

106TH CONGRESS
1ST SESSION

H. R. 2687

To amend the Immigration and Nationality Act to establish a 5-year pilot program under which certain aliens completing a postsecondary degree in mathematics, science, engineering, or computer science are permitted to change nonimmigrant classification in order to remain in the United States for a 5-year period for the purpose of working in one of those fields.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1999

Ms. LOFGREN (for herself, Mr. CONYERS, Mr. DOOLEY of California, Ms. ESHOO, Ms. PELOSI, Ms. SANCHEZ, Mrs. TAUSCHER, Ms. WOOLSEY, Mr. MATSUI, Mr. THOMPSON of California, Ms. JACKSON-LEE of Texas, Mr. BERMAN, Mr. MEEHAN, and Mr. KIND) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to establish a 5-year pilot program under which certain aliens completing a postsecondary degree in mathematics, science, engineering, or computer science are permitted to change nonimmigrant classification in order to remain in the United States for a 5-year period for the purpose of working in one of those fields.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Bringing Resources
3 from Academia to the Industry of Our Nation Act” or the
4 “BRAIN Act”.

5 **SEC. 2. PILOT PROGRAM AUTHORIZING CHANGE IN NON-**
6 **IMMIGRANT STATUS FOR EMPLOYMENT-**
7 **BASED NONIMMIGRANTS WITH DEGREES IN**
8 **MATHEMATICS, SCIENCE, ENGINEERING, OR**
9 **COMPUTER SCIENCE.**

10 (a) ESTABLISHMENT OF NONIMMIGRANT CAT-
11 EGORY.—Section 101(a)(15) of the Immigration and Na-
12 tionality Act (8 U.S.C. 101(a)(15)) is amended—

13 (1) in subparagraph (R), by striking “or” at
14 the end;

15 (2) in subparagraph (S), by striking the comma
16 at the end and inserting “; or”; and

17 (3) by inserting after subparagraph (S) the fol-
18 lowing:

19 “(T) subject to section 214(n), an alien who is
20 authorized to change nonimmigrant classification
21 and remain temporarily in the United States to per-
22 form services (other than services described in sub-
23 clause (a) of subparagraph (H)(i) during the period
24 in which such subclause applies, services described in
25 subclause (ii)(a) of subparagraph (H), or services
26 described in subparagraph (O) or (P)) in a special

1 technical occupation described in section 214(n)(2),
2 who meets the requirements for the occupation spec-
3 ified in section 214(n)(3);”.

4 (b) REQUIREMENTS FOR CHANGE OF NON-
5 IMMIGRANT CLASSIFICATION; ENFORCEMENT OF EM-
6 PLOYER OBLIGATIONS.—Section 214 of the Immigration
7 and Nationality Act (8 U.S.C. 1184) is amended—

8 (1) by redesignating the subsection (l) added by
9 section 625(a) of the Illegal Immigration Reform
10 and Immigrant Responsibility Act of 1996 (Public
11 Law 104–208; 110 Stat. 3009–1820) as subsection
12 (m); and

13 (2) by adding at the end the following:

14 “(n)(1) Notwithstanding section 248 or 212(e), or
15 any other provision of this Act, the Attorney General may,
16 under such conditions as the Attorney General may pre-
17 scribe consistent with this subsection and subsection
18 (c)(10)(A), authorize a change from a nonimmigrant clas-
19 sification under subparagraph (F) or (J) of section
20 101(a)(15) to a nonimmigrant classification under section
21 101(a)(15)(T) in the case of any alien lawfully admitted
22 to the United States as a nonimmigrant who is continuing
23 to maintain that status and who is not inadmissible under
24 section 212(a)(9)(B)(i) (or whose inadmissibility under
25 such section is waived under section 212(a)(9)(B)(v)).

1 “(2) For purposes of section 101(a)(15)(T) and para-
2 graph (3), the term ‘special technical occupation’ means
3 an occupation in a high-technology field—

4 “(A) that uses the knowledge, skills, and abili-
5 ties possessed by persons attaining a bachelor’s or
6 higher degree with a major in mathematics, science,
7 engineering, or computer science, and requires such
8 knowledge, skills, and abilities as a minimum for
9 entry into the occupation in the United States; and

10 “(B) with respect to which the annual total
11 compensation (including the value of all wages, sal-
12 ary, bonuses, stock, stock options, and any other
13 similar form of remuneration) equals or exceeds
14 \$60,000.

15 “(3) For purposes of section 101(a)(15)(T), the re-
16 quirements of this paragraph, with respect to a special
17 technical occupation, are—

18 “(A) full State licensure to practice in the occu-
19 pation, if such licensure is required to practice in the
20 occupation;

21 “(B) not earlier than 90 days prior to initially
22 obtaining nonimmigrant status under such section,
23 having been graduated, with a degree described in
24 paragraph (2)(A) for the occupation, from an insti-
25 tution of higher education (as defined in section

1 102(a) of the Higher Education Act of 1965 (20
2 U.S.C. 1002(a)) inside the United States whose stu-
3 dents receive loans under part B or D of title IV of
4 such Act (20 U.S.C. 1070 et seq.; 20 U.S.C. 1087a
5 et seq.); and

6 “(C) obtaining a contractual obligation on the
7 part of the employer filing the petition on behalf of
8 the alien under section 214(c)(10)(A) to pay the
9 alien in accordance with paragraph (2)(B) at all
10 times during the period of intended employment in
11 the United States specified in the petition.

