

106TH CONGRESS
2D SESSION

S. 2045

To amend the Immigration and Nationality Act with respect to H-1B
nonimmigrant aliens.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2000

Mr. HATCH (for himself, Mr. ABRAHAM, Mr. GRAMM, Mr. GRAHAM, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. SPECTER, Mr. DEWINE, Mr. ASHCROFT, Mr. MCCONNELL, Mr. GORTON, Mr. HAGEL, Mr. BENNETT, Mr. GRAMS, Mr. BROWNBACK, Mr. SMITH of Oregon, and Mr. WARNER) 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 with respect
to H-1B nonimmigrant aliens.

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 “American Competitive-
5 ness in the Twenty-first Century Act of 2000”.

6 **SEC. 2. TEMPORARY INCREASE IN VISA ALLOTMENTS.**

7 In addition to the number of aliens who may be
8 issued visas or otherwise provided nonimmigrant status

1 under section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101
 2 (a)(15)(H)(i)(b)), the following number of aliens may be
 3 issued such visas or otherwise provided such status for
 4 each of the following fiscal years:

- 5 (1) 80,000 for fiscal year 2000;
- 6 (2) 87,500 for fiscal year 2001; and
- 7 (3) 130,000 for fiscal year 2002.

8 **SEC. 3. SPECIAL RULE FOR UNIVERSITIES, RESEARCH FA-**
 9 **CILITIES, AND GRADUATE DEGREE RECIPI-**
 10 **ENTS.**

11 Section 214(g) of the Immigration and Nationality
 12 Act (8 U.S.C. 1184(g)) is amended by adding at the end
 13 the following new paragraphs:

14 “(5) The numerical limitations contained in para-
 15 graph (1)(A)(iii) shall not apply to any nonimmigrant
 16 alien issued a visa or otherwise provided status under sec-
 17 tion 101(a)(15)(H)(i)(b)—

18 “(A) who is employed (or has received an offer
 19 of employment) at—

20 “(i) an institution of higher education (as
 21 defined in section 101(a) of the Higher Edu-
 22 cation Act of 1965 (20 U.S.C. 1001(a))), or a
 23 related or affiliated nonprofit entity; or

24 “(ii) a nonprofit research organization or a
 25 governmental research organization; or

1 “(B) for whom a petition is filed not more than
2 90 days before or not more than 180 days after the
3 nonimmigrant has attained a master’s degree or
4 higher degree from an institution of higher edu-
5 cation (as defined in section 101(a) of the Higher
6 Education Act of 1965 (20 U.S.C. 1001(a))).”.

7 “(6) Any alien who ceases to be employed by an em-
8 ployer described in paragraph (5)(A) shall, if employed as
9 a nonimmigrant alien described in section
10 101(a)(15)(H)(i)(b), be counted toward the numerical lim-
11 itations contained in paragraph (1)(A)(iii) the first time
12 the alien is employed by an employer other than one de-
13 scribed in paragraph (5)(A).”.

14 **SEC. 4. LIMITATION ON PER COUNTRY CEILING WITH RE-**
15 **SPECT TO EMPLOYMENT-BASED IMMI-**
16 **GRANTS.**

17 (a) SPECIAL RULES.—Section 202(a) (8 U.S.C.
18 1152(a)) is amended by adding at the end the following
19 new paragraph:

20 “(5) RULES FOR EMPLOYMENT-BASED IMMI-
21 GRANTS.—

22 “(A) EMPLOYMENT-BASED IMMIGRANTS
23 NOT SUBJECT TO PER COUNTRY LIMITATION IF
24 ADDITIONAL VISAS AVAILABLE.—If the total
25 number of visas available under paragraph (1),

1 (2), (3), (4), or (5) of section 203(b) for a cal-
2 endar quarter exceeds the number of qualified
3 immigrants who may otherwise be issued such
4 visas, the visas made available under that para-
5 graph shall be issued without regard to the nu-
6 merical limitation under paragraph (2) of this
7 subsection during the remainder of the calendar
8 quarter.

9 “(B) LIMITING FALL ACROSS FOR CERTAIN
10 COUNTRIES SUBJECT TO SUBSECTION (e).—In
11 the case of a foreign state or dependent area to
12 which subsection (e) applies, if the total number
13 of visas issued under section 203(b) exceeds the
14 maximum number of visas that may be made
15 available to immigrants of the state or area
16 under section 203(b) consistent with subsection
17 (e) (determined without regard to this para-
18 graph), in applying subsection (e) all visas shall
19 be deemed to have been required for the classes
20 of aliens specified in section 203(b).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is
23 amended by striking “paragraphs (3) and (4)” and
24 inserting “paragraphs (3), (4), and (5)”.

1 (2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is
2 amended by striking “the proportion of the visa
3 numbers” and inserting “except as provided in sub-
4 section (a)(5), the proportion of the visa numbers”.

5 (c) ONE-TIME PROTECTION UNDER PER COUNTRY
6 CEILING.—Notwithstanding section 214(g)(4) of the Im-
7 migration and Nationality Act, any alien who—

8 (1) is the beneficiary of a petition filed under
9 section 204(a) for a preference status under para-
10 graph (1), (2), or (3) of section 203(b); and

11 (2) would be subject to the per country limita-
12 tions applicable to immigrants under those para-
13 graphs but for this subsection,

14 may apply for, and the Attorney General may grant, an
15 extension of such nonimmigrant status until the alien’s
16 application for adjustment of status has been processed
17 and a decision made thereon.

