112TH CONGRESS
1ST SESSION

S. 1986

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2011

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, 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 TITLES.**

4 This Act may be cited as—
5 (1) the "Science, Technology, Engineering, and
6 Mathematics Visa Act of 2011"; or
7 (2) the "STEM Visa Act of 2011".

TITLE I—ATTRACTING AND RETAINING INNOVATORS AND JOB CREATORS

SEC. 101. U.S. GRADUATES IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS.

(a) ADVANCED STEM GRADUATES.—Section 203(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(1)) is amended—

(1) in the matter preceding subparagraph (A), by striking "(A) through (C)" and inserting "(A) through (D)"; and

(2) by adding at the end the following:

"(D) ADVANCED GRADUATES IN SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS.—An alien is described in this subparagraph if—

"(i) the alien possesses a graduate degree at the level of master's or higher in a field of science, technology, engineering, or mathematics from a United States institution of higher education that has been designated by the Director of the National Science Foundation as a research institution or as otherwise excelling at instruction in such fields;

1 "(ii) the alien has an offer of employment from a United States employer in a field related to such degree; and
4 "(iii) the employer is offering and will offer wages that are at least—
6 "(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications in the same occupational classification; or
11 "(II) the prevailing wage level for the occupational classification in the area of employment;
14 whichever is greater, based on the best information available as of the time of filing the petition.".
17 (b) CAP EXEMPTION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:
20 "(F) Aliens described in paragraph (1)(B) or (1)(D) of section 203(b).".
22 (c) REMOVING VISA HURDLES FOR STUDENTS.—
23 (1) PROVIDING DUAL INTENT.—
24 (A) IN GENERAL.—Section 101(a)(15)(F)(i) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1101(a)(15)(F)(i)) is
2 amended by striking ‘‘an alien having a resi-
3 dence in a foreign country which he has no in-
4 tention of abandoning, who is a bona fide stu-
5 dent qualified to pursue a full course of study
6 and who’’ and inserting ‘‘an alien who is a bona
7 fide student qualified to pursue a full course of
8 study, who (except for a student qualified to
9 pursue a full course of study at an institution
10 of higher education) has a residence in a for-
11 eign country which the alien has no intention of
12 abandoning, and who’’.
13 (B) CONFORMING AMENDMENTS.—
14 (i) Section 214(b) of the Immigration
15 and Nationality Act (8 U.S.C. 1184(b)) is
16 amended by striking ‘‘(other than a non-
17 immigrant’’ and inserting ‘‘(other than a
18 nonimmigrant described in section
19 101(a)(15)(F) if the alien is qualified to
20 pursue a full course of study at an institu-
21 tion of higher education, other than a non-
22 immigrant’’.
23 (ii) Section 214(h) of the Immigration
24 and Nationality Act (8 U.S.C. 1184(h)) is
25 amended by inserting ‘‘(F) (if the alien is

1 qualified to pursue a full course of study at
2 an institution of higher education),'' before
3 ``H(i)(b)''.
4 (2) EXTENSIONS IN CASES OF LENGTHY ADJU-
5 DICATIONS.—
6 (A) IN GENERAL.—Section 214 of the Im-
7 migration and Nationality Act (8 U.S.C. 1154)
8 is amended by adding at the end the following:
9 ``(s) EXTENSIONS IN CASES OF LENGTHY ADJUDICA-
10 TIONS.—
11 ``(1) EXEMPTION FROM LIMITATIONS.—Not-
12 withstanding subsection (c)(2)(D), (g)(4) and (m),
13 the authorized stay of an alien described in para-
14 graph (2) may be extended pursuant to paragraph
15 (3) if 365 days or more have elapsed since the filing
16 of any of the following:
17 ``(A) An application for labor certification
18 under section 212(a)(5)(A), in a case in which
19 certification is required or used by an alien to
20 obtain status under section 203(b).
21 ``(B) A petition described in section 204(b)
22 to accord the alien a status under section
23 203(b).
24 ``(2) ALIENS DESCRIBED.—An alien is de-
25 scribed in this paragraph if the alien was previously

1 issued a visa or otherwise provided nonimmigrant
2 status under—
3 ''(A) section 101(a)(15)(F);
4 ''(B) section 101(a)(15)(H)(i)(b); or
5 ''(C) section 101(a)(15)(L).
6 ''(3) EXTENSION OF STATUS.—The Secretary
7 of Homeland Security shall extend the stay of an
8 alien who qualifies for an extension under paragraph
9 (1) in one-year increments until such time as a final
10 decision is made—
11 ''(A) to deny the application described in
12 paragraph (1)(A), or, in a case in which such
13 application is granted, to deny a petition de-
14 scribed in paragraph (1)(B) filed on behalf of
15 the alien pursuant to such grant;
16 ''(B) to deny the petition described in
17 paragraph (1)(B); or
18 ''(C) to grant or deny the alien's applica-
19 tion for an immigrant visa or adjustment of
20 status to that of an alien lawfully admitted for
21 permanent residence.
22 Work authorization shall be provided to an alien
23 whose stay is extended under this paragraph.''.
24 (B) CONFORMING AMENDMENT.—Section
25 106 of the American Competitiveness in the

1 21st Century Act is amended by striking sub-
2 sections (a) and (b).
3 (3) DEFINITIONS.—Section 101(a) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1101(a)) is
5 amended by adding at the end the following:
6 ‘‘(52) The term ‘institution of higher education’
7 has the meaning given such term in section 101(a)
8 of the Higher Education Act of 1965 (20 U.S.C.
9 1001(a)).
10 ‘‘(53) The term ‘employer’ shall include any
11 group treated as a single employer under subsection
12 (b), (c), (m), or (o) of section 414 of the Internal
13 Revenue Code of 1986.’’.
14 (d) CONFORMING AMENDMENTS.—Section
15 204(a)(1)(F) of the Immigration and Nationality Act (8
16 U.S.C. 1154(a)(1)(F)) is amended—
17 (1) by inserting ‘‘203(b)(1)(D),’’ after
18 ‘‘203(b)(1)(C),’’; and
19 (2) by striking ‘‘Attorney General’’ and insert-
20 ing ‘‘Secretary of Homeland Security’’.
21 **SEC. 102. ELIMINATING GREEN CARD BACKLOGS.**
22 (a) RECAPTURING IMMIGRANT VISAS LOST TO BU-
23 REAUCRATIC DELAY.—

1 (1) EMPLOYMENT-BASED IMMIGRANTS.—Sec-
2 tion 201(d) of the Immigration and Nationality Act
3 (8 U.S.C. 1151(d)) is amended to read as follows:
4 "(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
5 IMMIGRANTS.—
6 "(1) IN GENERAL.—The worldwide level of em-
7 ployment-based immigrants under this subsection for
8 a fiscal year is equal to the sum of—
9 "(A) 140,000;
10 "(B) the number computed under para-
11 graph (2); and
12 "(C) the number computed under para-
13 graph (3).
14 "(2) PREVIOUS FISCAL YEAR.—The number
15 computed under this paragraph for a fiscal year is
16 the difference, if any, between the maximum number
17 of visas which may be issued under section 203(a)
18 (relating to family-sponsored immigrants) during the
19 previous fiscal year and the number of visas issued
20 under that section during that year.
21 "(3) UNUSED VISAS.—The number computed
22 under this paragraph is the difference, if any, be-
23 tween—
24 "(A) the difference, if any, between—

1 "(i) the sum of the worldwide levels
2 established under paragraph (1) for fiscal
3 years 1992 through 2011; and
4 "(ii) the number of visas actually
5 issued under section 203(b), subject to this
6 subsection, during such fiscal years; and
7 "(B) the number of visas actually issued
8 after fiscal year 2011 pursuant to an immi-
9 grant visa number issued under section 203(b),
10 subject to this subsection, during fiscal years
11 1992 through 2011.".
12 (2) FAMILY-SPONSORED IMMIGRANTS.—Section
13 201(c) of the Immigration and Nationality Act (8
14 U.S.C. 1151(c)) is amended to read as follows:
15 "(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
16 IMMIGRANTS.—
17 "(1) IN GENERAL.—
18 "(A) Subject to subparagraph (B), the
19 worldwide level of family-sponsored immigrants
20 under this subsection for a fiscal year is equal
21 to—
22 "(i) 480,000 minus the number com-
23 puted under paragraph (2); plus

1 "(ii) the sum of the number computed
2 under paragraph (3) and the number com-
3 puted under paragraph (4).
4 "(B) In no case shall the number com-
5 puted under subparagraph (A)(i) be less than
6 226,000.
7 "(2) IMMEDIATE RELATIVES.—The number
8 computed under this paragraph for a fiscal year is
9 the number of aliens described in subparagraph (A)
10 or (B) of subsection (b)(2) who were issued immi-
11 grant visas, or who otherwise acquired the status of
12 an alien lawfully admitted to the United States for
13 permanent residence, in the previous fiscal year.
14 "(3) PREVIOUS FISCAL YEAR.—The number
15 computed under this paragraph for a fiscal year is
16 the difference, if any, between the maximum number
17 of visas which may be issued under section 203(b)
18 (relating to employment-based immigrants) during
19 the previous fiscal year and the number of visas
20 issued under that section during that year.
21 "(4) UNUSED VISAS.—The number computed
22 under this paragraph is the difference, if any, be-
23 tween—
24 "(A) the difference, if any, between—

