

112TH CONGRESS
2D SESSION

H. R. 6412

To amend the Immigration and Nationality Act to provide for immigrant visas for certain advanced STEM graduates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2012

Ms. ZOE LOFGREN of California (for herself, Mr. GUTIERREZ, Mr. GONZALEZ, Mr. CONYERS, Mr. GEORGE MILLER of California, Ms. ROYBAL-ALLARD, Mr. HINOJOSA, Mrs. NAPOLITANO, Mr. SABLAN, Mr. HONDA, Ms. ESHOO, and Ms. MATSUI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for immigrant visas for certain advanced STEM graduates, 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 “Attracting the Best
5 and Brightest Act of 2012”.

1 **SEC. 2. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM**
2 **GRADUATES.**

3 (a) ADVANCED STEM GRADUATES.—Section 203(b)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1153(b)) is amended—

6 (1) by redesignating paragraph (6) as para-
7 graph (7); and

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

10 “(6) ADVANCED GRADUATES IN SCIENCE,
11 TECHNOLOGY, ENGINEERING AND MATHEMATICS.—

12 “(A) IN GENERAL.—Notwithstanding sec-
13 tion 201, visas shall be made available, in a
14 number not to exceed 50,000, to qualified im-
15 migrants who—

16 “(i) possess a graduate degree at the
17 level of master’s or higher in a field of
18 science, technology, engineering, or mathe-
19 matics from a United States research insti-
20 tution of higher education;

21 “(ii) have an offer of employment
22 from a United States employer in a field
23 related to such degree;

24 “(iii) are the subject of an approved
25 labor certification as required under sec-
26 tion 212(a)(5)(A); and

1 “(iv) will receive a wage level from the
2 employer that is at least the actual wage
3 level paid by the employer to all other indi-
4 viduals with similar experience and quali-
5 fications for the specific employment in
6 question.

7 “(B) DEFINITIONS.—For purposes of this
8 paragraph:

9 “(i) The term ‘field of science, tech-
10 nology, engineering, or mathematics’
11 means a field included in the Department
12 of Education’s Classification of Instruc-
13 tional Programs taxonomy within the sum-
14 mary groups of computer and information
15 sciences and support services, engineering,
16 mathematics and statistics, and physical
17 sciences.

18 “(ii) The term ‘United States research
19 institution of higher education’ ‘ means an
20 institution in the United States that—

21 “(I) is described in section
22 101(a) of the Higher Education Act
23 of 1965 (20 U.S.C. 1001(a));

24 “(II) is classified by the Director
25 of the National Science Foundation as

1 a research institution or as otherwise
2 excelling at instruction in a field of
3 science, technology, engineering, or
4 mathematics;

5 “(III) has been in existence for
6 at least 10 years;

7 “(IV) does not provide any com-
8 mission, bonus, or other incentive pay-
9 ment based directly or indirectly on
10 success in securing enrollments or fi-
11 nancial aid to any persons or entities
12 engaged in any recruitment or admis-
13 sion activities for nonimmigrant stu-
14 dents or in making decisions regard-
15 ing the award of student financial as-
16 sistance to nonimmigrant students;
17 and

18 “(V) is accredited by an accred-
19 iting agency recognized by the Sec-
20 retary of Education.”.

21 (b) UNUSED VISAS; LIMITATION TO FOREIGN
22 STATES.—

23 (1) UNUSED VISAS.—Section 203(b)(1) of such
24 Act (8 U.S.C. 1153(b)(1)) is amended by striking
25 “(4) and (5)” and inserting “(4), (5) and (6)”.

1 (2) LIMITATION TO ANY SINGLE FOREIGN
2 STATE.—Section 202(a)(5)(A) of such Act (8 U.S.C.
3 1152(a)(5)(A)) is amended by striking “or (5)” and
4 inserting “(5), or (6)”.

5 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
6 TUS.—Section 204(a)(1)(F) of such Act (8 U.S.C.
7 1154(a)(1)(F)) is amended—

8 (1) by striking “or 203(b)(3)” and inserting
9 “203(b)(3), or 203(b)(6)”; and

10 (2) by striking “Attorney General” and insert-
11 ing “Secretary of Homeland Security”.

