

111TH CONGRESS
2D SESSION

H. R. 5658

To amend the Immigration and Nationality Act to increase competitiveness in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

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

A BILL

To amend the Immigration and Nationality Act to increase competitiveness in the United States, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Securing Knowledge, Innovation, and Leadership Act of
6 2010” or the “SKIL Act of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—ACCESS TO HIGH SKILLED FOREIGN WORKERS

Sec. 101. H-1B visa holders.

Sec. 102. Market-based visa limits.

TITLE II—RETAINING FOREIGN WORKERS EDUCATED IN THE UNITED STATES

Sec. 201. United States educated immigrants.

Sec. 202. Immigrant visa backlog reduction.

Sec. 203. Student visa reform.

Sec. 204. L–1 visa holders subject to visa backlog.

Sec. 205. Retaining workers subject to green card backlog.

TITLE III—BUSINESS FACILITATION THROUGH IMMIGRATION REFORM

Sec. 301. Streamlining the adjudication process for established employers.

Sec. 302. Providing premium processing of employment-based visa petitions.

Sec. 303. Eliminating procedural delays in labor certification process.

TITLE IV—MISCELLANEOUS

Sec. 401. Completion of background and security checks.

Sec. 402. Visa revalidation.

Sec. 403. Severability.

Sec. 404. Constitutional authority.

1 **TITLE I—ACCESS TO HIGH** 2 **SKILLED FOREIGN WORKERS**

3 **SEC. 101. H–1B VISA HOLDERS.**

4 (a) IN GENERAL.—Section 214(g)(5) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1184(g)(5)) is
6 amended—

7 (1) in subparagraph (B)—

8 (A) by striking “nonprofit research” and
9 inserting “nonprofit”;

10 (B) by inserting “Federal, State, or local”
11 before “governmental”; and

12 (C) by striking “or” at the end;

13 (2) in subparagraph (C)—

14 (A) by striking “a United States institu-
15 tion of higher education (as defined in section

1 101(a) of the Higher Education Act of 1965
2 (20 U.S.C. 1001(a)),” and inserting “an insti-
3 tution of higher education in a foreign coun-
4 try,”; and

5 (B) by striking the period at the end and
6 inserting a semicolon; and

7 (3) by adding at the end, the following new sub-
8 paragraphs:

9 “(D) has earned a master’s or higher degree
10 from a United States institution of higher education
11 (as defined in section 101(a) of the Higher Edu-
12 cation Act of 1965 (20 U.S.C. 1001(a))); or

13 “(E) has been awarded medical specialty certifi-
14 cation based on post-doctoral training and experi-
15 ence in the United States.”.

16 (b) **APPLICABILITY.**—The amendments made by sub-
17 section (a) shall apply to any petition or visa application
18 pending on the date of enactment of this Act and any peti-
19 tion or visa application filed on or after such date.

20 **SEC. 102. MARKET-BASED VISA LIMITS.**

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

23 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph
2 (A), by striking “(beginning with fiscal year
3 1992)”; and

4 (B) in subparagraph (A)—

5 (i) in clause (vi) by striking “and”;

6 (ii) in clause (vii), by striking “each
7 succeeding fiscal year; or” and inserting
8 “each of fiscal years 2004 through 2010;”;
9 and

10 (iii) by adding after clause (vii) the
11 following:

12 “(viii) 115,000 in the first fiscal year
13 beginning after the date of the enactment
14 of the Securing Knowledge, Innovation,
15 and Leadership Act of 2010; and

16 “(ix) the number calculated under
17 paragraph (9) in each fiscal year after the
18 fiscal year described in clause (viii); or”;

19 (2) in paragraph (5), as amended by section
20 101(a), in the matter preceding subparagraph (A),
21 by inserting “101(a)(15)(H)(i)(b1) or section” after
22 “under section”;

23 (3) in paragraph (8), by striking subparagraphs
24 (B)(iv) and (D);

1 (4) by redesignating paragraphs (9), (10), and
 2 (11) as paragraphs (10), (11), and (12), respec-
 3 tively; and

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

6 “(9) If the numerical limitation in paragraph
 7 (1)(A)—

8 “(A) is reached during the previous fiscal
 9 year, the numerical limitation under paragraph
 10 (1)(A)(ix) for the subsequent fiscal year shall
 11 be equal to 120 percent of the numerical limita-
 12 tion for the previous fiscal year; or

13 “(B) is not reached during the previous
 14 fiscal year, the numerical limitation under para-
 15 graph (1)(A)(ix) for the subsequent fiscal year
 16 shall be equal to the numerical limitation for
 17 the previous fiscal year.”.

