

107TH CONGRESS
2D SESSION

S. 3053

To provide immigration benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2002

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

A BILL

To provide immigration benefits, 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 “Alien Entrepreneur
5 Adjustment Act”.

6 **SEC. 2. REMOVAL OF CONDITIONAL BASIS OF PERMANENT**

7 **RESIDENT STATUS FOR CERTAIN ALIEN EN-**
8 **TREPRENEURS, SPOUSES, AND CHILDREN.**

9 (a) IN GENERAL.—In lieu of the provisions of section
10 216A(c)(3) of the Immigration and Nationality Act (8
11 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case
12 of an eligible alien described in subsection (b)(1).

1 (b) ELIGIBLE ALIENS DESCRIBED.—

2 (1) IN GENERAL.—An alien is an eligible alien
3 described in this subsection if the alien—

4 (A) filed, under section 204(a)(1)(H) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1154(a)(1)(H)) (or any predecessor provision),
7 a petition to accord the alien a status under
8 section 203(b)(5) of such Act (8 U.S.C.
9 1153(b)(5)) that was approved by the Attorney
10 General after January 1, 1995, and before Au-
11 gust 31, 1998;

12 (B) pursuant to such approval, obtained
13 the status of an alien entrepreneur with perma-
14 nent resident status on a conditional basis de-
15 scribed in section 216A of such Act (8 U.S.C.
16 1186b); and

17 (C) timely filed, in accordance with section
18 216A(c)(1)(A) of such Act (8 U.S.C.
19 1186b(c)(1)(A)) and before the date of the en-
20 actment of this Act, a petition requesting the
21 removal of such conditional basis.

22 (2) REOPENING PETITIONS PREVIOUSLY DE-
23 NIED.—

24 (A) IN GENERAL.—In the case of a peti-
25 tion described in paragraph (1)(C) that was de-

1 nied under section 216A(c)(3)(C) of the Immi-
2 gration and Nationality Act (8 U.S.C.
3 1186b(c)(3)(C)) before the date of the enact-
4 ment of this Act, upon a motion to reopen such
5 petition filed by the eligible alien not later than
6 60 days after such date, the Attorney General
7 shall make determinations on such petition pur-
8 suant to subsection (c).

9 (B) PETITIONERS ABROAD.—In the case of
10 such an eligible alien who is no longer phys-
11 ically present in the United States, the Attor-
12 ney General shall establish a process under
13 which the alien may be paroled into the United
14 States if necessary in order to obtain the deter-
15 minations under subsection (c), unless the At-
16 torney General finds that—

17 (i) the alien is inadmissible or deport-
18 able on any ground; or

19 (ii) the petition described in para-
20 graph (1)(C) was denied on the ground
21 that it contains a material misrepresenta-
22 tion in the facts and information described
23 in section 216A(d)(1) of the Immigration
24 and Nationality Act (8 U.S.C.

1 1186b(d)(1)) and alleged in the petition
2 with respect to a commercial enterprise.

3 (C) DEPORTATION OR REMOVAL PRO-
4 CEEDINGS.—In the case of such an eligible
5 alien who was placed in deportation or removal
6 proceedings by reason of the denial of the peti-
7 tion described in paragraph (1)(C), a motion to
8 reopen filed under subparagraph (A) shall be
9 treated as a motion to reopen such proceedings.
10 The Attorney General shall grant such motion
11 notwithstanding any time and number limita-
12 tions imposed by law on motions to reopen such
13 proceedings, except that the scope of any pro-
14 ceeding reopened on this basis shall be limited
15 to whether any order of deportation or removal
16 should be vacated, and the alien granted the
17 status of an alien lawfully admitted for perma-
18 nent residence (unconditionally or on a condi-
19 tional basis), by reason of the determinations
20 made under subsection (c). An alien who is in-
21 admissible or deportable on any ground shall
22 not be granted such status, except that this
23 prohibition shall not apply to an alien who has
24 been paroled into the United States under sub-
25 paragraph (B).

