

113TH CONGRESS
1ST SESSION

S. 169

To amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2013

Mr. HATCH (for himself, Ms. KLOBUCHAR, Mr. RUBIO, Mr. COONS, Mr. FLAKE, Mrs. SHAHEEN, Mr. HELLER, Mr. BLUMENTHAL, Mr. HOEVEN, Mr. WARNER, Mr. NELSON, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work 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.**

4 This Act may be cited as the “Immigration Innova-
5 tion Act of 2013” or the “I-Squared Act of 2013”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—EMPLOYMENT-BASED NONIMMIGRANT VISAS

- Sec. 101. Market-based H–1B visa limits.
 Sec. 102. Employment authorization for dependents of H–1B nonimmigrants.
 Sec. 103. Eliminating impediments to worker mobility.

TITLE II—STUDENT VISAS

- Sec. 201. Authorization of dual intent.

TITLE III—EMPLOYMENT-BASED IMMIGRANT VISAS

- Sec. 301. Elimination of per-country numerical limitations.
 Sec. 302. Recapturing lost employment-based immigrant visas.
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TITLE IV—STEM EDUCATION FUNDING

- Sec. 401. Funding for STEM education and training.
 Sec. 402. Promoting American Ingenuity Account.
 Sec. 403. STEM education grant application process.
 Sec. 404. Approved activities.
 Sec. 405. National evaluation.
 Sec. 406. Rule of construction.

1 **TITLE I—EMPLOYMENT-BASED** 2 **NONIMMIGRANT VISAS**

3 **SEC. 101. MARKET-BASED H-1B VISA LIMITS.**

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

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph

8 (A), by striking “(beginning with fiscal year
 9 1992)”; and

10 (B) by amending subparagraph (A) to read
 11 as follows:

12 “(A) under section 101(a)(15)(H)(i)(b)
 13 may not exceed the sum of—

14 “(i) the base allocation calculated
 15 under paragraph (9)(A); and

1 “(ii) the allocation adjustment cal-
 2 culated under paragraph (9)(B); and”;

3 (2) in paragraph (5)—

4 (A) in subparagraph (B), by striking “or”
 5 at the end; and

6 (B) in subparagraph (C), by striking “,
 7 until the number of aliens who are exempted
 8 from such numerical limitation during such
 9 year exceeds 20,000.” and inserting “; or”;

10 (3) in paragraph (8), by striking subparagraphs
 11 (B)(iv) and (D);

12 (4) by redesignating paragraph (10) as sub-
 13 paragraph (D) of paragraph (9);

14 (5) by redesignating paragraph (9) as para-
 15 graph (10); and

16 (6) by inserting after paragraph (8) the fol-
 17 lowing:

18 “(9)(A) The base allocation of nonimmigrant visas
 19 under section 101(a)(15)(H)(i)(b) for each fiscal year
 20 shall be equal to—

21 “(i) the sum of—

22 “(I) the base allocation for the most re-
 23 cently completed fiscal year; and

24 “(II) the allocation adjustment for the
 25 most recently completed fiscal year;

1 “(ii) if the number calculated under clause (i)
2 is less than 115,000, 115,000; or

3 “(iii) if the number calculated under clause (i)
4 is more than 300,000, 300,000.

5 “(B)(i) If the number of cap-subject nonimmigrant
6 visa petitions approved under section 101(a)(15)(H)(i)(b)
7 during the first 45 days petitions may be filed for a fiscal
8 year is equal to the base allocation for such fiscal year,
9 an additional 20,000 such visas shall be made available
10 beginning on the 46th day on which petitions may be filed
11 for such fiscal year.

12 “(ii) If the base allocation of cap-subject non-
13 immigrant visa petitions approved under section
14 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
15 15-day period ending on the 60th day on which petitions
16 may be filed for such fiscal year, an additional 15,000
17 such visas shall be made available beginning on the 61st
18 day on which petitions may be filed for such fiscal year.

19 “(iii) If the base allocation of cap-subject non-
20 immigrant visa petitions approved under section
21 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
22 30-day period ending on the 90th day on which petitions
23 may be filed for such fiscal year, an additional 10,000
24 such visas shall be made available beginning on the 91st
25 day on which petitions may be filed for such fiscal year.

1 “(iv) If the base allocation of cap-subject non-
2 immigrant visa petitions approved under section
3 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
4 185-day period ending on the 275th day on which peti-
5 tions may be filed for such fiscal year, an additional 5,000
6 such visas shall be made available beginning on the date
7 on which such allocation is reached.