1 "(i) the sum of the worldwide levels
2 established under paragraph (1) for fiscal
3 years 1992 through 2011; and
4 "(ii) the number of visas actually
5 issued under section 203(a), subject to this
6 subsection, during such fiscal years; and
7 "(B) the number of visas actually issued
8 after fiscal year 2011 pursuant to an immi-
9 grant visa number issued under section 203(a),
10 subject to this subsection, during fiscal years
11 1992 through 2011.".
12 (b) SPOUSES AND MINOR CHILDREN.—Section
13 201(b)(1) of the Immigration and Nationality Act (8
14 U.S.C. 1151(b)(1)), as amended by this Act, is further
15 amended by adding at the end the following:
16 "(G) Aliens who are the spouse or child of
17 an alien admitted as an employment-based im-
18 migrant under section 203(b).".
19 (c) ELIMINATING EMPLOYMENT-BASED PER COUN-
20 TRY LEVELS.—Section 202(a) of the Immigration and
21 Nationality Act (8 U.S.C. 1152(a)) is amended—
22 (1) in paragraph (2)—
23 (A) by striking ", (4), and (5)" and insert-
24 ing "and (4)";

(B) by striking ''subsections (a) and (b) of section 203'' and inserting ''section 203(a)'';

(C) by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''; and

(D) by striking ''such subsections'' and inserting ''such section''; and

(2) by striking paragraph (5).

TITLE II—INVESTING IN THE NEXT GENERATION OF INNOVATORS AND JOB CREATORS

SEC. 201. INVESTING IN STEM EDUCATION FOR U.S. STUDENTS.

Section 204(a)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F)), as amended by this Act, is further amended—

(1) by striking ''(F)'' and inserting ''(F)(i)''; and

(2) by adding at the end the following:

''(ii)(I) The Secretary of Homeland Security shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of

1 higher education, a nonprofit entity related to
2 or affiliated with any such institution, a non-
3 profit entity which engages in established cur-
4 riculum-related clinical training of students reg-
5 istered at any such institution, a nonprofit re-
6 search organization, or a governmental research
7 organization) filing a petition under clause (i)
8 to employ an alien entitled to classification
9 under subparagraph (B) or (D) of section
10 203(b)(1), section 203(b)(2), clause (i) or (ii) of
11 section 203(b)(3)(A), section 203(b)(5) or sec-
12 tion 203(b)(6).
13 ''(II) The amount of the fee shall be
14 $2,000 for each such petition except that the
15 fee shall be half the amount for each such peti-
16 tion by any employer with not more than 25
17 full-time equivalent employees who are em-
18 ployed in the United States.
19 ''(III) Fees collected under this clause
20 shall be deposited in the Treasury in accordance
21 with section 286(s).''.
22 **SEC. 202. U.S. STEM EDUCATION AND TRAINING ACCOUNT.**
23 Section 286(s) of the Immigration and Nationality
24 Act (8 U.S.C. 1356(s)) is amended to read as follows:
25 ''(s) STEM EDUCATION AND TRAINING ACCOUNT.—

1 "(1) IN GENERAL.—There is established in the
2 general fund of the Treasury a separate account,
3 which shall be known as the 'STEM Education and
4 Training Account'. Notwithstanding any other sec-
5 tion of this title, there shall be deposited as offset-
6 ting receipts into the account all fees collected under
7 section 204(a)(1)(F)(ii) and paragraphs (9) and
8 (11) of section 214(c).

9 "(2) LOW-INCOME STEM SCHOLARSHIP PRO-
10 GRAM.—Sixty percent of the amounts deposited into
11 the STEM Education and Training Account shall
12 remain available to the Director of the National
13 Science Foundation until expended for scholarships
14 described in section 414(d) of the American Com-
15 petitiveness and Workforce Improvement Act of
16 1998 for low-income students enrolled in a program
17 of study leading to a degree in science, technology,
18 engineering, or mathematics.

19 "(3) NATIONAL SCIENCE FOUNDATION COM-
20 PETITIVE GRANT PROGRAM FOR K–12 SCIENCE,
21 TECHNOLOGY, ENGINEERING AND MATHEMATICS
22 EDUCATION.—

23 "(A) IN GENERAL.—Fifteen percent of the
24 amounts deposited into the STEM Education
25 and Training Account shall remain available to

1 the Director of the National Science Founda-
2 tion until expended to carry out a direct or
3 matching grant program to support improve-
4 ment in K–12 education, including through pri-
5 vate-public partnerships.

6 "(B) TYPES OF PROGRAMS COVERED.—
7 The Director shall award grants to such pro-
8 grams, including those which support the devel-
9 opment and implementation of standards-based
10 instructional materials models and related stu-
11 dent assessments that enable K–12 students to
12 acquire an understanding of science, technology,
13 engineering, and mathematics, as well as to de-
14 velop critical thinking skills; provide systemic
15 improvement in training K–12 teachers and
16 education for students in science, technology,
17 engineering, and mathematics, including by
18 supporting efforts to promote gender-equality
19 among students receiving such instruction; sup-
20 port the professional development of K–12
21 science, technology, engineering and mathe-
22 matics teachers in the use of technology in the
23 classroom; stimulate system-wide K–12 reform
24 of science, technology, engineering, and mathe-
25 matics in rural, economically disadvantaged re-

1 gions of the United States; provide externships
2 and other opportunities for students to increase
3 their appreciation and understanding of science,
4 technology, engineering, and mathematics (in-
5 cluding summer institutes sponsored by an in-
6 stitution of higher education for students in
7 grades 7–12 that provide instruction in such
8 fields); involve partnerships of industry, edu-
9 cational institutions, and community organiza-
10 tions to address the educational needs of dis-
11 advantaged communities; provide college pre-
12 paratory support to expose and prepare stu-
13 dents for careers in science, technology, engi-
14 neering, and mathematics; and provide for car-
15 rying out systemic reform activities under sec-
16 tion 3(a)(1) of the National Science Foundation
17 Act of 1950 (42 U.S.C. 1862(a)(1)).
18 ''(4) STEM CAPACITY BUILDING AT MINORITY-
19 SERVING INSTITUTIONS.—
20 ''(A) IN GENERAL.—Twelve percent of the
21 amounts deposited into the STEM Education
22 and Training Account shall remain available to
23 the Director of the National Science Founda-
24 tion until expended to establish or expand pro-
25 grams to award grants on a competitive, merit-

1 reviewed basis to enhance the quality of under-
2 graduate science, technology, engineering, and
3 mathematics education at minority-serving in-
4 stitutions of higher education and to increase
5 the retention and graduation rates of students
6 pursuing degrees in such fields at such institu-
7 tions.

8 ‘‘(B) TYPES OF PROGRAMS COVERED.—
9 Grants awarded under this paragraph shall be
10 awarded to—

11 ‘‘(i) minority-serving institutions of
12 higher education for—

13 ‘‘(I) activities to improve courses
14 and curriculum in science, technology,
15 engineering, and mathematics;

16 ‘‘(II) efforts to promote gender
17 equality among students enrolled in
18 such courses;

19 ‘‘(III) faculty development;

20 ‘‘(IV) stipends for undergraduate
21 students participating in research;
22 and

23 ‘‘(V) other activities consistent
24 with subparagraph (A), as determined
25 by the Director; and

1 "(ii) to other institutions of higher
2 education to partner with the institutions
3 described in clause (i) for—
4 "(I) faculty and student develop-
5 ment and exchange;
6 "(II) research infrastructure de-
7 velopment;
8 "(III) joint research projects;
9 and
10 "(IV) identification and develop-
11 ment of minority and low-income can-
12 didates for graduate studies in
13 science, technology, engineering and
14 mathematics degree programs.
15 "(C) INSTITUTIONS INCLUDED.—In this
16 paragraph, the term 'minority-serving institu-
17 tions of higher education' shall include—
18 "(i) colleges eligible to receive funds
19 under the Act of August 30, 1890 (7
20 U.S.C. 321–326a and 328), including
21 Tuskegee University;
22 "(ii) 1994 Institutions, as defined in
23 section 532 of the Equity in Educational
24 Land-Grant Status Act of 1994 (7 U.S.C.
25 301 note); and

1 "(iii) Hispanic-serving institutions, as
2 defined in section 502(a)(5) of the Higher
3 Education Act of 1965 (20 U.S.C.
4 1101a(a)(5)).
5 "(5) STEM JOB TRAINING.—Ten percent of
6 amounts deposited into the STEM Education and
7 Training Account shall remain available to the Sec-
8 retary of Labor until expended for—
9 "(A) demonstration programs and projects
10 described in section 414(c) of the American
11 Competitiveness and Workforce Improvement
12 Act of 1998; and
13 "(B) training programs in the fields of
14 science, technology, engineering, and mathe-
15 matics for persons who have served honorably
16 in the Armed Forces of the United States and
17 have retired or are retiring from such service.
18 "(6) USE OF FEES FOR DUTIES RELATING TO
19 PETITIONS.—One and one-half percent of the
20 amounts deposited into the STEM Education and
21 Training Account shall remain available to the Sec-
22 retary of Homeland Security until expended to carry
23 out duties under paragraphs (1) (E) or (F) of sec-
24 tion 204(a) (related to petitions for immigrants de-
25 scribed in section 203(b)) and under paragraphs (1)

1 and (9) of section 214(c) (related to petitions made
2 for nonimmigrants described in section
3 101(a)(15)(H)(i)(b)).

