

106TH CONGRESS
2D SESSION

H. R. 3814

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, to provide for expedited processing of certain employers' petitions with respect to aliens seeking such status, to increase, and modify the use of, fees paid by employers petitioning with respect to such aliens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2000

Mr. SMITH of Texas (for himself, Mr. CAMPBELL, Mr. CANNON, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Science, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, to provide for expedited processing of certain employers' petitions with respect to aliens seeking such status, to increase, and modify the use of, fees paid by employers

petitioning with respect to such aliens, 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 “Technology Worker
 5 Temporary Relief Act”.

6 **TITLE I—NUMERICAL LIMITA-**
 7 **TIONS ON H-1B NON-**
 8 **IMMIGRANTS**

9 **SEC. 101. INAPPLICABILITY OF FISCAL YEAR 2000 NUMER-**
 10 **ICAL LIMITATIONS TO CERTAIN ALIENS.**

11 (a) IN GENERAL.—Section 214(g) of the Immigra-
 12 tion and Nationality Act (8 U.S.C. 1184(g)) is amended—

13 (1) in paragraph (1)(A)(iii), by inserting “Sub-
 14 ject to paragraph (5),” before “115,000”; and

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

16 “(5)(A) After the numerical limitation in paragraph
 17 (1)(A)(iii) has been exceeded, 45,000 aliens described in
 18 subparagraph (B) may be issued a visa or otherwise pro-
 19 vided nonimmigrant status under section
 20 101(a)(15)(H)(i)(b) in fiscal year 2000 without regard to
 21 such paragraph.

22 “(B) An alien is described in this subparagraph if—

23 “(i) the alien, disregarding paragraph
 24 (1)(A)(iii), otherwise is eligible to be issued a visa or

1 provided nonimmigrant status under section
2 101(a)(15)(H)(i)(b); and

3 “(ii) such employer demonstrates in the petition
4 that—

5 “(I) as of the last day of the employer’s
6 previous tax year, there was a net increase (as
7 compared with the first day of such tax year)
8 in the number of full-time equivalent United
9 States workers (as defined in section
10 212(n)(4)(E)) on the employer’s payroll;

11 “(II) as of the end of the employer’s pre-
12 vious tax year, there was a net increase (as
13 compared with the prior tax year) in the total
14 wages (including cash bonuses and similar com-
15 pensation) paid to United States workers de-
16 scribed in subclause (I) during such year; and

17 “(III) as of the end of the employer’s pre-
18 vious tax year, there was a net increase (as
19 compared with the prior tax year) in the me-
20 dian of the wages described in subclause (II).”.

21 (b) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 subsection (a) shall take effect on the date on which
24 final regulations fully implementing all provisions of
25 the American Competitiveness and Workforce Im-

1 provement Act of 1998 (as contained in title IV of
 2 division C of the Omnibus Consolidated and Emer-
 3 gency Supplemental Appropriations Act, 1999; Pub-
 4 lic Law 105–277) become effective.

5 (2) AMENDMENTS MAY TAKE EFFECT WITHOUT
 6 REGULATIONS.—The amendments made by sub-
 7 section (a) shall take effect as provided in paragraph
 8 (1) without regard to whether or not proposed or
 9 final regulations to carry out such amendments have
 10 been promulgated.

11 **SEC. 102. SECRETARY OF STATE TO MAINTAIN RECORDS ON**
 12 **H-1B NONIMMIGRANTS.**

13 (a) IN GENERAL.—Section 214(g)(3) of the Immi-
 14 gration and Nationality Act (8 U.S.C. 1184(g)(3)) is
 15 amended—

16 (1) by striking “(3)” and inserting “(3)(A)”;
 17 and

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

19 “(B) Records with respect to the issuance of visas
 20 (or the provision otherwise of nonimmigrant status) under
 21 section 101(a)(15)(H)(i)(b) shall be maintained in accord-
 22 ance with regulations prescribed by the Secretary of
 23 State.”.

