

114TH CONGRESS
2D SESSION

S. 3510

To facilitate the creation of American jobs by immigrant entrepreneurs.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2016

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

A BILL

To facilitate the creation of American jobs by immigrant
entrepreneurs.

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 “Attracting and Retain-
5 ing Entrepreneurs Act”.

6 **SEC. 2. ENTREPRENEUR NONIMMIGRANT VISAS.**

7 (a) ENTREPRENEUR NONIMMIGRANT CATEGORY.—
8 Section 101(a)(15) of the Immigration and Nationality
9 Act (8 U.S.C. 1101(a)(15)) is amended—

10 (1) in subparagraph (U)(iii), by striking “or”
11 at the end;

1 (2) in subparagraph (V)(ii)(II), by striking the
2 period at the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(W) in accordance with the definitions set
5 forth in section 203(b)(6)(A), a qualified entre-
6 preneur who has demonstrated that, during the
7 3-year period ending on the date on which the
8 alien filed an initial petition for nonimmigrant
9 status described in this subparagraph—

10 “(i) a qualified venture capitalist, a
11 qualified angel investor, a qualified govern-
12 ment entity, a qualified community devel-
13 opment financial institution, qualified
14 startup accelerator, or such other type of
15 entity or investors, as determined by the
16 Secretary, or any combination of such enti-
17 ties or investors, has made a qualified in-
18 vestment or combination of qualified in-
19 vestments of not less than \$100,000 in the
20 alien’s United States business entity; or

21 “(ii) the alien’s United States busi-
22 ness entity—

23 “(I) has created not fewer than 3
24 qualified jobs; and

1 “(II) during the 2-year period
 2 ending on such filing date has gen-
 3 erated not less than \$250,000 in an-
 4 nual revenue arising from business
 5 conducted in the United States.”.

6 (b) ADMISSION OF ENTREPRENEUR NON-
 7 IMMIGRANTS.—Section 214 of the Immigration and Na-
 8 tionality Act (8 U.S.C. 1184) is amended—

9 (1) in subsection (b), by striking “(other than”
 10 and all that follows through “such section)” and in-
 11 serting “(other than a nonimmigrant described in
 12 subparagraph (H)(i)(b), (H)(i)(c), (L), (V), or (W)
 13 of section 101(a)(15))”; and

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

15 “(s) ENTREPRENEUR NONIMMIGRANT VISAS.—

16 “(1) DEFINITIONS.—The definitions set forth
 17 in section 203(b)(6)(A) shall apply to this sub-
 18 section.

19 “(2) INITIAL PERIOD OF AUTHORIZED ADMIS-
 20 SION.—The initial period of authorized status as a
 21 nonimmigrant described in section 101(a)(15)(W)
 22 shall be 3 years.

23 “(3) RENEWAL OF ADMISSION.—Subject to
 24 paragraph (4), the period of authorized non-

1 immigrant status described in paragraph (2) may be
2 renewed for additional 3-year periods if—

3 “(A) during the most recent 3-year period
4 in which the alien was granted such status, the
5 alien’s United States business entity created
6 not fewer than 3 qualified jobs; and

7 “(B)(i) during such 3-year period, a quali-
8 fied venture capitalist, a qualified angel inves-
9 tor, a qualified government entity, a qualified
10 community development financial institution,
11 qualified startup accelerator, or such other type
12 of entity or investors, as determined by the Sec-
13 retary, or any combination of such entities or
14 investors, has made a qualified investment or
15 combination of qualified investments of not less
16 than \$250,000 to the alien’s United States
17 business entity; or

18 “(ii) during the 2-year period ending on
19 the date on which the alien petitioned for an ex-
20 tension, the alien’s United States business enti-
21 ty has generated not less than \$250,000 in an-
22 nual revenue arising from business conducted
23 within the United States.

24 “(4) WAIVER OF RENEWAL REQUIREMENTS.—

25 The Secretary may renew an alien’s status as a non-

1 immigrant described in section 101(a)(15)(W) for
2 not more than 1 year at a time, up to an aggregate
3 of 2 years, if the alien—

4 “(A) does not meet the criteria under
5 paragraph (3); and

6 “(B) meets the criteria established by the
7 Secretary, in consultation with the Secretary of
8 Commerce, for approving renewals under this
9 subsection, which shall include a determination
10 that—

11 “(i) the alien has made substantial
12 progress in meeting such criteria; and

13 “(ii) such renewal is economically ben-
14 eficial to the United States.