18 **TITLE II—RETAINING FOREIGN** 19 **WORKERS EDUCATED IN THE** 20 **UNITED STATES**

21 **SEC. 201. UNITED STATES EDUCATED IMMIGRANTS.**

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

1 “(F) Aliens who have earned a master’s or
2 higher degree from an accredited United States
3 university.

4 “(G) Aliens who have been awarded med-
5 ical specialty certification based on post-doc-
6 toral training and experience in the United
7 States preceding their application for an immi-
8 grant visa under section 203(b).

9 “(H) Aliens who will perform labor in
10 shortage occupations designated by the Sec-
11 retary of Labor for blanket certification under
12 section 212(a)(5)(A) as lacking sufficient
13 United States workers able, willing, qualified,
14 and available for such occupations and for
15 which the employment of aliens will not ad-
16 versely affect the terms and conditions of simi-
17 larly employed United States workers.

18 “(I) Aliens who have earned a master’s de-
19 gree or higher in science, technology, engineer-
20 ing, or math and have been working in a re-
21 lated field in the United States in a non-
22 immigrant status during the 3-year period pre-
23 ceding their application for an immigrant visa
24 under section 203(b).

1 “(J) Aliens described in subparagraph (A)
 2 or (B) of section 203(b)(1) or who have re-
 3 ceived a national interest waiver under section
 4 203(b)(2)(B).

5 “(K) The spouse and minor children of an
 6 alien who is admitted as an employment-based
 7 immigrant under section 203(b).”.

8 (b) LABOR CERTIFICATIONS.—Section
 9 212(a)(5)(A)(ii) of the Immigration and Nationality Act
 10 (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

11 (1) in subclause (I), by striking “or” at the
 12 end;

13 (2) in subclause (II), by striking the period at
 14 the end and inserting “; or”; and

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

16 “(III) is a member of the profes-
 17 sions and has a master’s degree or
 18 higher from an accredited United
 19 States university or has been awarded
 20 medical specialty certification based
 21 on post-doctoral training and experi-
 22 ence in the United States.”.

23 **SEC. 202. IMMIGRANT VISA BACKLOG REDUCTION.**

24 Section 201(d) of the Immigration and Nationality
 25 Act (8 U.S.C. 1151(d)) is amended to read as follows:

1 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
 2 IMMIGRANTS.—The worldwide level of employment-based
 3 immigrants under this subsection for a fiscal year is equal
 4 to the sum of—

5 “(1) 290,000;

6 “(2) the difference between—

7 “(A) the maximum number of visas au-
 8 thorized to be issued under this subsection dur-
 9 ing the previous fiscal year; and

10 “(B) the number of such visas issued dur-
 11 ing the previous fiscal year; and

12 “(3) the difference between—

13 “(A) the maximum number of visas au-
 14 thorized to be issued under this subsection dur-
 15 ing fiscal years 2001 through 2005 and the
 16 number of visa numbers issued under this sub-
 17 section during such fiscal years; and

18 “(B) the number of visas calculated under
 19 subparagraph (A) that were issued after fiscal
 20 year 2005.”.

21 **SEC. 203. STUDENT VISA REFORM.**

22 (a) IN GENERAL.—Section 101(a)(15)(F) of the Im-
 23 migration and Nationality Act (8 U.S.C. 1101(a)(15)(F))
 24 is amended to read as follows:

25 “(F) an alien—

1 “(i) who—

2 “(I) is a bona fide student qualified to
3 pursue a full course of study in mathe-
4 matics, engineering, technology, or the
5 sciences leading to a bachelors or graduate
6 degree and who seeks to enter the United
7 States for the purpose of pursuing such a
8 course of study consistent with section
9 214(m) at an institution of higher edu-
10 cation (as defined by section 101(a) of the
11 Higher Education Act of 1965 (20 U.S.C.
12 1001(a))) in the United States, particu-
13 larly designated by the alien and approved
14 by the Secretary of Homeland Security,
15 after consultation with the Secretary of
16 Education, which institution or place of
17 study shall have agreed to report to the
18 Secretary of Homeland Security the termi-
19 nation of attendance of each nonimmigrant
20 student, and if any such institution of
21 learning or place of study fails to make re-
22 ports promptly the approval shall be with-
23 drawn; or

24 “(II) is engaged in temporary employ-
25 ment for optional practical training related

1 to such alien's area of study following com-
2 pletion of the course of study described in
3 subclause (I) for a period or periods of not
4 more than 24 months;