4 "(7) USE OF FEES FOR APPLICATION PROC-
5 ESSING AND ENFORCEMENT.—One and one-half per-
6 cent of the amounts deposited into the STEM Edu-
7 cation and Training Account shall remain available
8 to the Secretary of Labor until expended for de-
9 creasing the processing time for applications under
10 section 212(a)(5)(A) and section 212(n)(1).".

11 **SEC. 203. ACCESS TO STUDENT VISAS FOR IMMIGRANT STU-**
12 **DENTS PRESENT IN THE UNITED STATES.**

13 Notwithstanding paragraphs (6)(A) and (7) of sec-
14 tion 212(a) of the Immigration and Nationality Act (8
15 U.S.C. 1182(a)), the Secretary of Homeland Security may
16 adjust an alien's status to that of a nonimmigrant student
17 under section 101(a)(15)(F) of such Act (8 U.S.C.
18 1101(a)(15)(F)) if the alien—

19 (1) is a bona fide student enrolled in a full
20 course of study related to science, technology, engi-
21 neering, or mathematics at a United States institu-
22 tion of higher education;

23 (2) was present in the United States on the
24 date of the enactment of this Act and has been con-
25 tinuously present since that date; and

(3) was 15 years of age or younger on the date the alien initially entered the United States.

TITLE III—REDUCING ADMINISTRATIVE HURDLES TO FOSTER INNOVATION AND JOB CREATION

SEC. 301. STREAMLINING LABOR CERTIFICATIONS.

(a) IN GENERAL.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)) is amended—

(1) in clause (ii)—

(A) in subclause (I), by striking "or";

(B) in subclause (II), by striking the period and inserting ", or";

(C) by adding at the end the following new subclause:

"(III) is the beneficiary of a labor certification application filed by an employer designated as an Established U.S. Recruiter under clause (vii)."; and

(2) by adding at the end the following new clauses:

"(v) PROCESSING STANDARDS.—

1 "(I) TIMEFRAMES.—The Sec-
2 retary of Labor shall adjudicate an
3 application for certification under
4 clause (i) not later than 120 days
5 after the date on which the applica-
6 tion is filed. In the event that addi-
7 tional information or documentation is
8 requested by the Secretary during
9 such 120-day period, the Secretary
10 shall adjudicate the application not
11 later than 60 days after the date on
12 which such information or documenta-
13 tion is received.

14 "(II) NOTICE WITHIN 30 DAYS OF
15 DEFICIENCIES.—The employer shall
16 be notified in writing within 30 days
17 of the date of filing if the application
18 does not meet the standards (other
19 than that described in clause (i)(I))
20 for approval. If the application does
21 not meet such standards, the notice
22 shall include the reasons therefor and
23 the Secretary shall provide an oppor-
24 tunity for the prompt resubmission of
25 a modified application.

1 "(vi) FEES.—
2 "(I) APPLICATION FEE.—In ad-
3 dition to any other fees authorized by
4 law, the Secretary of Labor shall im-
5 pose a fee on an employer that sub-
6 mits an application for certification
7 under clause (i). The amount of the
8 fee shall be $295 for each such appli-
9 cation.
10 "(II) PREMIUM PROCESSING.—
11 The Secretary of Labor is authorized
12 to establish and collect an optional
13 premium fee for processing of applica-
14 tions for certification under clause (i).
15 This fee shall be set at $1,000 and
16 shall be paid in addition to the appli-
17 cation fee under subclause (I). For an
18 application in which the premium
19 processing fee is paid, the Secretary
20 shall adjudicate the application not
21 later than 30 days after the date on
22 which the application is filed. In the
23 event that additional information or
24 documentation is requested by the
25 Secretary with respect to such appli-

cation during the 30-day period, the Secretary shall adjudicate the application not later than 30 days after the date on which such information or documentation is received. If the Secretary does not comply with these timeframes, the Secretary shall refund the premium processing fee to the applicant.

"(III) DEPOSIT OF FEES.—Fees collected under subclauses (I) and (II) shall be deposited in the Treasury in accordance with section 286(w).

"(IV) PROHIBITION ON EMPLOYER ACCEPTING REIMBURSEMENT OF FEE.—An employer subject to a fee under this clause shall not require or accept reimbursement of or other compensation for all or part of the cost of such fee, directly or indirectly, from the alien on whose behalf the application is filed.

"(vii) ESTABLISHED U.S. RECRUITERS.—

1 "(I) IN GENERAL.—The Sec-
2 retary of Labor shall establish a proc-
3 ess for employers to apply for des-
4 ignation as an Established U.S. Re-
5 cruiter. An employer seeking such
6 designation must file an application
7 with the Secretary stating the fol-
8 lowing:

9 "(aa) At least 80 percent of
10 the employer's workforce in the
11 United States are United States
12 workers.

13 "(bb) At least 80 percent of
14 the employer's new hires in the
15 United States in the 5 years pre-
16 ceding the filing of the applica-
17 tion are United States workers.

18 "(cc) The employer regularly
19 posts employment opportunities
20 on a publicly accessible Internet
21 Web site and has engaged in at
22 least 3 other forms of active re-
23 cruitment on an annual basis
24 over the preceding 3 years.

1 "(dd) The employer will con-
2 tinue to engage in the recruit-
3 ment efforts described in item
4 (cc) during the certification pe-
5 riod.
6 For the purposes of this clause, the
7 term 'United States worker' shall in-
8 clude an alien with a pending or ap-
9 proved petition under subparagraph
10 (E) or (F) of section 204(a)(1).
11 "(II) DESIGNATION.—
12 "(aa) TIMELY ADJUDICA-
13 TIONS.—The Secretary of Labor
14 shall adjudicate an application
15 for designation under subclause
16 (I) not later than 30 days after
17 the date on which the application
18 is filed. In the event that addi-
19 tional information or documenta-
20 tion is requested by the Sec-
21 retary, the Secretary shall adju-
22 dicate the application not later
23 than 30 days after the receipt of
24 such information or documenta-
25 tion.

1 "(bb) APPLICATION FEE.—
2 In addition to any other fees au-
3 thorized by law, the Secretary of
4 Labor may impose a fee on an
5 employer that submits an appli-
6 cation for designation under sub-
7 clause (I). The amount of the fee
8 shall be $500 for each such ap-
9 plication. Fees collected under
10 this clause shall be deposited in
11 the Treasury in accordance with
12 section 286(w).
13 "(cc) PERIOD OF DESIGNA-
14 TION.—Unless terminated under
15 item (dd), a designation issued
16 under this clause shall be valid
17 for 3 years.
18 "(dd) TERMINATION.—The
19 Secretary of Labor may termi-
20 nate a designation under sub-
21 clause (I) if the Secretary deter-
22 mines that the employer—
23 "(AA) did not fulfill the
24 requirements of such sub-

1 clause at the time the certification was issued; or

3 "(BB) failed to meet the requirements under subclause (I)(ee) during the designation period described in item (cc).

8 "(III) ACTIVE RECRUITMENT.—For the purposes of this clause 'active recruitment' means any of the following:

12 "(aa) EMPLOYEE REFERRAL PROGRAM.—The employer operates an employee referral program that includes meaningful incentives for employees to refer workers for job openings.

18 "(bb) IN-HOUSE RECRUITERS.—The employer retains an in-house recruiter on a full-time basis to recruit workers for job openings.

23 "(cc) JOB FAIRS.—The employer recruits workers at job fairs that are advertised in news-

1 paper advertisements in which
2 the employer is named as a par-
3 ticipant in such fairs.

4 "(dd) MILITARY RECRUIT-
5 ING.—The employer recruits
6 workers during recruiting events
7 that are organized by the Armed
8 Forces of the United States.

9 "(ee) ON-CAMPUS RECRUIT-
10 ING.—The employer recruits
11 workers at institutions of higher
12 education during recruiting
13 events that are organized by such
14 institutions.

15 "(ff) PRIVATE EMPLOYMENT
16 FIRMS.—The employer regularly
17 engages private employment
18 firms or placement agencies to
19 recruit workers for job openings.

20 "(gg) TRADE OR PROFES-
21 SIONAL ORGANIZATIONS.—The
22 employer regularly advertises
23 with trade or professional organi-
24 zations to recruit workers for job
25 openings.".

1 (b) ESTABLISHMENT OF ACCOUNT AND USE OF
2 FUNDS.—Section 286 of the Immigration and Nationality
3 Act (8 U.S.C. 1356) is amended by adding at the end the
4 following new subsection:

5 "(w) LABOR CERTIFICATION APPLICATION FEE AC-
6 COUNT.—

7 "(1) IN GENERAL.—There is established in the
8 general fund of the Treasury a separate account,
9 which shall be known as the 'Labor Certification Ap-
10 plication Fee Account'. Notwithstanding any other
11 section of this title, there shall be deposited as off-
12 setting receipts into the account all fees collected
13 under section 212(a)(5)(A).

