

114TH CONGRESS
1ST SESSION

H. R. 616

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2015

Mr. POLIS (for himself and Mr. AMODEI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Entrepre-
5 neurship and Investment Act of 2015”.

6 **SEC. 2. THE EB-5 EMPLOYMENT-CREATION IMMIGRANT IN-**
7 **VESTOR PROGRAM.**

8 (a) REFORMING THE EB-5 IMMIGRANT INVESTOR
9 PROGRAM.—Section 203(b)(5) of the Immigration and

1 Nationality Act (8 U.S.C. 1153(b)(5)) is amended as fol-
2 lows:

3 (1) TYPE OF INVESTMENT.—In subparagraph
4 (A), by inserting “or similar entity” after “including
5 a limited partnership”.

6 (2) TARGETED EMPLOYMENT AREA.—In sub-
7 paragraph (B)—

8 (A) by amending clause (i) to read as fol-
9 lows:

10 “(i) IN GENERAL.—Not fewer than
11 5,000 of the visas made available under
12 this paragraph in each fiscal year shall be
13 reserved for qualified immigrants who in-
14 vest in a new commercial enterprise de-
15 scribed in subparagraph (A), which—

16 “(I) is investing such capital in a
17 targeted employment area; and

18 “(II) will create employment in
19 such targeted employment area.”; and

20 (B) by inserting after clause (iii) the fol-
21 lowing:

22 “(iv) STATE DETERMINATIONS.—In a
23 case in which a geographic area is deter-
24 mined under clause (ii) to be a targeted
25 employment area by a delegated State

1 agency, and such a determination has been
2 made using acceptable data sources to in-
3 clude U.S. Census Bureau data (including
4 data from the American Community Sur-
5 vey) and data from the Bureau of Labor
6 Statistics (including data from the Local
7 Area Unemployment Statistics), The Sec-
8 retary of Homeland Security or her des-
9 ignee shall defer to a state’s designation as
10 conclusive.

11 “(v) EFFECT OF PRIOR DETERMINA-
12 TION.—In a case in which an area is deter-
13 mined under clause (ii) to be a targeted
14 employment area, such determination shall
15 remain in effect during the 2-year period
16 beginning on the date of the determination
17 for purposes of an alien seeking a visa re-
18 served under this subparagraph.”.

19 (3) PERMANENT AUTHORIZATION OF REGIONAL
20 CENTER PROGRAM.—By adding after subparagraph
21 (D) the following:

22 “(E) EMPLOYMENT CREATION REGIONAL
23 CENTERS.—

24 “(i) IN GENERAL.—Visas under this
25 paragraph shall be made available to quali-

1 fied immigrants who participate in a pro-
2 gram involving a regional center in the
3 United States, which has been designated
4 by the Secretary of Homeland Security, in
5 consultation with the Secretary of Com-
6 merce, on the basis of a general proposal,
7 for the promotion of economic growth, in-
8 cluding increased exports, improved re-
9 gional productivity, job creation, and in-
10 creased domestic capital investment. A re-
11 gional center shall have jurisdiction over a
12 specific geographic area, which shall be de-
13 scribed in the proposal and consistent with
14 the purpose of concentrating pooled invest-
15 ment in defined economic zones. The es-
16 tablishment of a regional center under this
17 subparagraph may be based on general
18 predictions, contained in the proposal, con-
19 cerning—

20 “(I) the kinds of new commercial
21 enterprises that will receive capital
22 from aliens;

23 “(II) the jobs that will be created
24 directly or indirectly as a result of
25 such investments; and

1 “(III) other positive economic ef-
2 fects such investments will have.

3 “(ii) METHODOLOGIES.—In deter-
4 mining compliance with this subparagraph,
5 and notwithstanding requirements applica-
6 ble to investors not involving regional cen-
7 ters, the Secretary of Homeland Security,
8 in consultation with the Secretary of Com-
9 merce, shall recognize reasonable meth-
10 odologies for determining the number of
11 jobs created by a designated regional cen-
12 ter, including such jobs that are estimated
13 to have been created indirectly through
14 revenues generated from increased exports,
15 improved regional productivity, or in-
16 creased domestic capital investment result-
17 ing from the regional center.

