

112TH CONGRESS  
1ST SESSION

# S. 1983

To amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2011

Mr. SCHUMER (for himself, Mr. LEAHY, and Mr. DURBIN) 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 eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, 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 TITLE.**

4 This Act may be cited as the “Fairness for High-  
5 Skilled Immigrants Act of 2011”.

1 **SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**  
2 **STATE.**

3 (a) IN GENERAL.—Section 202(a)(2) of the Immi-  
4 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is  
5 amended—

6 (1) in the paragraph heading, by striking “AND  
7 EMPLOYMENT-BASED”;

8 (2) by striking “(3), (4), and (5),” and insert-  
9 ing “(3) and (4),”;

10 (3) by striking “subsections (a) and (b) of sec-  
11 tion 203” and inserting “section 203(a)”;

12 (4) by striking “7” and inserting “15”; and

13 (5) by striking “such subsections” and inserting  
14 “such section”.

15 (b) CONFORMING AMENDMENTS.—Section 202 of the  
16 Immigration and Nationality Act (8 U.S.C. 1152) is  
17 amended—

18 (1) in subsection (a)(3), by striking “both sub-  
19 sections (a) and (b) of section 203” and inserting  
20 “section 203(a)”;

21 (2) by striking subsection (a)(5); and

22 (3) by amending subsection (e) to read as fol-  
23 lows:

24 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—  
25 If it is determined that the total number of immigrant  
26 visas made available under section 203(a) to natives of

1 any single foreign state or dependent area will exceed the  
2 numerical limitation specified in subsection (a)(2) in any  
3 fiscal year, in determining the allotment of immigrant visa  
4 numbers to natives under section 203(a), visa numbers  
5 with respect to natives of that state or area shall be allo-  
6 cated (to the extent practicable and otherwise consistent  
7 with this section and section 203) in a manner so that,  
8 except as provided in subsection (a)(4), the proportion of  
9 the visa numbers made available under each of paragraphs  
10 (1) through (4) of section 203(a) is equal to the ratio of  
11 the total number of visas made available under the respec-  
12 tive paragraph to the total number of visas made available  
13 under section 203(a).”.

14 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the  
15 Chinese Student Protection Act of 1992 (8 U.S.C. 1255  
16 note) is amended—

17 (1) in subsection (a), by striking “subsection  
18 (e))” and inserting “subsection (d))”; and

19 (2) by striking subsection (d) and redesignating  
20 subsection (e) as subsection (d).

21 (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect as if enacted on September  
23 30, 2011, and shall apply to fiscal year 2012 and each  
24 subsequent fiscal year.

1 (e) TRANSITION RULES FOR EMPLOYMENT-BASED  
2 IMMIGRANTS.—

3 (1) IN GENERAL.—Subject to paragraphs (2)  
4 through (4), and notwithstanding title II of the Im-  
5 migration and Nationality Act (8 U.S.C. 1151 et  
6 seq.), the following rules shall apply:

7 (A) For fiscal year 2012, 15 percent of the  
8 immigrant visas made available under each of  
9 paragraphs (2) and (3) of section 203(b) of  
10 such Act (8 U.S.C. 1153(b)) shall be allotted to  
11 immigrants who are natives of a foreign state  
12 or dependent area that was not 1 of the 2  
13 States with the largest aggregate numbers of  
14 natives obtaining immigrant visas during fiscal  
15 year 2010 under such paragraphs.

16 (B) For fiscal year 2013, 10 percent of the  
17 immigrant visas made available under each of  
18 such paragraphs shall be allotted to immigrants  
19 who are natives of a foreign state or dependent  
20 area that was not 1 of the 2 States with the  
21 largest aggregate numbers of natives obtaining  
22 immigrant visas during fiscal year 2011 under  
23 such paragraphs.

24 (C) For fiscal year 2014, 10 percent of the  
25 immigrant visas made available under each of

1 such paragraphs shall be allotted to immigrants  
2 who are natives of a foreign state or dependent  
3 area that was not 1 of the 2 States with the  
4 largest aggregate numbers of natives obtaining  
5 immigrant visas during fiscal year 2012 under  
6 such paragraphs.

