H. R. 670

To amend the Immigration and Nationality Act to reform the H–1B visa program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Ms. LOFGREN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reform the H–1B visa program, 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 “High-Skilled Integrity and Fairness Act of 2017”.

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

(a) IN GENERAL.—Section 202(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(2)) is amended—
(1) in the paragraph heading, by striking “and employment-based”;

(2) by striking “(3), (4), and (5),” and inserting “(3) and (4),”;

(3) by striking “subsections (a) and (b) of section 203” and inserting “section 203(a)”;

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

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

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

(1) in subsection (a)(3), by striking “both subsections (a) and (b) of section 203” and inserting “section 203(a)”;

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

(3) by amending subsection (e) to read as follows:

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

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

(c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
note) is amended—

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

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

(d) EFFECTIVE DATE.—The amendments made by
this section shall take effect as if enacted on September
30, 2016, and shall apply to fiscal years beginning with
fiscal year 2017.

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

(1) IN GENERAL.—Subject to the succeeding
paragraphs of this subsection and notwithstanding
title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.), the following rules shall apply:

(A) For fiscal year 2017, 15 percent of the immigrant visas made available under each of paragraphs (2) and (3) of section 203(b) of such Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are natives of a foreign state or dependent area that was not one of the two states with the largest aggregate numbers of natives obtaining immigrant visas during fiscal year 2011 under such paragraphs.

(B) For fiscal year 2018, 10 percent of the immigrant visas made available under each of such paragraphs shall be allotted to immigrants who are natives of a foreign state or dependent area that was not one of the two states with the largest aggregate numbers of natives obtaining immigrant visas during fiscal year 2012 under such paragraphs.

(C) For fiscal year 2019, 10 percent of the immigrant visas made available under each of such paragraphs shall be allotted to immigrants who are natives of a foreign state or dependent area that was not one of the two states with the largest aggregate numbers of natives obtaining
immigrant visas during fiscal year 2015 under such paragraphs.

(2) PER-COUNTRY LEVELS.—

(A) RESERVED VISAS.—With respect to the visas reserved under each of subparagraphs (A) through (C) of paragraph (1), the number of such visas made available to natives of any single foreign state or dependent area in the appropriate fiscal year may not exceed 25 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas.

(B) UNRESERVED VISAS.—With respect to the immigrant visas made available under each of paragraphs (2) and (3) of section 203(b) of such Act (8 U.S.C. 1153(b)) and not reserved under paragraph (1), for each of fiscal years 2017, 2018, and 2019, not more than 85 percent shall be allotted to immigrants who are natives of any single foreign state.

(3) SPECIAL RULE TO PREVENT UNUSED VISAS.—If, with respect to fiscal year 2017, 2018, or 2019, the operation of paragraphs (1) and (2) of this subsection would prevent the total number of immigrant visas made available under paragraph (2)
(3) of section 203(b) of such Act (8 U.S.C. 1153(b)) from being issued, such visas may be issued during the remainder of such fiscal year without regard to paragraphs (1) and (2) of this subsection.

(4) Rules for chargeability.—Section 202(b) of such Act (8 U.S.C. 1152(b)) shall apply in determining the foreign state to which an alien is chargeable for purposes of this subsection.

SEC. 3. STRENGTHENING INTEGRITY IN THE H–1B PROGRAM.

Section 212(n)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(3)(B)(i)) is amended by striking all that follows after “means an H–1B non-immigrant” and inserting the following: “, in any occupation, who receives wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) at an annual rate equal to at least 35 percentile points more than the median wage for the most recent national annual wage estimates for Computer and Mathematical Occupations (Group 15–0000) (or any successor group, as des-
Ignated by the Secretary of Labor) as published in the
Occupational Employment Statistics by the Secretary of
Labor; and”.

SEC. 4. TRANSPARENCY FOR AND PROHIBITING PENALTIES
AGAINST FOREIGN HIGH-SKILLED WORKERS.

(a) IMMIGRATION DOCUMENTS.—Section 204 of the
Immigration and Nationality Act (8 U.S.C. 1154) is
amended by adding at the end the following:

“(m) EMPLOYER TO PROVIDE IMMIGRATION DOCU-
MENTATION.—

“(1) IN GENERAL.—Not later than 30 calendar
days after receiving a written request from a bene-

ficiary, a petitioner shall provide any current or
former employee currently or previously described in
section 101(a)(15)(H) or (L) with an accurate, leg-
ible copy of the nonimmigrant petition that was filed
by the petitioner and that named the requestor as
a beneficiary, along with a copy of any receipt no-

tice, approval notice, or denial notice related to such
petition.

“(2) WITHHOLDING OF INFORMATION.—If a
document required to be provided under paragraph
(1) includes any confidential or sensitive business in-
formation, the employer may redact or withhold such
information from the requestor.
“(3) **TIMEFRAME.**—Any request under this subsection shall be submitted to the petitioner not later than 3 years after the date on which the non-immigrant petition for status under section 101(a)(15)(H) or (L) was filed.

