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109TH CONGRESS
*1st Session*
HOUSE OF REPRESENTATIVES
REPORT
109–251

# TO RENDER NATIONALS OF DENMARK ELIGIBLE TO ENTER THE UNITED STATES AS NONIMMIGRANT TRADERS AND INVESTORS

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OCTOBER 18, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

## R E P O R T

[To accompany H.R. 3647]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3647) to render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

**SECTION 1. NONIMMIGRANT TRADERS AND INVESTORS FROM DENMARK.**

Denmark shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), to be a foreign state described in such section (other than clause (iii) of such section) if Denmark extends reciprocal nonimmigrant treatment to nationals of the United States.

## PURPOSE AND SUMMARY

H.R. 3647 would render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

## BACKGROUND AND NEED FOR THE LEGISLATION

"E-2" visas are nonimmigrant visas available for treaty investors. Under the Immigration and Nationality Act, a visa is available to an alien who is:

> entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him . . . solely to develop and direct the operations of an enterprise in which he has invested . . . a substantial amount of capital. . . .[1]

Alien employees of a treaty investor may receive E-2 visas if they are coming to the U.S. "to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, if they have special qualifications that make the services to be rendered essential to the efficient operation of the enterprise."[2] There is no numerical cap on E-2 visas. An alien may be admitted initially for a period of two years, and can apply for extensions in two-year increments.[3]

The U.S. has entered into treaties of commerce containing language similar to the E-2 visas since at least 1815, when it entered into a Convention to Regulate Commerce with the United Kingdom. Currently, the nationals of 74 countries are eligible for E-2 status.[4] In fiscal year 2003, 24,506 aliens (including dependents) were granted E-2 visas.

Nationals of Denmark are already eligible for "E-1" (treaty trader) visas pursuant to the Treaty of Friendship, Commerce, and Navigation Between the United States and Denmark of October 1, 1951. The U.S. and Denmark signed a protocol to that treaty on May 2, 2001, that would grant Danes eligibility for E-2 visas.[5] However, the Judiciary Committee has since made clear that all immigration provisions must be considered and enacted in accordance with the formal legislative process rather than be contained in trade agreements or treaties.[6] This bill therefore would grant access to E-2 nonimmigrant visa status to nationals of Denmark.

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[1] Section 101(a)(15)(E) of the Immigration and Nationality Act.
[2] 22 C.F.R. sec. 41.51(c).
[3] *See* 8 C.F.R. sec. 214.2(e).
[4] *See* Foreign Affairs Manual sec. 41.51 Exhibit 1.
[5] *See* Protocol to Treaty of Friendship, Commerce, and Navigation with Denmark, May 2, 2001, S. Treaty Doc. No. 108–8 (2003) (The protocol is currently before the Senate Foreign Affairs Committee.).
[6] *See* H.R. Rep. No. 108–224, pt. 2, at 46–47 (2003) (letter from F. James Sensenbrenner, Jr., and John Conyers to Ambassador Robert Zoellick).

## HEARINGS

The Committee on the Judiciary held no hearings on H.R. 3647.

## COMMITTEE CONSIDERATION

On September 29, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3647 to the House with an amendment by a voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 3647.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 3647, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, October 6, 2005.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3647, a bill to render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

*H.R. 3647—A bill to render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.*

CBO estimates that enacting H.R. 3647 would result in no significant net cost to the Federal Government. The bill could affect direct spending, but we estimate that any net effects would be insignificant. H.R. 3647 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 3647 would permit nationals of Denmark to enter the United States temporarily as nonimmigrant investors or traders if Denmark extends reciprocal treatment to U.S. nationals. If such individuals apply for entry into the United States under the bill's provisions, the Bureau of Citizenship and Immigration Services (CIS) would charge a fee of $190 to adjudicate the application and the Department of State would charge a $100 fee to process machine-readable visas. Based on the number of Danish citizens who have entered the United States recently in nonimmigrant categories comparable to investors and traders, CBO expects that additional collections would not exceed $1 million annually. Both CIS and the Department of State are authorized to spend such fees without further appropriation, so the net impact on Federal spending in any year would not be significant.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3647 would render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8, cl. 4 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

### SEC. 1. NONIMMIGRANT TRADERS AND INVESTORS FROM DENMARK.

This section provides that Denmark should be considered to be a foreign state described in section 101(a)(15)(E) of the Immigration and Nationality Act (other than in regards to clause (iii)) if Denmark extends reciprocal treatment to nationals of the U.S. Clauses (i) and (ii) of section 101(a)(15)(E) provide nonimmigrant status to aliens entitled to enter the U.S. under and in pursuance of the provisions of a treaty of commerce and navigation between the U.S. and the foreign state of which they are nationals, and the spouses and children of any such aliens if accompanying or following to join, to carry on trade (clause (i)) or develop and direct the operations of an enterprise in which they have or are investing (clause (ii)).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes that H.R. 3647 makes no changes to existing law.

