

110TH CONGRESS
1ST SESSION

S. 1397

To increase the allocation of visas for certain highly skilled workers and to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2007

Mr. LIEBERMAN (for himself, Mr. HAGEL, Ms. CANTWELL, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase the allocation of visas for certain highly skilled workers and to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Skilled Worker Immigration and Fairness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

See. 2. H-1B visas.

Sec. 3. Employment-based immigration.

Sec. 4. H-1B visa fraud and abuse protections.

1 **SEC. 2. H-1B VISAS.**

2 (a) EXEMPTIONS TO NUMERICAL LIMITATIONS.—

3 (1) IN GENERAL.—Section 214(g)(5) of the Im-
4 migration and Nationality Act (8 U.S.C. 1184(g)(5))
5 is amended—

6 (A) in subparagraph (C), by striking “until
7 the number of aliens who are exempted from
8 such numerical limitation during such year ex-
9 ceeds 20,000.” and inserting “or has been
10 awarded a medical specialty certification based
11 on post-doctoral training and experience in the
12 United States; or”; and

13 (B) by adding at the end the following:

14 “(D) has earned a masters or higher de-
15 gree in science, technology, engineering, or
16 mathematics from an institution of higher edu-
17 cation outside of the United States.”.

18 (2) APPLICABILITY.—The amendments made
19 by paragraph (1) shall apply to—

20 (A) any petition or visa application pend-
21 ing on the date of the enactment of this Act;
22 and

23 (B) any petition or visa application filed on
24 or after such date.

1 (b) MARKET-BASED VISA LIMITS.—Section 214(g) of
2 such Act (8 U.S.C. 1184(g)), as amended by subsection
3 (a), is further amended—

4 (1) in paragraph (1)—

5 (A) in the matter preceding subparagraph
6 (A), by striking “(beginning with fiscal year
7 1992)”; and

8 (B) in subparagraph (A), by striking
9 clauses (i) through (vii) and inserting the fol-
10 lowing:

11 “(i) 115,000 in fiscal year 2007; and

12 “(ii) in fiscal year 2008, and in each sub-
13 sequent fiscal year, the greater of—

14 “(I) 115,000; or

15 “(II) the number calculated under
16 paragraph (9);”;

17 (2) in paragraph (8)—

18 (A) in subparagraph (B), by striking
19 clause (iv); and

20 (B) by striking subparagraph (D);

21 (3) by redesignating paragraphs (9), (10), and
22 (11) as paragraphs (10), (11), and (12), respec-
23 tively; and

24 (4) by inserting after paragraph (8) the fol-
25 lowing:

1 “(9) If the numerical limitation under paragraph
2 (1)(A)—

3 “(A) is reached during a given fiscal year, the
4 numerical limitation under paragraph (1)(A) for the
5 subsequent fiscal year shall be equal to the lesser
6 of—

7 “(i) 120 percent of the numerical limita-
8 tion for the given fiscal year; or
9 “(ii) 180,000; and

10 “(B) is not reached during a given fiscal year,
11 the numerical limitation under paragraph (1)(A) for
12 the subsequent fiscal year shall be equal to the nu-
13 merical limitation for the given fiscal year.”.

14 **SEC. 3. EMPLOYMENT-BASED IMMIGRATION.**

15 (a) IN GENERAL.—Section 201(b)(1) of the Immi-
16 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is
17 amended by adding at the end the following:

18 “(F) Aliens who have earned a master’s or
19 higher degree from an accredited university in the
20 United States.

21 “(G) Aliens who—

22 “(i) have earned an advanced degree in
23 science, technology, engineering, or mathe-
24 matics; and

1 “(ii) have been working in a related field
2 in the United States under a nonimmigrant visa
3 during the 3-year period preceding their appli-
4 cation for an immigrant visa under section
5 203(b).

6 “(H) Aliens who—

7 “(i) are described in subparagraph (A) or
8 (B) of section 203(b)(1); or

9 “(ii) have received a national interest waiv-
10 er under section 203(b)(2)(B).

11 “(I) The immediate relatives of an alien who is
12 admitted as an employment-based immigrant under
13 section 203(b).”.

14 (b) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
15 BASED IMMIGRANTS.—

16 (1) IN GENERAL.—Section 245 of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1255) is amend-
18 ed by adding at the end the following:

19 “(n) ADJUSTMENT OF STATUS TO EMPLOYMENT-
20 BASED IMMIGRANT.—

21 “(1) ELIGIBILITY.—An alien, and any eligible
22 dependents of such alien, may file an application for
23 adjustment of status with the Secretary of Home-
24 land Security, whether or not an employment-based

1 immigrant visa is immediately available at the time
2 the application is filed, if—

3 “(A) a petition filed under subparagraph
4 (E) or (F) of section 204(a)(1) on behalf of the
5 alien has been approved; or

6 “(B) in the discretion of the Secretary, the
7 adjudication of such petition is pending.

