

112TH CONGRESS
1ST 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.

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

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

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

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

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

“(1) IN GENERAL.—In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a), if the Secretary of Homeland Security determines, before the 60-month anniversary of the alien’s obtaining the status of lawful admission for permanent residence, that—

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

“(B)(i) the alien did not establish and engage in a new commercial enterprise relevant to 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 Security
4 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 (c)(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.

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