18 “(iii) SPECIAL PROCEDURES.—

19 “(I) PREAPPROVAL OF NEW COM-
20 MERCIAL ENTERPRISES.—The Sec-
21 retary of Homeland Security shall es-
22 tablish a preapproval procedure for
23 commercial enterprises that—

24 “(aa) allows a regional cen-
25 ter or potential regional center to

1 apply to the Secretary for
2 preapproval of a new commercial
3 enterprise before any alien files a
4 petition for classification under
5 this paragraph by reason of in-
6 vestment in the new commercial
7 enterprise;

8 “(bb) in considering an ap-
9 plication under subclause (I)—

10 “(AA) allows the appli-
11 cant to address and cure
12 any deficiencies identified by
13 the Secretary in the applica-
14 tion prior to final determina-
15 tion on the application; and

16 “(BB) requires that the
17 Secretary make final deci-
18 sions on all issues under this
19 paragraph other than those
20 issues unique to each indi-
21 vidual investor in the new
22 commercial enterprise; and

23 “(cc) requires that the Sec-
24 retary eliminate the need for the
25 repeated submission of docu-

1 mentation that is common to
2 multiple petitions for classifica-
3 tion under this paragraph
4 through a regional center.

5 “(II) DEFERENCE TO PRIOR
6 RULINGS.—Except in the case of ma-
7 terial change, fraud, or legal defi-
8 ciency, the Secretary of Homeland Se-
9 curity shall give deference to, and not
10 revisit, favorable determinations made
11 pertaining to a commercial enterprise
12 during the adjudication of—

13 “(aa) petitions filed by im-
14 migrants investing in the com-
15 mercial enterprise under this sub-
16 paragraph; or

17 “(bb) petitions filed by such
18 immigrants under section 216A
19 for removal of conditional basis.

20 “(iv) PROCESSING TIMES.—The Sec-
21 retary of Homeland Security shall make
22 determinations on a proposal under clause
23 (i) or an application under clause (iii) not
24 later than 180 days after the date on
25 which the proposal or application is filed.

1 In the event that additional information or
2 documentation is requested by the Sec-
3 retary, the Secretary shall adjudicate the
4 proposal or application not later than 30
5 days after the receipt of such information
6 or documentation. The filing party shall be
7 notified in writing within 30 days of the
8 date of filing if the filing does not meet the
9 standards for approval. If the filing does
10 not meet such standards, the notice shall
11 include the reasons therefore and the Sec-
12 retary shall provide an opportunity for the
13 prompt resubmission of a modified filing.”.

14 (4) PREVENTING FRAUD IN THE REGIONAL
15 CENTER PROGRAM.—In subparagraph (E) (as added
16 by paragraph (5)), by inserting after clause (iii) the
17 following:

18 “(v) BONA FIDES OF REGIONAL CEN-
19 TER PRINCIPALS.—No person may serve as
20 an owner, director or officer of a regional
21 center, or hold other positions of sub-
22 stantive authority for the operations, man-
23 agement or promotion of a regional center,
24 if the Secretary of Homeland Security de-

1 termines based on substantial evidence
2 that the person—

3 “(I) has been found liable within
4 the previous 5 years for any criminal
5 or civil violation of any law relating to
6 fraud or deceit;

7 “(II) has been found liable at
8 any time for any such criminal or civil
9 violation if such violation involved—

10 “(aa) a criminal conviction
11 with a term of imprisonment of
12 at least 1 year; or

13 “(bb) any law or agency reg-
14 ulation in connection with the
15 purchase or sale of a security; or

16 “(III) is engaged in, has ever
17 been engaged in, or seeks to engage in
18 any—

19 “(aa) terrorist activity (as
20 defined in clauses (iii) and (iv) of
21 section 212(a)(3)(B));

22 “(bb) activity relating to es-
23 pionage or sabotage;

24 “(cc) illicit trafficking in any
25 controlled substance;

1 “(dd) activity related to
2 money laundering (as described
3 in section 1956 or 1957 of title
4 18, United States Code);

5 “(ee) violation of any stat-
6 ute, regulation or Executive order
7 regarding foreign financial trans-
8 actions or foreign asset control;
9 or

10 “(ff) human trafficking or
11 any other human rights offense.

