enterprise relevant to the grad-  
15 uate level degree in science, technology, en-  
16 gineering, math or a related academic dis-  
17 cipline;

18 “(ii) sustained the actions described  
19 in clause (i) throughout the period of the  
20 alien's residence in the United States; and

21 “(iii) either—

22 “(I) created no less than 5 new  
23 full-time jobs and a minimum of 90  
24 total work months for a United States  
25 citizens or aliens lawfully admitted for

1 permanent residence or other immi-  
2 grants lawfully authorized to be em-  
3 ployed in the United States (other  
4 than the immigrant and the immi-  
5 grant's spouse, sons, or daughters)  
6 within 5 years and provides the pre-  
7 vailing wage level for the occupational  
8 classification in the area of employ-  
9 ment; or

10 “(II) invested not less than  
11 \$500,000 in the new commercial en-  
12 terprise.

13 “(C) is otherwise conforming to the re-  
14 quirements of this section.

15 “(2) PERIOD FOR FILING PETITION.—

16 “(A) IN GENERAL.—Except as provided in  
17 subparagraph (B)—

18 “(i) the petition under subsection  
19 (c)(1)(A) must be filed during the 90-day  
20 period before the 36 month anniversary of  
21 the alien's lawful admission for permanent  
22 residence; and

23 “(ii) the petition under subsection  
24 (d)(1)(A) must be filed during the 90-day  
25 period before the 60 month anniversary of



1           the alien’s lawful admission for permanent  
2           residence.

3           “(B)   DATE    PETITIONS    FOR    GOOD  
4           CAUSE.—Such a petition may be considered if  
5           filed after such date, but only if the alien estab-  
6           lishes to the satisfaction of the Secretary of  
7           Homeland Security good cause and extenuating  
8           circumstances for failure to file the petition  
9           during the period described in subparagraph  
10          (A).

11          “(C)   FILING OF PETITIONS DURING RE-  
12          MOVAL.—In the case of an alien who is the sub-  
13          ject of removal hearings as a result of failure  
14          to file a petition on a timely basis in accordance  
15          with subparagraph (A), the Secretary of Home-  
16          land Security may stay such removal pro-  
17          ceedings against an alien pending the filing of  
18          the petition under subparagraph (B).

19          “(3)   PERSONAL INTERVIEW.—The interview  
20          under subsection (c)(1)(B) and (d)(1)(B) shall be  
21          conducted within 90 days after the date of submit-  
22          ting a petition under subsection (c)(1)(A) and  
23          (d)(1)(A), respectively, and at a local office of the  
24          Service, designated by the Secretary of Homeland  
25          Security, which is convenient to the parties involved.

1 The Secretary of Homeland Security, in the Sec-  
2 retary of Homeland Security's discretion, may waive  
3 the deadline for such an interview or the require-  
4 ment for such an interview in such cases as may be  
5 appropriate.

6 “(f) TREATMENT OF PERIOD FOR PURPOSES OF  
7 NATURALIZATION.—For purposes of title III, in the case  
8 of an alien who is in the United States as a lawful perma-  
9 nent resident on a conditional basis under this section, the  
10 alien shall be considered to have been admitted as an alien  
11 lawfully admitted for permanent residence and to be in  
12 the United States as an alien lawfully admitted to the  
13 United States for permanent residence.

14 “(g) DEFINITIONS.—In this section:

15 “(1) ALIEN ENTREPRENEUR.—The term ‘alien  
16 entrepreneur’ means an alien who obtains the status  
17 of an alien lawfully admitted for permanent resi-  
18 dence (whether on a conditional basis or otherwise)  
19 under this section.

20 “(2) ALIEN SPOUSE; ALIEN CHILD.—The term  
21 ‘alien spouse’ and the term ‘alien child’ mean an  
22 alien who obtains the status of an alien lawfully ad-  
23 mitted for permanent residence (whether on a condi-  
24 tional basis or otherwise) by virtue of being the

1 spouse or child, respectively, of an alien entre-  
2 preneur.

3 “(3) COMMERCIAL ENTERPRISE.—The term  
4 ‘commercial enterprise’ includes a limited partner-  
5 ship.

6 “(4) INVESTMENT.—The term ‘investment’ in-  
7 cludes investments by venture capitalists, qualified  
8 angel investors, or the entrepreneur, and also in-  
9 cludes reinvested profits.

10 “(5) FULL-TIME EMPLOYMENT.—The term  
11 ‘full-time employment’ means employment in a posi-  
12 tion that requires at least 35 hours of service per  
13 week at any time, regardless of who fills the posi-  
14 tion.”.

15 **SEC. 3. GOVERNMENT ACCOUNTABILITY OFFICE STUDY.**

16 (a) IN GENERAL.—Not later than 5 years after the  
17 date of enactment of this Act, and again not later than  
18 10 years after the date of enactment, the Comptroller  
19 General of the United States shall submit to Congress a  
20 report on the entrepreneur-based immigrant category es-  
21 tablished under section 216B of the Immigration and Na-  
22 tionality Act.

23 (b) CONTENTS.—A report described in subsection (a)  
24 shall include information regarding—

1           (1) the number of immigrant entrepreneurs who  
2           have obtained conditional permanent residency under  
3           the entrepreneur-based immigrant category;

4           (2) the number of jobs created through the pro-  
5           gram;

6           (3) the titles and wages of the created employ-  
7           ment positions;

8           (4) the length of employment for the created  
9           employment positions;

10          (5) the number of immigrant entrepreneurs who  
11          were approved for removal of conditional permanent  
12          residence status at the end of the 5 year conditional  
13          status period;

14          (6) the economic impact of the commercial ac-  
15          tivity generated in the United States as a result of  
16          immigrant entrepreneurs; and

17          (7) any additional information regarding the ef-  
18          fects of the Program.

19 **SEC. 4. RECRUIT, RETAIN, AND INVEST STRATEGIC PLAN.**

20          (a) IN GENERAL.—Not later than 2 years after the  
21          date of the enactment of this Act, the Secretary of Home-  
22          land Security, the Secretary of Commerce, and the Sec-  
23          retary of Education shall jointly submit a strategic plan  
24          to be known as the “Recruitment, Retainment, and Invest-  
25          ment Strategic Plan” to Congress.

1           (b) CONTENTS.—The strategic plan described in sub-  
2 section (a) shall study and recommend coordinated strate-  
3 gies to attract the highest skilled and most talented for-  
4 eign nationals to immigrate to the United States in order  
5 to create American jobs and grow the United States econ-  
6 omy.

○