7 (2) PER-COUNTRY LEVELS.—

8 (A) RESERVED VISAS.—With respect to  
9 the visas reserved under each of subparagraphs  
10 (A) through (C) of paragraph (1), the number  
11 of such visas made available to natives of any  
12 single foreign state or dependent area in the ap-  
13 propriate fiscal year may not exceed 25 percent  
14 (in the case of a single foreign state) or 2 per-  
15 cent (in the case of a dependent area) of the  
16 total number of such visas.

17 (B) UNRESERVED VISAS.—With respect to  
18 the immigrant visas made available under each  
19 of paragraphs (2) and (3) of section 203(b) of  
20 such Act (8 U.S.C. 1153(b)) and not reserved  
21 under paragraph (1), for each of fiscal years  
22 2012, 2013, and 2014, not more than 85 per-  
23 cent shall be allotted to immigrants who are na-  
24 tives of any single foreign state.

1           (3) SPECIAL RULE TO PREVENT UNUSED  
2 VISAS.—If, with respect to fiscal year 2012, 2013, or  
3 2014, the application of paragraphs (1) and (2)  
4 would prevent the total number of immigrant visas  
5 made available under paragraph (2) or (3) of section  
6 203(b) of such Act (8 U.S.C. 1153(b)) from being  
7 issued, such visas may be issued during the remain-  
8 der of such fiscal year without regard to paragraphs  
9 (1) and (2).

10           (4) RULES FOR CHARGEABILITY.—Section  
11 202(b) of such Act (8 U.S.C. 1152(b)) shall apply  
12 in determining the foreign state to which an alien is  
13 chargeable for purposes of this subsection.

14 **SEC. 3. E-VISA REFORM.**

15           (a) DEFINITION.—Section 101(a)(15)(E)(iii) of the  
16 Immigration and Nationality Act (8 U.S.C.  
17 1101(a)(15)(E)(iii)) is amended by inserting “, or solely  
18 to perform services as an employee who meets the require-  
19 ments under section 203(d)(2) if the alien is a national  
20 of the Republic of Ireland,” after “Australia”.

21           (b) TEMPORARY ADMISSION.—Section 212(d)(3)(A)  
22 of the Immigration and Nationality Act (8 U.S.C.  
23 1182(d)(3)(A)) is amended to read as follows:

24           “(A) Except as otherwise provided in this sub-  
25 section—

1           “(i) an alien who is applying for a non-  
2 immigrant visa and who the consular officer  
3 knows or believes to be ineligible for such visa  
4 under subsection (a) (other than subparagraphs  
5 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and  
6 (E)(ii) of paragraph (3) of such subsection)—

7           “(I) after approval by the Secretary of  
8 Homeland Security of a recommendation  
9 by the Secretary of State or by the con-  
10 sular officer that the alien be admitted  
11 temporarily despite the alien’s inadmis-  
12 sibility, may be granted such a visa and  
13 may be admitted into the United States  
14 temporarily as a nonimmigrant, in the dis-  
15 cretion of the Secretary of Homeland Secu-  
16 rity; or

17           “(II) absent such recommendation  
18 and approval, be granted a nonimmigrant  
19 visa pursuant to section 101(a)(15)(E) if  
20 such ineligibility is based solely on conduct  
21 in violation of paragraph (6), (7), or (9) of  
22 section 212(a) that occurred before the  
23 date of the enactment of the Fairness for  
24 High-Skilled Immigrants Act of 2011;

1           “(ii) an alien who is inadmissible under  
2 subsection (a) (other than subparagraphs  
3 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and  
4 (E)(ii) of paragraph (3) of such subsection), is  
5 in possession of appropriate documents or was  
6 granted a waiver from such document require-  
7 ment, and is seeking admission, may be admit-  
8 ted into the United States temporarily as a  
9 nonimmigrant, in the discretion of the Sec-  
10 retary of Homeland Security, who shall pre-  
11 scribe conditions, including exaction of such  
12 bonds as may be necessary, to control and regu-  
13 late the admission and return of inadmissible  
14 aliens applying for temporary admission under  
15 this paragraph.”.

16       (c)           NUMERICAL           LIMITATION.—Section  
17 214(g)(11)(B) of the Immigration and Nationality Act (8  
18 U.S.C. 1184(g)(11)(B)) is amended by inserting “for each  
19 of the nationalities identified under section  
20 101(a)(15)(E)(iii)” before the period at the end.

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