8 “(2) VISA AVAILABILITY.—An application filed
9 under paragraph (1) may not be approved until the
10 appropriate employment-based immigrant visa be-
11 comes available under section 203(b).

12 “(3) FEES.—If an employment-based immi-
13 grant visa is not available on the date on which an
14 application is filed under paragraph (1), a supple-
15 mental fee of \$500 shall be paid on behalf of the
16 beneficiary of such application. Such fee may not be
17 charged with respect to any dependent accom-
18 panying or following to join such beneficiary.

19 “(o) EXTENSION OF EMPLOYMENT AUTHORIZATION
20 AND ADVANCED PAROLE DOCUMENT.—The Secretary of
21 Homeland Security—

22 “(1) shall issue a 3-year employment authoriza-
23 tion and 3-year advanced parole document to any
24 beneficiary of an application for adjustment of sta-

1 tus if a petition has been filed or is pending under
2 subparagraph (E) or (F) of section 204(a)(1); and

3 “(2) may adjust fees assessed under this sec-
4 tion in accordance to the 3-year period of validity as-
5 signed to the employment authorization or advanced
6 parole documents issued under subparagraph (1).”.

7 (2) USE OF FEES.—Section 286 of such Act (8
8 U.S.C. 1356) is amended—

9 (A) in subsection (m), by striking “provi-
10 sions of law, all adjudication fees” and inserting
11 “provision of law, all adjudication fees and the
12 fees collected under section 245(n)(3)”; and

13 (B) in subsection (n)—

14 (i) by striking “All deposits” and in-
15 serting the following: “(1) Except as pro-
16 vided in paragraph (2), all deposits”; and
17 (ii) by adding at the end the fol-
18 lowing:

19 “(2) All deposits in the Immigration Examinations
20 Fee Account that were originally collected under section
21 245(n)(3) shall be used to clear security background check
22 delays.”.

23 (c) APPLICABILITY.—The amendments made by sub-
24 sections (a) and (b) shall apply to any visa application—

4 SEC. 4. H-1B VISA FRAUD AND ABUSE PROTECTIONS.

5 (a) PROHIBITION AGAINST ADVERTISING EXCLU-
6 SIVELY TO H-1B NONIMMIGRANTS.—Section 212(n)(1)
7 of the Immigration and Nationality Act (8 U.S.C.
8 1182(n)(1)) is amended—

11 (2) by inserting after subparagraph (H), as re-
12 designated, the following:

13 “(I) The employer has not advertised the avail-
14 able jobs specified in the application in an advertise-
15 ment that states or indicates that—

16 “(i) the jobs are only available to persons
17 who are, or may become, H-1B nonimmigrants;
18 or

25 “(K) The employer”

1 (b) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—

2 Section 212(n)(1) of such Act, as amended by this section,
3 is further amended by inserting after subparagraph (I),
4 as added by subsection (a)(1), the following:

5 “(J) If the employer employs 50 or more em-
6 ployees in the United States, not more than 50 per-
7 cent of such employees are H-1B nonimmigrants.”.

8 (c) SAFEGUARDS AGAINST FRAUD AND MISREP-
9 SENTATION IN APPLICATION REVIEW PROCESS.—Section
10 212(n)(1)(K) of such Act, as designated by subsection
11 (a)(2), is amended—

12 (1) by inserting “, clear indicators of fraud,
13 misrepresentation of material fact,” after “complete-
14 ness”;

15 (2) by striking “or obviously inaccurate” and
16 inserting “, presents clear indicators of fraud or
17 misrepresentation of material fact, or is obviously in-
18 accurate”; and

19 (3) by adding at the end the following: “If the
20 Secretary’s review of an application identifies clear
21 indicators of fraud or misrepresentation of material
22 fact, the Secretary may conduct an investigation and
23 hearing under paragraph (2).”.

24 (d) INVESTIGATIONS BY DEPARTMENT OF LABOR.—

25 Section 212(n)(2) of such Act is amended—

8 (2) in subparagraph (C)(i)—

9 (A) by striking “a condition of paragraph
10 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
11 dition under subparagraph (B), (C), (E), (F),
12 (H), (I), or (J) of paragraph (1)”; and

13 (B) by striking “paragraph (1)(C), (1)(D),
14 or (1)(G)(i)(I)” and inserting “subparagraph
15 (C), (D) or (G)(i)(I) of paragraph (1);

16 (3) in subparagraph (G)—

17 (A) in clause (i), by striking “if the Sec-
18 retary” and all that follows and inserting “with
19 regard to the employer’s compliance with the
20 requirements under this subsection.”;

21 (B) in clause (ii), by striking “and whose
22 identity” and all that follows through “failure
23 or failures.” and inserting “the Secretary of
24 Labor may conduct an investigation into the

1 employer's compliance with the requirements
2 under this subsection.”;

3 (C) in clause (iii), by striking the last sen-
4 tence;

