

115TH CONGRESS
1ST SESSION

S. 727

To increase the worldwide level of employment-based immigrants and to reauthorize the EB–5 regional center program.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2017

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase the worldwide level of employment-based immigrants and to reauthorize the EB–5 regional center program.

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 “Invest in Our Commu-
5 nities Act”.

1 **SEC. 2. EXEMPTION OF DEPENDENTS FROM BEING COUNT-**
 2 **ED TOWARDS WORLDWIDE EMPLOYMENT-**
 3 **BASED IMMIGRATION LEVEL.**

4 Section 201(b)(1) of the Immigration and Nationality
 5 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
 6 end the following:

7 “(F) Aliens who are spouses or children of an
 8 alien admitted as an employment-based immigrant
 9 under section 203(b)(5).”.

10 **SEC. 3. WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMI-**
 11 **GRANTS.**

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

14 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
 15 IMMIGRANTS.—

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

19 “(A) 150,000; and

20 “(B) the number computed under para-
 21 graph (2).

22 “(2) ADJUSTMENT.—The number computed
 23 under this paragraph for fiscal year 2017 and each
 24 subsequent fiscal year is the difference (if any) be-
 25 tween—

1 “(A) the maximum number of visas au-
 2 thorized to be issued under section 203(a) dur-
 3 ing the previous fiscal year; and

4 “(B) the number of visas issued under that
 5 section during that year.”.

6 **SEC. 4. EXCLUSION OF EB-5 VISAS FROM COUNTRY CAPS.**

7 Section 202(a)(5) of the Immigration and Nationality
 8 Act (8 U.S.C. 1152(a)(5)) is amended by adding at the
 9 end the following:

10 “(C) EXCLUSION OF EB-5 VISAS FROM
 11 PER COUNTRY LIMITATION.—Visas issued under
 12 section 203(b)(5) shall not be counted toward
 13 the numerical limitation under paragraph (2).”.

14 **SEC. 5. PERMANENT REAUTHORIZATION OF EMPLOYMENT**
 15 **CREATION REGIONAL CENTERS.**

16 Section 203(b)(5) of the Immigration and Nationality
 17 Act (8 U.S.C. 1153(b)(5)) is amended—

18 (1) by redesignating subparagraph (D) as sub-
 19 paragraph (H); and

20 (2) by inserting after subparagraph (C) the fol-
 21 lowing:

22 “(D) EMPLOYMENT CREATION REGIONAL
 23 CENTERS.—

24 “(i) IN GENERAL.—Visas under this
 25 paragraph shall be made available to quali-

1 fied immigrants who participate in a pro-
2 gram involving a regional center in the
3 United States, which has been designated
4 by the Secretary of Homeland Security, in
5 consultation with the Secretary of Com-
6 merce, on the basis of a general proposal
7 filed with the Secretary of Homeland Secu-
8 rity, for the promotion of economic growth,
9 including—

10 “(I) increased exports;

11 “(II) improved regional produc-
12 tivity;

13 “(III) job creation; and

14 “(IV) increased domestic capital
15 investment.

16 “(ii) JURISDICTION.—A regional cen-
17 ter shall have jurisdiction over a specific
18 geographic area, which shall be—

19 “(I) described in the proposal
20 filed under clause (i); and

21 “(II) consistent with the purpose
22 of concentrating pooled investment in
23 defined economic zones.

24 “(iii) GENERAL PREDICTIONS.—The
25 establishment of a regional center under

1 this subparagraph may be based on gen-
2 eral predictions contained in the proposal
3 concerning—

4 “(I) the kinds of new commercial
5 enterprises that will receive capital
6 from aliens;

7 “(II) the jobs that will be created
8 directly or indirectly as a result of
9 such investments; and

10 “(III) other positive economic ef-
11 fects such investments will have.

12 “(iv) METHODOLOGIES FOR DETER-
13 MINING JOB CREATION.—Notwithstanding
14 requirements applicable to investors not in-
15 volved in a regional center, in determining
16 compliance with this subparagraph, the
17 Secretary of Homeland Security shall rec-
18 ognize reasonable methodologies for deter-
19 mining the number of jobs created by a
20 designated regional center, including jobs
21 that are estimated to have been created in-
22 directly through revenues generated
23 from—

24 “(I) increased exports;

1 “(II) improved regional produc-
2 tivity; or

3 “(III) increased domestic capital
4 investment resulting from the regional
5 center.