14 "(2) USE OF FEES.—Amounts deposited into
15 the Labor Certification Application Fee Account
16 shall remain available to the Secretary of Labor
17 until expended for carrying out labor certification
18 activities under section 212(a)(5)(A) (including pro-
19 viding premium processing services) and to make in-
20 frastructure improvements in the adjudications and
21 customer-service processes related to such activi-
22 ties.".

SEC. 302. STREAMLINING PETITIONS FOR ESTABLISHED EMPLOYERS.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

''(15) The Secretary of Homeland Security shall establish a pre-certification procedure for employers who file multiple petitions described in this subsection or section 203(b). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish, through a single filing, criteria relating to the employer and the offered employment opportunity.''.

SEC. 303. PREMIUM PROCESSING.

Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended—

(1) by striking ''is authorized to'' and inserting ''shall''; and

(2) at the end of the first sentence, by striking ''applications.'' and inserting ''applications, including an administrative appeal of any decision on an employment-based immigrant petition.''.

TITLE IV—PROTECTING AMERICAN WORKERS

SEC. 401. STRENGTHENING THE PREVAILING WAGE SYSTEM TO PROTECT AMERICAN WORKERS.

Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended to read as follows:

"(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

"(1) The Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

"(A) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

"(B) The second level shall be the mean of wages surveyed.

"(C) The third level shall be the mean of the highest two-thirds of wages surveyed.

1 "(2) The prevailing wage level required to be
2 paid pursuant to section 203(b)(1)(D) and sub-
3 sections (a)(5)(A), (n)(1)(A)(i)(II), and
4 (t)(1)(A)(i)(II) of this section shall be 100 percent
5 of the wage level determined pursuant to those sec-
6 tions.

7 "(3) In computing the prevailing wage level for
8 an occupational classification in an area of employ-
9 ment for purposes of section 203(b)(1)(D) and sub-
10 sections (a)(5)(A), (n)(1)(A)(i)(II), and
11 (t)(1)(A)(i)(II) of this section in the case of an em-
12 ployee of—

13 "(A) an institution of higher education, or
14 a related or affiliated nonprofit entity, or

15 "(B) a nonprofit research organization or
16 a Governmental research organization,

17 the prevailing wage level shall only take into account
18 employees at such institutions and organizations in
19 the area of employment.

20 "(4) With respect to a professional athlete (as
21 defined in subsection (a)(5)(A)(iii)(II)) when the job
22 opportunity is covered by professional sports league
23 rules or regulations, the wage set forth in those
24 rules or regulations shall be considered as not ad-
25 versely affecting the wages of United States workers

1 similarly employed and be considered the prevailing
2 wage.''.

3 **SEC. 402. REFORMING THE H–1B VISA PROGRAM TO PRO-**
4 **TECT AMERICAN WORKERS.**

5 (a) STRENGTHENING WAGE PROTECTIONS.—Section
6 214(g)(3) of the Immigration and Nationality Act (8
7 U.S.C. 1184(g)(3)) is amended—
8 (1) by striking ''Aliens who'' and inserting ''(A)
9 Aliens who''; and
10 (2) by adding at the end the following:
11 ''(B) If, on any given date, the number of peti-
12 tions filed under subparagraph (A) exceeds the num-
13 ber of visas remaining under paragraph (1), the Sec-
14 retary shall consider such petitions in the following
15 order:
16 ''(i) petitions in which the offered wage
17 level meets or exceeds the wage set by section
18 212(p)(1)(C);
19 ''(ii) petitions in which the offered wage
20 level meets or exceeds the wage set by section
21 212(p)(1)(B); and
22 ''(iii) any remaining petitions.''.
23 (b) PROHIBITING DISPLACEMENT OF U.S. WORK-
24 ERS.—

1 (1) PROHIBITING DISPLACEMENT BY EM-
2 PLOYER.—Section 212(n)(1)(E) of the Immigration
3 and Nationality Act (8 U.S.C. 1182(n)(1)(E)) is
4 amended—
5 (A) in clause (i) by striking "In the case
6 of an application described in clause (ii), the"
7 and inserting "The"; and
8 (B) by striking clause (ii).
9 (2) PROHIBITING DISPLACEMENT BY THIRD-
10 PARTY EMPLOYER.—Section 212(n)(1)(F) of the Im-
11 migration and Nationality Act (8 U.S.C.
12 1182(n)(1)(F)) is amended by striking "In the case
13 of an application described in subparagraph (E)(ii),
14 the" and inserting "The".
15 (3) DEFINITION OF DISPLACE.—Section
16 212(n)(4)(B) of the Immigration and Nationality
17 Act (8 U.S.C. 1182(n)(4)(B)) is amended by—
18 (A) inserting "and skills" after "respon-
19 sibilities"; and
20 (B) inserting "working in the same divi-
21 sion, project or product line" after "experi-
22 ence".
23 (c) STRENGTHENING RECRUITMENT REQUIRE-
24 MENTS.—

1 (1) REQUIRING RECRUITMENT OF U.S. WORK-
2 ERS.—
3 (A) IN GENERAL.—Section 212(n)(1)(G)(i)
4 of the Immigration and Nationality Act (8
5 U.S.C. 1182(n)(1)(G)(i)) is amended by strik-
6 ing ''In the case of an application described in
7 subparagraph (E)(ii), subject to clause (ii)'' and
8 inserting ''Subject to clauses (ii) and (iii)''.
9 (B) DEPENDENT EMPLOYERS.—Section
10 212(n)(1)(G)(ii) of the Immigration and Na-
11 tionality Act (8 U.S.C. 1182(n)(1)(G)(ii)) is
12 amended to read as follows:
13 ''(ii) The employer shall be required
14 to comply with additional supervised re-
15 cruitment activities as specified by the Sec-
16 retary of the Labor if the employer—
17 ''(I) employs 50 or more employ-
18 ees in the United States and less than
19 50 percent of such employees are
20 United States workers; and
21 ''(II) is offering wages below the
22 wage level set by subsection (p)(1)(B)
23 (relating to the mean wage for the oc-
24 cupational classification in the area of
25 employment).

1 For purposes of this clause, the term
2 'United States worker' shall include an
3 alien with a pending or approved petition
4 under subparagraph (E) or (F) of section
5 204(a)(1).''.
6 (C) RECRUITMENT REPORT.—Section
7 212(n)(1) of the Immigration and Nationality
8 Act (8 U.S.C. 1182(n)(1)) is amended, in the
9 flush text following subparagraph (G), by strik-
10 ing ''Nothing in subparagraph (G)'' and insert-
11 ing ''An employer required to recruit under sub-
12 paragraph (G) shall submit to the Secretary,
13 along with an application under this paragraph,
14 a recruitment report containing evidence that
15 the employer posted the employment oppor-
16 tunity on a publicly accessible Internet Web site
17 and engaged in at least 3 other forms of active
18 recruitment (as defined in subsection
19 (a)(5)(A)(vii)(III)). The employer shall main-
20 tain an audit file of recruitment activities, in-
21 cluding information on United States worker
22 applicants, for 3 years after the date the appli-
23 cation was filed with the Secretary. Nothing in
24 Subparagraph (G)''.

1 (2) EXCEPTION FOR EMPLOYERS WHO PAY IN-
2 CREASED WAGES.—Section 212(n)(1)(G) of the Im-
3 migration and Nationality Act (8 U.S.C.
4 1182(n)(1)(G)), as amended by this subsection, is
5 further amended by adding at the end the following:
6 ''(iii) The conditions described in
7 clause (i) shall not apply to an application
8 filed with respect to the employment of an
9 H–1B nonimmigrant—
10 ''(I) who is described in subpara-
11 graph (A), (B), or (C) of section
12 203(b)(1); or
13 ''(II) if the wages being offered
14 to such nonimmigrant meet or exceed
15 the wage level set by subsection
16 (p)(1)(B) (relating to the mean wage
17 for the occupational classification in
18 the area of employment) and the ap-
19 plicant is designated as an Estab-
20 lished U.S. Recruiter under section
21 212(a)(5)(A)(vii).''.
22 (3) ELIMINATING REDUNDANT TESTING OF
23 LABOR MARKET.—Section 212(a)(5)(D) of the Im-
24 migration and Nationality Act (8 U.S.C.
25 1182(a)(5)(D)) is amended—

1 (A) by striking ''The grounds'' and insert-
2 ing ''(i) Except as provided in clause (ii), the
3 grounds''; and
4 (B) by adding at the end the following:
5 ''(ii) Clause (i) shall not apply to an alien
6 seeking admission or adjustment of status who
7 is presently a nonimmigrant described under
8 section 101(a)(15)(H)(i)(b) if—
9 ''(I) the alien obtained such non-
10 immigrant status based on a petition filed
11 after the effective date of the IDEA Act of
12 2011;
13 ''(II) the alien is the subject of a peti-
14 tion described in section 204(a)(1)(F) and
15 is seeking admission or adjustment of sta-
16 tus through such petition; and
17 ''(III) the petition described in sub-
18 clause (II) was filed by the alien's em-
19 ployer within 18 months after the date on
20 which the alien obtained nonimmigrant
21 status under section 101(a)(15)(H)(i)(b).''.
22 (d) IMPROVING PROTECTIONS FOR U.S. WORKERS.—
23 (1) IN GENERAL.—Section 212(n)(2) of the Im-
24 migration and Nationality Act (8 U.S.C.
25 1182(n)(2)) is amended to read as follows:

1 "(2)(A) IN GENERAL.—The Secretary of Labor
2 shall establish a process for the receipt, investiga-
3 tion, and disposition of complaints, which may be
4 filed by any aggrieved person or organization (in-
5 cluding bargaining representatives), respecting an
6 employer's compliance with this subsection. The Sec-
7 retary, either pursuant to this complaint process or
8 otherwise, may investigate employers as necessary to
9 determine such compliance. The Secretary shall
10 audit at least 5 percent of the employers who file ap-
11 plications under paragraph (1) in a given year to de-
12 termine compliance with this subsection.