5 “(ii) who—

6 “(I) has a residence in a foreign coun-
7 try which the alien has no intention of
8 abandoning, who is a bona fide student
9 qualified to pursue a full course of study,
10 and who seeks to enter the United States
11 temporarily and solely for the purpose of
12 pursuing such a course of study consistent
13 with section 214(m) at an established col-
14 lege, university, seminary, conservatory,
15 academic high school, elementary school, or
16 other academic institution or in a language
17 training program in the United States,
18 particularly designated by the alien and
19 approved by the Secretary of Homeland
20 Security, after consultation with the Sec-
21 retary of Education, which institution or
22 place of study shall have agreed to report
23 to the Secretary of Homeland Security the
24 termination of attendance of each non-
25 immigrant student, and if any such institu-

1 tion of learning or place of study fails to
2 make reports promptly the approval shall
3 be withdrawn; or

4 “(II) is engaged in temporary employ-
5 ment for optional practical training related
6 to such alien’s area of study following com-
7 pletion of the course of study described in
8 subclause (I) for a period or periods of not
9 more than 24 months;

10 “(iii) who is the spouse or minor child of
11 an alien described in clause (i) or (ii) if accom-
12 panying or following to join such an alien; or

13 “(iv) who—

14 “(I) is a national of Canada or Mex-
15 ico, who maintains actual residence and
16 place of abode in the country of nation-
17 ality, who is described in clause (i) or (ii)
18 except that the alien’s qualifications for
19 and actual course of study may be full or
20 part-time, and who commutes to the
21 United States institution or place of study
22 from Canada or Mexico; or

23 “(II) is engaged in temporary employ-
24 ment for optional practical training related
25 to such alien’s area of study following com-

1 pletion of the course of study described in
2 subclause (I) for a period or periods of not
3 more than 24 months;”.

4 (b) ADMISSION.—Section 214(b) of the Immigration
5 and Nationality Act (8 U.S.C. 1184(b)) is amended by in-
6 serting “(F)(i),” before “(L) or (V)”.

7 (c) CONFORMING AMENDMENT.—Section 214(m)(1)
8 of the Immigration and Nationality Act (8 U.S.C.
9 1184(m)(1)) is amended, in the matter preceding subpara-
10 graph (A), by striking “(i) or (iii)” and inserting “(i), (ii),
11 or (iv)”.

12 **SEC. 204. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

13 Section 214(c)(2) of the Immigration and Nationality
14 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the
15 end the following new subparagraph:

16 “(G) The limitations contained in subparagraph (D)
17 with respect to the duration of authorized stay shall not
18 apply to any nonimmigrant alien previously issued a visa
19 or otherwise provided nonimmigrant status under section
20 101(a)(15)(L) on whose behalf a petition under section
21 204(b) to accord the alien immigrant status under section
22 203(b), or an application for labor certification (if such
23 certification is required for the alien to obtain status
24 under such section 203(b)) has been filed, if 365 days or
25 more have elapsed since such filing. The Secretary of

1 Homeland Security shall extend the stay of an alien who
2 qualifies for an exemption under this subparagraph until
3 such time as a final decision is made on the alien's lawful
4 permanent residence.”.

5 **SEC. 205. RETAINING WORKERS SUBJECT TO GREEN CARD**

6 **BACKLOG.**

7 (a) ADJUSTMENT OF STATUS.—

8 (1) IN GENERAL.—Section 245(a) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1255(a)) is
10 amended to read as follows:

11 “(a) ELIGIBILITY.—

12 “(1) IN GENERAL.—The status of an alien who
13 was inspected and admitted or paroled into the
14 United States or the status of any other alien having
15 an approved petition for classification under sub-
16 paragraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of sec-
17 tion 204(a)(1) may be adjusted by the Secretary of
18 Homeland Security or the Attorney General, in the
19 discretion of the Secretary or the Attorney General
20 under such regulations as the Secretary or Attorney
21 General may prescribe, to that of an alien lawfully
22 admitted for permanent residence if—

23 “(A) the alien makes an application for
24 such adjustment;

1 “(B) the alien is eligible to receive an im-
2 migrant visa and is admissible to the United
3 States for permanent residence; and

4 “(C) an immigrant visa is immediately
5 available to the alien at the time the application
6 is filed.