12 “(4) In the case of a nonimmigrant described in sec-
13 tion 101(a)(15)(T), the period of authorized stay in the
14 United States as such a nonimmigrant may not exceed 5
15 years.

16 “(5) An employer who has filed a petition under sub-
17 section (c)(10)(A) with respect to an employee having non-
18 immigrant status under section 101(a)(15)(T) annually
19 shall submit to the Attorney General a copy of the most
20 recent statement under section 6051 of the Internal Rev-
21 enue Code of 1986 for the employee. Based on information
22 in any such statement, the Attorney General may initiate
23 an investigation described in paragraph (7)(A) concerning
24 a possible failure, misrepresentation, or violation, without

1 a complaint described in such paragraph, if the Attorney
2 General has a reasonable basis for such initiation.

3 “(6)(A) It is a violation of this subparagraph for an
4 employer who has filed a petition under subsection
5 (c)(10)(A) to intimidate, threaten, restrain, coerce, black-
6 list, discharge, or in any other manner discriminate
7 against an employee (which term, for purposes of this sub-
8 paragraph, includes a former employee and an applicant
9 for employment) because the employee has disclosed infor-
10 mation to the employer, or to any other person, that the
11 employee reasonably believes evidences a failure to meet
12 a condition specified in the petition or a misrepresentation
13 of material facts in the petition, or any rule or regulation
14 pertaining to such subsection, or because the employee co-
15 operates or seeks to cooperate in an investigation or other
16 proceeding concerning the employer’s compliance with the
17 requirements of such subsection or any rule or regulation
18 pertaining to such subsection.

19 “(B) The Attorney General shall devise a process
20 under which a nonimmigrant described in section
21 101(a)(15)(T) who files a complaint regarding a violation
22 of subparagraph (A) and is otherwise eligible to remain
23 and work in the United States may be allowed to seek
24 other appropriate employment in the United States for a

1 period not to exceed the maximum period of stay author-
2 ized for such nonimmigrant classification.

3 “(7)(A) The Attorney General shall establish a proc-
4 ess for the receipt, investigation, and disposition of com-
5 plaints respecting a petitioner’s failure to meet a condition
6 specified in a petition under subsection (c)(10)(A), a peti-
7 tioner’s misrepresentation of material facts in such a peti-
8 tion, or a violation of paragraph (6)(A). Complaints may
9 be filed by any aggrieved person or organization (including
10 bargaining representatives). No investigation or hearing
11 shall be conducted on a complaint concerning such a fail-
12 ure, misrepresentation, or violation unless the complaint
13 was filed not later than 12 months after the date of the
14 failure, misrepresentation, or violation, respectively. The
15 Attorney General shall conduct an investigation under this
16 subparagraph if there is reasonable cause to believe that
17 such a failure, misrepresentation, or violation has oc-
18 curred.

19 “(B) Under such process, the Attorney General shall
20 provide, within 30 days after the date such a complaint
21 is filed, for a determination as to whether or not a reason-
22 able basis exists to make a finding described in subpara-
23 graph (C). If the Attorney General determines that such
24 a reasonable basis exists, the Attorney General shall pro-
25 vide for notice of such determination to the interested par-

1 ties and an opportunity for a hearing on the complaint,
2 in accordance with section 556 of title 5, United States
3 Code, within 60 days after the date of the determination.
4 If such a hearing is requested, the Attorney General shall
5 make a finding concerning the matter by not later than
6 60 days after the date of the hearing. In the case of simi-
7 lar complaints respecting the same petitioner, the Sec-
8 retary may consolidate the hearings under this subpara-
9 graph on such complaints.

10 “(C) If the Attorney General finds, after notice and
11 opportunity for a hearing, a failure to meet a condition
12 specified in a petition under subsection (c)(10)(A), a peti-
13 tioner’s misrepresentation of material facts in such a peti-
14 tion, or a violation of paragraph (6)(A), the Attorney
15 General—

16 “(i) shall revoke the status under section
17 101(a)(15)(T) of any alien having such status em-
18 ployed by the petitioner, beginning 90 days after the
19 date the finding is made, unless the alien has ob-
20 tained from the Attorney authorization to change
21 employers during the 90-day period;

22 “(ii) may not approve any other petition filed
23 by the petitioner under subsection (c)(10)(A); and

24 “(iii) may impose such other administrative
25 remedies (including civil monetary penalties in an

1 amount not to exceed \$10,000 per violation) as the
2 Attorney General determines to be appropriate.

3 “(D) Notwithstanding any other provision of law,
4 civil money penalties collected under this paragraph shall
5 be deposited in the Treasury in accordance with section
6 286(t).