“(4) **PENALTY.**—If the Secretary of Labor finds, after notice and opportunity for a hearing, a knowing failure to meet a condition of this subsection or a knowing misrepresentation of material fact—

“(A) the Secretary of Labor shall notify the Attorney General of such finding and may, in addition, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate; and

“(B) the Secretary shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.”.

(b) **LIQUIDATED DAMAGES PROHIBITED.**—Section 212(n)(2)(C)(vi)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)(vi)(I)) is amended by striking all that follows after “a violation of this clause” and
inserting the following: “for an employer who has filed an
application under this subsection to require an H–1B non-
immigrant to pay a penalty or liquidated damages for
ceasing employment with the employer prior to a date
agreed to by the nonimmigrant and the employer.”.

SEC. 5. STRENGTHENING THE PREVAILING WAGE SYSTEM
TO PROTECT AMERICAN WORKERS.

Section 212(p) of the Immigration and Nationality
Act (8 U.S.C. 1182(p)) is amended to read as follows:

“(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

“(1) The Secretary of Labor shall make avail-
able to employers a governmental survey to deter-
mine the prevailing wage for each occupational clas-
sification by metropolitan statistical area in the
United States. Such survey, or other survey ap-
proved by the Secretary of Labor, shall provide 3
levels of wages commensurate with experience, edu-
cation, and level of supervision. Such wage levels
shall be determined as follows:

“(A) The first level shall be the mean of
the lowest two-thirds of wages surveyed, but in
no case less than 80 percent of the mean of the
wages surveyed.

“(B) The second level shall be the mean of
wages surveyed.
“(C) The third level shall be the mean of the highest two-thirds of wages surveyed.

“(2) The prevailing wage level required to be paid pursuant to section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section shall be 100 percent of the wage level determined pursuant to those sections.

“(3) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section in the case of an employee of—

“(A) an institution of higher education, or

a related or affiliated nonprofit entity, or

“(B) a nonprofit research organization or

a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

“(4) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those
rules or regulations shall be considered as not ad-
versely affecting the wages of United States workers
similarly employed and be considered the prevailing
wage.”.

SEC. 6. MARKET-BASED H-1B VISA AND STATUS ALLOCA-
TION.

Section 214(g)(3) of the Immigration and Nationality
Act (8 U.S.C. 1184(g)(3)), is amended—

(1) by striking the first sentence and inserting
the following:

“(A) Subject to subparagraph (B), aliens
who are subject to the numerical limitations
under paragraph (1)(A) shall be issued visas, or
otherwise provided nonimmigrant status in a
manner and order established by the Secretary
by regulation. If for a fiscal year petitions are
filed seeking a number of nonimmigrant work-
ers under section 101(a)(15)(H)(i)(b) that ex-
ceeds the numerical limitation set out in para-
graph (1)(A) for such fiscal year, the Secretary
of Homeland Security shall allocate the avail-
able visas for the petitions seeking such worker
in accordance with subparagraph (B).”;
and

(2) by adding at the end the following:
“(B) If for a fiscal year petitions are filed seeking a number of nonimmigrant workers under section 101(a)(15)(H)(i)(b) that exceeds the numerical limitation set out in paragraph (1)(A) for such fiscal year, the Secretary shall consider and approve petitions for a visa or nonimmigrant status under section 101(a)(15)(H)(i)(b) in accordance with the following:

“(i) first, if the petitioner certifies that the prevailing wage level for the position is level 3 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 3 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of
employment at the time of filing the application, then 150 percent, then 100 percent;

“(ii) then, if the petitioner certifies that the prevailing wage level for the position is level 2 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 2 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent; and

“(iii) then, if the petitioner certifies that the prevailing wage level for the position is level 1 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash
bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 1 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent.

“(C) The employer may not reduce the H–1B nonimmigrant’s wages, regardless of whether the deduction is in accordance with a voluntary authorization by the H–1B nonimmigrant, except for Federal, State, and local taxes and lawful garnishments. An employer may also reduce an H–1B nonimmigrant’s wages if the deduction is authorized by a collective bargaining agreement or is reasonable and customary in the occupation and/or area of employment, including deductions for health, life, disability and other insurance plans; retirement and savings plans; and union dues.
“(D) The employer may no longer employ the H–1B nonimmigrant described in subparagraph (B) if the H–1B nonimmigrant’s wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) are reduced below the level identified in clauses (i), (ii), and (iii) of subparagraph (B).

“(E) If the H–1B nonimmigrant described in subparagraph (B) receives wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) for services rendered on behalf of the employer for 30 calendar days or more, including partial days, in any area of employment other than area of employment indicated at the time of filing the application, the
employer shall pay the H–1B nonimmigrant wages at the level identified in clauses (i), (ii), and (iii) based on the prevailing wage of the area of employment with the highest prevailing wage.