12 The Secretary of Homeland Security shall
13 require such attestations and information
14 (including fingerprints) and shall perform
15 such background checks as the Secretary
16 in the Secretary’s discretion considers ap-
17 propriate to determine whether a regional
18 center is in compliance with this clause.
19 The Secretary may terminate any regional
20 center from the program under this section
21 if the Secretary determines that the re-
22 gional center is in violation of this clause,
23 the regional center fails to provide such at-
24 testations and information requested by
25 the Secretary under this clause, or the re-

1 regional center or any person described in
2 this clause is engaged in fraud, misrepre-
3 sentation, criminal misuse, or threats to
4 national security. The Secretary shall pro-
5 vide for procedures for the appeal and re-
6 view of such a termination, and any deter-
7 minations pertaining to such termination
8 shall be subject to review under chapter 7
9 of title 5, United States Code.

10 “(vi) FEE FOR REGIONAL CENTER
11 DESIGNATION.—In addition to any other
12 fees authorized by law, the Secretary of
13 Homeland Security shall impose—

14 “(I) a fee to apply for designa-
15 tion as a regional center under this
16 subparagraph; and

17 “(II) a fee for preapproval of a
18 new commercial enterprise as provided
19 under clause (iii)(I).”.

20 (5) EB–5 PETITIONS.—By adding after sub-
21 paragraph (E) (as amended by paragraph (6)) the
22 following:

23 “(F) EB–5 PETITIONS.—

24 “(i) PROCESSING TIMES.—The Sec-
25 retary of Homeland Security shall adju-

1 dicate a petition filed pursuant to this
2 paragraph not later than 180 days after
3 the date on which the petition is filed. In
4 the event that additional information or
5 documentation is requested by the Sec-
6 retary, the Secretary shall adjudicate the
7 petition not later than 30 days after the
8 receipt of such information or documenta-
9 tion. The filing party shall be notified in
10 writing within 30 days of the date of filing
11 if the filing does not meet the standards
12 for approval. If the filing does not meet
13 such standards, the notice shall include the
14 reasons therefore and the Secretary shall
15 provide an opportunity for the prompt re-
16 submission of a modified filing.

17 “(ii) FRAUD.—The Secretary of
18 Homeland Security, in consultation with
19 the Commissioner of the Securities and
20 Exchange Commission, shall develop a
21 strategy to review securities-related mate-
22 rials included in any immigration petition
23 under this paragraph, or a petition under
24 section 216A for removal of conditional
25 basis, when there is evidence of fraud.”.

1 (b) CONFORMING AMENDMENT.—Section 610 of the
2 Departments of Commerce, Justice, and State, the Judici-
3 ary, and Related Agencies Appropriations Act, 1993 (8
4 U.S.C. 1153 note) is repealed.

5 **SEC. 3. EB-5 VISA REFORMS.**

6 (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
7 LIMITATION.—Section 201(b)(1) of the Immigration and
8 Nationality Act (8 U.S.C. 1151(b)(1)) is amended by add-
9 ing at the end the following:

10 “(P) Aliens who are the spouse or a child
11 of an alien admitted as an employment-based
12 immigrant under section 203(b)(5).”.

13 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN
14 INVESTORS.—Section 203(h) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1153(h)) is amended by adding
16 at the end the following:

17 “(5) AGE DETERMINATION FOR CHILDREN OF
18 ALIEN INVESTORS.—An alien admitted under sub-
19 section (d) as a lawful permanent resident on a con-
20 ditional basis as the child of an alien lawfully admit-
21 ted for permanent residence under subsection (b)(5),
22 whose lawful permanent resident status on a condi-
23 tional basis is terminated under section 216A, shall
24 continue to be considered a child of the principal
25 alien for the purpose of a subsequent immigrant pe-

1 tition by such alien under subsection (b)(5) if the
2 alien remains unmarried and the subsequent petition
3 is filed by the principal alien not later than 1 year
4 after the termination of conditional lawful perma-
5 nent resident status. No alien shall be considered a
6 child under this paragraph with respect to more
7 than 1 petition filed after the alien’s 21st birth-
8 day.”.

9 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
10 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
11 Secretary may establish, fix the compensation of, and ap-
12 point individuals to, designated critical administrative,
13 technical, and professional positions needed to administer
14 sections 203(b)(5) and 216A of the Immigration and Na-
15 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

16 (d) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

17 (1) IN GENERAL.—The Secretary of Homeland
18 Security may delegate to the Secretary of Commerce
19 authority and responsibility for determinations
20 under sections 203(b)(5) and 216A (with respect to
21 alien entrepreneurs) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-
23 ing determining whether an alien has met employ-
24 ment creation requirements.