13 "(B) PENALTIES.—If the Secretary of Labor
14 finds, after notice and an opportunity for a hear-
15 ing—

16 "(i) a substantial failure to meet any of
17 the conditions of the application described
18 under paragraph (1), a misrepresentation of a
19 material fact in such application, or a violation
20 of subparagraph (C) or (D)—

21 "(I) the Secretary of Labor shall, in
22 addition to any other remedy authorized by
23 law, impose such administrative remedies
24 (including civil monetary penalties in an
25 amount not to exceed $10,000 per viola-

1 tion) as the Secretary determines to be ap-
2 propriate; and
3 ''(II) the Secretary of Labor may not
4 approve applications with respect to that
5 employer under paragraph (1) during a pe-
6 riod of at least 1 year but not more than
7 5 years for aliens to be employed by the
8 employer; and
9 ''(ii) a substantial failure to meet any of
10 the conditions of the application described
11 under paragraph (1) or a misrepresentation of
12 a material fact in such application, in the
13 course of which failure or misrepresentation the
14 employer displaced a United States worker em-
15 ployed by the employer within the period begin-
16 ning 180 days before and ending 180 days after
17 the date of filing of any visa petition supported
18 by the application—
19 ''(I) the Secretary of Labor shall im-
20 pose such administrative remedies (includ-
21 ing civil monetary penalties in an amount
22 not to exceed $35,000 per violation) as the
23 Secretary determines to be appropriate;
24 and

1 "(II) the Secretary of Labor may not
2 approve applications with respect to that
3 employer under paragraph (1) during a pe-
4 riod of at least 5 years for aliens to be em-
5 ployed by the employer.

6 "(C) DISCRIMINATION OR RETALIATION PRO-
7 HIBITED.—It is a violation of this subparagraph for
8 an employer who has filed an application under this
9 subsection to intimidate, threaten, restrain, coerce,
10 discharge, or in any other manner discriminate or
11 retaliate against an employee (including a former
12 employee or an applicant for employment) because
13 the employee—

14 "(i) has disclosed information to the em-
15 ployer, or to any other person, that the em-
16 ployee reasonably believes evidences a violation
17 of this subsection, or any rule or regulation per-
18 taining to this subsection; or

19 "(ii) seeks legal assistance or counsel re-
20 lated to any such violation, or cooperates, or
21 seeks to cooperate, in an investigation or other
22 proceeding concerning the employer's compli-
23 ance with the requirements of this subsection,
24 or any rule or regulation pertaining to this sub-
25 section.

1 The Secretary of Labor and the Secretary of Home-
2 land Security shall devise a process under which an
3 H–1B nonimmigrant who files a complaint regarding
4 a violation of this subparagraph and is otherwise eli-
5 gible to remain and work in the United States may
6 be allowed to seek other appropriate employment in
7 the United States for a period not to exceed the
8 maximum period of stay authorized for such non-
9 immigrant classification.

10 ''(D) PROHIBITED FEES.—It is a violation of
11 this subparagraph for an employer who has filed an
12 application under this subsection—

13 ''(i) to require an H–1B nonimmigrant to
14 pay a penalty for ceasing employment with the
15 employer prior to a date agreed to by the non-
16 immigrant and the employer; or

17 ''(ii) to require or accept reimbursement or
18 any other form of compensation from an alien
19 with respect to a fee imposed on the employer
20 under section 214(c)(9).

21 ''(E) BENCHING PROHIBITED.—

22 ''(i) IN GENERAL.—It is a violation of
23 paragraph (1)(A) for an employer, who has
24 filed an application under this subsection and
25 who places an H–1B nonimmigrant, after the

1 nonimmigrant has entered into employment
2 with the employer, in nonproductive status due
3 to a decision by the employer (based on factors
4 such as lack of work), or due to the non-
5 immigrant's lack of a permit or license, to fail
6 to pay the nonimmigrant full-time wages in ac-
7 cordance with paragraph (1)(a) for all such
8 nonproductive time (if the nonimmigrant was
9 designated as a full-time employee on the peti-
10 tion filed under section 214(c)(1)) or otherwise
11 for such hours as are designated on such peti-
12 tion consistent with the rate of pay identified
13 on such petition.

14 "(ii) EXCEPTIONS.—

15 "(I) In the case of an H–1B non-
16 immigrant who has not yet entered into
17 employment with an employer who has had
18 approved an application under this sub-
19 section, and a petition under section
20 214(c)(1), with respect to the non-
21 immigrant, subclause (i) shall apply to the
22 employer beginning 30 days after the date
23 the nonimmigrant first is admitted into the
24 United States pursuant to the petition, or
25 60 days after the date the nonimmigrant

1 becomes eligible to work for the employer
2 (in the case of a nonimmigrant who is
3 present in the United States on the date of
4 the approval of the petition).

5 ''(II) Clause (i) does not apply to a
6 failure to pay wages to an H–1B non-
7 immigrant for nonproductive time due to
8 non-work-related factors, such as the vol-
9 untary request of the nonimmigrant for an
10 absence or circumstances rendering the
11 nonimmigrant unable to work.

12 ''(III) Clause (i) shall not be con-
13 strued as prohibiting an employer that is a
14 school or other educational institution from
15 applying to an H–1B nonimmigrant an es-
16 tablished salary practice of the employer,
17 under which the employer pays to H–1B
18 nonimmigrants and United States workers
19 in the same occupational classification an
20 annual salary in disbursements over fewer
21 than 12 months, if—

22 ''(aa) the nonimmigrant agrees to
23 the compressed annual salary pay-
24 ments prior to the commencement of
25 the employment; and

1 "(bb) the application of the sal-
2 ary practice to the nonimmigrant does
3 not otherwise cause the nonimmigrant
4 to violate any condition of the non-
5 immigrant's authorization under this
6 chapter to remain in the United
7 States.

8 "(iii) RELATION TO SUBPARAGRAPH (G).—
9 This subparagraph shall not be construed as
10 superseding subparagraph (G).

11 "(F) TREATMENT.—It is a violation of para-
12 graph (1)(A) for an employer who has filed an appli-
13 cation under this subsection to fail to offer to an H–
14 1B nonimmigrant, during the nonimmigrant's period
15 of authorized employment, benefits and eligibility for
16 benefits (including the opportunity to participate in
17 health, life, disability, and other insurance plans; the
18 opportunity to participate in retirement and savings
19 plans; and cash bonuses and noncash compensation,
20 such as stock options (whether or not based on per-
21 formance)) on the same basis, and in accordance
22 with the same criteria, as the employer offers to
23 United States workers.

24 "(G) BACK WAGES.—If the Secretary of Labor
25 finds, after notice and an opportunity for a hearing,

1 that recovery of back wages, fees or costs is nec-
2 essary to address a violation of this subsection or
3 any other law, the Secretary of Labor may recover
4 such back wages, fees or costs on behalf of the work-
5 er.

6 ‘‘(H) GOOD FAITH COMPLIANCE.—

7 ‘‘(i) Except as provided in clauses (ii) and
8 (iii), a person or entity is considered to have
9 complied with the requirements of this sub-
10 section, notwithstanding a technical or proce-
11 dural failure to meet such requirements, if
12 there was a good faith attempt to comply with
13 the requirements.

14 ‘‘(ii) Clause (i) shall not apply if—

15 ‘‘(I) the Department of Labor (or an-
16 other enforcement agency) has explained to
17 the person or entity the basis for the fail-
18 ure;

19 ‘‘(II) the person or entity has been
20 provided a period of not less than 10 busi-
21 ness days (beginning after the date of the
22 explanation) within which to correct such
23 failure; and

1 "(III) the person or entity has not
2 corrected the failure voluntarily within
3 such period.

4 "(iii) A person or entity that, in the course
5 of an investigation, is found to have violated the
6 prevailing wage requirements set forth in para-
7 graph (1)(A), shall not be assessed fines or
8 other penalties for such violation if the person
9 or entity can establish that the manner in
10 which the prevailing wage was calculated was
11 consistent with recognized industry standards
12 and practices.

13 "(iv) Clauses (i) and (iii) shall not apply to
14 a person or entity that has engaged in or is en-
15 gaging in a pattern or practice of willful viola-
16 tions of this paragraph.

17 "(I) AUTHORITY TO ENSURE COMPLIANCE.—
18 The Secretary of Labor is authorized to take other
19 such actions, including issuing subpoenas and seek-
20 ing appropriate injunctive relief and specific per-
21 formance of contractual obligations, as may be nec-
22 essary to assure employer compliance with the terms
23 and conditions under this subsection. The rights and
24 remedies provided to H–1B nonimmigrants by this
25 subsection are in addition to, and not in lieu of, any

1 other contractual or statutory rights and remedies of
2 such nonimmigrants, and are not intended to alter
3 or affect such rights and remedies.