7 “(2) SUPPLEMENTAL FEE.—An application
8 under paragraph (1) that is based on a petition ap-
9 proved or approvable under subparagraph (E) or (F)
10 of section 204(a)(1) may be filed without regard to
11 the limitation set forth in paragraph (1)(C) if a sup-
12 plemental fee of \$500 is paid by the principal alien
13 at the time the application is filed. A supplemental
14 fee may not be required for any dependent alien ac-
15 companying or following to join the principal alien.

16 “(3) VISA AVAILABILITY.—An application for
17 adjustment filed under this paragraph may not be
18 approved until such time as an immigrant visa be-
19 come available.”.

20 (b) USE OF FEES.—Section 286(v)(1) (8 U.S.C.
21 1356(v)(1)) is amended by inserting before the period at
22 the end “and the fees collected under section 245(a)(2).”.

1 **TITLE III—BUSINESS FACILITA-**
2 **TION THROUGH IMMIGRA-**
3 **TION REFORM**

4 **SEC. 301. STREAMLINING THE ADJUDICATION PROCESS**
5 **FOR ESTABLISHED EMPLOYERS.**

6 Section 214(c) of the Immigration and Nationality
7 Act (8. U.S.C. 1184) is amended by adding at the end
8 the following new paragraph:

9 “(15) Not later than 180 days after the date of the
10 enactment of the Securing Knowledge, Innovation, and
11 Leadership Act of 2010, the Secretary of Homeland Secu-
12 rity shall establish a pre-certification procedure for em-
13 ployers who file multiple petitions described in this sub-
14 section or section 203(b). Such precertification procedure
15 shall enable an employer to avoid repeatedly submitting
16 documentation that is common to multiple petitions and
17 establish through a single filing criteria relating to the em-
18 ployer and the offered employment opportunity.”.

19 **SEC. 302. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
20 **MENT-BASED VISA PETITIONS.**

21 (a) IN GENERAL.—Pursuant to section 286(u) of the
22 Immigration and Nationality Act (8 U.S.C. 1356(u)), the
23 Secretary of Homeland Security shall establish and collect
24 a fee for premium processing of employment-based immi-
25 grant petitions.

1 (b) APPEALS.—Pursuant to such section 286(u), the
2 Secretary of Homeland Security shall establish and collect
3 a fee for premium processing of an administrative appeal
4 of any decision on a permanent employment-based immi-
5 grant petition.

6 **SEC. 303. ELIMINATING PROCEDURAL DELAYS IN LABOR**
7 **CERTIFICATION PROCESS.**

8 (a) PREVAILING WAGE RATE.—

9 (1) REQUIREMENT TO PROVIDE.—The Sec-
10 retary of Labor shall provide prevailing wage deter-
11 minations to employers seeking a labor certification
12 for aliens pursuant to part 656 of title 20, Code of
13 Federal Regulation (or any successor regulation).
14 The Secretary may not delegate this function to any
15 agency of a State.

16 (2) SCHEDULE FOR DETERMINATION.—Except
17 as provided in paragraph (3), the Secretary of Labor
18 shall provide a response to an employer's request for
19 a prevailing wage determination in no more than 20
20 calendar days from the date of receipt of such re-
21 quest. If the Secretary fails to reply during such 20-
22 day period, then the wage proposed by the employer
23 shall be the valid prevailing wage rate.

24 (3) USE OF SURVEYS.—The Secretary of Labor
25 shall accept an alternative wage survey provided by

1 the employer unless the Secretary determines that
2 the wage component of the Occupational Employ-
3 ment Statistics Survey is more accurate for the oc-
4 cupation in the labor market area.

5 (b) PLACEMENT OF JOB ORDER.—The Secretary of
6 Labor shall maintain a Web site with links to the official
7 Web site of each workforce agency of a State, and such
8 official Web site shall contain instructions on the filing
9 of a job order in order to satisfy the job order require-
10 ments of section 656.17(e)(1) of title 20, Code of Federal
11 Regulation (or any successor regulation).

12 (c) TECHNICAL CORRECTIONS.—The Secretary of
13 Labor shall establish a process by which employers seeking
14 certification under section 212(a)(5) of the Immigration
15 and Nationality Act (8 U.S.C. 1182(a)(5)), as amended
16 by section 201(b), may make technical corrections to ap-
17 plications in order to avoid requiring employers to conduct
18 additional recruitment to correct an initial technical error.
19 A technical error shall include any error that would not
20 have a material effect on the validity of the employer's
21 recruitment of able, willing, and qualified United States
22 workers.