1 (2) REGULATIONS.—The Secretary of Home-
2 land Security and the Secretary of Commerce may
3 each adopt such rules and regulations as are nec-
4 essary to carry out the delegation authorized under
5 paragraph (1), including regulations governing the
6 eligibility criteria for obtaining benefits pursuant to
7 the amendments made by this section.

8 (3) USE OF FEES.—Adjudication fees described
9 in section 286(m) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1356(m)) shall remain available
11 until expended to reimburse the Secretary of Com-
12 merce for the costs of any determinations made by
13 the Secretary of Commerce under paragraph (1).

14 (e) CONCURRENT FILING OF EB-5 PETITIONS AND
15 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
16 245 (8 U.S.C. 1255) of the Immigration and Nationality
17 Act is amended—

18 (1) in subsection (k), in the matter preceding
19 paragraph (1), by striking “or (3)” and inserting
20 “(3), or (5)”; and

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

22 “(n) At the time a petition is filed for classification
23 under section 203(b)(5), if the approval of such petition
24 would make a visa immediately available to the alien bene-
25 ficiary, the alien beneficiary’s application for adjustment

1 of status under this section shall be considered to be prop-
 2 erly filed whether the application is submitted concur-
 3 rently with, or subsequent to, the visa petition.”.

4 (f) TECHNICAL AMENDMENT.—Section 203(b)(5) of
 5 the Immigration and Nationality Act (8 U.S.C.
 6 1153(b)(5)), as amended by this Act, is further amended
 7 by striking “Attorney General” each place it appears and
 8 inserting “Secretary of Homeland Security”.

9 **SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
 10 **EIGN STATES.**

11 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
 12 EIGN STATE.—Section 202(a)(2) of the Immigration and
 13 Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

14 (1) in the paragraph heading, by striking “and
 15 employment- based”;

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

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

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

21 (5) by striking “such subsections” and inserting
 22 “such section”.

23 (b) CONFORMING AMENDMENTS.—Section 202 of the
 24 Immigration and Nationality Act (8 U.S.C. 1152) is
 25 amended—

1 (1) in subsection (a)—

2 (A) in paragraph (3), by striking “both
3 subsections (a) and (b) of section 203” and in-
4 sserting “section 203(a)”; and

5 (B) by striking paragraph (5); and

6 (2) by amending subsection (e) to read as fol-
7 lows:

8 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

9 If it is determined that the total number of immigrant
10 visas made available under section 202(a) to natives of
11 any single foreign state or dependent area will exceed the
12 numerical limitation specified in subsection (a)(2) in any
13 fiscal year, in determining the allotment of immigrant visa
14 numbers to natives under section 203(a), visa numbers
15 with respect to natives of that state or area shall be allo-
16 cated (to the extent practicable and otherwise consistent
17 with this section and section 203) in a manner so that,
18 except as provided in subsection (a)(4), the proportion of
19 the visa numbers made available under each of paragraphs
20 (1) through (4) of section 203(a) is equal to the ratio of
21 the total number of visas made available under the respec-
22 tive paragraph to the total number of visas made available
23 under section 203(a).”.

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

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

6 (2) by striking subsection (d) and redesignating
7 subsection (e) as subsection (d).

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect 1 year after the date of the
10 enactment of this Act.

11 **SEC. 5. APPLICABILITY OF FOREIGN CORRUPT PRACTICES**
12 **ACT.**

13 The Foreign Corrupt Practices Act (15 U.S.C. 78a
14 et seq.) shall apply to any petition under section
15 203(b)(5).

16 **SEC. 6. REGULATIONS.**

17 Not later than 180 days after the effective date of
18 this subtitle, the Secretary of Homeland Security shall
19 make rules to carry out this Act and the amendments
20 made by this Act.

21 **SEC. 7. CONSULTATION WITH SECRETARY OF COMMERCE.**

22 The Secretary of Homeland Security may consult
23 with the Secretary of Commerce in carrying out this Act
24 and the amendments made by this Act.

1 **SEC. 8. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 take effect beginning on the date that is 6 months after
4 the date of enactment of this Act.

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