

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

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.

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 “Benefits to Research
5 and American Innovation through Nationality Statutes
6 Act of 2012” or the “BRAINS Act”.

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

3 (a) **ADVANCED STEM GRADUATES.**—Section 203(b)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1153(b)) is amended—

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

8 (2) by inserting after paragraph (5) the fol-
9 lowing:

10 “(6) **ADVANCED GRADUATES IN SCIENCE,**
11 **TECHNOLOGY, ENGINEERING AND MATHEMATICS.**—

12 “(A) **IN GENERAL.**—Notwithstanding sec-
13 tion 201, visas shall be made available, in a
14 number not to exceed 55,000, to qualified im-
15 migrants who—

16 “(i) possess a graduate degree at the
17 level of master’s or higher in a field of
18 science, technology, engineering, or mathe-
19 matics from a United States research insti-
20 tution of higher education;

21 “(ii) earned a graduate degree by tak-
22 ing no greater than 25 percent of classes
23 by correspondence (including courses of-
24 fered by telecommunications) and by tak-
25 ing all classes while physically present in
26 the United States;

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

4 “(iv) are the subject of an approved
5 labor certification as required under sec-
6 tion 212(a)(5)(A); and

7 “(v) will receive a wage level from the
8 employer that is at least the actual wage
9 level paid by the employer to all other indi-
10 viduals with similar experience and quali-
11 fications for the specific employment in
12 question.

13 “(B) DEFINITIONS.—In this paragraph:

14 “(i) FIELD OF SCIENCE, TECH-
15 NOLOGY, ENGINEERING, OR MATHEMATICS.—
16 The term ‘field of science, technology, en-
17 gineering, or mathematics’ means a field
18 included in the Department of Education’s
19 Classification of Instructional Programs
20 taxonomy within the summary groups of
21 computer and information sciences and
22 support services, engineering, mathematics
23 and statistics, and physical sciences.

24 “(ii) UNITED STATES RESEARCH IN-
25 STITUTION OF HIGHER EDUCATION.—The

1 term ‘United States research institution of
2 higher education’ means an institution in
3 the United States that—

4 “(I) is described in section
5 101(a) of the Higher Education Act
6 of 1965 (20 U.S.C. 1001(a));

7 “(II) is classified by the Director
8 of the National Science Foundation as
9 a research institution or as otherwise
10 excelling at instruction in a field of
11 science, technology, engineering, or
12 mathematics;

13 “(III) has been in existence for
14 at least 10 years;

15 “(IV) does not provide any com-
16 mission, bonus, or other incentive pay-
17 ment based directly or indirectly on
18 success in securing enrollments or fi-
19 nancial aid to any persons or entities
20 engaged in any recruitment or admis-
21 sion activities for nonimmigrant stu-
22 dents or in making decisions regard-
23 ing the award of student financial as-
24 sistance to nonimmigrant students;

1 “(V) is accredited by an accred-
2 iting agency recognized by the Sec-
3 retary of Education; and

4 “(VI) is not operating for prof-
5 it.”.

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

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

11 (2) LIMITATION TO ANY SINGLE FOREIGN
12 STATE.—Section 202(a)(5)(A) of such Act (8 U.S.C.
13 1152(a)(5)(A)) is amended by striking “or (5)” and
14 inserting “(5), or (6)”.

15 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
16 TUS.—Section 204(a)(1)(F) of such Act (8 U.S.C.
17 1154(a)(1)(F)) is amended—

18 (1) by striking “or 203(b)(3)” and inserting
19 “203(b)(3), or 203(b)(6)”; and

20 (2) by striking “Attorney General” and insert-
21 ing “Secretary of Homeland Security”.

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

25 (1) in subparagraph (A)—

1 (A) in clause (ii)—

2 (i) in subclause (I), by striking “, or”
3 at the end and inserting a semicolon;

4 (ii) in subclause (II), by striking the
5 period at the end and inserting “; or”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(III) holds a doctorate degree in
9 a field of science, technology, engi-
10 neering, or mathematics (as defined in
11 section 203(b)(6)(B)(i)) from a
12 United States research institution of
13 higher education (as defined in section
14 203(b)(6)(B)(ii)).”;

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

17 (C) by inserting after clause (ii) the fol-
18 lowing:

19 “(iii) JOB ORDER.—

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

1 labor. The State workforce agency
2 shall post the job order on its official
3 agency website for a minimum of 30
4 days and not later than 3 days after
5 receipt using the employment statis-
6 tics system authorized under section
7 15 of the Wagner-Peyser Act (29
8 U.S.C. 49 et seq.).

9 “(II) LINKS.—The Secretary of
10 Labor shall include links to the offi-
11 cial websites of all State workforce
12 agencies on a single webpage of the
13 official website of the Department of
14 Labor.”; and

15 (2) in subparagraph (D), by striking “(2) or
16 (3)” and inserting “(2), (3), or (6)”.

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

20 “(5) To satisfy the requirement under section
21 203(b)(6)(A)(iv), an employer must demonstrate
22 that the total amount of compensation to be paid to
23 the alien (including health insurance, stock options,
24 and other benefits provided by the employer) must
25 meet or exceed the total amount of compensation

1 paid by the employer to all other employees with
2 similar experience and qualifications working in the
3 same occupational classification.”.

4 (f) GAO STUDY.—Not later than June 30, 2017, the
5 Comptroller General of the United States shall provide to
6 the Congress the results of a study on the use by the Na-
7 tional Science Foundation of the classification authority
8 provided under section 203(b)(6)(B)(ii)(II) of the Immi-
9 gration and Nationality Act (8 U.S.C.
10 1153(b)(6)(B)(ii)(II)), as added by this section.