MARKUP TRANSCRIPT

# BUSINESS MEETING

## THURSDAY, SEPTEMBER 29, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr., Chairman of the Committee, presiding.

Chairman SENSENBRENNER. The Committee will come to order.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 3647, to render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors, for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point, and the Chair recognizes himself for 5 minutes to explain the bill.

[The bill, H.R. 3647, follows:]

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109TH CONGRESS
1ST SESSION

# H. R. 3647

To render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 6, 2005

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

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

**SECTION 1. NONIMMIGRANT TRADERS AND INVESTORS FROM DENMARK.**

Denmark shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), to be a foreign state described in such section if Denmark extends reciprocal nonimmigrant treatment to nationals of the United States.

○

Chairman SENSENBRENNER. E-2 visas are non-immigrant visas available to nationals of countries with which the United States maintains a treaty of commerce. Under the Immigration and Nationality Act, aliens from such countries who wish to come to the United States to develop and direct the operations of an enterprise in which they have invested, or are actively in the process of investing a substantial amount of capital, may apply for entry on an E-2 visa.

Alien employees of a treaty investor may also receive E-2 visas if they're coming to the U.S. to engage in duties of an executive or supervisory character, or if employed in a lesser capacity if they have special qualifications that make the services to be rendered essential to the efficient operation of the enterprise. There is no numerical cap on E-2 visas. An alien may be admitted initially for a period of 2 years, and can apply for extensions in 2-year increments. The United States has entered into treaties of commerce containing language similar to the E-2 visas as far back as 1815, when we entered into a convention to regulate commerce with the United Kingdom.

Currently nationals of 74 countries are eligible for E-2 visas. In fiscal year '03, 24,506 aliens, including dependents, were granted E-2 visas. Nationals of Denmark are already eligible for the E-1 treaty trader visas pursuant to the Treaty of Friendship, Commerce and Navigation between the United States and Denmark of October 1st, 1951. The U.S. and Denmark signed a protocol to that treaty on May 2, 2001, that would also grant Danes eligibility for E-2 visas. However, that protocol has not been ratified due to the broad objections raised on both sides of the Capitol regarding the inclusion of immigration provisions in trade agreements. Accordingly, the Danish Embassy has requested that Denmark be granted E-2 privilege through the normal legislative process, which this legislation would accomplish.

I appreciate the Embassy of Denmark for seeking E-2 status the right way, and I urge my colleagues to support this legislation, and recognize the gentleman from Michigan, Mr. Conyers.

The gentlewoman from Texas, Ms. Jackson Lee, you are recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman and Ranking Member.

Let me first of all acknowledge that this is an important issue. Danish nationals are eligible for E-1 treaty trader visas pursuant to the Treaty of Friendship, Commerce and Navigation between the United States and Denmark of October 1, 1951.

The United States and Denmark signed a protocol to the treaty on May 2nd, 2001, which would grant Danes eligibility for E-2 visas. That protocol is currently before the Senate Foreign Affairs Committee. However, since the Judiciary Committee began insisting in 2003 that trade agreements and treaties no longer contain immigration provisions, the Danish Embassy has requested a grant of E-2 privileges through the normal legislative process.

H.R. 3647 would grant those privileges to Denmark, and I support the grant of such privileges.

However, as we have been consistently arguing against trade agreements having the issues of immigration without legislative input, I would have wanted for this proceeding and this particular

grant of eligibility statute to have gone through the normal rule of order, which is to be heard at the Immigration Committee level, and proceeded on with a hearing, and then onto the Full Committee.

If the privileges are granted, Danish nationals will be able to receive E-2 visas if they're coming to the United States to develop and direct the operations of an enterprise in which they have invested or of an enterprise in which they are actively in the process of investing a substantial amount of capital. Also they would be admitted initially for a period of 2 years and would be able to apply for extensions in 2-year increments. E-2 visas do not have a numerical cap.

Several years ago our Committee raised bipartisan objection to using free trade agreements as vehicles for immigration legislation. That practice ended after the passage of the Chilean-Singapore Free Trade Agreements, however, many of us still opposed those particular agreements going through with immigration processes.

Since then the Australian Free Trade Agreement and the Dominican Republic-Central America Free Trade Agreement have been enacted without any explicit immigration provisions.

The Danish Embassy has requested a grant of E-2 privilege to Denmark through the normal legislative process. The normal legislative process does not begin with a Full Committee markup. It begins with a hearing at the Subcommittee level.