6 “(v) SPECIAL PROCEDURES.—

7 “(I) PREAPPROVAL OF NEW COM-
8 Mercial ENTERPRISES.—The Sec-
9 retary of Homeland Security shall es-
10 tablish a preapproval procedure for
11 new commercial enterprises that—

12 “(aa) allows a regional cen-
13 ter or potential regional center to
14 apply to the Secretary for
15 preapproval of a new commercial
16 enterprise before any alien files a
17 petition for classification under
18 this paragraph by reason of in-
19 vestment in the new commercial
20 enterprise;

21 “(bb) allows the applicant to
22 address and cure any deficiencies
23 identified by the Secretary in the
24 application before a final deter-
25 mination on the application;

1 “(cc) requires that the Sec-
2 retary make final decisions on all
3 issues under this paragraph other
4 than those issues unique to each
5 individual investor in the new
6 commercial enterprise; and

7 “(dd) requires that the Sec-
8 retary eliminate the need for the
9 repeated submission of docu-
10 mentation that is common to
11 multiple petitions for classifica-
12 tion under this paragraph
13 through a regional center.

14 “(II) DEFERENCE TO PRIOR
15 RULINGS.—Absent material change,
16 fraud, or legal deficiency, the Sec-
17 retary of Homeland Security shall
18 give deference to, and not revisit, fa-
19 vorable determinations made per-
20 taining to a commercial enterprise
21 during the adjudication of—

22 “(aa) petitions filed by im-
23 migrants investing in the com-
24 mercial enterprise under this sub-
25 paragraph; and

1 “(bb) petitions filed by such
2 immigrants under section 216A
3 for the removal of conditional
4 basis.

5 “(vi) PROCESSING TIMES.—

6 “(I) IN GENERAL.—The Sec-
7 retary of Homeland Security shall
8 make determinations on a proposal
9 filed under clause (i) or an application
10 filed under clause (v) not later than
11 180 days after the date on which the
12 proposal or application is filed.

13 “(II) ADDITIONAL INFORMA-
14 TION.—If the Secretary determines
15 that an initial filing under this section
16 does not meet the standards for ap-
17 proval, the Secretary shall—

18 “(aa) not later than 30 days
19 after the date of such filing, no-
20 tify the applicant of the reasons
21 such proposal or application was
22 not approved and the additional
23 information or documentation
24 that is required for approval;

1 “(bb) permit the applicant
2 to promptly resubmit a modified
3 filing; and

4 “(cc) adjudicate the modi-
5 fied proposal or application not
6 later than 30 days after it is re-
7 ceived.”.

8 **SEC. 6. SECURITY REFORMS.**

9 Section 203(b)(5) of the Immigration and Nationality
10 Act (8 U.S.C. 1153(b)(5)) is amended by inserting after
11 subparagraph (D), as added by section 5, the following:

12 “(E) APPELLATE RIGHTS.—

13 “(i) IN GENERAL.—Any person sub-
14 ject to the suspension or termination of
15 rights under this paragraph, if such deci-
16 sion was under the discretion of the Sec-
17 retary of Homeland Security, may appeal
18 such decision and be entitled to a hearing
19 before an administrative law judge.

20 “(ii) APPELLANT’S RIGHTS.—An ap-
21 pellant under this subparagraph has the
22 right—

23 “(I) to access the facts and docu-
24 mentation underlying the allegations
25 that are the basis of the suspension or

1 termination referred to in clause (i);
 2 and

3 “(II) to cross-examine witnesses
 4 during proceedings.

5 “(iii) BURDEN OF PROOF.—In a hear-
 6 ing under this subparagraph, the Secretary
 7 has the burden to prove, by a preponder-
 8 ance of the evidence, that the suspension
 9 or termination was valid under applicable
 10 law.

11 “(iv) FINALITY.—A determination of
 12 the administrative law judge in an appeal
 13 under this subparagraph shall be final and
 14 may not be subject to judicial review.”.