8 “(v) If the number of cap-subject nonimmigrant visa
9 petitions approved under section 101(a)(15)(H)(i)(b) for
10 a fiscal year is at least 5,000 fewer than the base alloca-
11 tion, but is not more than 9,999 fewer than the base allo-
12 cation, the allocation adjustment for the following fiscal
13 year shall be $-5,000$.

14 “(vi) If the number of cap-subject nonimmigrant visa
15 petitions approved under section 101(a)(15)(H)(i)(b) for
16 a fiscal year is at least 10,000 fewer than the base alloca-
17 tion, but not more than 14,999 fewer than the base alloca-
18 tion, the allocation adjustment for the following fiscal year
19 shall be $-10,000$.

20 “(vii) If the number of cap-subject nonimmigrant visa
21 petitions approved under section 101(a)(15)(H)(i)(b) for
22 a fiscal year is at least 15,000 fewer than the base alloca-
23 tion, but not more than 19,999 fewer than the base alloca-
24 tion, the allocation adjustment for the following fiscal year
25 shall be $-15,000$.

1 “(viii) If the number of cap-subject nonimmigrant
 2 visa petitions approved under section 101(a)(15)(H)(i)(b)
 3 for a fiscal year is at least 20,000 fewer than the base
 4 allocation, the allocation adjustment for the following fis-
 5 cal year shall be $-20,000$.”.

6 (b) REPORTING REQUIREMENT.—The Secretary of
 7 Homeland Security shall—

8 (1) timely upload to a public website data that
 9 summarizes the adjudication of nonimmigrant peti-
 10 tions under section 101(a)(15)(H)(b) of the Immi-
 11 gration and Nationality Act (8 U.S.C.
 12 1101(a)(15)(H)(b)) during each fiscal year; and

13 (2) allow the timely adjustment of visa alloca-
 14 tions under section 214(g)(9)(B) of such Act, as
 15 added by subsection (a).

16 **SEC. 102. EMPLOYMENT AUTHORIZATION FOR DEPEND-**
 17 **ENTS OF H-1B NONIMMIGRANTS.**

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

20 (1) by striking “Attorney General” each place
 21 such term appears and inserting “Secretary of
 22 Homeland Security”; and

23 (2) in paragraph (2), by amending subpara-
 24 graph (E) to read as follows:

1 “(E) The Secretary of Homeland Security
2 shall—

3 “(i) authorize an alien spouse admitted
4 under subparagraph (H)(i)(b) or (L) of section
5 101(a)(15) who is accompanying or following to
6 join the principal alien to engage in employment
7 in the United States; and

8 “(ii) provide the spouse with an ‘employ-
9 ment authorized’ endorsement or other appro-
10 priate work permit.”.

11 **SEC. 103. ELIMINATING IMPEDIMENTS TO WORKER MOBIL-**
12 **ITY.**

13 (a) DEFERENCE TO PRIOR APPROVALS.—Section
14 214(c) of the Immigration and Nationality Act (8 U.S.C.
15 1184(c)) is amended by adding at the end the following:

16 “(9) The Secretary of Homeland Security may not
17 deny a petition to extend the status of a nonimmigrant
18 admitted under subparagraph (H)(i)(b) or (L) of section
19 101(a)(15) in which the petition involves the same alien
20 and petitioner unless the Secretary determines that—

21 “(A) there was a material error with regard to the
22 previous petition approval;

23 “(B) a substantial change in circumstances has taken
24 place that renders the nonimmigrant ineligible for such
25 status under this Act; or

1 “(C) new material information has been discovered
2 that adversely impacts the eligibility of the employer or
3 the nonimmigrant.”.

4 (b) EFFECT OF EMPLOYMENT TERMINATION.—Sec-
5 tion 214(n) of the Immigration and Nationality Act (8
6 U.S.C. 1184(n)) is amended by adding at the end the fol-
7 lowing:

8 “(3) A nonimmigrant admitted under section
9 101(a)(15)(H)(i)(b) whose employment relationship termi-
10 nates before the expiration of the nonimmigrant’s period
11 of authorized admission shall be deemed to have retained
12 such legal status throughout the entire 60-day period be-
13 ginning on the date such employment is terminated if an
14 employer files a petition to extend, change, or adjust the
15 status of the nonimmigrant at any point during such pe-
16 riod.”.

17 (c) VISA REVALIDATION.—Section 222(c) of the Im-
18 migration and Nationality Act (8 U.S.C. 1202(c)) is
19 amended by inserting “The Secretary of State shall au-
20 thorize an alien admitted under subparagraph (E), (H),
21 (L), (O), or (P) of section 101(a)(15) to renew his or her
22 nonimmigrant visa in the United States if the alien has
23 remained eligible for such status.”.