12 (d) LABOR CERTIFICATION AND QUALIFICATION FOR
13 CERTAIN IMMIGRANTS.—Section 212(a)(5) of such Act (8
14 U.S.C. 1182(a)(5)) is amended—

15 (1) in subparagraph (A)—

16 (A) in clause (ii)—

17 (i) in subclause (I), by striking “, or”
18 at the end and inserting a semicolon;

19 (ii) in subclause (II), by striking the
20 period at the end and inserting “; or”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(III) holds a doctorate degree in
24 a field of science, technology, engi-
25 neering, or mathematics (as defined in

1 section 203(b)(6)(B)(i)) from a
2 United States research institution of
3 higher education (as defined in section
4 203(b)(6)(B)(ii)).”;

5 (B) by redesignating clauses (iii) and (iv)
6 as clauses (iv) and (v), respectively; and

7 (C) by inserting after clause (ii) the fol-
8 lowing:

9 “(iii) JOB ORDER.—

10 “(I) IN GENERAL.—An employer
11 who files an application under clause
12 (i) shall submit a job order for the
13 labor the alien seeks to perform to the
14 State workforce agency in the State in
15 which the alien seeks to perform the
16 labor. The State workforce agency
17 shall post the job order on its official
18 agency website for a minimum of 30
19 days and not later than 3 days after
20 receipt using the employment statis-
21 tics system authorized under section
22 15 of the Wagner-Peyser Act (29
23 U.S.C. 49 et seq.).

24 “(II) LINKS.—The Secretary of
25 Labor shall include links to the offi-

1 cial websites of all State workforce
2 agencies on a single webpage of the
3 official website of the Department of
4 Labor.”; and

5 (2) in subparagraph (D), by striking “(2) or
6 (3)” and inserting “(2), (3), or (6)”.

7 (e) FURTHER PROTECTING AMERICAN WORKERS.—
8 Section 212(p) of such Act (8 U.S.C. 1182(p)) is amended
9 by adding at the end the following:

10 “(5) To satisfy the requirement under section
11 203(b)(6)(A)(iv), an employer must demonstrate
12 that the total amount of compensation to be paid to
13 the alien (including health insurance, stock options,
14 and other benefits provided by the employer) must
15 meet or exceed the total amount of compensation
16 paid by the employer to all other employees with
17 similar experience and qualifications working in the
18 same occupational classification.”.

19 (f) GAO STUDY.—Not later than June 30, 2017, the
20 Comptroller General of the United States shall provide to
21 the Congress the results of a study on the use by the Na-
22 tional Science Foundation of the classification authority
23 provided under section 203(b)(6)(B)(ii)(II) of the Immi-
24 gration and Nationality Act (8 U.S.C.
25 1153(b)(6)(B)(ii)(II)), as added by this section.

1 (g) PUBLIC INFORMATION.—The Secretary of Home-
2 land Security shall make available to the public on the
3 official website of the Department of Homeland Security,
4 and shall update not less than monthly, the following in-
5 formation (which shall be organized according to month
6 and fiscal year) with respect to aliens granted status
7 under section 203(b)(6) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1153(b)(6)), as added by this section:

9 (1) The name, city, and State of each employer
10 who petitioned pursuant to either of such para-
11 graphs on behalf of one or more aliens who were
12 granted status in the month and fiscal year to date.

13 (2) The number of aliens granted status under
14 either of such paragraphs in the month and fiscal
15 year to date based upon a petition filed by such em-
16 ployer.

17 (3) The occupations for which such alien or
18 aliens were sought by such employer and the job ti-
19 tles listed by such employer on the petition.

20 (h) EFFECTIVE DATE; SUNSET.—

21 (1) EFFECTIVE DATE.—The amendments made
22 by this section shall take effect on October 1, 2012,
23 and shall apply with respect to fiscal years beginning
24 on or after such date.

1 (2) SUNSET.—The amendments made by sub-
2 sections (a) through (e) shall be repealed after the
3 2-year period beginning on the date of the enact-
4 ment of this Act.