15 **SEC. 7. REGIONAL CENTERS.**

16 (a) IN GENERAL.—Section 203(b)(5) of the Immi-
 17 gration and Nationality Act (8 U.S.C. 1153(b)(5)), as
 18 amended by sections 5 and 6, is further amended by in-
 19 serting after subparagraph (E) the following:

20 “(F) BONA FIDES OF PERSONS ASSOCI-
 21 ATED WITH REGIONAL CENTERS OR REGIONAL
 22 CENTER ASSOCIATED COMMERCIAL ENTER-
 23 PRISES.—

24 “(i) IN GENERAL.—No person shall be
 25 permitted by any regional center or re-

1 gional center associated commercial enter-
2 prise to be directly or indirectly involved
3 with the regional center or commercial en-
4 terprise as its principal, representative, ad-
5 ministrator, owner, officer, board member,
6 manager, executive, general partner, fidu-
7 ciary, marketer, promoter, or other similar
8 position of substantive authority for the
9 operations, management, or promotion of
10 the regional center or commercial enter-
11 prise if—

12 “(I) the person has been found
13 liable within the previous five years
14 for any criminal or civil violation of
15 any law relating to fraud or deceit, or
16 at any time if such violation involved
17 a civil liability in excess of
18 \$1,000,000, a criminal conviction with
19 a term of imprisonment of more than
20 one year or a criminal or civil viola-
21 tion of any law or agency regulation
22 in connection with the offer, purchase,
23 or sale of a security;

24 “(II) the person is subject to a
25 final order of a State securities com-

mission (or an agency or officer of a State who performs similar functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State who performs similar functions), an appropriate Federal banking agency, the Commodity Futures Trading Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that—

“(aa) prohibits fraudulent, manipulative, or deceptive conduct; or

“(bb) bars the person from—

“(AA) association with an entity regulated by such commission, authority, agency, or officer;

“(BB) engaging in the business of securities, insurance, or banking; or

1 “(CC) engaging in sav-
 2 ings association or credit
 3 union activities;

4 “(III) the person has been con-
 5 victed of—

6 “(aa) any activity relating to
 7 espionage, sabotage, or theft of
 8 intellectual property;

9 “(bb) any activity related to
 10 money laundering (as described
 11 in section 1956 or 1957 of title
 12 18, United States Code);

13 “(cc) any terrorist activity
 14 (as defined in clauses (iii) and
 15 (iv) of section 212(a)(3)(B)); or

16 “(dd) any activity related to
 17 human trafficking or a human
 18 rights offense; or

19 “(IV) the person—

20 “(aa) is, or during the pre-
 21 ceding 5 years has been, included
 22 on the Department of Justice’s
 23 List of Currently Disciplined
 24 Practitioners; or

1 “(bb) during the preceding 5
2 years, has received a reprimand
3 or otherwise been publicly dis-
4 ciplined by a bar association of
5 which the person is or was a
6 member.

7 “(ii) STATUS OF REGIONAL CENTER
8 PRINCIPALS.—

9 “(I) LAWFUL STATUS RE-
10 QUIRED.—No person may be directly
11 or indirectly involved with a regional
12 center as its principal, administrator,
13 owner, officer, board member, man-
14 ager, executive, general partner, fidu-
15 ciary, or other similar position of sig-
16 nificant authority for the operations
17 or management of the regional center
18 unless the person is a national of the
19 United States or an individual who
20 has been lawfully admitted for perma-
21 nent residence.

22 “(II) FOREIGN GOVERNMENTS.—
23 No foreign government entity may be
24 directly or indirectly involved with the

1 ownership or administration of a re-
2 gional center.

3 “(iii) INFORMATION REQUIRED.—The
4 Secretary of Homeland Security shall re-
5 quire such attestations and information,
6 including the submission of fingerprints or
7 other biometrics to the Federal Bureau of
8 Investigation, and shall perform such
9 criminal record checks and other back-
10 ground checks with respect to a regional
11 center or regional center associated com-
12 mercial enterprise, and persons involved in
13 a regional center or regional center associ-
14 ated commercial enterprise, to determine
15 whether such regional center or regional
16 center associated commercial enterprise is
17 in compliance with clauses (i) and (ii).