4 "(J) SUBSTANTIAL FAILURE DEFINED.—The
5 term 'substantial failure' means the repeated, reck-
6 less or willful failure to comply with the require-
7 ments of this section that constitute a significant de-
8 viation from the requirements of this section or the
9 terms and conditions of an application filed under
10 this section.".

11 (2) CONFORMING AMENDMENT.—Section
12 212(n) of the Immigration and Nationality Act (8
13 U.S.C. 1182(n)) is amended by striking paragraphs
14 (3) and (5) and redesignating paragraph (4), as
15 amended by this section, as paragraph (3).

16 (e) ELIMINATING H–1B EXTENSIONS FOR EXCLU-
17 SIVELY TEMPORARY WORKERS.—Section 214(g)(4) of the
18 Immigration and Nationality Act (8 U.S.C. 1184(g)(4))
19 is amended by striking "6" and inserting "3".

20 (f) INCREASED PORTABILITY FOR H–1B EMPLOY-
21 EES.—

22 (1) GRACE PERIOD.—Section 214(g)(4) of the
23 Immigration and Nationality Act (8 U.S.C.
24 1184(g)(4)), as amended by this Act, is further
25 amended by adding at the end the following:

1 "(C) If a nonimmigrant described in section
2 101(a)(15)(H)(i)(b) is terminated or laid off by the
3 nonimmigrant's employer, or otherwise ceases em-
4 ployment with the employer, the nonimmigrant's sta-
5 tus shall continue for 60 days or until the last date
6 of the previously approved status, whichever is ear-
7 lier.".

8 (2) ALLOWING PROMOTIONS.—Section 204(j) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1154(j)) is amended by—

11 (A) striking "(a)(1)(D)" and inserting
12 "(a)(1)(F)";

13 (B) striking "if the new job is in the same
14 or similar occupational classification as the job
15 for which the petition was filed." and inserting
16 "if the new job—"; and

17 (C) inserting at the end the following:

18 "(1) is in the same or similar occupational clas-
19 sification as the job for which the petition was filed;
20 or

21 "(2) is in a different occupational classification
22 that is in a field related to the job for which the pe-
23 tition was filed and involves an increase in wages of
24 at least 5 percent.".

1 (3) RETENTION OF PRIORITY DATE.—Section
2 203 of the Immigration and Nationality Act (8
3 U.S.C. 1153), as amended by this Act, is further
4 amended by adding at the end the following new
5 subsection:

6 "(i) RETENTION OF PRIORITY DATE.—The priority
7 date for any immigrant petition shall be the date of filing
8 with the Secretary of Homeland Security or the Secretary
9 of State, unless the filing was preceded by the filing of
10 a labor certification with the Secretary of Labor, in which
11 case the date of filing of such labor certification shall con-
12 stitute the priority date. The beneficiary of any petition
13 shall retain the earliest priority date based on any ap-
14 proved petition filed on the beneficiary's behalf, regardless
15 of the category of subsequent petitions.".

16 (4) EMPLOYMENT OF SPOUSES.—Section
17 214(c)(2)(E) of the Immigration and Nationality
18 Act (8 U.S.C. 1184(c)(2)(E)) is amended by striking
19 "section 101(a)(15)(L)" and inserting "subpara-
20 graph (H) or (L) of section 101(a)(15)".

21 (g) ELIMINATION OF H–1B CLASSIFICATION FOR
22 FASHION MODELS.—

23 (1) IN GENERAL.—Section 101(a)(15)(H)(i)(b)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(15)(H)(i)(b)) is amended—

1 (A) by striking "or as a fashion model";
2 and
3 (B) by striking "or, in the case of a fash-
4 ion model, is of distinguished merit and abil-
5 ity".
6 (2) ADDITION TO P NONIMMIGRANT CLASSI-
7 FICATION.—
8 (A) NEW CLASSIFICATION.—Section
9 101(a)(15)(P) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1101(a)(15)(P)) is amend-
11 ed—
12 (i) in clause (iii), by striking "or" at
13 the end;
14 (ii) in clause (iv), by striking "clause
15 (i), (ii), or (iii)" and inserting "clause (i),
16 (ii), (iii), or (iv)";
17 (iii) by redesignating clause (iv) as
18 clause (v);
19 (iv) by inserting after clause (iii) the
20 following:
21 "(iv) is a fashion model who is of dis-
22 tinguished merit and ability and who is
23 seeking to enter the United States tempo-
24 rarily to perform fashion modeling services
25 that involve events or productions which

1 have a distinguished reputation or that are
2 performed for an organization or establish-
3 ment that has a distinguished reputation
4 for, or a record of, utilizing prominent
5 modeling talent; or''; and
6 (v) by striking ''having a foreign resi-
7 dence which the alien has no intention of
8 abandoning''.
9 (B) AUTHORIZED PERIOD OF STAY.—Sec-
10 tion 214(a)(2) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1184(a)(2)) is amended—
12 (i) in paragraph (B) by inserting ''(i),
13 (ii), and (iii)'' after ''1101(a)(15)(P)'' each
14 place that term appears; and
15 (ii) by inserting ''or fashion model''
16 after ''athlete''.
17 (C) CONSULTATION.—
18 (i) IN GENERAL.—Section
19 214(c)(4)(D) of the Immigration and Na-
20 tionality Act (8 U.S.C. 1184(c)(4)(D)) is
21 amended by striking ''clause (i) or (iii)''
22 and inserting ''clause (i), (iii), or (iv)''.
23 (ii) ADVISORY OPINION.—Section
24 214(c)(6)(A) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1184(c)(6)(A)) is

1 amended by inserting at the end new
2 clause to read as follows:
3 "(iv) To meet the consultation re-
4 quirement of paragraph (4)(D), in the case
5 of a petition for a nonimmigrant described
6 in section 101(a)(15)(P)(iv) of this Act,
7 the petitioner shall submit with the peti-
8 tion an advisory opinion from a peer
9 group, labor organization, or other person
10 or persons of its choosing with expertise in
11 the field of fashion modeling."
12 (iii) EXPEDITED PROCEDURES.—Sec-
13 tion 214(c)(6)(E)(i) of the Immigration
14 and Nationality Act (8 U.S.C.
15 1184(c)(6)(E)(i)) is amended by striking
16 "artists or entertainers" and inserting
17 "artists, entertainers, or fashion models".
18 (3) CONFORMING AMENDMENTS.—Section 214
19 (a) and (c) of the Immigration and Nationality Act
20 (8 U.S.C. 1184 (a) and (c)) are amended by striking
21 the term "Attorney General" each place it appears
22 and inserting "Secretary of Homeland Security".
23 (4) CONSTRUCTION.—Nothing in this sub-
24 section shall be construed as preventing an alien who
25 is a fashion model from obtaining nonimmigrant sta-

1 tus under section 101(a)(15)(O)(i) of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1101(a)(15)(O)(i)) if such alien is otherwise quali-
4 fied for such status.

5 **SEC. 403. REFORMING THE L VISA PROGRAM TO PROTECT**
6 **AMERICAN WORKERS.**

7 (a) REQUIRING PREVAILING WAGE FOR CERTAIN L–
8 1B NONIMMIGRANTS.—Section 214(c)(2) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
10 ed by adding at the end the following:

11 ‘‘(G)(i) No alien described in clause (ii)
12 may be admitted or provided status under sec-
13 tion 101(a)(15)(L) unless the employer has
14 filed with the Secretary of Labor an application
15 stating that the employer—

16 ‘‘(I) is offering and will offer during
17 the period of authorized employment wages
18 that are at least—

19 ‘‘(aa) the actual wage level paid
20 by the employer to all other individ-
21 uals with similar experience and quali-
22 fications for the specific employment
23 in question, or

1 ''(bb) the prevailing wage level
2 for the occupational classification in
3 the area of employment,
4 whichever is greater, based on the best in-
5 formation available as of the time of filing
6 the application; and
7 ''(II) will provide working conditions
8 for such alien that will not adversely affect
9 the working conditions of workers similarly
10 employed.
11 ''(ii) An alien is described in this clause if
12 the alien will serve in a capacity involving spe-
13 cialized knowledge under section 101(a)(15)(L)
14 and the alien—
15 ''(I) will be employed in the United
16 States for a cumulative period of time in
17 excess of 18 months over a 3-year period,
18 or
19 ''(II) will be employed in the United
20 States for a cumulative period of time in
21 excess of 90 days over a 3-year period and
22 will be stationed primarily at the worksite
23 of an employer other than the petitioning
24 employer or its affiliate, subsidiary, or par-

1 ent, including pursuant to an outsourcing,
2 leasing, or other contracting agreement.
3 "(iii) An employer may comply with the re-
4 quirements of clause (i) by establishing that the
5 total amount of compensation to be paid by the
6 employer to the alien (including the value of
7 benefits paid by the employer to the alien in the
8 alien's home country, employer-provided hous-
9 ing or housing allowances, employer-provided
10 vehicles or transportation allowances, and other
11 benefits provided to the alien as an incident of
12 the assignment in the United States) meets or
13 exceeds the total amount of compensation paid
14 by the employer to all other employees with
15 similar experience and qualifications working in
16 the same occupational classification.".
17 (b) INVESTIGATION AND DISPOSITION OF COM-
18 PLAINTS AGAINST L–1 EMPLOYERS.—Section 214(c)(2)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1184(c)(2)), as amended by this section, is further amend-
21 ed by adding at the end the following:
22 "(H)(i) The Secretary of Labor shall es-
23 tablish a process for the receipt, investigation
24 and disposition of complaints, which may be
25 filed by any aggrieved person or organization

1 (including bargaining representatives), respect-
2 ing an employer's compliance with this para-
3 graph and the conditions of an application
4 under paragraph (1) for a nonimmigrant under
5 section 101(a)(15)(L). The Secretary, either
6 pursuant to this complaint process or otherwise,
7 may investigate employers as necessary to de-
8 termine such compliance. The Secretary shall
9 audit at least 5 percent of the employers who
10 file applications under subparagraph (G) in a
11 given year to determine compliance with this
12 subsection.