24 (b) CONFORMING AMENDMENTS.—Section 416 of the
 25 American Competitiveness and Workforce Improvement

1 Act of 1998 (Public Law 105–277; 112 Stat. 2681–655;
2 8 U.S.C. 1184 note) is amended—

3 (1) in subsection (a)—

4 (A) by striking “214(g)(1)” and inserting
5 “214(g)(1)(B)”;

6 (B) by striking “1184(g)(1))” and insert-
7 ing “1184(g)(1)(B))”; and

8 (C) by adding at the end “The Secretary
9 of State, with the assistance of the Attorney
10 General, shall take such steps as are necessary
11 to maintain an accurate count of the number of
12 aliens subject to the numerical limitations of
13 section 214(g)(1)(A) of such Act (8 U.S.C.
14 1184(g)(1)(A)) who are issued visas or other-
15 wise provided nonimmigrant status.”;

16 (2) in subsection (b), by striking “to count”
17 and inserting “to count, or to assist the Secretary
18 of State in accurately counting,”; and

19 (3) in subsection (c)—

20 (A) in paragraph (1), by striking “Attor-
21 ney General” and inserting “Secretary of
22 State”; and

23 (B) in paragraph (2), by inserting “and
24 the Secretary of State” after “Attorney Gen-
25 eral”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall take effect beginning with the first fiscal
 3 year that begins after the date of the enactment of this
 4 Act.

5 **TITLE II—ANTI-FRAUD PROVI-**
 6 **SIONS FOR H-1B NON-**
 7 **IMMIGRANTS**

8 **SEC. 201. REQUIRING SPECIALTY OCCUPATION WORKERS**
 9 **AND FASHION MODELS TO OBTAIN STATUS**
 10 **AS AN H-1B NONIMMIGRANT.**

11 Section 214(g) of the Immigration and Nationality
 12 Act (8 U.S.C. 1184(g)), as amended by section 101, is
 13 further amended by adding at the end the following:

14 “(6) Notwithstanding any other provision of this Act,
 15 any alien admitted or provided status as a nonimmigrant
 16 in order to provide services in a specialty occupation de-
 17 scribed in subsection (i)(1) (other than services described
 18 in subparagraph (H)(ii)(a), (O), or (P) of section
 19 101(a)(15)) or as a fashion model shall have been issued
 20 a visa (or otherwise been provided nonimmigrant status)
 21 under section 101(a)(15)(H)(i)(b).”.

22 **SEC. 202. REQUIRING FULL-TIME EMPLOYMENT.**

23 (a) IN GENERAL.—Section 101(a)(15)(H)(i)(b) of
 24 the Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(H)(i)(b)) is amended by inserting “not less
2 than 35 hours per week” after “or (P))”.

3 (b) CONFORMING AMENDMENTS.—Section
4 212(n)(2)(C)(vii) of the Immigration and Nationality Act
5 (8 U.S.C. 1182(n)(2)(C)(vii)) is amended—

6 (1) in subclause (I), by striking “a full-time”
7 and inserting “an”;

8 (2) by striking subclause (II);

9 (3) in subclause (III), by striking “subclauses
10 (I) and (II)” and inserting “subclause (I)”; and

11 (4) by redesignating subclauses (III) through
12 (VI) as subclauses (II) through (V), respectively.

13 **SEC. 203. REQUIREMENTS FOR SPECIALTY OCCUPATION.**

14 Section 214(i) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(i)) is amended—

16 (1) by amending paragraph (1)(B) to read as
17 follows:

18 “(B) attainment of a bachelor’s degree (or
19 higher degree) in the specific specialty as a min-
20 imum for entry into the occupation in the United
21 States.”;

22 (2) in paragraph (2)—

23 (A) in subparagraph (A), by adding “and”
24 at the end;

1 (B) in subparagraph (B), by striking “,
2 or” at the end and inserting a period; and

3 (C) by striking subparagraph (C); and

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

5 “(3)(A) Subject to subparagraph (B), for purposes
6 of paragraph (1)(B), the term ‘bachelor’s degree (or high-
7 er degree)’ includes a foreign degree that is a recognized
8 foreign equivalent of a bachelor’s degree (or higher de-
9 gree).

10 “(B) In the case of an alien obtaining a foreign de-
11 gree, any determination with respect to the equivalence of
12 that degree to a degree obtained in the United States shall
13 be made by the Secretary of State. In carrying out the
14 preceding sentence, the Secretary of State shall verify the
15 authenticity of any foreign educational credential prof-
16 fered by an alien.”.

17 **SEC. 204. ANTI-FRAUD FEE.**

18 (a) IMPOSITION OF FEE.—Section 214(c) of the Im-
19 migration and Nationality Act (8 U.S.C. 1184(c)) is
20 amended by adding at the end the following:

21 “(10)(A) In addition to any other fees authorized by
22 law, the Attorney General shall impose an anti-fraud fee
23 on an employer filing a petition under paragraph (1)—

24 “(i) initially to grant an alien nonimmigrant
25 status described in section 101(a)(15)(H)(i)(b); or

1 “(ii) to obtain authorization for an alien having
2 such status to change employers.

