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112TH CONGRESS
2D SESSION

H. R. 6429

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2012

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CUELLAR, Mr. LABRADOR, Mr. DREIER, Mr. ROYCE, Mr. GRIFFIN of Arkansas, Mr. GALLEGLY, Mr. DANIEL E. LUNGREN of California, Mr. CHABOT, Mr. ISSA, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. CHAFFETZ, Mr. LEWIS of California, Mr. HERGER, Mr. BACHUS, Mr. CALVERT, Mr. MANZULLO, Mrs. MYRICK, Ms. GRANGER, Mr. SESSIONS, Mr. BILBRAY, Mr. FLAKE, Mrs. BLACKBURN, Mr. CARTER, Mr. NEUGEBAUER, Mr. CONAWAY, Mr. DENT, Mr. MCCAUL, Mr. PEARCE, Mr. CASSIDY, Mr. COFFMAN of Colorado, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Ms. BUERKLE, Mr. GRIMM, Mr. HANNA, Mr. HULTGREN, Mr. LANKFORD, Mr. MCKINLEY, Mr. PALAZZO, Mr. SCHWEIKERT, Mr. STIVERS, Mr. YODER, and Mr. ROSKAM) introduced the following bill; which was 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, to eliminate the diversity immigrant program, 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,*

SECTION 1. SHORT TITLE.

This Act may be cited as the ''STEM Jobs Act of 2012''.

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

(a) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(2)) is amended by adding at the end the following:

''(D)(i) In addition to the increase provided under subparagraph (C), the number computed under this paragraph for fiscal year 2013 and subsequent fiscal years shall be further increased by the number specified in clause (ii), to be used in accordance with paragraphs (6) and (7) of section 203(b), except that—

''(I) immigrant visa numbers made available under this subparagraph but not required for the classes specified in paragraphs (6) and (7) of section 203(b) shall not be counted for purposes of subsection (c)(3)(C); and

''(II) for purposes of paragraphs (1) through (5) of section 203(b), the increase under this subparagraph shall not be counted for purposes of computing any percentage of the worldwide level under this subsection.

"(ii) The number specified in this clause is 55,000, reduced for any fiscal year by the number by which the number of visas under section 201(e) would have been reduced in that year pursuant to section 203(d) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1151 note) if section 201(e) had not been repealed by section 3 of the STEM Jobs Act of 2012.

"(iii) Immigrant visa numbers made available under this subparagraph for fiscal year 2013, but not used for the classes specified in paragraphs (6) and (7) of section 203(b) in such year, may be made available in subsequent years as if they were included in the number specified in clause (ii), but only to the extent to which the cumulative number of petitions under section 204(a)(1)(F), and applications for a labor certification under section 212(a)(5)(A), filed in fiscal year 2013 with respect to aliens seeking a visa under paragraph (6) or (7) of section 203(b) was less than the number specified in clause (ii) for such year. Such immigrant visa numbers may only be made available in fiscal years after fiscal year 2013 in connection with a petition under section 204(a)(1)(F), or an application for a labor certification under section 212(a)(5)(A), that was filed in fiscal year 2013.

"(iv) Immigrant visa numbers made available under this subparagraph for fiscal year 2014, but not used for

the classes specified in paragraphs (6) and (7) of section 203(b) during such year, may be made available in subsequent years as if they were included in the number specified in clause (ii), but only to the extent to which the cumulative number of petitions under section 204(a)(1)(F), and applications for a labor certification under section 212(a)(5)(A), filed in fiscal year 2014 with respect to aliens seeking a visa under paragraph (6) or (7) of section 203(b) was less than the number specified in clause (ii) for such year. Such immigrant visa numbers may only be made available in fiscal years after fiscal year 2014 in connection with a petition under section 204(a)(1)(F), or an application for a labor certification under section 212(a)(5)(A), that was filed in fiscal year 2014.''.

(b) NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.—Section 202(a)(5)(A) of such Act (8 U.S.C. 1152(a)(5)(A)) is amended by striking ''or (5)'' and inserting ''(5), (6), or (7)''.