13 "(ii) If the Secretary finds, after notice
14 and an opportunity for a hearing, a substantial
15 failure to meet any of the conditions of this
16 paragraph, a misrepresentation of a material
17 fact in an application under paragraph (1) for
18 a nonimmigrant under section 101(a)(15)(L),
19 or a violation of clause (iii) or (iv)—

20 "(I) the Secretary shall, in addition to
21 any other remedy authorized by law, im-
22 pose such administrative remedies (includ-
23 ing civil monetary penalties in an amount
24 not to exceed $10,000 per violation) as the

1 Secretary determines to be appropriate;
2 and

3 ''(II) the Secretary may not approve
4 applications with respect to that employer
5 under paragraph (1) for a nonimmigrant
6 under section 101(a)(15)(L) during a pe-
7 riod of at least 1 year but not more than
8 5 years for aliens to be employed by the
9 employer.

10 ''(iii) It is a violation of this subparagraph
11 for an employer who has filed an application
12 under paragraph (1) for a nonimmigrant under
13 section 101(a)(15)(L) to intimidate, threaten,
14 restrain, coerce, discharge, or in any other man-
15 ner discriminate or retaliate against an em-
16 ployee (including a former employee or an ap-
17 plicant for employment) because the em-
18 ployee—

19 ''(I) has disclosed information to the
20 employer, or to any other person, that the
21 employee reasonably believes evidences a
22 violation of this subsection, or any rule or
23 regulation pertaining to this subsection; or

24 ''(II) seeks legal assistance or counsel
25 related to any such violation, or cooper-

1 ates, or seeks to cooperate, in an investiga-
2 tion or other proceeding concerning the
3 employer's compliance with the require-
4 ments of this subsection, or any rule or
5 regulation pertaining to this subsection.
6 The Secretary shall devise a process under
7 which a nonimmigrant under section
8 101(a)(15)(L) who files a complaint regarding
9 a violation of this subparagraph and is other-
10 wise eligible to remain and work in the United
11 States may be allowed to seek other appropriate
12 employment in the United States for a period
13 not to exceed the maximum period of stay au-
14 thorized for such nonimmigrant classification.
15 ''(iv) It is a violation of this subparagraph
16 for an employer who has filed an application
17 under paragraph (1) for a nonimmigrant under
18 section 101(a)(15)(L)—
19 ''(I) to require such nonimmigrant to
20 pay a penalty for ceasing employment with
21 the employer prior to a date agreed to by
22 the nonimmigrant and the employer; or
23 ''(II) to require or accept reimburse-
24 ment or any other form of compensation
25 from an alien with respect to a fee imposed

1 on the employer related to such application.

3 "(v) If the Secretary finds, after notice and an opportunity for a hearing, that recovery of back wages, fees or costs is necessary to address a violation of this subparagraph or any other law, the Secretary may recover such back wages, fees or costs on behalf of the worker.

9 "(vi) The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions under this paragraph. The rights and remedies provided to nonimmigrants under section 101(a)(15)(L) by this paragraph are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such nonimmigrants, and are not intended to alter or affect such rights and remedies.

22 "(vii)(I) Except as provided in subclauses (II) and (III), a person or entity is considered to have complied with the requirements of this paragraph, notwithstanding a technical or pro-

1 cedural failure to meet such requirements, if
2 there was a good faith attempt to comply with
3 the requirements.
4 ‘‘(II) Subclause (I) shall not apply
5 if—
6 ‘‘(aa) the Secretary of Homeland
7 Security (or another enforcement
8 agency) has explained to the person or
9 entity the basis for the failure;
10 ‘‘(bb) the person or entity has
11 been provided a period of not less
12 than 10 business days (beginning
13 after the date of the explanation)
14 within which to correct such failure;
15 and
16 ‘‘(cc) the person or entity has not
17 corrected the failure voluntarily within
18 such period.
19 ‘‘(III) A person or entity that, in the
20 course of an investigation, is found to have
21 violated the prevailing wage requirements
22 set forth in subparagraph (G), shall not be
23 assessed fines or other penalties for such
24 violation if the person or entity can estab-
25 lish that the manner in which the pre-

1 vailing wage was calculated was consistent
2 with recognized industry standards and
3 practices.

4 ''(IV) Subclauses (I) and (III) shall
5 not apply to a person or entity that has
6 engaged in or is engaging in a pattern or
7 practice of willful violations of this para-
8 graph.

9 ''(viii) The term 'substantial failure' means
10 the repeated, reckless or willful failure to com-
11 ply with the requirements of this paragraph
12 that constitute a significant deviation from the
13 requirements of this paragraph or the terms
14 and conditions of an application filed under
15 paragraph (1) for nonimmigrants under section
16 101(a)(15)(L).''.

17 (c) TECHNICAL AMENDMENT.—Section 214(c)(2) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1184(c)(2)), as amended by this section, is further amend-
20 ed by striking ''Attorney General'' each place such term
21 appears and inserting ''Secretary of Homeland Security''.

22 (d) REPORT ON L–1 NONIMMIGRANTS.—Section
23 214(c)(8) of the Immigration and Nationality Act (8
24 U.S.C. 1184(c)(8)) is amended—

1 (1) by striking "Attorney General" and insert-
2 ing "Secretary of Homeland Security or Secretary of
3 State, as appropriate,";
4 (2) by inserting "(L)," after "(H),"; and
5 (3) by adding at the end the following:
6 "(F) The number of applications for non-
7 immigrants described under section
8 101(a)(15)(L), based on an approved blanket
9 petition under paragraph (2)(A), which have
10 been filed.
11 "(G) The number of applications for non-
12 immigrants described under section
13 101(a)(15)(L), based on an approved blanket
14 petition under paragraph (2)(A), which have
15 been approved.".
16 (e) REPORT ON L–1 BLANKET PETITION PROC-
17 ESS.—Not later than 12 months after the date of the en-
18 actment of this Act, the Inspector General of the Depart-
19 ment of Homeland Security, in cooperation with the In-
20 spector General of the Department of State, shall submit
21 to the Committee on the Judiciary of the House of Rep-
22 resentatives and the Committee on the Judiciary of the
23 Senate a report regarding the use of blanket petitions
24 under section 214(c)(2)(A) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall

1 assess the efficiency and reliability of the process for re-
2 viewing such blanket petitions and adjudicating visa appli-
3 cations filed under an approved blanket petition, including
4 whether the process includes adequate safeguards against
5 fraud and abuse.

6 TITLE V—PROMOTING INVEST- 7 MENT IN THE AMERICAN 8 ECONOMY

9 SEC. 501. EB–5 EMPLOYMENT CREATION INVESTOR PRO- 10 GRAM.

11 (a) AUTHORIZATION OF EB–5 EMPLOYMENT CRE-
12 ATION REGIONAL CENTER PROGRAM.—Section 203(b)(5)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1153(b)(5)) is amended by adding at the end the following
15 new subparagraph:

16 "(E) SET-ASIDE FOR EMPLOYMENT CRE-
17 ATION REGIONAL CENTERS.—

18 "(i) IN GENERAL.—Of the visas other-
19 wise available under this paragraph, the
20 Secretary of State, together with the Sec-
21 retary of Homeland Security, shall set
22 aside at least 5,000 visas for a program in-
23 volving regional centers designated by the
24 Secretary of Homeland Security, on the
25 basis of a general proposal, for the pro-

1 motion of economic growth, including im-
2 proved regional productivity, job creation,
3 or increased domestic capital investment. A
4 regional center shall have jurisdiction over
5 a specific geographic area, which shall be
6 described in the proposal and consistent
7 with the purpose of concentrating pooled
8 investment in defined economic zones. The
9 establishment of a regional center under
10 this subparagraph may be based on gen-
11 eral predictions, contained in the proposal,
12 concerning the kinds of new commercial
13 enterprises that will receive capital from
14 aliens under this paragraph, the jobs that
15 will be created (directly or indirectly) as a
16 result of such capital investments and the
17 other positive economic effects such capital
18 investments will have.