15 “(5) ATTESTATION.—The Secretary shall re-
16 quire an alien seeking status as a nonimmigrant de-
17 scribed in section 101(a)(15)(W) to attest, under
18 penalty of perjury, that the alien meets the applica-
19 tion criteria.

20 “(6) W-1 VISA FEE.—In addition to processing
21 fees, the Secretary shall collect a \$1,000 fee from
22 each nonimmigrant admitted under section
23 101(a)(15)(W).”.

1 **SEC. 3. ENTREPRENEUR IMMIGRANT VISAS.**

2 Section 203(b) of the Immigration and Nationality
3 Act (8 U.S.C. 1153(b)) is amended—

4 (1) by redesignating paragraph (6) as para-
5 graph (7); and

6 (2) by inserting after paragraph (5) the fol-
7 lowing:

8 “(6) ENTREPRENEUR IMMIGRANTS.—

9 “(A) DEFINITIONS.—In this paragraph
10 and in sections 101(a)(15)(W) and 214(s):

11 “(i) QUALIFIED ANGEL INVESTOR.—

12 The term ‘qualified angel investor’ means
13 an individual or organized group of individ-
14 uals investing directly or through a legal
15 entity—

16 “(I) each of whom is an accred-
17 ited investor (as defined in section
18 230.501(a) of title 17, Code of Fed-
19 eral Regulations, or any similar suc-
20 cessor regulation) investing the funds
21 owned by such individual or organized
22 group in a qualified entrepreneur’s
23 United States business entity;

24 “(II)(aa) if an individual, is a cit-
25 izen of the United States or an alien

1 lawfully admitted for permanent resi-
2 dence; or

3 “(bb) if an organized group or
4 legal entity, a majority of the individ-
5 uals investing through such group or
6 entity are citizens of the United
7 States or aliens lawfully admitted for
8 permanent residence; and

9 “(III) each of whom in the pre-
10 vious 3 years has made qualified in-
11 vestments totaling not less than
12 \$50,000 (or such higher amount de-
13 termined appropriate by the Sec-
14 retary) in United States business enti-
15 ties that are less than 5 years old.

16 “(ii) QUALIFIED COMMUNITY DEVEL-
17 OPMENT FINANCIAL INSTITUTION.—The
18 term ‘qualified community development fi-
19 nancial institution’ means an entity that
20 has been certified by the CDFI Fund
21 under section 1805.201 45D(c) of title 12,
22 Code of Federal Regulations, or any simi-
23 lar successor regulation.

1 “(iii) QUALIFIED ENTREPRENEUR.—

2 The term ‘qualified entrepreneur’ means
3 an individual who—

4 “(I) has a significant ownership
5 interest, which need not constitute a
6 majority interest, in a United States
7 business entity;

8 “(II) is employed in a senior ex-
9 ecutive position at such entity;

10 “(III) submits a business plan to
11 U.S. Citizenship and Immigration
12 Services; and

13 “(IV) had a substantial role in
14 the founding or early-stage growth
15 and development of such entity.

16 “(iv) QUALIFIED GOVERNMENT ENTI-
17 TY.—The term ‘qualified government enti-
18 ty’ means an agency or instrumentality of
19 the United States or of a State, local, or
20 tribal government.

21 “(v) QUALIFIED INVESTMENT.—The
22 term ‘qualified investment’—

23 “(I) means an investment in a
24 qualified entrepreneur’s United States
25 business entity that is—

1 “(aa) a purchase from such
2 entity of equity or convertible
3 debt issued by such entity;

4 “(bb) a secured loan;

5 “(cc) a convertible debt
6 note;

7 “(dd) a public securities of-
8 fering;

9 “(ee) a research and devel-
10 opment award from a qualified
11 government entity to the United
12 States business entity;

13 “(ff) another investment de-
14 termined appropriate by the Sec-
15 retary; or

16 “(gg) a combination of any
17 of the investments described in
18 items (aa) through (ff); and

19 “(II) does not include an invest-
20 ment from—

21 “(aa) such qualified entre-
22 preneur;

23 “(bb) the parents, spouse,
24 son, or daughter of such qualified
25 entrepreneur; or

1 “(cc) any corporation, com-
2 pany, association, firm, partner-
3 ship, society, or joint stock com-
4 pany over which such qualified
5 entrepreneur has a substantial
6 ownership interest.