1 (c) DETERMINATIONS ON PETITIONS.—

2 (1) INITIAL DETERMINATION.—

3 (A) IN GENERAL.—With respect to each el-
4 igible alien described in subsection (b)(1), the
5 Attorney General shall make a determination,
6 not later than 180 days after the date of the
7 enactment of this Act, whether—

8 (i) the petition described in subsection
9 (b)(1)(C) contains any material misrepre-
10 sentation in the facts and information de-
11 scribed in section 216A(d)(1) of the Immi-
12 gration and Nationality Act (8 U.S.C.
13 1186b(d)(1)) and alleged in the petition
14 with respect to a commercial enterprise
15 (regardless of whether such enterprise is a
16 limited partnership and regardless of
17 whether the alien entered the enterprise
18 after its formation);

19 (ii) subject to subparagraphs (B) and
20 (C), such enterprise created full-time jobs
21 for not fewer than 10 United States citi-
22 zens or aliens lawfully admitted for perma-
23 nent residence or other immigrants law-
24 fully authorized to be employed in the
25 United States (other than the eligible alien

1 and the alien's spouse, sons, or daughters),
2 and those jobs exist or existed on any of
3 the dates described in subparagraph (D);
4 and

5 (iii) on any of the dates described in
6 subparagraph (D), the alien is in substan-
7 tial compliance with the capital investment
8 requirement described in section
9 216A(d)(1)(B) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1186b(d)(1)(B)).

11 (B) INVESTMENT UNDER PILOT IMMIGRA-
12 TION PROGRAM.—For purposes of subpara-
13 graph (A)(ii), an investment that satisfies the
14 requirements of section 610(e) of the Depart-
15 ments of Commerce, Justice, and State, the Ju-
16 diciary, and Related Agencies Appropriations
17 Act, 1993 (8 U.S.C. 1153 note), as in effect on
18 the date of the enactment of this Act, shall be
19 deemed to satisfy the requirements of such sub-
20 paragraph.

21 (C) EXCEPTION FOR TROUBLED BUSI-
22 NESSES.—In the case of an eligible alien who
23 has made a capital investment in a troubled
24 business (as defined in 8 CFR 204.6(e), as in
25 effect on the date of the enactment of this Act),

1 in lieu of the determination under subpara-
2 graph (A)(ii), the Attorney General shall deter-
3 mine whether the number of employees of the
4 business, as measured on any of the dates de-
5 scribed in subparagraph (D), is at no less than
6 the pre-investment level.

7 (D) DATES.—The dates described in this
8 subparagraph are the following:

9 (i) The date on which the petition de-
10 scribed in subsection (b)(1)(C) is filed.

11 (ii) 6 months after the date described
12 in clause (i).

13 (iii) The date on which the determina-
14 tion under subparagraph (A) or (C) is
15 made.

16 (E) REMOVAL OF CONDITIONAL BASIS IF
17 FAVORABLE DETERMINATION.—If the Attorney
18 General renders an affirmative determination
19 with respect to clauses (ii) and (iii) of subpara-
20 graph (A), and if the Attorney General renders
21 a negative determination with respect to clause
22 (i) of such subparagraph, the Attorney General
23 shall so notify the alien involved and shall re-
24 move the conditional basis of the alien's status
25 (and that of the alien's spouse and children if

1 it was obtained under section 216A of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1186b)) effective as of the second anniversary
4 of the alien's lawful admission for permanent
5 residence.

6 (F) REQUIREMENTS RELATING TO AD-
7 VERSE DETERMINATIONS.—

8 (i) NOTICE.—If the Attorney General
9 renders an adverse determination with re-
10 spect to clause (i), (ii), or (iii) of subpara-
11 graph (A), the Attorney General shall so
12 notify the alien involved. The notice shall
13 be in writing and shall state the factual
14 basis for any adverse determination. The
15 Attorney General shall provide the alien
16 with an opportunity to submit evidence to
17 rebut any adverse determination. If the At-
18 torney General reverses all adverse deter-
19 minations pursuant to such rebuttal, the
20 Attorney General shall so notify the alien
21 involved and shall remove the conditional
22 basis of the alien's status (and that of the
23 alien's spouse and children if it was ob-
24 tained under section 216A of the Immigra-
25 tion and Nationality Act (8 U.S.C. 1186b))

1 effective as of the second anniversary of
2 the alien's lawful admission for permanent
3 residence.