18 **SEC. 5. INCREASED PORTABILITY OF H-1B STATUS.**

19 (a) IN GENERAL.—Section 214 of the Immigration
20 and Nationality Act (8 U.S.C. 1184) is amended by add-
21 ing at the end the following new subsection:

22 “(m)(1) A nonimmigrant alien described in para-
23 graph (2) who was previously issued a visa or otherwise
24 provided nonimmigrant status under section
25 101(a)(15)(H)(i)(b) is authorized to accept new employ-

1 ment upon the filing by the prospective employer of a new
2 petition on behalf of such nonimmigrant as provided under
3 subsection (a). Employment authorization shall continue
4 for such alien until the new petition is adjudicated. If the
5 new petition is denied, employment authorization shall
6 cease.

7 “(2) A nonimmigrant alien described in this para-
8 graph is a nonimmigrant alien—

9 “(A) who has been lawfully admitted into the
10 United States;

11 “(B) on whose behalf an employer has filed a
12 nonfrivolous application for new employment or ex-
13 tension of status before the date of expiration of the
14 period of stay authorized by the Attorney General;
15 and

16 “(C) who has not been employed without au-
17 thorization in the United States before or during the
18 pendency of such petition for new employment.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to petitions filed before, on, or
21 after the date of enactment of this Act.

22 **SEC. 6. EXTENSION OF AUTHORIZED STAY IN CASES OF**
23 **LENGTHY ADJUDICATIONS.**

24 (a) EXEMPTION FROM LIMITATION.—The limitation
25 contained in section 214(g)(4) of the Immigration and Na-

1 tionality Act with respect to the duration of authorized
2 stay shall not apply to any nonimmigrant alien previously
3 issued a visa or otherwise provided nonimmigrant status
4 under section 101(a)(15)(H)(i)(b) of the Immigration and
5 Nationality Act on whose behalf a petition under section
6 204(b) to accord the alien immigrant status under section
7 203(b), or an application for adjustment of status under
8 section 245 to accord the alien status under section
9 203(b), has been filed, if 365 days or more have elapsed
10 since the filing of a labor certification application on the
11 alien's behalf, if required for the alien to obtain status
12 under section 203(b), or the filing of the petition under
13 section 204(b).

14 (b) **EXTENSION OF H1-B WORKER STATUS.**—The
15 Attorney General shall extend the stay of an alien who
16 qualifies for an exemption under subsection (a) in one-year
17 increments until such time as a final decision is made on
18 the alien's lawful permanent residence.

19 **SEC. 7. EXTENSION OF CERTAIN REQUIREMENTS AND AU-**
20 **THORITIES THROUGH FISCAL YEAR 2002.**

21 (a) **ATTESTATION REQUIREMENTS.**—Section
22 212(n)(1)(E)(ii) of the Immigration and Nationality Act
23 (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking “Oc-
24 tober 1, 2001” and inserting “October 1, 2002”.

1 (b) FEE REQUIREMENTS.—Section 212(c)(9)(A) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1182(c)(9)(A)) is amended in the text above clause (i) by
4 striking “October 1, 2001” and inserting “October 1,
5 2002”.

6 (c) DEPARTMENT OF LABOR INVESTIGATIVE AU-
7 THORITIES.—Section 413(e)(2) of the American Competi-
8 tiveness and Workforce Improvement Act of 1998 (as con-
9 tained in title IV of division C of Public Law 105–277)
10 is amended by striking “September 30, 2001” and insert-
11 ing “September 30, 2002”.

12 **SEC. 8. RECOVERY OF VISAS USED FRAUDULENTLY.**

13 Section 214(g)(3) of the Immigration and Nationality
14 Act (8 U.S.C. 1184 (g)(3)) is amended to read as follows:

15 “(3) Aliens who are subject to the numerical limita-
16 tions of paragraph (1) shall be issued visas (or otherwise
17 provided nonimmigrant status) in the order in which peti-
18 tions are filed for such visas or status. If an alien who
19 was issued a visa or otherwise provided nonimmigrant sta-
20 tus and counted against the numerical limitations of para-
21 graph (1) is found to have been issued such visa or other-
22 wise provided such status by fraud or willfully misrepres-
23 enting a material fact and such visa or nonimmigrant sta-
24 tus is revoked, then one number shall be restored to the
25 total number of aliens who may be issued visas or other-

1 wise provided such status under the numerical limitations
2 of paragraph (1) in the fiscal year in which the petition
3 is revoked, regardless of the fiscal year in which the peti-
4 tion was approved.”.

5 **SEC. 9. NSF STUDY AND REPORT ON THE “DIGITAL DIVIDE”.**

6 (a) STUDY.—The National Science Foundation shall
7 conduct a study of the divergence in access to high tech-
8 nology (commonly referred to as the “digital divide”) in
9 the United States.

10 (b) REPORT.—Not later than 18 months after the
11 date of enactment of this Act, the Director of the National
12 Science Foundation shall submit a report to Congress set-
13 ting forth the findings of the study conducted under sub-
14 section (a).

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