3 “(B) The amount of the fee shall be \$100 for each
4 such petition.

5 “(C) Fees collected under this paragraph shall be de-
6 posited in the Treasury in accordance with section
7 286(t).”.

8 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
9 Section 286 of the Immigration and Nationality Act (8
10 U.S.C. 1356) is amended by adding at the end the fol-
11 lowing:

12 “(t) H-1B ANTI-FRAUD ACCOUNT.—

13 “(1) IN GENERAL.—There is established in the
14 general fund of the Treasury a separate account,
15 which shall be known as the ‘H-1B Anti-fraud Ac-
16 count’. Notwithstanding any other provision of law,
17 there shall be deposited as offsetting receipts into
18 the account all fees collected under section
19 214(c)(10).

20 “(2) USE OF FEES TO COMBAT FRAUD.—

21 “(A) ATTORNEY GENERAL.—

22 “(i) PROGRAMS TO ELIMINATE
23 FRAUD.—20 percent of amounts deposited
24 into the H-1B Anti-fraud Account shall
25 remain available to the Attorney General

1 until expended for programs and activities
2 to eliminate fraud by employers filing peti-
3 tions described in section 214(c)(9)(A) and
4 aliens who are the beneficiaries of such pe-
5 titions.

6 “(ii) REMOVAL OF ALIENS.—20 per-
7 cent of amounts deposited into the H–1B
8 Anti-fraud Account shall remain available
9 to the Attorney General until expended for
10 the removal of H–1B nonimmigrants (as
11 defined in section 212(n)(4)(C)) who are
12 deportable under section 237(a)(1)(A) by
13 reason of having been found to be within
14 the class of aliens inadmissible under sec-
15 tion 212(a)(6)(C).

16 “(B) SECRETARY OF STATE.—40 percent
17 of amounts deposited into the H–1B Anti-fraud
18 Account shall remain available to the Secretary
19 of State until expended—

20 “(i) to carry out section 214(i)(3)(B);
21 and

22 “(ii) for other programs and activities
23 to eliminate fraud by employers and aliens
24 described in subparagraph (A).

1 “(C) JOINT PROGRAMS.—20 percent of
2 amounts deposited into the H-1B Anti-fraud
3 Account shall remain available to the Attorney
4 General and the Secretary of State until ex-
5 pended for programs and activities conducted
6 by them jointly to eliminate fraud by employers
7 and aliens described in subparagraph (A).”.

8 **SEC. 205. ADDITIONAL REQUIREMENTS ON PETITIONING**
9 **EMPLOYERS.**

10 Section 214(c) of the Immigration and Nationality
11 Act (8 U.S.C. 1184(c)), as amended by section 204, is
12 further amended by adding at the end the following:

13 “(11) The Attorney General may not approve any pe-
14 tition under paragraph (1) filed by an employer with re-
15 spect to an alien seeking to obtain or having the status
16 of a nonimmigrant under section 101(a)(15)(H)(i)(b) un-
17 less the employer satisfies the following requirements:

18 “(A) The employer—

19 “(i) is an institution of higher education
20 (as defined in section 101(a) of the Higher
21 Education Act of 1965), or a governmental or
22 nonprofit entity; or

23 “(ii) maintains a place of business in the
24 United States that is licensed in accordance
25 with any applicable State or local business li-

1 censing requirements and is used exclusively for
2 business purposes.

3 “(B) The employer—

4 “(i) is a governmental entity; or

5 “(ii) has aggregate gross assets with a
6 value of not less than \$5,000,000—

7 “(I) in the case of an employer that is
8 a publicly held corporation, as determined
9 using its most recent report filed with the
10 Securities and Exchange Commission; or

11 “(II) in the case of any other em-
12 ployer, as determined as of the date on
13 which the petition is filed pursuant to reg-
14 ulations promulgated by the Attorney Gen-
15 eral.”.

16 **SEC. 206. EFFECTIVE DATE.**

17 The amendments made by this title shall apply to pe-
18 titions filed under section 214(c), and applications filed
19 under section 212(n)(1), of the Immigration and Nation-
20 ality Act on or after the date final regulations are issued
21 to carry out such amendments.