“(F) If the Secretary of Labor finds, after notice and opportunity for a hearing, a knowing failure to meet a condition of subparagraph (C), (D), or (E) or a knowing misrepresentation of material fact—

“(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

“(ii) after the first offense, the Secretary shall not approve petitions filed with respect to that employer, including parent, subsidiary, and other affiliated entities, under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer; and
“(iii) after the second offense, the Secretary shall not approve any petitions filed with respect to that employer, including parent, subsidiary, and other affiliated entities, under section 204 or 214(c).”.

SEC. 7. VISAS RESERVED FOR SMALL AND START-UP EMPLOYERS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by this Act, is further amended by adding at the end the following:

“(12) The numerical limitations of paragraph (1)(A) shall be allocated for a fiscal year so that 20 percent of the number of aliens who may receive visas or nonimmigrant status subject to such numerical limitations shall be reserved for employers with 50 or fewer full-time employees, including parent, subsidiary, and other affiliated entities. Petitions filed under this subsection must include an attestation from the petitioning employer that the beneficiary will not be placed for more than 30 days at a third party worksite. If the Secretary determines, after notice and opportunity for a hearing, a misrepresentation of material fact in the attestation or action by the petitioning employer in contravention to this attestation, paragraph (3)(F) applies and the
petitioning employer may be punished in the same manner as a violation punishable under such paragraph. In a fiscal year, any visa or nonimmigrant status reserved under this paragraph that is not used by the end of the third quarter of that fiscal year may be issued to an alien who is eligible for such visa or nonimmigrant status. In the case of an alien receiving a visa or nonimmigrant status under this paragraph, paragraph (3)(B) does not apply, unless for a fiscal year the number of petitions seeking visas or nonimmigrant status under this paragraph received during the first 10 business days that petitions may be filed exceeds 20 percent of all petitions subject to the numerical limitations of paragraph (1)(A).

SEC. 8. REMOVING VISA HURDLES FOR STUDENTS.

(a) Dual Intent.—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 at an institution of higher
education) has a residence in a foreign country which the
alien has no intention of abandoning, and who”.

(b) Students Allowed To Use Employment For
Purposes Of Labor Certification.—In making a cer-
tification under section 212(a)(5) of the Immigration and
Nationality Act (8 U.S.C. 1182(a)(5)), the Secretary of
Labor shall consider any experience the alien beneficiary
gained as a nonimmigrant described in section
101(a)(15)(F) as qualifying experience for purposes of
meeting the actual minimum requirements for the job for
which the certification is sought.

(c) Employment Authorization; Extended Va-
validity Of Petition.—Section 204 of the Immigration
and Nationality Act (8 U.S.C. 1154) is amended in sub-
section (j)—

(1) in the heading for such subsection, by strik-
ing “Applicants for” and inserting “Applicants
Seeking”;

(2) by striking “subsection (a)(1)(D)” and in-
serting “subsection (a)(1)(F)”;

(3) by redesignating the text of such subsection
as paragraph (1); and

(4) by adding at the end the following:
“(2) Changes in Employers; Eligibility
For Employment Authorization.—
“(A) Petition to remain valid for change in jobs.—A petition under subsection (a)(1)(F) that has been approved for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

“(B) Eligibility for employment authorization.—An individual who has a petition under subsection (a)(1)(F) that has been approved for 180 days or more shall be eligible to apply for travel authorization and employment authorization in the same or a similar occupational classification as the job for which the petition was filed until such time as the application under section 245 has been filed.”.

(d) Conforming Amendments.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) in subsection (b), by striking “(other than a nonimmigrant)” and inserting “(other than a nonimmigrant described in section 101(a)(15)(E)(iii), other than a nonimmigrant described in section 101(a)(15)(F) if the alien is qualified to pursue a
full course of study at an institution of higher education, other than a nonimmigrant described in section 101(a)(15)(H)(i)(b1), other than a nonimmigrant described in section 101(a)(15)(O)(i), other than a nonimmigrant described in section 101(a)(15)(P), other than an alien admitted under subsection (e) of this section, other than a nonimmigrant”; and

(2) in subsection (h)—

(A) by inserting “(E)(iii), (F) (if the alien is qualified to pursue a full course of study at an institution of higher education), (H)(i)(b1),” before “H(i)(b)”;

(B) by inserting after “(L),” the following “(O)(i), (P),”; and

(C) by inserting after “or (V) of section 101(a)(15)” the following: “, for purposes of admission under subsection (e) of this section,”.

SEC. 9. REMOVING PAPERWORK BURDENS.

Section 214(c)(10) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(10)) is amended by striking the period at the end and inserting “, or where the nonimmigrant worker begins working at a place of employment where the petitioner has secured a valid, certified Labor Condition Application for the new place of employ-
ment and where the terms and conditions of employment
remain otherwise the same.”.

SEC. 10. REMOVAL OF LIMITATION ON CONSIDERATION OF
CERTAIN INFORMATION RECEIVED.

Section 212(n)(2)(G) of the Immigration and Nation-
ality Act (8 U.S.C. 1182(n)(2)(G)) is amended by striking
clause (v), and redesignating clauses (vi) through (viii) as
classes (v) through (vii), respectively.