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112TH CONGRESS
2D SESSION

S. 3553

To amend the Immigration and Nationality Act to enhance national security, combat illegal immigration, and promote job creation, innovation, investment, and research in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. SCHUMER (for himself, Mr. COONS, and Mr. WHITEHOUSE) 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 enhance national security, combat illegal immigration, and promote job creation, innovation, investment, and research in the United States, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Benefits to Research and American Innovation through Nationality Statutes Act of 2012'' or the ''BRAINS Act''.

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

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

(1) by redesignating paragraph (6) as paragraph (7); and

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

"(6) ADVANCED GRADUATES IN SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS.—

"(A) IN GENERAL.—Notwithstanding section 201, visas shall be made available, in a number not to exceed 55,000, to qualified immigrants who—

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

"(ii) earned a graduate degree by taking no greater than 25 percent of classes by correspondence (including courses offered by telecommunications) and by taking all classes while physically present in the United States;

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

"(iv) are the subject of an approved labor certification as required under section 212(a)(5)(A); and

"(v) will receive a wage level from the employer that is at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question.

"(B) DEFINITIONS.—In this paragraph:

"(i) FIELD OF SCIENCE, TECHNOLOGY, ENGEERING, OR MATHEMATICS.—The term 'field of science, technology, engineering, or mathematics' means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, and physical sciences.

"(ii) UNITED STATES RESEARCH INSTITUTION OF HIGHER EDUCATION.—The

term 'United States research institution of higher education' means an institution in the United States that—

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

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

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

"(IV) does not provide any 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 admission activities for nonimmigrant students or in making decisions regarding the award of student financial assistance to nonimmigrant students;

"(V) is accredited by an accrediting agency recognized by the Secretary of Education; and

"(VI) is not operating for profit.".

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

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

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

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

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

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

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

(1) in subparagraph (A)—

(A) in clause (ii)—

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

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

(iii) by adding at the end the following:

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

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

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

"(iii) JOB ORDER.—

"(I) IN GENERAL.—An employer who files an application under clause (i) shall submit a job order for the labor the alien seeks to perform to the State workforce agency in the State in which the alien seeks to perform the

labor. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt using the employment 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

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

(e) FURTHER PROTECTING AMERICAN WORKERS.—Section 212(p) of such Act (8 U.S.C. 1182(p)) is amended by adding at the end the following:

"(5) To satisfy the requirement under section 203(b)(6)(A)(iv), an employer must demonstrate that the total amount of compensation to be paid to the alien (including health insurance, stock options, and other benefits provided by the employer) must meet or exceed the total amount of compensation

paid by the employer to all other employees with similar experience and qualifications working in the same occupational classification.''.

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

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

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

(2) The number of aliens granted status under either of such paragraphs in the month and fiscal

year to date based upon a petition filed by such employer.

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

(h) EFFECTIVE DATE; SUNSET.—

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

(2) SUNSET.—The amendments made by subsections (a) through (e) shall be repealed after the 2-year period beginning on the date of the enactment of this Act.

SEC. 3. STUDENT VISA REFORM.

(a) IN GENERAL.—Section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) is amended by striking ''an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who'' and inserting ''an alien who is a bona fide student qualified to pursue a full course of study, who (except for a student qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section

203(b)(6)(B)(i)) at an institution of higher education) has a residence in a foreign country which the alien has no intention of abandoning, and who''.

(b) CONFORMING AMENDMENTS.—

(1) Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking ''(other than a nonimmigrant'' and inserting ''(other than a nonimmigrant described in section 101(a)(15)(F) if the alien is qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(i)) at an institution of higher education, other than a nonimmigrant''.

(2) Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting ''(F) (if the alien is qualified to pursue a full course of study in a field of science, technology, engineering, or mathematics (as defined in section 203(b)(6)(B)(i)) at an institution of higher education),'' before ''H(i)(b)''.

SEC. 4. VISA REVALIDATION.

Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended—

(1) in subsection (h), in the matter preceding paragraph (1), by inserting ''except as provided under subsection (i),'' after ''Act,''; and

(2) by adding at the end the following:

''(i) VISA REVALIDATION.—The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph (E), (H), (I), (L), (O), or (P) of section 101(a)(15) to apply for a renewal of such visa within the United States if—

''(1) such visa expired during the 12-month period ending on the date of such application;

''(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

''(3) the alien has complied with the immigration laws of the United States.''.

SEC. 5. AGE-OUT PROTECTIONS FOR CHILDREN.

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

''(H) RULES FOR DETERMINING AGE OF A CHILD.—

''(i) IMMIGRANT PETITIONS.—Notwithstanding any other provision of the Act, a determination of whether an alien is

a child for the purposes of a petition under sections 204 and 209 shall be made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security.

"(ii) CHILD OF U.S. CITIZEN FIANCÉ.—A determination of whether an alien is a child for the purposes of a petition under section 214 or an application for adjustment of status under section 245(d) shall be made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security to classify the alien's parent as the fiancé of a U.S. citizen.".

SEC. 6. RETENTION OF PRIORITY DATES.

(a) IN GENERAL.—Section 203(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1153(h)(3)) is amended to read follows:

"(3) RETENTION OF PRIORITY DATE.—If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), and a parent of the alien files a petition under section 204 for classification of such alien based upon a relationship de-

scribed in subsection (a), the priority date for such petition shall be the original priority date issued upon receipt of the original family-based or employment-based petition for which either parent was a beneficiary.''.

(b) PERMANENT PRIORITY DATES.—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 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 PETITIONS.—Subject to subsection (h)(3), an alien who is the beneficiary of any petition that was approvable when filed (including self-petitioners) shall retain the priority date assigned with respect to that petition in the consideration of any subsequently filed petition (including self-petitions) of which the alien is a beneficiary.''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply to any alien who is a beneficiary of a classification petition pending on or after such date.

SEC. 7. NUCLEAR FAMILY REUNIFICATIONS FOR HIGH-SKILLED WORKERS.

Notwithstanding any other numerical limitation in law, the number of immigrant visas available to the spouse of an alien lawfully admitted for permanent residence pursuant to section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) shall be increased in each fiscal year by the number of aliens who were lawfully admitted for permanent residence that were removed from the United States in the preceding fiscal year.

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