

114TH CONGRESS
1ST SESSION

H. R. 4097

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2015

Mr. CAPUANO 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 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—

5 (1) the “Best Return on America’s Investment
6 Now Act”; or

7 (2) the “BRAIN Act”.

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

3 (a) PREFERENCE ALLOCATION FOR EMPLOYMENT-
4 BASED IMMIGRANTS.—Section 203(b) of the Immigration
5 and Nationality Act (8 U.S.C. 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) ALIENS HOLDING DOCTORATE DEGREES
11 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER
12 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-
13 ING, OR MATHEMATICS.—

14 “(A) IN GENERAL.—Visas shall be made
15 available, in a number not to exceed 10 percent
16 of such worldwide level, to qualified immigrants
17 who—

18 “(i) hold a doctorate degree in a field
19 of science, technology, engineering, or
20 mathematics from a United States doctoral
21 institution of higher education; and

22 “(ii) have taken all doctoral courses in
23 a field of science, technology, engineering,
24 or mathematics, including all courses taken
25 by correspondence (including courses of-
26 fered by telecommunications) or by dis-

1 tance education, while physically present in
2 the United States.

3 “(B) DEFINITIONS.—For purposes of this
4 paragraph:

5 “(i) The term ‘distance education’ has
6 the meaning given such term in section
7 103 of the Higher Education Act of 1965
8 (20 U.S.C. 1003).

9 “(ii) 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 “(iii) The term ‘United States doc-
19 toral institution of higher education’ means
20 an institution that—

21 “(I) is described in section
22 101(a) of the Higher Education Act
23 of 1965 (20 U.S.C. 1001(a)) or is a
24 proprietary institution of higher edu-

1 cation (as defined in section 102(b) of
2 such Act (20 U.S.C. 1002(b))); and

3 “(II) was classified by the Car-
4 negie Foundation for the Advance-
5 ment of Teaching on January 1,
6 2012, as a doctorate-granting univer-
7 sity with a very high or high level of
8 research activity or classified by the
9 National Science Foundation after the
10 date of enactment of this paragraph,
11 pursuant to an application by the in-
12 stitution, as having equivalent re-
13 search activity to those institutions
14 that had been classified by the Car-
15 negie Foundation as being doctorate-
16 granting universities with a very high
17 or high level of research activity.”.

18 (b) PROCEDURE FOR GRANTING IMMIGRANT STA-
19 TUS.—Section 204(a)(1)(E) of such Act (8 U.S.C.
20 1154(a)(1)(E)) is amended—

- 21 (1) by striking “(E)” and inserting “(E)(i)”;
- 22 (2) by striking “203(b)(1)(A),” and inserting
23 “203(b)(1)(A) or 203(b)(6),”;
- 24 (3) by striking “Attorney General” and insert-
25 ing “Secretary of Homeland Security”; and

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

2 “(ii) The following processing standards
3 shall apply with respect to petitions under
4 clause (i) relating to alien beneficiaries quali-
5 fying under section 203(b)(6):

6 “(I) The Secretary of Homeland Secu-
7 rity shall adjudicate such petitions not
8 later than 60 days after the date on which
9 the petition is filed. In the event that addi-
10 tional information or documentation is re-
11 quested by the Secretary during such 60-
12 day period, the Secretary shall adjudicate
13 the petition not later than 30 days after
14 the date on which such information or doc-
15 umentation is received.

16 “(II) The petitioner shall be notified
17 in writing within 30 days of the date of fil-
18 ing if the petition does not meet the stand-
19 ards for approval. If the petition does not
20 meet such standards, the notice shall in-
21 clude the reasons therefore and the Sec-
22 retary shall provide an opportunity for the
23 prompt resubmission of a modified peti-
24 tion.”.

1 (c) SKILLED WORKERS, PROFESSIONALS, AND
2 OTHER WORKERS.—Section 203(b)(3)(A) of such Act (8
3 U.S.C. 1153(b)(3)(A)) is amended by striking “28.6” and
4 inserting “25.74”.

5 (d) GAO STUDY.—Not later than June 30, 2018, the
6 Comptroller General of the United States shall provide to
7 the Congress the results of a study on the use by the Na-
8 tional Science Foundation of the classification authority
9 provided under section 203(b)(6)(B)(iii)(II) of the Immi-
10 gration and Nationality Act (8 U.S.C.
11 1153(b)(6)(B)(iii)(II)), as added by this section.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on October 1, 2016, and shall
14 apply with respect to fiscal years beginning on or after
15 such date. Nothing in the preceding sentence shall be con-
16 strued to prohibit the Secretary of Homeland Security
17 from accepting before such date petitions under section
18 204(a)(1)(E) of the Immigration and Nationality Act (8
19 U.S.C. 1154(a)(1)(E)) relating to alien beneficiaries quali-
20 fying under section 203(b)(6) of such Act (8 U.S.C.
21 1153(b)(6)) (as added by this section).

1 **SEC. 3. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**
 2 **STATE.**

3 (a) IN GENERAL.—Section 202(a)(2) of the Immi-
 4 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is
 5 amended—

6 (1) by striking “subsections (a) and (b)” and
 7 inserting “subsection (a), and paragraphs (3), (4),
 8 and (5) of subsection (b),”;

9 (2) by striking “such subsections” and inserting
 10 “such provisions”.

11 (b) RULES FOR EMPLOYMENT-BASED IMMI-
 12 GRANTS.—Section 202(a)(5) of such Act (8 U.S.C.
 13 1152(a)(5)) is amended—

14 (1) in subparagraph (A), by striking “(1), (2),
 15 (3), (4), or (5)” and inserting “(3), (4), or (5)”; and

16 (2) in subparagraph (B)—

17 (A) by inserting “paragraphs (3), (4), and
 18 (5) of” before “section 203(b) exceeds”; and

19 (B) by striking “section 203(b) consistent”
 20 and inserting “such paragraphs consistent”.

21 (c) SPECIAL RULES FOR COUNTRIES AT CEILING.—
 22 Section 202(e) of such Act (8 U.S.C. 1152(e)) is amend-
 23 ed—

24 (1) by striking “subsections (a) and (b)” each
 25 place such term appears and inserting “subsection

1 (a), and paragraphs (3), (4), and (5) of subsection
 2 (b),”; and

3 (2) by striking “(1) through (5)” and inserting
 4 “(3), (4), and (5)”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on October 1, 2016, and shall
 7 apply with respect to fiscal years beginning on or after
 8 such date.

9 **SEC. 4. PERMANENT PRIORITY DATES.**

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

13 “(i) PERMANENT PRIORITY DATES.—

14 “(1) IN GENERAL.—Subject to subsection
 15 (h)(3) and paragraph (2), the priority date for any
 16 employment-based petition shall be the date of filing
 17 of the petition with the Secretary of Homeland Secu-
 18 rity (or the Secretary of State, if applicable), unless
 19 the filing of the petition was preceded by the filing
 20 of a labor certification with the Secretary of Labor,
 21 in which case that date shall constitute the priority
 22 date.

23 “(2) SUBSEQUENT EMPLOYMENT-BASED PETI-
 24 TIONS.—Subject to subsection (h)(3), an alien who
 25 is the beneficiary of any employment-based petition

1 that was approvable when filed (including self-peti-
2 tioners) shall retain the priority date assigned with
3 respect to that petition in the consideration of any
4 subsequently filed employment-based petition (in-
5 cluding self-petitions).”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall take effect on October 1, 2016, and
8 shall apply to aliens who are a beneficiary of a classifica-
9 tion petition pending on or after such date.

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