To amend the Immigration and Nationality Act to provide for immigrant visas for certain advanced STEM graduates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2012

Ms. ZOE LOFGREN of California (for herself, Mr. GUTIERREZ, Mr. GONZALEZ, Mr. CONYERS, Mr. GEORGE MILLER of California, Ms. ROYBAL-ALLARD, Mr. HINOJOSA, Mrs. NAPOLITANO, Mr. SABLON, Mr. HONDA, Ms. ESHOO, and Ms. MATSUI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for immigrant visas for certain advanced STEM graduates, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Attracting the Best and Brightest Act of 2012”.

4

5

6
SEC. 2. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM GRADUATES.

(a) Advanced Stem Graduates.—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) Advanced Graduates in Science, Technology, Engineering and Mathematics.—

“(A) In General.—Notwithstanding section 201, visas shall be made available, in a number not to exceed 50,000, to qualified immigrants who—

“(i) possess a graduate degree at the level of master’s or higher in a field of science, technology, engineering, or mathematics from a United States research institution of higher education;

“(ii) have an offer of employment from a United States employer in a field related to such degree;

“(iii) are the subject of an approved labor certification as required under section 212(a)(5)(A); and
“(iv) will receive a wage level from the employer that is at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question.

“(B) DEFINITIONS.—For purposes of this paragraph:

“(i) The term ‘field of science, technology, engineering, or mathematics’ means a field included in the Department of Education’s Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, and physical sciences.

“(ii) The term ‘United States research institution of higher education’ means an institution in the United States that—

“(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

“(II) is classified by the Director of the National Science Foundation as
a research institution or as otherwise
excelling at instruction in a field of
science, technology, engineering, or
mathematics;

“(III) has been in existence for
at least 10 years;

“(IV) does not provide any com-
mission, bonus, or other incentive pay-
ment based directly or indirectly on
success in securing enrollments or fi-
nancial aid to any persons or entities
engaged in any recruitment or admis-
sion activities for nonimmigrant stu-
dents or in making decisions regard-
ing the award of student financial as-
sistance to nonimmigrant students;
and

“(V) is accredited by an accred-
iting agency recognized by the Sec-
retary of Education.”.

(b) UNUSED VISAS; LIMITATION TO FOREIGN
STATES.—

(1) UNUSED VISAS.—Section 203(b)(1) of such
Act (8 U.S.C. 1153(b)(1)) is amended by striking
“(4) and (5)” and inserting“(4), (5) and (6)”.

•HR 6412 IH
(2) Limitation to any single foreign state.—Section 202(a)(5)(A) of such Act (8 U.S.C. 1152(a)(5)(A)) is amended by striking “or (5)” and inserting “(5), or (6)”.

(c) Procedure for granting immigrant status.—Section 204(a)(1)(F) of such Act (8 U.S.C. 1154(a)(1)(F)) is amended—

(1) by striking “or 203(b)(3)” and inserting “203(b)(3), or 203(b)(6)”; and

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

(d) Labor certification and qualification for certain immigrants.—Section 212(a)(5) of such Act (8 U.S.C. 1182(a)(5)) is amended—

(1) in subparagraph (A)—

(A) in clause (ii)—

(i) in subclause (I), by striking “, or” at the end and inserting a semicolon;

(ii) in subclause (II), by striking the period at the end and inserting “; or”; and

(iii) by adding at the end the following:

“(III) holds a doctorate degree in a field of science, technology, engineering, or mathematics (as defined in
section 203(b)(6)(B)(i)) from a
United States research institution of
higher education (as defined in section
203(b)(6)(B)(ii)).”;

(B) by redesignating clauses (iii) and (iv)
as clauses (iv) and (v), respectively; and

(C) by inserting after clause (ii) the fol-
lowing:

“(iii) JOB ORDER.—

“(I) IN GENERAL.—An employer
who files an application under clause
(i) shall submit a job order for the
labor the alien seeks to perform to the
State workforce agency in the State in
which the alien seeks to perform the
labor. The State workforce agency
shall post the job order on its official
agency website for a minimum of 30
days and not later than 3 days after
receipt using the employment statis-
tics system authorized under section
15 of the Wagner-Peyser Act (29
U.S.C. 49 et seq.).