18 “(iv) TERMINATION.—The Secretary
19 shall terminate any regional center or re-
20 gional center associated commercial enter-
21 prise from the regional center program if
22 the Secretary determines that—

23 “(I) the regional center or re-
24 gional center associated commercial
25 enterprise has violated clause (i);

1 “(II) the regional center has vio-
 2 lated clause (ii); or

3 “(III) the regional center, a re-
 4 gional center associated commercial
 5 enterprise, or any person involved
 6 with the regional center or regional
 7 center associated commercial enter-
 8 prise—

9 “(aa) fails to provide an at-
 10 testation or information re-
 11 quested by the Secretary;

12 “(bb) provides any false at-
 13 testation or information under
 14 clause (iii);

15 “(cc) has engaged in fraud,
 16 misrepresentation, or criminal
 17 misuse; or

18 “(dd) poses a threat to pub-
 19 lic safety or national security.

20 “(G) COMPLIANCE WITH SECURITIES
 21 LAWS.—

22 “(i) JURISDICTION.—In view of the
 23 objective of promoting investment in the
 24 United States, in an action filed by the Se-
 25 curities and Exchange Commission, the

1 purchase or sale of securities offered or
2 sold by any regional center or any party
3 associated with a regional center shall be
4 deemed to have occurred within the terri-
5 tory of the United States for purposes of
6 the securities laws, and subject matter ju-
7 risdiction shall also lie within the United
8 States.

9 “(ii) REGIONAL CENTER CERTIFI-
10 CATIONS REQUIRED.—

11 “(I) INITIAL CERTIFICATION.—

12 The Secretary of Homeland Security
13 may not approve an application for re-
14 gional center designation or regional
15 center amendment unless the regional
16 center certifies that the regional cen-
17 ter is in compliance with and has poli-
18 cies and procedures reasonably de-
19 signed to ensure that all parties asso-
20 ciated with the regional center remain
21 in compliance with the securities laws
22 of the United States and of any State
23 in which the regional center operates
24 in connection with the offer, purchase,
25 or sale of securities or the provision of

1 investment advice by the regional cen-
2 ter or parties associated with the re-
3 gional center.

4 “(II) REISSUE.—A regional cen-
5 ter shall annually reissue a certifi-
6 cation described in subclause (I). An-
7 nual certifications under this sub-
8 clause shall certify compliance with
9 clause (iii) by stating that—

10 “(aa) the certifier is in a po-
11 sition to have knowledge of the
12 offers, purchases, and sales of se-
13 curities or the provision of invest-
14 ment advice by parties associated
15 with the regional center; and

16 “(bb) to the best of the cer-
17 tifier’s knowledge, after reason-
18 able investigation—

19 “(AA) all such offers,
20 purchases, and sales of secu-
21 rities or the provision of in-
22 vestment advice complied
23 with securities laws of the
24 United States; and

1 “(BB) records, data,
 2 and information related to
 3 such offers, purchases, and
 4 sales have been maintained.

5 “(III) EFFECT OF NONCOMPLI-
 6 ANCE.—If a regional center, through
 7 its due diligence, discovered during
 8 the previous fiscal year that the re-
 9 gional center or any party associated
 10 with the regional center was not in
 11 compliance with the securities laws of
 12 the United States, the certifier shall—

13 “(aa) describe the activities
 14 that led to noncompliance;

15 “(bb) describe the actions
 16 taken to remedy the noncompli-
 17 ance; and

18 “(cc) certify that the re-
 19 gional center and all parties asso-
 20 ciated with the regional center
 21 are currently in compliance.

22 “(iii) OVERSIGHT REQUIRED.—Each
 23 regional center shall—

24 “(I) monitor and supervise all of-
 25 fers, purchases, and sales of, and ad-

1 vice relating to, securities made by
2 parties associated with the regional
3 center to ensure compliance with the
4 securities laws of the United States;

5 “(II) maintain records, data, and
6 information relating to all such offers,
7 purchases, sales, and advice during
8 the 5-year period beginning on the
9 date of their creation; and

10 “(III) make such records, data,
11 and information available to the Secu-
12 rities and Exchange Commission and
13 to the Secretary upon the receipt of a
14 subpoena from the Securities and Ex-
15 change Commission.