7 “(8)(A) The Attorney General shall submit every 6
8 months to the Committees on the Judiciary of the House
9 of Representatives and of the Senate a report describing,
10 with respect to petitions under section 101(a)(15)(T) for
11 the previous 6-month period, the number aliens granted
12 nonimmigrant status pursuant to such petitions. Such
13 data shall be reported on a monthly basis for each month
14 in the reporting period.

15 “(B) The Attorney General shall submit annually to
16 the Committees on the Judiciary of the House of Rep-
17 resentatives and of the Senate a report describing, with
18 respect to each workers included in such approved peti-
19 tions under section 101(a)(15)(T) for the previous fiscal
20 year, the following:

21 “(i) Occupation.

22 “(ii) Employer.

23 “(iii) Annual total compensation.

24 “(iv) Highest degree completed at an institution
25 of higher education described in paragraph (2)(B).

1 “(v) Name of such institution.

2 “(vi) Concentration or major with respect to
3 such degree.”.

4 (c) COLLECTION AND USE OF FEES.—

5 (1) IMPOSITION OF FEE.—Section 214(c) of the
6 Immigration and Nationality Act (8 U.S.C. 1184(c))
7 is amended by adding at the end the following:

8 “(10)(A) The question of providing any alien status
9 as a nonimmigrant under section 101(a)(15)(T) in any
10 specific case or specific cases shall be determined by the
11 Attorney General upon petition of the employer seeking
12 to employ the alien. Such petition shall be made and ap-
13 proved before the status is granted, and, in the case of
14 a petition described in subparagraph (B)(i), the petition
15 shall be made and approved before the alien obtains the
16 degree described in subsection (n)(3)(B). The petition
17 shall be in such form and contain such information as the
18 Attorney General shall prescribe, consistent with sub-
19 section (n), and shall specify a period of intended employ-
20 ment. The approval of such a petition shall not, of itself,
21 be construed as establishing that the alien is a non-
22 immigrant with such status.

23 “(B) The Attorney General shall impose a fee on an
24 employer filing a petition under subparagraph (A)—

1 “(i) initially to grant an alien nonimmigrant
2 status described in section 101(a)(15)(T);

3 “(ii) to extend the stay of an alien having such
4 status (unless the employer previously has obtained
5 an extension for such alien); or

6 “(iii) to obtain authorization for an alien having
7 such status to change employers.

8 “(C) The amount of the fee shall be \$500 for each
9 petition filed under clause (ii) or (iii) of subparagraph (B)
10 and \$1,000 for each petition filed under subparagraph
11 (B)(i).

12 “(D) Fees collected under this paragraph shall be de-
13 posited in the Treasury in accordance with section
14 286(t).”.

15 (2) ESTABLISHMENT OF ACCOUNT; USE OF
16 FEES.—Section 286 of the Immigration and Nation-
17 ality Act (8 U.S.C. 1356) is amended by adding at
18 the end the following:

19 “(t) HIGH-TECH EDUCATION FUND ACCOUNT.—

20 “(1) IN GENERAL.—There is established in the
21 general fund of the Treasury a separate account,
22 which shall be known as the ‘High-Tech Education
23 Fund Account’. Notwithstanding any other provision
24 of law, there shall be deposited as offsetting receipts
25 into the account all fees collected under section

1 214(c)(10) and all civil money penalties collected
2 under section 214(n)(7)(C).

3 “(2) USE OF FEES FOR K–12 MATHEMATICS,
4 SCIENCE, AND COMPUTER SCIENCE EDUCATION.—
5 Except as provided in paragraph (3), amounts de-
6 posited into the High-Tech Education Fund Account
7 shall remain available to the Director of the Na-
8 tional Science Foundation until expended to make
9 merit-reviewed grants, under section 3(a)(1) of the
10 National Science Foundation Act of 1950 (43
11 U.S.C. 1862(a)(1)), for programs that provide op-
12 portunities for enrollment in academic enrichment
13 courses in mathematics, science, and computer
14 science for elementary and secondary school stu-
15 dents.

16 “(3) USE OF FEES FOR DUTIES RELATING TO
17 PETITIONS.—3 percent of the amounts deposited
18 into the High-Tech Education Fund Account shall
19 remain available to the Attorney General until ex-
20 pended to carry out duties under subsections (c)(10)
21 and (n) of section 214.”.

22 (d) EFFECTIVE DATE; SUNSET.—

23 (1) EFFECTIVE DATE.—The amendments made
24 by this section shall take effect beginning with fiscal
25 year 2000.

1 (2) SUNSET.—The amendments made by sub-
2 sections (a), (b), and (c)(1) shall cease to be effec-
3 tive on September 30, 2004, except with respect to
4 any alien having nonimmigrant status pursuant to
5 such amendments before such date. In the case of
6 such an alien, the amendments made by subsections
7 (a) and (b) shall remain in effect until the date on
8 which such nonimmigrant status otherwise would ex-
9 pire (disregarding any potential extension of status).

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