(c) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of such Act (8 U.S.C. 1153(b)) is amended—

(1) by redesignating paragraph (6) as paragraph (8); and

(2) by inserting after paragraph (5) the following:

"(6) ALIENS HOLDING DOCTORATE DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed the number specified in section 201(d)(2)(D)(ii), to qualified immigrants who—

"(i) hold a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education;

"(ii) agree to work for a total of not less than 5 years in the aggregate for the petitioning employer or in the United States in a field of science, technology, engineering, or mathematics upon being lawfully admitted for permanent residence; and

"(iii) have taken all doctoral courses in a field of science, technology, engineering, or mathematics, including all courses taken by correspondence (including courses offered by telecommunications) or by dis-

tance education, while physically present in the United States.

"(B) DEFINITIONS.—For purposes of this paragraph, paragraph (7), and sections 101(a)(15)(F)(i)(I) and 212(a)(5)(A)(iii)(III):

"(i) The term 'distance education' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

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

"(iii) The term 'United States doctoral institution of higher education' means an institution that—

"(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher edu-

cation (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));

"(II) was classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2012, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation after the date of enactment of this paragraph, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity;

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

"(IV) does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any recruitment or admis-

sion activities for nonimmigrant students or in making decisions regarding the award of student financial assistance to nonimmigrant students; and

"(V) is accredited by an accrediting body that is itself accredited either by the Department of Education or by the Council for Higher Education Accreditation.

"(C) LABOR CERTIFICATION REQUIRED.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A), except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

"(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall

be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

"(7) ALIENS HOLDING MASTER'S DEGREES FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEERING, OR MATHEMATICS.—

"(A) IN GENERAL.—Any visas not required for the class specified in paragraph (6) shall be made available to the class of aliens who—

"(i) hold a master's degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education that was either part of a master's program that required at least 2 years of enrollment or part of a 5-year combined baccalaureate-master's degree program in such field;

"(ii) agree to work for a total of not less than 5 years in the aggregate for the petitioning employer or in the United States in a field of science, technology, en-

gineering, or mathematics upon being lawfully admitted for permanent residence;

"(iii) have taken all master's degree courses in a field of science, technology, engineering, or mathematics, including all courses taken by correspondence (including courses offered by telecommunications) or by distance education, while physically present in the United States; and

"(iv) hold a baccalaureate degree in a field of science, technology, engineering, or mathematics or in a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary group of biological and biomedical sciences.

"(B) LABOR CERTIFICATION REQUIRED.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary of Homeland Security may not approve a petition filed for classification of an alien under subparagraph (A) unless the Secretary of Homeland Security is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A),

except that the Secretary of Homeland Security may, when the Secretary deems it to be in the national interest, waive this requirement.

"(ii) REQUIREMENT DEEMED SATISFIED.—The requirement of clause (i) shall be deemed satisfied with respect to an employer and an alien in a case in which a certification made under section 212(a)(5)(A)(i) has already been obtained with respect to the alien by that employer.

"(C) DEFINITIONS.—The definitions in paragraph (6)(B) shall apply for purposes of this paragraph.".

(d) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204(a)(1)(F) of such Act (8 U.S.C. 1154(a)(1)(F)) is amended—

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

(2) by striking "or 203(b)(3)" and inserting "203(b)(3), 203(b)(6), or 203(b)(7)";

(3) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(4) by adding at the end the following:

"(ii) The following processing standards shall apply with respect to petitions under clause (i) relating to alien

beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

"(I) The Secretary of Homeland Security shall adjudicate such petitions not later than 60 days after the date on which the petition is filed. In the event that additional information or documentation is requested by the Secretary during such 60-day period, the Secretary shall adjudicate the petition not later than 30 days after the date on which such information or documentation is received.

"(II) The petitioner shall be notified in writing within 30 days of the date of filing if the petition does not meet the standards for approval. If the petition does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified petition.".