5 (D) by striking clauses (iv) and (v);

6 (E) by redesignating clauses (vi), (vii), and
7 (viii) as clauses (iv), (v), and (vi), respectively;

8 (F) in clause (iv), as redesignated, by
9 striking “meet a condition” and all that follows
10 and inserting “comply with the requirements
11 under this subsection, unless the Secretary of
12 Labor receives the information not later than
13 24 months after the date of the alleged fail-
14 ure.”;

15 (G) by amending clause (v), as redesi-
16 gnated, to read as follows:

17 “(v) The Secretary of Labor shall provide notice to
18 an employer of the intent to conduct an investigation. The
19 notice shall be provided in such a manner, and shall con-
20 tain sufficient detail, to permit the employer to respond
21 to the allegations before an investigation is commenced.

22 The Secretary is not required to comply with this clause
23 if the Secretary determines that such compliance would
24 interfere with an effort by the Secretary to investigate the
25 employer or secure the employer's compliance with this

1 subsection. A determination by the Secretary under this
2 clause is not subject to judicial review.”;

3 (H) in clause (vi), as redesignated, by
4 striking “An investigation” and all that follows
5 through “the determination.” and inserting “If
6 the Secretary of Labor, after an investigation
7 under clause (i) or (ii), determines that a rea-
8 sonable basis exists to make a finding that the
9 employer has failed to comply with the require-
10 ments under this subsection, the Secretary shall
11 provide interested parties with notice of such
12 determination and an opportunity for a hearing
13 in accordance with section 556 of title 5,
14 United States Code, not later than 120 days
15 after the date of such determination.”; and

16 (I) by adding at the end the following:

17 “(vii) If the Secretary of Labor, after a hearing, finds
18 a reasonable basis to believe that the employer has violated
19 a requirement under this subsection, the Secretary may
20 impose a penalty under subparagraph (C).”;

21 (4) by redesignating subparagraph (I) as sub-
22 paragraph (J).

23 (e) ADDITIONAL DEPARTMENT OF LABOR EMPLOY-
24 EES.—

8 (f) SCHEDULE OF FEES.—Section 214(c)(12)(C) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1184(c)(12)(C)) is amended by striking “\$500” and in-
11 serting “\$1,000”.

12 (g) INFORMATION SHARING BETWEEN DEPARTMENT
13 OF LABOR AND DEPARTMENT OF HOMELAND SECU-
14 RITY.—Section 212(n)(2) of such Act, as amended by this
15 section, is further amended by inserting after subpara-
16 graph (H) the following:

17 “(I) If any information contained in the materials
18 submitted by employers of H-1B nonimmigrants as part
19 of the adjudication process indicates that the employer is
20 not complying with the requirements under this sub-
21 section, the Director of United States Citizenship and Im-
22 migration Services shall provide such information to the
23 Secretary of Labor. The Secretary may initiate and con-
24 duct an investigation and hearing under this paragraph
25 after receiving such information.”.

1 (h) AUDITS.—Section 212(n)(2)(A) of such Act, as
2 amended by this section, is further amended by adding
3 at the end the following: “The Secretary may conduct sur-
4 veys regarding the degree to which employers comply with
5 the requirements under this subsection and may conduct
6 annual compliance audits of employers of H-1B non-
7 immigrants. The Secretary shall conduct annual compli-
8 ance audits of not less than 1 percent of the employers
9 of H-1B nonimmigrants during the applicable calendar
10 year. The Secretary shall conduct annual compliance au-
11 dits of each employer with more than 100 employees who
12 work in the United States if more than 15 percent of such
13 employees are H-1B nonimmigrants.”.

14 (i) PENALTIES.—Section 212(n)(2)(C) of such Act,
15 as amended by this section, is further amended—

16 (1) in clause (i)(I), by striking “\$1,000” and
17 inserting “\$2,000”;

18 (2) in clause (ii)(I), by striking “\$5,000” and
19 inserting “\$10,000”; and

20 (3) in clause (vi)(III), by striking “\$1,000” and
21 inserting “\$2,000”.

22 (j) INFORMATION PROVIDED TO H-1B NON-
23 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of
24 such Act, as amended by this section, is further amended
25 by adding at the end the following:

1 “(6)(A) Upon providing H-1B nonimmigrant status
2 to an alien in the United States, the office processing the
3 petition for such status shall provide the applicant with—

4 “(i) a brochure outlining the employer’s obliga-
5 tions and the employee’s rights under Federal law,
6 including labor and wage protections; and

7 “(ii) the contact information for Federal agen-
8 cies that can offer more information or assistance in
9 clarifying employer obligations and workers’ rights.

10 “(B) Upon issuing an H-1B nonimmigrant visa to
11 an alien outside the United States, the officer of the De-
12 partment of State shall provide the applicant with the
13 items described in clauses (i) and (ii) of subparagraph
14 (A).”.

○