1 **TITLE II—STUDENT VISAS**

2 **SEC. 201. AUTHORIZATION OF DUAL INTENT.**

3 (a) DEFINITION.—Section 101(a)(15)(F)(i) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1101(a)(15)(F)(i)) is amended by striking “which he has
6 no intention of abandoning”.

7 (b) PRESUMPTION OF STATUS; INTENTION TO ABAN-
8 DON FOREIGN RESIDENCE.—Section 214 of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1184) is amended—
10 (1) in subsection (b), by striking “(L) or (V)”
11 and inserting “(F), (L), or (V)”; and

12 (2) in subsection (h), by striking “(H)(i)(b) or
13 (c)” and inserting “(F), (H)(i)(b), (H)(i)(c)”.

14 **TITLE III—EMPLOYMENT-BASED** 15 **IMMIGRANT VISAS**

16 **SEC. 301. ELIMINATION OF PER-COUNTRY NUMERICAL LIM-** 17 **ITATIONS.**

18 (a) IN GENERAL.—Section 202(a)(2) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is
20 amended to read as follows:

21 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
22 SORED IMMIGRANTS.—Subject to paragraphs (3)
23 and (4), the total number of immigrant visas made
24 available to natives of any single foreign state or de-
25 pendent area under section 203(a) in any fiscal year

1 may not exceed 15 percent (in the case of a single
 2 foreign state) or 2 percent (in the case of a depend-
 3 ent area) of the total number of such visas made
 4 available under such section in that fiscal year.”.

5 (b) CONFORMING AMENDMENTS.—Section 202 of the
 6 Immigration and Nationality Act (8 U.S.C. 1152) is
 7 amended—

8 (1) in subsection (a)—

9 (A) in paragraph (3), by striking “both
 10 subsections (a) and (b) of section 203” and in-
 11 serting “section 203(a)”; and

12 (B) by striking paragraph (5); and

13 (2) by amending subsection (e) to read as fol-
 14 lows:

15 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

16 If the total number of immigrant visas made available
 17 under section 203(a) to natives of any single foreign state
 18 or dependent area will exceed the numerical limitation
 19 specified in subsection (a)(2) in any fiscal year, the num-
 20 ber of visas for natives of that state or area shall be allo-
 21 cated under section 203(a) so that, except as provided in
 22 subsection (a)(4), the proportion of the visa numbers
 23 made available under each of paragraphs (1) through (4)
 24 of section 203(a) is equal to the ratio of the total number
 25 of visas made available under the respective paragraph to

1 the total number of visas made available under section
2 203(a).”.

3 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
4 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
5 note) is amended—

6 (1) in subsection (a), by striking “subsection
7 (e))” and inserting “subsection (d))”; and

8 (2) by striking subsection (d) and redesignating
9 subsection (e) as subsection (d).

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on October 1, 2013, and shall
12 apply to fiscal years beginning with fiscal year 2014.

13 **SEC. 302. RECAPTURING LOST EMPLOYMENT-BASED IMMI-**
14 **GRANT VISAS.**

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

17 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
18 IMMIGRANTS.—

19 “(1) IN GENERAL.—The worldwide level of em-
20 ployment-based immigrants under this subsection for
21 a fiscal year is equal to the sum of—

22 “(A) 140,000; and

23 “(B) the number computed under para-
24 graph (2).

1 “(2) UNUSED VISAS.—The number computed
 2 under this paragraph is the difference, if any, be-
 3 tween—

4 “(A) the sum of the worldwide levels estab-
 5 lished under paragraph (1) for fiscal years
 6 1992 through the current fiscal year; and

7 “(B) the number of visas actually issued
 8 under section 203(b), subject to this subsection,
 9 during such fiscal years.”.

10 **SEC. 303. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
 11 **LIMITATION.**

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

15 “(F) Aliens who are the spouse or a child
 16 of an alien admitted as an employment-based
 17 immigrant under section 203(b).

18 “(G) Aliens who have earned a master’s or
 19 higher degree in a field listed on the STEM
 20 Designated Degree Program List published by
 21 the Department of Homeland Security on the
 22 Student and Exchange Visitor Program website
 23 from an institution of higher education (as de-
 24 fined in section 101(a) of the Higher Education
 25 Act of 1965 (20 U.S.C. 1001(a))).

1 “(H) Aliens for whom a petition for an
 2 employment-based immigrant visa under para-
 3 graph (A) or (B) of section 203(b)(1) has been
 4 approved.”.