(e) LABOR CERTIFICATION AND QUALIFICATION FOR CERTAIN IMMIGRANTS.—Section 212(a)(5) of such Act (8 U.S.C. 1182(a)(5)) is amended—

(1) in subparagraph (A)—

(A) in clause (ii)—

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

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

(iii) by adding at the end the following:

"(III) holds a doctorate degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education (as defined in section 203(b)(6)(B)(iii)).";

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

(C) by inserting after clause (i) the following:

"(ii) JOB ORDER.—

"(I) IN GENERAL.—An employer who files an application under clause (i) shall submit a job order for the labor the alien seeks to perform to the State workforce agency in the State in which the alien seeks to perform the labor. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after

receipt using the employment statistics system authorized under section 15 of the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

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

(D) by adding at the end the following:

"(vi) PROCESSING STANDARDS FOR ALIEN BENEFICIARIES QUALIFYING UNDER PARAGRAPHS (6) AND (7) OF SECTION 203(b).—The following processing standards shall apply with respect to applications under clause (i) relating to alien beneficiaries qualifying under paragraph (6) or (7) of section 203(b):

"(I) The Secretary of Labor shall adjudicate such applications not later than 180 days after the date on which the application is filed. In the event that additional information or documentation is requested by the Sec-

retary during such 180-day period, the Secretary shall adjudicate the application not later than 60 days after the date on which such information or documentation is received.

"(II) The applicant shall be notified in writing within 60 days of the date of filing if the application does not meet the standards for approval. If the application does not meet such standards, the notice shall include the reasons therefore and the Secretary shall provide an opportunity for the prompt resubmission of a modified application."; and

(2) in subparagraph (D), by striking "(2) or (3)" and inserting "(2), (3), (6), or (7)".

(f) GAO STUDY.—Not later than June 30, 2017, the Comptroller General of the United States shall provide to the Congress the results of a study on the use by the National Science Foundation of the classification authority provided under section 203(b)(6)(B)(iii)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(6)(B)(iii)(II)), as added by this section.

(g) PUBLIC INFORMATION.—The Secretary of Homeland Security shall make available to the public on the official website of the Department of Homeland Security, and shall update not less than monthly, the following information (which shall be organized according to month and fiscal year) with respect to aliens granted status under paragraph (6) or (7) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)), as added by this section:

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

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

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

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2012, and shall apply with respect to fiscal years beginning on or after such date.

SEC. 3. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

(a) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) in subsection (a)—

(A) by inserting ''and'' at the end of paragraph (1);

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—Section 203 of such Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (c);

(2) in subsection (d), by striking ''(a), (b), or (c),'' and inserting ''(a) or (b),'';

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking ''(a), (b), or (c)'' and inserting ''(a) or (b)''; and

(5) in subsection (g), by striking ''(a), (b), and (c)'' and inserting ''(a) and (b)''.

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of such Act (8 U.S.C. 1154) is amended—

(1) by striking subsection (a)(1)(I); and

(2) in subsection (e), by striking ''(a), (b), or (c)'' and inserting ''(a) or (b)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2012, and shall apply with respect to fiscal years beginning on or after such date.

SEC. 4. PERMANENT PRIORITY DATES.

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

''(i) PERMANENT PRIORITY DATES.—

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

''(2) SUBSEQUENT EMPLOYMENT-BASED PETITIONS.—Subject to subsection (h)(3), an alien who is the beneficiary of any employment-based petition that was approvable when filed (including self-peti-

tioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed employment-based petition (including self-petitions).''.

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

SEC. 5. STUDENT VISA REFORM.

(a) IN GENERAL.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

''(F) an alien—

''(i) who—

''(I) is a bona fide student qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(ii)) leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent with section 214(m) at an institution of higher education (as described in section

101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution shall have agreed to report to the Secretary of Homeland Security the termination of attendance of each nonimmigrant student, and if any such institution fails to make reports promptly the approval shall be withdrawn; or

''(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I);

''(ii) who has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely

for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution of learning or place of study shall have agreed to report to the Secretary of Homeland Security the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn;

''(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien; or

''(iv) who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who com-

mutes to the United States institution or place of study from Canada or Mexico.''.

(b) ADMISSION.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by inserting ''(F)(i),'' before ''(L) or (V)''.

(c) CONFORMING AMENDMENT.—Section 214(m)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking ''(i) or (iii)'' and inserting ''(i), (ii), or (iv)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to nonimmigrants who possess or are granted status under section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) on or after such date.

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