19 ''(ii) METHODOLOGIES.—In deter-
20 mining compliance with this subparagraph,
21 and notwithstanding requirements applica-
22 ble to investors not involving regional cen-
23 ters, the Secretary of Homeland Security,
24 in consultation with the Secretary of Com-
25 merce, shall recognize reasonable meth-

1 odologies for determining the number of
2 jobs created by a designated regional cen-
3 ter, including such jobs that are estimated
4 to have been created indirectly through
5 revenues generated from increased exports,
6 improved regional productivity, or in-
7 creased domestic capital investment result-
8 ing from the regional center. The Sec-
9 retary may consider estimated job creation
10 outside the geographic boundary of a des-
11 ignated regional center if such estimate is
12 supported by substantial evidence and con-
13 stitutes no more than 50 percent of the
14 overall number of jobs estimated to be cre-
15 ated by such regional center.

16 ''(iii) PREAPPROVAL OF NEW COM-
17 MERCIAL ENTERPRISES.—The Secretary of
18 Homeland Security shall establish a
19 preapproval procedure for commercial en-
20 terprises that—

21 ''(I) allows a regional center to
22 apply to the Secretary for approval of
23 a new commercial enterprise before
24 any alien files a petition for classifica-
25 tion under this paragraph by reason

1 of investment in the new commercial
2 enterprise;
3 "(II) in considering an applica-
4 tion under subclause (I), requires that
5 the Secretary make final decisions on
6 all issues under this paragraph other
7 than those issues unique to each indi-
8 vidual investor in the new commercial
9 enterprise; and
10 "(III) requires that the Secretary
11 eliminate the need for the repeated
12 submission of documentation that is
13 common to multiple petitions for clas-
14 sification under this paragraph
15 through a regional center.
16 "(iv) FEE FOR REGIONAL CENTER
17 DESIGNATION.—In addition to any other
18 fees authorized by law, the Secretary of
19 Homeland Security shall impose a fee to
20 apply for designation as an EB–5 regional
21 center under this paragraph. Fees collected
22 under this paragraph shall be deposited in
23 the Treasury in accordance with section
24 286(y).".

1 (b) TARGETED EMPLOYMENT AREAS.—Section
2 203(b)(5)(B) of the Immigration and Nationality Act (8
3 U.S.C. 1153(b)(5)(B)) is amended as follows:
4 (1) TARGETED EMPLOYMENT AREA DEFINED.—
5 In clause (ii), to read as follows:
6 ''(ii) TARGETED EMPLOYMENT AREA
7 DEFINED.—In this paragraph, the term
8 'targeted employment area' means—
9 ''(I) a rural area;
10 ''(II) an area that has experi-
11 enced high unemployment (of at least
12 150 percent of the national average
13 rate) within the preceding 12 months;
14 ''(III) a county that has had a 20
15 percent or more decrease in popu-
16 lation since 1970; or
17 ''(IV) an area that is within the
18 boundaries established for purposes of
19 a State or Federal economic develop-
20 ment incentive program, including
21 areas defined as Enterprise Zones,
22 Renewal Communities and Empower-
23 ment Zones.''.
24 (2) RURAL AREA DEFINED.—In clause (iii), by
25 striking ''within a metropolitan statistical area or''.

1 (3) EFFECT OF PRIOR DETERMINATION.—By
2 adding at the end the following:
3 "(iv) EFFECT OF PRIOR DETERMINA-
4 TION.—In a case in which a geographic
5 area is determined under clause (ii) to be
6 a targeted employment area, such deter-
7 mination shall remain in effect during the
8 2-year period beginning on the date of the
9 determination for purposes of any alien
10 seeking a visa reserved under this subpara-
11 graph.".
12 (c) CALCULATING JOB CREATION.—Section
13 203(b)(5)(D) of such Act (8 U.S.C. 1153(b)(5)(D)) is
14 amended to read as follows:
15 "(D) FULL-TIME EMPLOYMENT.—In this
16 paragraph, the term 'full-time employment'
17 means employment in a position that requires
18 at least 35 hours of service per week at any
19 time, regardless of who fills the position. Such
20 employment may be satisfied on a full-time
21 equivalent basis by calculating the number of
22 full-time employees that could have been em-
23 ployed if the reported number of hours worked
24 by part-time employees had been worked by
25 full-time employees. Full-time equivalent em-

1 ployment shall be calculated by dividing the
2 part-time hours paid by the standard number of
3 hours for full-time employees.''.
4 (d) CAPITAL.—Section 203(b)(5)(C) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1153(b)(5)(C)) is
6 amended by adding at the end the following:
7 ''(iv) CAPITAL DEFINED.—For pur-
8 poses of this paragraph, the term 'capital'
9 does not include any assets acquired, di-
10 rectly or indirectly, by unlawful means.''.
11 (e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1153(b)(5)(A)), is amended by adding ''or similar entity''
14 after ''including a limited partnership''.
15 (f) EXTENSION.—Subparagraph (A) of section
16 216A(d)(2) of the Immigration and Nationality Act (8
17 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end
18 the following: ''A date specified by the applicant (but not
19 later than the fourth anniversary) shall be substituted for
20 the second anniversary in applying the preceding sentence
21 if the applicant demonstrates that the applicant has at-
22 tempted to follow the applicant's business model in good
23 faith, provides an explanation for the delay in filing the
24 petition that is based on circumstances outside of the ap-
25 plicant's control, and demonstrates that such cir-

1 cumstances will be able to be resolved within the specified
2 period.''.

3 (g) STUDY.—

4 (1) IN GENERAL.—The Secretary of Homeland
5 Security, in appropriate consultation with the Sec-
6 retary of Commerce and other interested parties,
7 shall conduct a study concerning—

8 (A) current job creation counting method-
9 ology and initial projections under section
10 203(b)(5) of the Immigration and Nationality
11 Act (8 U.S.C. 1153(b)(5)); and

12 (B) how to best promote the employment
13 creation program described in such section
14 overseas to potential immigrant investors.

15 (2) REPORT.—The Secretary of Homeland Se-
16 curity shall submit a report to the Committee on the
17 Judiciary of the House of Representatives and the
18 Committee on the Judiciary of the Senate not later
19 than 1 year after the date of the enactment of this
20 Act containing the results of the study conducted
21 under paragraph (1).

22 (h) BIENNIAL REPORT.—Beginning on the date that
23 is one year after the date of enactment of this Act, and
24 every 2 years thereafter, the Secretary of Homeland Secu-
25 rity shall submit a report to the Committee on the Judici-

1 ary of the House of Representatives and the Committee
2 on the Judiciary of the Senate that measures the economic
3 impact of the regional center program described in section
4 203(b)(5)(E) of the Immigration and Nationality Act (8
5 U.S.C. 1153(b)(5)(E)), including—
6 (1) foreign and domestic capital investment;
7 (2) the number of jobs directly and indirectly
8 created;
9 (3) any other economic benefits related to for-
10 eign investment under such program; and
11 (4) the number of petitions under such section
12 approved or denied for each regional center.
13 (i) RULEMAKING.—Not later than 120 days after the
14 date of the enactment of this Act, the Secretary of Home-
15 land Security shall prescribe regulations to implement the
16 amendments made by this section.
17 **SEC. 502. CONCURRENT FILING; ADJUSTMENT OF STATUS.**
18 Section 245 of the Immigration and Nationality Act
19 (8 U.S.C. 1255) is amended—
20 (1) in subsection (k), in the matter preceding
21 paragraph (1), by striking ''(1), (2), or (3)'' and in-
22 serting ''(1), (2), (3), (5), or (6)''; and
23 (2) by adding at the end the following:
24 ''(n) If, at the time a petition is filed under section
25 204 for classification under paragraph (5) or (6) of section

1 203(b), approval of the petition would make a visa imme-
2 diately available to the alien beneficiary, the alien bene-
3 ficiary's adjustment application under this section shall be
4 considered to be properly filed whether the application is
5 submitted concurrently with, or subsequent to, the visa pe-
6 tition.''.

7 **SEC. 503. FEES; PREMIUM PROCESSING.**

8 (a) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
9 Section 286 of the Immigration and Nationality Act (8
10 U.S.C. 1356), as amended by this Act, is further amended
11 by adding at the end the following:

12 ''(y) IMMIGRANT ENTREPRENEUR ACCOUNT.—

13 ''(1) IN GENERAL.—There is established in the
14 general fund of the Treasury a separate account,
15 which shall be known as the 'Immigrant Entre-
16 preneur Account'. Notwithstanding any other provi-
17 sion of law, there shall be deposited as offsetting re-
18 ceipts into the account all fees collected under para-
19 graph (5) or (6) of section 203(b) of this Act or sec-
20 tion 610(b) of the Departments of Commerce, Jus-
21 tice, and State, the Judiciary, and Related Agencies
22 Appropriations Act, 1993 (8 U.S.C. 1153 note).

23 ''(2) USE OF FEES.—Fees collected under this
24 section may only be used by the Secretary of Home-
25 land Security to administer and operate the employ-

1 ment creation program described in paragraph (5)
2 or (6) of section 203(b).''.
3 (b) PREMIUM PROCESSING.—Section 286(u) of the
4 Immigration and Nationality Act (8 U.S.C. 1356(u)) is
5 amended by adding at the end the following: ''In the case
6 of a petition filed under section 204(a)(1)(H) for classi-
7 fication under paragraph (5) or (6) of section 203(b), if
8 the petitioner desires a guarantee of a decision on the peti-
9 tion in 60 days or less, the premium processing fee under
10 this subsection shall be set at $2,500 and shall be depos-
11 ited as offsetting receipts in the Immigrant Entrepreneur
12 Account established under subsection (y).''.

○