1 **TITLE III—EXPEDITED PROC-**
2 **ESSING FOR CERTAIN EM-**
3 **PLOYERS**

4 **SEC. 301. EXPEDITED PROCESSING OF PETITIONS BY CER-**
5 **TAIN EMPLOYERS.**

6 (a) IN GENERAL.—Section 214(c) of the Immigration
7 and Nationality Act (8 U.S.C. 1184(c)), as amended by
8 section 205, is further amended by adding at the end the
9 following:

10 “(12)(A) In the case of an employer filing a petition
11 described in paragraph (11) who is qualified for expedited
12 processing under subparagraphs (B) and (C) and has paid
13 the expedited processing fee under subparagraph (D) (in
14 addition to any other fees imposed under paragraph (9)
15 or (10))—

16 “(i) determinations with respect to the petition
17 shall be made by the Attorney General through a na-
18 tional office established by the Attorney General for
19 this purpose;

20 “(ii) if the petition is complete when it is filed,
21 and if the Attorney General does not approve or dis-
22 approve the petition during the 30-day period begin-
23 ning on the date on which it is filed, it shall be
24 deemed approved, except that in a case where the
25 Attorney General, before the expiration of such 30-

1 day period, requests the employer to submit addi-
2 tional information, the Attorney General shall have
3 30 days after the date of that submission in which
4 to approve or disapprove the petition before it is
5 deemed approved; and

6 “(iii) the employer shall be deemed to have sat-
7 isfied the requirement in paragraph (11)(B)(ii) if
8 the employer states in the petition that it satisfies
9 such requirement.

10 “(B) An employer may qualify for expedited proc-
11 essing under this subparagraph by demonstrating, in an
12 application submitted to the Attorney General, that—

13 “(i) the employer—

14 “(I) is an institution of higher education
15 (as defined in section 101(a) of the Higher
16 Education Act of 1965), a related or affiliated
17 nonprofit entity, a nonprofit research organiza-
18 tion, or a governmental entity and has been in
19 existence continuously for not less than 5 years;
20 or

21 “(II) has been doing business continuously
22 for not less than 5 years and has reported at
23 least \$100,000,000 in gross receipts or sales on
24 a United States income tax return for each of
25 the 2 most recently completed tax years;

1 “(ii) the employer is not an H-1B dependent
2 employer (as defined in section 212(n)(3)(A));

3 “(iii) the employer has never submitted a peti-
4 tion described in paragraph (11) that was denied, or
5 been subject to an approval that was subsequently
6 revoked, on account of fraud, except if such denial
7 or revocation was done in cooperation with, or at the
8 request of, the employer;

9 “(iv) the employer has never been found will-
10 fully to have failed to meet a condition of section
11 212(n)(1), willfully to have made a misrepresenta-
12 tion of material fact in an application under such
13 section, or to have committed a violation of section
14 212(n)(2)(C)(iv); and

15 “(v) the employer has not been found to have
16 failed to meet a condition of section 212(n)(1), or to
17 have made a misrepresentation of material fact in an
18 application under such section, during the last 5
19 years.

20 “(C) In the case of an employer who has qualified
21 for expedited processing under subparagraph (B), the em-
22 ployer shall cease to be considered so qualified upon a de-
23 termination by the Attorney General that any of clauses
24 (i) through (v) of such subparagraph are no longer accu-
25 rate with respect to the employer.

1 “(D)(i) The Attorney General shall impose a fee on
 2 an employer filing a petition under paragraph (1) and re-
 3 questing expedited processing of the petition under this
 4 paragraph.

5 “(ii) The amount of the fee shall be \$250 for each
 6 such petition.

7 “(iii) Fees collected under this paragraph shall be de-
 8 posited as offsetting receipts into the account entitled ‘Im-
 9 migration Examinations Fee Account’ in the Treasury of
 10 the United States and shall be available in accordance
 11 with section 286(n).”.

12 (b) EFFECTIVE DATE.—The amendment made by
 13 subsection (a) shall apply to petitions filed under section
 14 214(c) of the Immigration and Nationality Act on or after
 15 the date final regulations are issued to carry out such
 16 amendment.

17 **TITLE IV—COLLECTION AND** 18 **USE OF H-1B NONIMMIGRANT** 19 **FEES FOR SCHOLARSHIPS**

20 **SEC. 401. INCREASE IN H-1B NONIMMIGRANT FEES.**

21 Section 214(c)(9) of the Immigration and Nationality
 22 Act (8 U.S.C. 1184(c)(9)) is amended—

23 (1) in subparagraph (A), by striking “on or
 24 after December 1, 1998,” and inserting “on or after

1 the date of the enactment of the Technology Worker
 2 Temporary Relief Act”; and

3 (2) in subparagraph (B), by striking “\$500”
 4 and inserting “\$1,000”.