7 “(vi) QUALIFIED JOB.—The term
8 ‘qualified job’ means a full-time position at
9 a United States business entity owned by
10 a qualified entrepreneur that—

11 “(I) is located in the United
12 States;

13 “(II) has been filled for at least
14 2 years by a United States citizen or
15 legal permanent resident who is not
16 the qualified entrepreneur or the
17 spouse, son, or daughter of the quali-
18 fied entrepreneur; and

19 “(III) is compensated at a wage
20 level that is commensurate with simi-
21 larly situated employees in comparable
22 positions in the metropolitan statis-
23 tical area of the employment.

24 “(vii) QUALIFIED STARTUP ACCEL-
25 ERATOR.—The term ‘qualified startup ac-

1 celerator’ means a corporation, company,
2 association, firm, partnership, society, or
3 joint stock company that—

4 “(I) is organized under the laws
5 of the United States or of any State
6 and conducts business in the United
7 States;

8 “(II) in the ordinary course of
9 business, provides a program of train-
10 ing, mentorship, and logistical support
11 to assist entrepreneurs in growing
12 their businesses;

13 “(III) is managed by individuals,
14 the majority of whom are citizens of
15 the United States or aliens lawfully
16 admitted for permanent residence;

17 “(IV)(aa) regularly acquires an
18 equity interest in companies that par-
19 ticipate in its programs in which the
20 majority of the capital so invested is
21 committed from individuals who are
22 United States citizens or aliens law-
23 fully admitted for permanent resi-
24 dence, or from entities organized

1 under the laws of the United States
2 or any State; or

3 “(bb) is an entity that has re-
4 ceived not less than \$250,000 in fund-
5 ing from a qualified government entity
6 or entities during the previous 5 years
7 and regularly awards grants to com-
8 panies that participate in its programs
9 (in which case, such grant shall be
10 treated as a qualified investment for
11 purposes of clause (iv));

12 “(V) during the previous 5 years,
13 has acquired an equity interest in, or,
14 in the case of an entity described in
15 subclause (IV)(bb), regularly made
16 grants to, not fewer than 10 United
17 States business entities that—

18 “(aa) have participated in
19 its programs; and

20 “(bb)(AA) have each secured
21 at least \$100,000 in initial in-
22 vestments; or

23 “(BB) during any 2-year pe-
24 riod following the date of such
25 acquisition, have generated not

1 less than \$500,000 in aggregate
2 annual revenue within the United
3 States;

4 “(VI) has its primary location in
5 the United States; and

6 “(VII) satisfies such other cri-
7 teria as the Secretary may establish.

8 “(viii) QUALIFIED VENTURE CAPI-
9 TALIST.—The term ‘qualified venture capi-
10 talist’ means an entity that—

11 “(I)(aa) is a venture capital oper-
12 ating company (as defined in section
13 2510.3–101(d) of title 29, Code of
14 Federal Regulations or any successor
15 to such regulation); or

16 “(bb) has management rights, as
17 defined in, and to the extent required
18 by, such section 2510.3–101(d) or
19 successor regulation, in its portfolio
20 companies;

21 “(II) has capital commitments of
22 not less than \$10,000,000; and

23 “(III) has an investment adviser
24 that—

1 “(aa) is registered under
2 section 203 of the Investment
3 Advisers Act of 1940 (15 U.S.C.
4 80b-3);

5 “(bb) has its primary office
6 location in the United States;

7 “(cc) is directly or indirectly
8 owned by individuals, the major-
9 ity of whom are citizens of the
10 United States or aliens lawfully
11 admitted for permanent residence
12 in the United States;

13 “(dd) has been advising
14 such entity or other similar funds
15 or entities for at least 2 years;
16 and

17 “(ee) has advised such entity
18 or a similar fund or entity with
19 respect to at least 2 investments
20 of not less than \$500,000 made
21 by such entity or similar fund or
22 entity during each of the most
23 recent 2 years.

24 “(ix) SECRETARY.—Except as other-
25 wise specifically provided, the term ‘Sec-

1 retary’ means the Secretary of Homeland
2 Security.

3 “(x) SENIOR EXECUTIVE POSITION.—
4 The term ‘senior executive position’ in-
5 cludes the position of chief executive offi-
6 cer, chief technology officer, and chief op-
7 erating officer.