16 “(iv) SUSPENSION OR TERMI-
17 NATION.—The Secretary, in the Sec-
18 retary’s unreviewable discretion, shall sus-
19 pend or terminate the designation of any
20 regional center that does not provide the
21 certification described in clause (ii). The
22 Secretary, in the Secretary’s unreviewable
23 discretion, may suspend or terminate the
24 designation of any regional center or im-
25 pose other sanctions against the regional

1 center if the regional center or any parties
2 associated with the regional center—

3 “(I) are permanently or tempo-
4 rarily enjoined by order, judgment, or
5 decree of any court of competent ju-
6 risdiction in connection with the offer,
7 purchase, or sale of a security or the
8 provision of investment advice;

9 “(II) are subject to any final
10 order of the Securities and Exchange
11 Commission that—

12 “(aa) bars such person from
13 association with an entity regu-
14 lated by the Securities and Ex-
15 change Commission; or

16 “(bb) constitutes a final
17 order based on violations in con-
18 nection with the offer, purchase,
19 or sale of, or advice relating to, a
20 security; or

21 “(III) knowingly submitted or
22 caused to be submitted a certification
23 described in clause (ii) that contained
24 an untrue statement of a material fact
25 or omitted to state a material fact

1 necessary in order to make the state-
2 ments made, in light of the cir-
3 cumstances under which they were
4 made, not misleading.

5 “(v) SAVINGS PROVISION.—Nothing in
6 this subparagraph may be construed to im-
7 pair or limit the authority of the Securities
8 and Exchange Commission under the Fed-
9 eral securities laws.

10 “(vi) DEFINED TERM.—In this sub-
11 paragraph, the term ‘parties associated
12 with a regional center’ means—

13 “(I) the regional center;

14 “(II) any commercial enterprise
15 associated with the regional center;

16 “(III) the regional center’s and
17 associated commercial enterprise’s
18 owners, officers, directors, managers,
19 partners, broker-dealers, employees,
20 and attorneys; and

21 “(IV) any person in active con-
22 cert or participation with the regional
23 center or directly or indirectly control-
24 ling, controlled by, or under common
25 control with the regional center.”.

1 (b) STUDY AND REPORT.—

2 (1) IN GENERAL.—Not later than two years
3 after the date of the enactment of this Act, the Sec-
4 retary of Homeland Security, in coordination with
5 the Secretary of Commerce and after consultation
6 with relevant Federal agencies, shall submit a report
7 to the Committee on the Judiciary of the Senate and
8 the Committee on the Judiciary of the House of
9 Representatives that describes—

10 (A) the percentage of completed and pend-
11 ing capital investment projects, within the scope
12 of business plans approved or awaiting ap-
13 proval—

14 (i) in targeted rural employment
15 areas;

16 (ii) in targeted high unemployment
17 areas;

18 (iii) in high poverty areas;

19 (iv) for infrastructure projects; and

20 (v) not included in the areas described
21 in clauses (i) through (iii);

22 (B) whether other Federal financial assist-
23 ance programs, such as economic development
24 programs administered by the Department of
25 Agriculture, the Department of Housing and

Urban Development, or the Community Development Financial Institutions Fund, are also used or intended to support projects described in subparagraph (A); and

(C) whether market demands to approve projects described in subparagraph (A) exceed the number of visas allowed under section 203(b)(5)(F) of the Immigration and Nationality Act, as added by subsection (a).

(2) PUBLIC INPUT.—Not later than 60 days before the submission of the report required under paragraph (1), the public shall receive notice and an opportunity to comment.

SEC. 8. AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.

Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended by adding at the end the following:

“(5) AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.—

“(A) IN GENERAL.—Subject to subparagraph (B), an alien admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under sub-

1 section (b)(5), whose lawful permanent resident
2 status on a conditional basis is terminated
3 under section 216A, shall continue to be consid-
4 ered a child of the principal alien for the pur-
5 pose of a subsequent immigrant petition by
6 such alien under subsection (b)(5) if—

7 “(i) the alien remains unmarried; and

8 “(ii) the subsequent petition is filed
9 by the principal alien not later than one
10 year after the termination of conditional
11 lawful permanent resident status.

12 “(B) EXCEPTION.—An alien shall not be
13 considered a child under this paragraph with
14 respect to more than one petition filed after the
15 alien reaches 21 years of age.”.

○