5 **SEC. 402. REPEAL OF AUTHORITY TO USE FEES UNDER JOB**
 6 **TRAINING PARTNERSHIP ACT AND WORK-**
 7 **FORCE INVESTMENT ACT.**

8 (a) REPEAL OF DEPOSIT ALLOCATION.—

9 (1) IN GENERAL.—Section 286(s) of the Immi-
 10 gration and Nationality Act (8 U.S.C. 1356(s)) is
 11 amended—

12 (A) by striking paragraph (2); and

13 (B) by redesignating paragraphs (3)
 14 through (6) as paragraphs (2) through (5), re-
 15 spectively.

16 (2) CONFORMING AMENDMENT.—Section
 17 414(d)(4) of the American Competitiveness and
 18 Workforce Improvement Act of 1998 (as contained
 19 in title IV of division C of the Omnibus Consolidated
 20 and Emergency Supplemental Appropriations Act,
 21 1999; Public Law 105–277) is amended by striking
 22 “286(s)(3)” and inserting “286(s)(2)”.

23 (b) REPEAL OF AUTHORITY TO USE FUNDS FOR
 24 DEMONSTRATION PROGRAMS AND PROJECTS.—

1 (1) IN GENERAL.—Section 414 of the American
2 Competitiveness and Workforce Improvement Act of
3 1998 is amended—

4 (A) by striking subsection (c); and

5 (B) by redesignating subsection (d) as sub-
6 section (c).

7 (2) CONFORMING AMENDMENT.—Section
8 286(s)(2) of the Immigration and Nationality Act (8
9 U.S.C. 1356(s)(2)) (as redesignated by subsection
10 (a)(1)(B)) is amended by striking “414(d)” and in-
11 serting “414(c)”.

12 **SEC. 403. USE OF FEES FOR SCHOLARSHIP PROGRAM.**

13 (a) DEPOSIT ALLOCATION.—Section 286(s)(2) of the
14 Immigration and Nationality Act (8 U.S.C. 1356(s)(2))
15 (as redesignated by section 402(a)(1)(B) of this Act) is
16 amended—

17 (1) in the paragraph heading, by striking
18 “LOW-INCOME”;

19 (2) by striking “28.2 percent” and inserting
20 “84.5 percent”;

21 (3) by inserting “merit-based” before “scholar-
22 ships”;

23 (4) by striking “low-income”;

24 (5) by striking “a degree in mathematics, engi-
25 neering, or computer science.” and inserting “a

1 bachelor's or graduate degree with an academic
2 major in computer science, computer programming,
3 information sciences, systems analysis, computer en-
4 gineering, electrical engineering, electronics engi-
5 neering, or electronic commerce.”; and

6 (6) by adding at the end “Not more than 5 per-
7 cent of the amounts made available under this para-
8 graph may be used for administrative expenses.”.

9 (b) SCHOLARSHIP PROGRAM AUTHORIZED.—Section
10 414(c) of the American Competitiveness and Workforce
11 Improvement Act of 1998 (as redesignated by section
12 402(b)(1)(B) of this Act) is amended—

13 (1) in the subsection heading, by striking
14 “LOW-INCOME”;

15 (2) in paragraph (1)—

16 (A) by inserting “merit-based” before
17 “scholarships”;

18 (B) by inserting “directly” after “scholar-
19 ships”;

20 (C) by striking “low-income individuals”
21 and inserting “graduate students and under-
22 graduate students who are in their junior or
23 senior year of attendance at an institution of
24 higher education”; and

(D) by striking “associate,” and all that follows through the period at the end and inserting “a bachelor’s or graduate degree with an academic major in computer science, computer programming, information sciences, systems analysis, computer engineering, electrical engineering, electronics engineering, or electronic commerce.”; and

(3) in paragraph (2)—

(A) in subparagraph (A)(iii)—

(i) by inserting “will be a graduate student or an undergraduate student in the junior or senior year and” before “intends”; and

(ii) by striking “an associate,” and all that follows through the period at the end and inserting “a bachelor’s or graduate degree with an academic major in computer science, computer programming, information sciences, systems analysis, computer engineering, electrical engineering, electronics engineering, or electronic commerce.”; and

(B) by adding at the end the following:

1 “(C) SCHOLARSHIP REVOCATION.—A
2 scholarship awarded under this subsection shall
3 be revoked if the individual to whom the award
4 is made does not maintain a status of good
5 standing in a degree program with an academic
6 major in computer science, computer program-
7 ming, information sciences, systems analysis,
8 computer engineering, electrical engineering,
9 electronics engineering, or electronic com-
10 merce.”.

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