23 (d) ADMINISTRATIVE APPEALS.—Motions to recon-
24 sider, and administrative appeals of, a denial of a perma-
25 nent labor certification application, shall be decided by the

1 Secretary of Labor not later than 60 days after the date
2 of the filing of such motion or such appeal.

3 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not
4 later than 180 days after the date of the enactment of
5 this Act, the Secretary of Labor shall process and issue
6 decisions on all applications for permanent alien labor cer-
7 tification that were filed prior to March 28, 2005.

8 (f) EFFECTIVE DATE.—The provisions of this section
9 shall take effect 90 days after the date of enactment of
10 this Act, regardless of whether the Secretary of Labor has
11 amended the regulations at part 656 of title 20, Code of
12 Federal Regulation to implement such changes.

13 **TITLE IV—MISCELLANEOUS**

14 **SEC. 401. COMPLETION OF BACKGROUND AND SECURITY** 15 **CHECKS.**

16 Section 103 of the Immigration and Nationality Act
17 (8 U.S.C. 1103) is amended by adding at the end the fol-
18 lowing new subsection:

19 “(i) REQUIREMENT FOR BACKGROUND CHECKS.—
20 Notwithstanding any other provision of law, until appro-
21 priate background and security checks, as determined by
22 the Secretary of Homeland Security, have been completed,
23 and the information provided to and assessed by the offi-
24 cial with jurisdiction to grant or issue the benefit or docu-
25 mentation, on an in-camera basis as may be necessary

1 with respect to classified, law enforcement, or other infor-
2 mation that cannot be disclosed publicly, the Secretary of
3 Homeland Security, the Attorney General, or any court
4 may not—

5 “(1) grant or order the grant of adjustment of
6 status of an alien to that of an alien lawfully admit-
7 ted for permanent residence;

8 “(2) grant or order the grant of any other sta-
9 tus, relief, protection from removal, or other benefit
10 under the immigration laws; or

11 “(3) issue any documentation evidencing or re-
12 lated to such grant by the Secretary, the Attorney
13 General, or any court.

14 “(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-
15 TIONS.—Notwithstanding any other provision of law, until
16 any suspected or alleged fraud relating to the granting of
17 any status (including the granting of adjustment of sta-
18 tus), relief, protection from removal, or other benefit
19 under this Act has been investigated and resolved, the Sec-
20 retary of Homeland Security and the Attorney General
21 may not be required to—

22 “(1) grant or order the grant of adjustment of
23 status of an alien to that of an alien lawfully admit-
24 ted for permanent residence;

1 “(2) grant or order the grant of any other sta-
 2 tus, relief, protection from removal, or other benefit
 3 under the immigration laws; or

4 “(3) issue any documentation evidencing or re-
 5 lated to such grant by the Secretary, the Attorney
 6 General, or any court.

7 “(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—
 8 Notwithstanding any other provision of law, no court may
 9 require any act described in subsection (i) or (j) to be com-
 10 pleted by a certain time or award any relief for the failure
 11 to complete such acts.”.

12 **SEC. 402. VISA REVALIDATION.**

13 (a) IN GENERAL.—Section 222 of the Immigration
 14 and Nationality Act (8 U.S.C. 1202) is amended by add-
 15 ing at the end the following:

16 “(i) VISA REVALIDATION.—The Secretary of State
 17 shall permit an alien granted a nonimmigrant visa under
 18 subparagraph (E), (H), (I), (L), (O), or (P) of section
 19 101(a)(15) to apply for a renewal of such visa within the
 20 United States if—

21 “(1) such visa expired during the 12-month pe-
 22 riod ending on the date of such application;

23 “(2) the alien is seeking a nonimmigrant visa
 24 under the same subparagraph under which the alien
 25 had previously received a visa; and

1 “(3) the alien has complied with the immigra-
2 tion laws and regulations of the United States.”.

3 (b) CONFORMING AMENDMENT.—Section 222(h) of
4 such Act is amended, in the matter preceding subpara-
5 graph (1), by inserting “and except as provided under sub-
6 section (i),” after “Act”.

7 **SEC. 403. SEVERABILITY.**

8 If any provision of this Act, any amendment by this
9 Act, or the application of such provision or amendment
10 to any person or circumstance is held to be invalid for
11 any reason, the remainder of this Act, the amendments
12 made by this Act, and the applications of such to any
13 other person or circumstance shall not be affected by such
14 holding.

15 **SEC. 404. CONSTITUTIONAL AUTHORITY.**

16 The constitutional authority on which this Act rests
17 is the power of Congress to establish a uniform rule of
18 naturalization and authority to provide for the general
19 welfare of the United States as enumerated in article I,
20 section 8 of the United States Constitution.