5 (b) CONFORMING AMENDMENTS.—Section 203(b) of
 6 the Immigration and Nationality Act (8 U.S.C. 1153(b))
 7 is amended—

8 (1) in paragraph (1), by striking “28.6 per-
 9 cent” and inserting “12 percent”;

10 (2) in paragraph (2)(A), by striking “28.6 per-
 11 cent” and inserting “36.9 percent”; and

12 (3) in paragraph (3)—

13 (A) in subparagraph (A), by striking “28.6
 14 percent” and inserting “36.9 percent”;

15 (B) by striking subparagraph (B); and

16 (C) by redesignating subparagraph (C) as
 17 subparagraph (B).

18 **TITLE IV—STEM EDUCATION** 19 **FUNDING**

20 **SEC. 401. FUNDING FOR STEM EDUCATION AND TRAINING.**

21 (a) NONIMMIGRANT FEE ADJUSTMENT AND ALLOCA-
 22 TION.—Section 214(c)(9) of the Immigration and Nation-
 23 ality Act (8 U.S.C. 1184(c)(9)) is amended—

24 (1) by amending subparagraph (B) to read as
 25 follows:

1 “(B) The amount of the fee imposed under this para-
2 graph shall be—

3 “(i) \$1,250 for each such petition filed by an
4 employer with not more than 25 full-time equivalent
5 employees who are employed in the United States
6 (determined by including any affiliate or subsidiary
7 of such employer); and

8 “(ii) \$2,500 for each such petition filed by an
9 employer with more than 25 such employees.”; and

10 (2) by amending subparagraph (C) to read as
11 follows:

12 “(C) Fees collected under this paragraph shall be dis-
13 tributed as follows:

14 “(i) Of the amounts collected pursuant to sub-
15 paragraph (B)(i)—

16 “(I) \$750 shall be deposited in the Treas-
17 ury in accordance with section 286(s); and

18 “(II) \$500 shall be deposited in the Treas-
19 ury in accordance with section 286(w).

20 “(ii) Of the amounts collected pursuant to sub-
21 paragraph (B)(ii)—

22 “(I) \$1,500 shall be deposited in the
23 Treasury in accordance with section 286(s); and

24 “(II) \$1,000 shall be deposited in the
25 Treasury in accordance with section 286(w).”.

1 (b) CONFORMING AMENDMENT.—Section 286(s)(1)
 2 of the Immigration and Nationality Act (8 U.S.C.
 3 1356(s)(1)) is amended by striking the last sentence and
 4 inserting “There shall be deposited as offsetting receipts
 5 into the account a portion of the fees collected under para-
 6 graphs (9) and (11) of section 214(c).”.

7 (c) IMMIGRANT FEE.—Section 203(b) of the Immi-
 8 gration and Nationality Act (8 U.S.C. 1153(b)) is amend-
 9 ed by adding at the end the following:

10 “(7) FUNDING FOR STEM EDUCATION AND
 11 TRAINING.—The Secretary of Homeland Security
 12 shall impose a fee of \$1,000 on each I-140 immi-
 13 grant visa petition filed under this subsection.
 14 Amounts collected under this paragraph shall be de-
 15 posited into the Treasury in accordance with section
 16 286(w).”.

17 **SEC. 402. PROMOTING AMERICAN INGENUITY ACCOUNT.**

18 Section 286 of the Immigration and Nationality Act
 19 (8 U.S.C. 1356) is amended by adding at the end the fol-
 20 lowing:

21 “(w) PROMOTING AMERICAN INGENUITY AC-
 22 COUNT.—

23 “(1) IN GENERAL.—There is established in the
 24 general fund of the Treasury a separate account,
 25 which shall be known as the ‘Promoting American

1 Ingenuity Account’. There shall be deposited as off-
 2 setting receipts into the account fees collected under
 3 section 203(b)(7) and a portion of the fees collected
 4 under section 214(c)(9). Amounts deposited into the
 5 account shall remain available to the Secretary of
 6 Education until expended.

7 “(2) PURPOSES.—The purposes of the Pro-
 8 moting American Ingenuity Account are to enhance
 9 the economic competitiveness of the United States
 10 by—

11 “(A) strengthening STEM education, in-
 12 cluding in computer science, at all levels;

13 “(B) ensuring that schools have access to
 14 well-trained and effective STEM teachers;

15 “(C) supporting efforts to strengthen the
 16 elementary and secondary curriculum, including
 17 efforts to make courses in computer science
 18 more broadly available; and

19 “(D) helping colleges and universities
 20 produce more graduates in fields needed by
 21 American employers.