11 (g) PUBLIC INFORMATION.—The Secretary of Home-
12 land Security shall make available to the public on the
13 official website of the Department of Homeland Security,
14 and shall update not less than monthly, the following in-
15 formation (which shall be organized according to month
16 and fiscal year) with respect to aliens granted status
17 under section 203(b)(6) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1153(b)(6)), as added by this section:

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

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

1 year to date based upon a petition filed by such em-
2 ployer.

3 (3) The occupations for which such alien or
4 aliens were sought by such employer and the job ti-
5 tles listed by such employer on the petition.

6 (h) EFFECTIVE DATE; SUNSET.—

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

11 (2) SUNSET.—The amendments made by sub-
12 sections (a) through (e) shall be repealed after the
13 2-year period beginning on the date of the enact-
14 ment of this Act.

15 **SEC. 3. STUDENT VISA REFORM.**

16 (a) IN GENERAL.—Section 101(a)(15)(F)(i) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1101(a)(15)(F)(i)) is amended by striking “an alien hav-
19 ing a residence in a foreign country which he has no inten-
20 tion of abandoning, who is a bona fide student qualified
21 to pursue a full course of study and who” and inserting
22 “an alien who is a bona fide student qualified to pursue
23 a full course of study, who (except for a student qualified
24 to pursue a full course of study in a field of science, tech-
25 nology, engineering, or mathematics (as defined in section

1 203(b)(6)(B)(i)) at an institution of higher education) has
2 a residence in a foreign country which the alien has no
3 intention of abandoning, and who”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 214(b) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1184(b)) is amended by
7 striking “(other than a nonimmigrant” and inserting
8 “(other than a nonimmigrant described in section
9 101(a)(15)(F) if the alien is qualified to pursue a
10 full course of study in a field of science, technology,
11 engineering, or mathematics (as defined in section
12 203(b)(6)(B)(i)) at an institution of higher edu-
13 cation, other than a nonimmigrant”.

14 (2) Section 214(h) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1184(h)) is amended by in-
16 serting “(F) (if the alien is qualified to pursue a full
17 course of study in a field of science, technology, en-
18 gineering, or mathematics (as defined in section
19 203(b)(6)(B)(i)) at an institution of higher edu-
20 cation),” before “H(i)(b)”.

21 **SEC. 4. VISA REVALIDATION.**

22 Section 222 of the Immigration and Nationality Act
23 (8 U.S.C. 1202) is amended—

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

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

5 “(i) VISA REVALIDATION.—The Secretary of State
6 shall permit an alien granted a nonimmigrant visa under
7 subparagraph (E), (H), (I), (L), (O), or (P) of section
8 101(a)(15) to apply for a renewal of such visa within the
9 United States if—

10 “(1) such visa expired during the 12-month pe-
11 riod ending on the date of such application;

12 “(2) the alien is seeking a nonimmigrant visa
13 under the same subparagraph under which the alien
14 had previously received a visa; and

15 “(3) the alien has complied with the immigra-
16 tion laws of the United States.”.

17 **SEC. 5. AGE-OUT PROTECTIONS FOR CHILDREN.**

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

21 “(H) RULES FOR DETERMINING AGE OF A
22 CHILD.—

23 “(i) IMMIGRANT PETITIONS.—Not-
24 withstanding any other provision of the
25 Act, a determination of whether an alien is

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

6 “(ii) CHILD OF U.S. CITIZEN
7 FIANCÉ.—A determination of whether an
8 alien is a child for the purposes of a peti-
9 tion under section 214 or an application
10 for adjustment of status under section
11 245(d) shall be made using the age of the
12 alien on the date on which the petition is
13 filed with the Secretary of Homeland Secu-
14 rity to classify the alien’s parent as the
15 fiancé of a U.S. citizen.”.

16 **SEC. 6. RETENTION OF PRIORITY DATES.**

17 (a) IN GENERAL.—Section 203(h)(3) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1153(h)(3)) is
19 amended to read follows:

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

1 scribed in subsection (a), the priority date for such
2 petition shall be the original priority date issued
3 upon receipt of the original family-based or employ-
4 ment-based petition for which either parent was a
5 beneficiary.”.

6 (b) PERMANENT PRIORITY DATES.—Section 203 of
7 the Immigration and Nationality Act (8 U.S.C. 1153) is
8 amended by adding at the end the following:

9 “(i) PERMANENT PRIORITY DATES.—

10 “(1) IN GENERAL.—Subject to subsection
11 (h)(3) and paragraph (2), the priority date for any
12 petition shall be the date of filing of the petition
13 with the Secretary of Homeland Security (or the
14 Secretary of State, if applicable), unless the filing of
15 the petition was preceded by the filing of a labor
16 certification with the Secretary of Labor, in which
17 case that date shall constitute the priority date.

18 “(2) SUBSEQUENT PETITIONS.—Subject to sub-
19 section (h)(3), an alien who is the beneficiary of any
20 petition that was approvable when filed (including
21 self-petitioners) shall retain the priority date as-
22 signed with respect to that petition in the consider-
23 ation of any subsequently filed petition (including
24 self-petitions) of which the alien is a beneficiary.”.

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

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

8 Notwithstanding any other numerical limitation in
9 law, the number of immigrant visas available to the spouse
10 of an alien lawfully admitted for permanent residence pur-
11 suant to section 203(a)(2) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1153(a)(2)) shall be increased in each
13 fiscal year by the number of aliens who were lawfully ad-
14 mitted for permanent residence that were removed from
15 the United States in the preceding fiscal year.

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