8 “(xi) UNITED STATES BUSINESS EN-
9 TITY.—The term ‘United States business
10 entity’ means any corporation, company,
11 association, firm, partnership, society, or
12 joint stock company that is organized
13 under the laws of the United States or any
14 State and that conducts business in the
15 United States that is not—

16 “(I) a private fund (as defined in
17 202(a) of the Investment Advisers Act
18 of 1940 (15 U.S.C. 80b–2));

19 “(II) a commodity pool (as de-
20 fined in section 1a of the Commodity
21 Exchange Act (7 U.S.C. 1a));

22 “(III) an investment company (as
23 defined in section 3 of the Investment
24 Company Act of 1940 (15 U.S.C.
25 80a–3); or

1 “(IV) an issuer that would be an
2 investment company without an ex-
3 emption provided in—

4 “(aa) section 3(c) of the In-
5 vestment Company Act of 1940
6 (15 U.S.C. 80a-3(c)); or

7 “(bb) section 270.3a-7 of
8 title 17, Code of Federal Regula-
9 tions, or any similar successor
10 regulation.

11 “(B) IN GENERAL.—Not more than
12 10,000 visas shall be available during each fis-
13 cal year for qualified immigrants seeking to
14 enter the United States for the purpose of cre-
15 ating new businesses, as described in this para-
16 graph.

17 “(C) ELIGIBILITY.—An alien who is a
18 qualified entrepreneur is eligible for a visa
19 under this paragraph if—

20 “(i)(I) the alien maintained valid non-
21 immigrant status in the United States for
22 at least 2 years;

23 “(II) during the 3-year period ending
24 on the date the alien files an initial peti-
25 tion for such status under this section—

1 “(aa)(AA) the alien has a signifi-
2 cant ownership in a United States
3 business entity that has created not
4 fewer than 5 qualified jobs; and

5 “(BB) a qualified venture capi-
6 talist, a qualified angel investor, a
7 qualified government entity, a quali-
8 fied community development financial
9 institution, qualified startup accel-
10 erator, or such other entity or type of
11 investors, as determined by the Sec-
12 retary, or any combination of such en-
13 tities or investors, has devoted a
14 qualified investment or combination of
15 qualified investments of not less than
16 \$500,000 to the alien’s United States
17 business entity; or

18 “(bb)(AA) the alien has a signifi-
19 cant ownership interest in a United
20 States business entity that has cre-
21 ated not fewer than 5 qualified jobs;
22 and

23 “(BB) during the 2-year period
24 ending on such petition date, has gen-
25 erated not less than \$500,000 in an-

1 nual revenue within the United
2 States; and

3 “(III) not more than 2 other aliens
4 have received nonimmigrant status under
5 this section on the basis of an alien’s own-
6 ership of such United States business enti-
7 ty; or

8 “(ii)(I) the alien maintained valid
9 nonimmigrant status in the United States
10 for at least 3 years before the date on
11 which the alien filed an application for
12 such status;

13 “(II) the alien holds an advanced de-
14 gree in a field of science, technology, engi-
15 neering, or mathematics that has been ap-
16 proved by the Secretary;

17 “(III) during the 3-year period ending
18 on the date on which the alien files an ini-
19 tial petition for such status under this sec-
20 tion—

21 “(aa)(AA) the alien has a signifi-
22 cant ownership interest in a United
23 States business entity that has cre-
24 ated not fewer than 4 qualified jobs;
25 and

1 “(BB) a qualified venture capi-
2 talist, a qualified angel investor, a
3 qualified government entity, a quali-
4 fied community development financial
5 institution, qualified startup accel-
6 erator, or such other entity or type of
7 investors, as determined by the Sec-
8 retary, or any combination of such en-
9 tities or investors, has devoted a
10 qualified investment or combination of
11 qualified investments of not less than
12 \$500,000 in total to the alien’s
13 United States business entity; or

14 “(bb)(AA) the alien has a signifi-
15 cant ownership interest in a United
16 States business entity that has cre-
17 ated not fewer than 3 qualified jobs;
18 and

19 “(BB) during the 2-year period
20 ending on such petition date, the enti-
21 ty has generated not less than
22 \$500,000 in annual revenue within
23 the United States; and

24 “(IV) not more than 3 other aliens
25 have received nonimmigrant status under

1 this paragraph on the basis of an alien’s
 2 ownership of such United States business
 3 entity.