5 **SEC. 3. STUDENT VISA REFORM.**

6 (a) IN GENERAL.—Section 101(a)(15)(F)(i) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1101(a)(15)(F)(i)) is amended by striking “an alien hav-
9 ing a residence in a foreign country which he has no inten-
10 tion of abandoning, who is a bona fide student qualified
11 to pursue a full course of study and who” and inserting
12 “an alien who is a bona fide student qualified to pursue
13 a full course of study, who (except for a student qualified
14 to pursue a full course of study in a field of science, tech-
15 nology, engineering, or mathematics (as defined in section
16 203(b)(6)(B)(i)) at an institution of higher education) has
17 a residence in a foreign country which the alien has no
18 intention of abandoning, and who”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 214(b) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1184(b)) is amended by
22 striking “(other than a nonimmigrant” and inserting
23 “(other than a nonimmigrant described in section
24 101(a)(15)(F)) if the alien is qualified to pursue a
25 full course of study in a field of science, technology,

1 engineering, or mathematics (as defined in section
2 203(b)(6)(B)(i)) at an institution of higher edu-
3 cation, other than a nonimmigrant”.

4 (2) Section 214(h) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1184(h)) is amended by in-
6 serting “(F) (if the alien is qualified to pursue a full
7 course of study in a field of science, technology, en-
8 gineering, or mathematics (as defined in section
9 203(b)(6)(B)(i)) at an institution of higher edu-
10 cation),” before “H(i)(b)”.

11 **SEC. 4. AGE-OUT PROTECTIONS FOR CHILDREN.**

12 Section 101(b)(1) of the Immigration and Nationality
13 Act (8 U.S.C. 1101(b)) is amended by adding at the end
14 the following—

15 “(H) RULES FOR DETERMINING AGE OF A
16 CHILD.—

17 “(i) IMMIGRANT PETITIONS.—Not-
18 withstanding any other provision of the
19 Act, a determination of whether an alien is
20 a child for the purposes of a petition under
21 sections 204 and 209 shall be made using
22 the age of the alien on the date on which
23 the petition is filed with the Secretary of
24 Homeland Security.

1 “(ii) CHILD OF U.S. CITIZEN
2 FIANCÉ.—A determination of whether an
3 alien is a child for the purposes of a peti-
4 tion under section 214 or an application
5 for adjustment of status under section
6 245(d) shall be made using the age of the
7 alien on the date on which the petition is
8 filed with the Secretary of Homeland Secu-
9 rity to classify the alien’s parent as the
10 fiancé of a U.S. citizen.”.

11 **SEC. 5. PERMANENT PRIORITY DATES.**

12 (a) IN GENERAL.—Section 203 of the Immigration
13 and Nationality Act (8 U.S.C. 1153) is amended by add-
14 ing at the end the following:

15 “(i) PERMANENT PRIORITY DATES.—

16 “(1) IN GENERAL.—Subject to subsection
17 (h)(3) and paragraph (2), the priority date for any
18 family- or employment-based petition shall be the
19 date of filing of the petition with the Secretary of
20 Homeland Security (or the Secretary of State, if ap-
21 plicable), unless the filing of the petition was pre-
22 ceded by the filing of a labor certification with the
23 Secretary of Labor, in which case that date shall
24 constitute the priority date.

1 “(2) SUBSEQUENT FAMILY- AND EMPLOYMENT-
2 BASED PETITIONS.—Subject to subsection (h)(3), an
3 alien who—

4 “(A) is the beneficiary of any family-based
5 petition that was approvable when filed (includ-
6 ing self-petitioners) shall retain the priority
7 date assigned with respect to that petition in
8 the consideration of any subsequently filed fam-
9 ily-based petition (including self-petitions); or

10 “(B) is the beneficiary of any employment-
11 based petition that was approvable when filed
12 (including self-petitioners) shall retain the pri-
13 ority date assigned with respect to that petition
14 in the consideration of any subsequently filed
15 employment-based petition (including self-peti-
16 tions).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall take effect on the date of the enact-
19 ment of this Act and shall apply to aliens who are a bene-
20 ficiary of a classification petition pending on or after such
21 date.

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