22 “(3) ALLOCATION OF FUNDS.—

23 “(A) NATIONAL ACTIVITIES.—The Sec-
 24 retary of Education may reserve up to 5 per-
 25 cent of the amounts deposited into the Pro-

1 moting American Ingenuity Account for na-
 2 tional research, development, demonstration,
 3 evaluation, and dissemination activities carried
 4 out directly or through grants, contracts, or co-
 5 operative agreements, including—

6 “(i) activities undertaken jointly with
 7 other Federal agencies, such as STEM
 8 mission agencies; and

9 “(ii) grants to non-profit organiza-
 10 tions for nationally significant activities
 11 consistent with the purposes of the Immi-
 12 gration Innovation Act of 2013.

13 “(B) ALLOCATIONS TO STATES.—

14 “(i) IN GENERAL.—Subject to clause
 15 (ii), the Secretary of Education shall pro-
 16 portionately allocate the remaining
 17 amounts deposited into the account to the
 18 States each fiscal year in an amount that
 19 bears the same relationship to the remain-
 20 der as the amount the State received under
 21 subpart 2 of part A of title I of the Ele-
 22 mentary and Secondary Education Act of
 23 1965 (20 U.S.C. 6331 et seq.) for the pre-
 24 ceding fiscal year bears to the amount all

1 States received under that subpart for the
2 preceding fiscal year.

3 “(ii) MINIMUM ALLOCATIONS.—No
4 State shall receive less than an amount
5 equal to 0.5 percent of the total amount
6 made available to all States from the Pro-
7 moting American Ingenuity Account. If a
8 State does not request an allocation from
9 the Account for a fiscal year, the Secretary
10 shall reallocate the State’s allocation to the
11 remaining States in accordance with this
12 section.”.

13 **SEC. 403. STEM EDUCATION GRANT APPLICATION PROC-**
14 **ESS.**

15 (a) APPLICATION.—Each State desiring to receive an
16 allocation from the Promoting American Ingenuity Ac-
17 count established under section 286(w) of the Immigration
18 and Nationality Act (8 U.S.C. 1356(w)) submit an appli-
19 cation to the Secretary of Education that describes how
20 the State plans to improve STEM education to meet the
21 needs of employers in the State, at such time, in such
22 form, and including such information as the Secretary
23 may prescribe.

24 (b) APPROVAL.—The Secretary of Education shall
25 approve any application submitted under subsection (a)

1 that meets the requirements prescribed by the Secretary
 2 if the Secretary determines, after evaluating the rec-
 3 ommendations of peer reviewers, that the State’s plan for
 4 the use of funds would be successful in making progress
 5 toward meeting the purposes set forth in section
 6 286(w)(2) of the Immigration and Nationality Act (8
 7 U.S.C. 1356(w)(2)).

8 **SEC. 404. APPROVED ACTIVITIES.**

9 A State or other entity that receives funding from
 10 the Promoting American Ingenuity Account may use such
 11 funding—

12 (1) to strengthen the State’s academic achieve-
 13 ment standards in science, technology, engineering,
 14 and mathematics (STEM);

15 (2) to implement strategies for the recruitment,
 16 training, placement, and retention of teachers in
 17 STEM fields, including computer science;

18 (3) to carry out initiatives designed to assist
 19 students in succeeding and graduating from postsec-
 20 ondary STEM programs;

21 (4) to improve the availability and access to
 22 STEM-related worker training programs, including
 23 community college courses and programs; and

24 (5) for other activities approved by the Sec-
 25 retary of Education to improve STEM education.

1 **SEC. 405. NATIONAL EVALUATION.**

2 (a) IN GENERAL.—Using amounts reserved under
3 section 286(w)(3)(A) of the Immigration and Nationality
4 Act, as added by section 402, the Secretary of Education
5 shall conduct, directly or through a grant or contract, an
6 annual evaluation of the implementation and impact of the
7 activities funded by the Promoting American Ingenuity
8 Account.

9 (b) ANNUAL REPORT.—The Secretary shall submit
10 a report describing the results of each evaluation con-
11 ducted under subsection (a) to—

12 (1) the President;

13 (2) the Committee on the Judiciary of the Sen-
14 ate;

15 (3) the Committee on the Judiciary of the
16 House of Representatives;

17 (4) the Committee on Health, Education,
18 Labor, and Pensions of the Senate; and

19 (5) the Committee on Education and the Work-
20 force of the House of Representatives.

21 (c) DISSEMINATION.—The Secretary shall make the
22 findings of the evaluation widely available to educators,
23 the business community, and the public.

24 **SEC. 406. RULE OF CONSTRUCTION.**

25 Nothing in this title may be construed to permit the
26 Secretary of Education or any other Federal official to ap-

- 1 prove the content or academic achievement standards of
- 2 a State.