“(II) LINKS.—The Secretary of
Labor shall include links to the offi-
cial websites of all State workforce agencies on a single webpage of the official website of the Department of Labor.’’; and

(2) in subparagraph (D), by striking ‘‘(2) or (3)’’ and inserting ‘‘(2), (3), or (6)’’.

(e) FURTHER PROTECTING AMERICAN WORKERS.—

Section 212(p) of such Act (8 U.S.C. 1182(p)) is amended by adding at the end the following:

‘‘(5) To satisfy the requirement under section 203(b)(6)(A)(iv), an employer must demonstrate that the total amount of compensation to be paid to the alien (including health insurance, stock options, and other benefits provided by the employer) must meet or exceed the total amount of compensation paid by the employer to all other employees with similar experience and qualifications working in the same occupational classification.’’.

(f) GAO STUDY.—Not later than June 30, 2017, the Comptroller General of the United States shall provide to the Congress the results of a study on the use by the National Science Foundation of the classification authority provided under section 203(b)(6)(B)(ii)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(6)(B)(ii)(II)), as added by this section.
(g) PUBLIC INFORMATION.—The Secretary of Homeland Security shall make available to the public on the official website of the Department of Homeland Security, and shall update not less than monthly, the following information (which shall be organized according to month and fiscal year) with respect to aliens granted status under section 203(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(6)), as added by this section:

(1) The name, city, and State of each employer who petitioned pursuant to either of such paragraphs on behalf of one or more aliens who were granted status in the month and fiscal year to date.

(2) The number of aliens granted status under either of such paragraphs in the month and fiscal year to date based upon a petition filed by such employer.

(3) The occupations for which such alien or aliens were sought by such employer and the job titles listed by such employer on the petition.

(h) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2012, and shall apply with respect to fiscal years beginning on or after such date.
(2) SUNSET.—The amendments made by sub-
sections (a) through (e) shall be repealed after the 
2-year period beginning on the date of the enact-
ment of this Act.

SEC. 3. STUDENT VISA REFORM.

(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 hav-
ing a residence in a foreign country which he has no inten-
tion 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 in a field of science, tech-
nology, engineering, or mathematics (as defined in section
203(b)(6)(B)(i)) 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.—

(1) Section 214(b) of the Immigration and Na-
tionality 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 in a field of science, technology,
• HR 6412 IH

engineering, or mathematics (as defined in section 203(b)(6)(B)(i)) at an institution of higher education, other than a nonimmigrant”.

(2) 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 in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(i)) at an institution of higher education),” before “H(i)(b)”.

SEC. 4. AGE-OUT PROTECTIONS FOR CHILDREN.

Section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)) is amended by adding at the end the following—

“(H) Rules for determining age of a child.—

“(i) Immigrant petitions.—Notwithstanding any other provision of the Act, a determination of whether an alien is a child for the purposes of a petition under sections 204 and 209 shall be made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security.
“(ii) CHILD OF U.S. CITIZEN FINANCÉ.—A determination of whether an alien is a child for the purposes of a petition under section 214 or an application for adjustment of status under section 245(d) shall be made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security to classify the alien’s parent as the fiancé of a U.S. citizen.”.

SEC. 5. PERMANENT PRIORITY DATES.

(a) IN GENERAL.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by adding at the end the following:

“(i) PERMANENT PRIORITY DATES.—

“(1) IN GENERAL.—Subject to subsection (h)(3) and paragraph (2), the priority date for any family- or employment-based petition shall be the date of filing of the petition with the Secretary of Homeland Security (or the Secretary of State, if applicable), unless the filing of the petition was preceded by the filing of a labor certification with the Secretary of Labor, in which case that date shall constitute the priority date.
“(2) **Subsequent family- and employment-based petitions.**—Subject to subsection (h)(3), an alien who—

“(A) is the beneficiary of any family-based petition that was approvable when filed (including self-petitioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed family-based petition (including self-petitions); or

“(B) is the beneficiary of any employment-based petition that was approvable when filed (including self-petitioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed employment-based petition (including self-petitions).”.

(b) **Effective Date.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to aliens who are a beneficiary of a classification petition pending on or after such date.