4 “(D) NEW BUSINESS PLAN REQUIRE-
 5 MENT.—

6 “(i) IN GENERAL.—A qualified entre-
 7 preneur shall submit a new business plan
 8 to U.S. Citizenship and Immigration Serv-
 9 ices if there has been a material change to
 10 the business plan referred to in subpara-
 11 graph (A)(ii)(III).

12 “(ii) PRESUMPTION.—There shall be
 13 a presumption in favor of approval for any
 14 new business plan submitted pursuant to
 15 clause (i).

16 “(E) ATTESTATION.—The Secretary may
 17 require an alien seeking a visa under this para-
 18 graph to attest, under penalties of perjury, to
 19 the alien’s qualifications.”.

20 **SEC. 4. ADMINISTRATION AND OVERSIGHT.**

21 (a) RULEMAKING.—

22 (1) IN GENERAL.—Not later than 16 months
 23 after the date of the enactment of this Act, the Sec-
 24 retary of Homeland Security, in consultation with
 25 the Secretary of Commerce, the Administrator of the

1 Small Business Administration, and heads of other
2 relevant Federal agencies and departments, shall
3 promulgate regulations—

4 (A) to carry out the amendments made by
5 this Act; and

6 (B) to ensure that such amendments are
7 implemented in a manner that is consistent
8 with—

9 (i) the protection of national security;

10 and

11 (ii) the promotion of United States
12 economic growth, job creation, and com-
13 petitiveness.

14 (2) MODIFICATION OF DOLLAR AMOUNTS.—

15 (A) IN GENERAL.—The Secretary of
16 Homeland Security may prescribe regulations
17 that increase or decrease any dollar amount
18 specified in—

19 (i) section 101(a)(15)(W) of the Im-
20 migration and Nationality Act, as added by
21 section 2(a);

22 (ii) section 214(s) of such Act, as
23 added by section 2(b); or

24 (iii) section 203(b)(6) of such Act, as
25 added by section 3.

1 (B) AUTOMATIC ADJUSTMENT.—Unless a
2 dollar amount referred to in subparagraph (A)
3 relating to a petition for a nonimmigrant visa
4 under section 101(a)(15)(W) of the Immigra-
5 tion and Nationality Act or an immigrant visa
6 under section 203(b)(6) of such Act is adjusted
7 by the Secretary of Homeland Security pursu-
8 ant to such subparagraph, such dollar amount
9 shall automatically adjust—

10 (i) on January 1, 2021, by the per-
11 centage change in the Consumer Price
12 Index (CPI-U) during fiscal year 2020;
13 and

14 (ii) on every fifth subsequent January
15 1 by the percentage change in the CPI-U
16 during the previous 5 fiscal years.

17 (b) OTHER AUTHORITY.—The Secretary of Home-
18 land Security, in the Secretary's unreviewable discretion,
19 may deny or revoke the approval of a petition seeking an
20 immigrant visa under section 203(b)(6) of the Immigra-
21 tion and Nationality Act, as added by section 3, or any
22 other petition, application, or benefit based upon the pre-
23 vious or concurrent filing or approval of a petition for clas-
24 sification of an alien under such section, if the Secretary
25 determines that the approval or continuation of such peti-

tion, application, or benefit is contrary to the national interest of the United States or for other good cause.

(c) REPORTS.—Once every 3 years, the Secretary of Homeland Security shall submit a report to Congress that includes—

(1) a description of the implementation of this Act and the amendments made by this Act;

(2) the number and percentage of entrepreneurs who have met the thresholds for nonimmigrant renewal and adjustment to green card status under the amendments made by this Act;

(3) an analysis of the program’s economic impact, including—

(A) job and revenue creation;

(B) increased investments; and

(C) growth within business sectors and regions;

(4) a description and breakdown of the types of businesses that have been created by entrepreneurs granted nonimmigrant or immigrant status;

(5) for each report other than the Secretary’s initial report, a description of the percentage of the businesses initially created by the entrepreneurs granted immigrant and nonimmigrant status under

1 this Act and the amendments made by this Act, that
2 are still in operation; and

3 (6) any recommendations for improving the
4 program established under this Act and the amend-
5 ments made by this Act.

○