Consideration of H.R. 3647 should begin with a legislative hearing. We needed to hear testimony on whether Denmark should be granted E-2 privileges. In addition, I believe that the rule for this particular Committee should always be balanced, equality, fair treatment, and this hearing would allow us to determine the possibility of the uniqueness of the Denmark request as opposed to other countries and other entities who would make the same request. Setting a standard without going through the normal legislative process still commits us to legislating and adding to trade bills immigration proceedings without the full hearing of this Committee.

We also should have a Subcommittee markup. At that point a full Committee markup may be appropriate. It is not appropriate now in the absence if these proceedings to do so.

I would also suggest that we've gained little from insisting on legislative proceedings if we're going to immediately bring this to the full Committee, and also ignore the commitment that we've made about not following the legislative process when it comes to immigration issues.

I am urging my colleagues to vote against this bill so that it can be referred to the Subcommittee on Immigration, Border Security, and Claims for a legislative hearing, and I would offer to say that this would be consistent with the views of this Committee.

Let me also just make note at this time that because of an emergency in my district I was not here for H.R. 3648. I intend to put a statement in the record. But I would also argue in relation to fees, that it would seem to be unfair to utilize the increase in fees for budget shortfalls and to exact the need for $60 million for FY 2006 to be raising these fees without full understanding of the burden that it might create on the L Visas.

With that, let me conclude by suggesting that it would be preferable to refer this particular legislation to the Committee, being consistent with the statements being made previously of this Committee of not putting immigration issues into a trade bill without the full legislative process.

With that, I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

Danish nationals are eligible for E-1 (treaty trader) visas pursuant to the Treaty of Friendship, Commerce, and Navigation Between the United States and Denmark of October 1, 1951. The United States and Denmark signed a protocol to that treaty on May 2, 2001, which would grant Danes eligibility for E-2 visas. That protocol is currently before the Senate Foreign Affairs Committee. However, since the Judiciary Committee began insisting in 2003 that trade agreements and treaties no longer contain immigration provisions, the Danish embassy has requested a grant of E-2 privileges through the normal legislative process. H.R. 3647 would grant those privileges to Denmark.

If the privileges are granted, Danish nationals will be able to receive E-2 visas if they are coming to the United States to develop and direct the operations of an enterprise in which they have invested, or of an enterprise in which they are actively in the process of investing, a substantial amount of capital. Also, they would be admitted initially for a period of two years and would be able to apply for extensions in two-year increments. E-2 visas do not have a numerical cap.

Several years ago, our Committee raised bipartisan objections to using Free Trade Agreements as vehicles for immigration legislation. That practice ended after the passage of the Chile and Singapore Free Trade Agreements. Since then, the Australian Free Trade Agreement and the Dominican Republic-Central America Free Trade Agreement have been enacted without any explicit immigration provisions.

The Danish embassy has requested a grant of E-2 privileges to Denmark through the normal legislative process. The normal legislative process does not begin with a Committee markup. Consideration of H.R. 3647 should begin with a legislative hearing. We need to hear testimony on whether Denmark should be granted E-2 privileges. We also should have a subcommittee markup. At that point, a full Committee markup may be appropriate. It is not appropriate now in the absence of those proceedings.

We have gained little from insisting on legislative proceedings if we are going to abbreviate those proceedings by starting the process at the Committee markup level. I urge you to vote against this bill so that it can be referred to the Subcommittee on Immigration, Border Security, and Claims for a legislative hearing. Thank you.

Chairman SENSENBRENNER. Are there amendments? And the Chair recognizes himself for purposes of offering an amendment, and the clerk will report the amendment.

The CLERK. Amendment to H.R. 3647, Offered by Chairman Sensenbrenner. Page 1, line 8, after "in such section" insert "(other than clause (iii) of such section)."

[The amendment of Chairman Sensenbrenner follows:]

**AMENDMENT TO H.R. 3647**

**OFFERED BY MR. SENSENBRENNER OF WISCONSIN**

Page 1, line 8, after "in such section" insert "(other than clause (iii) of such section)".



Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to state that this amendment simply clarifies that the bill does not grant nationals of Denmark eligibility for E-3 visas, nonimmigrant visas for Australian professionals that were created earlier this year in the Iraq Supplemental.

Those visas are much akin to H1B visas and bear no relationship to the traditional E-1 and E-2 visas. Why the Senate decided to put the Australian visas in the E category and confuse everybody is a question that they only know the answer to, and I will not presume to guess.

In any event, I urge my colleagues to support this clarification made by the amendment and yield back the balance of my time.

The question is on agreeing to the amendment offered by the Chair. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, the question occurs on the motion to report the bill H.R. 3647 favorably as amended. A reporting quorum is present. All in favor say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes, and that all Members will be given 2 days as provided by the House rules within which to submit additional dissenting supplemental or minority views.