4 (ii) CONTINUATION OF CONDITIONAL
5 BASIS IF CERTAIN ADVERSE DETERMINA-
6 TIONS.—If the Attorney General renders
7 an adverse determination with respect to
8 clause (ii) or (iii) of subparagraph (A), and
9 the eligible alien's rebuttal does not cause
10 the Attorney General to reverse such deter-
11 mination, the Attorney General shall con-
12 tinue the conditional basis of the alien's
13 permanent resident status (and that of the
14 alien's spouse and children if it was ob-
15 tained under section 216A of the Immigra-
16 tion and Nationality Act (8 U.S.C. 1186b))
17 for a 2-year period.

18 (iii) TERMINATION IF ADVERSE DE-
19 TERMINATION.—If the Attorney General
20 renders an adverse determination with re-
21 spect to subparagraph (A)(i), and the eligi-
22 ble alien's rebuttal does not cause the At-
23 torney General to reverse such determina-
24 tion, the Attorney General shall so notify
25 the alien involved and, subject to sub-

1 section (d), shall terminate the permanent
2 resident status of the alien (and that of
3 the alien's spouse and children if it was ob-
4 tained on a conditional basis under section
5 216A of the Immigration and Nationality
6 Act (8 U.S.C. 1186b)).

7 (iv) ADMINISTRATIVE AND JUDICIAL
8 REVIEW.—An alien may seek administra-
9 tive review of an adverse determination
10 made under subparagraph (A) by filing a
11 petition for such review with the Board of
12 Immigration Appeals. If the Board of Im-
13 migration Appeals denies the petition, the
14 alien may seek judicial review. The proce-
15 dures for judicial review under this clause
16 shall be the same as the procedures for ju-
17 dicial review of a final order of removal
18 under section 242(a)(1) of the Immigra-
19 tion and Nationality Act (8 U.S.C.
20 1252(a)(1)). During the period in which an
21 administrative or judicial appeal under this
22 clause is pending, the Attorney General
23 shall continue the conditional basis of the
24 alien's permanent resident status (and that
25 of the alien's spouse and children if it was

1 obtained under section 216A of the Immi-
2 gration and Nationality Act (8 U.S.C.
3 1186b)).

4 (2) SECOND DETERMINATION.—

5 (A) AUTHORIZATION TO CONSIDER IN-
6 VESTMENTS IN OTHER COMMERCIAL ENTER-
7 PRISES.—In determining under this paragraph
8 whether to remove a conditional basis continued
9 under paragraph (1)(F)(ii) with respect to an
10 alien, the Attorney General shall consider any
11 capital investment made by the alien in a com-
12 mercial enterprise (regardless of whether such
13 enterprise is a limited partnership and regard-
14 less of whether the alien entered the enterprise
15 after its formation), in the United States, re-
16 gardless of whether that investment was made
17 before or after the determinations under para-
18 graph (1) and regardless of whether the com-
19 mercial enterprise is the same as that consid-
20 ered in the determinations under such para-
21 graph, if facts and information with respect to
22 the investment and the enterprise are included
23 in the petition submitted under subparagraph
24 (B).

1 (B) PETITION.—In order for a conditional
2 basis continued under paragraph (1)(F)(ii) for
3 an eligible alien (and the alien’s spouse and
4 children) to be removed, the alien must submit
5 to the Attorney General, during the period de-
6 scribed in subparagraph (C), a petition which
7 requests the removal of such conditional basis
8 and which states, under penalty of perjury, the
9 facts and information described in subpara-
10 graphs (A) and (B) of section 216A(d)(1) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1186b(d)(1)) with respect to any commercial
13 enterprise (regardless of whether such enter-
14 prise is a limited partnership and regardless of
15 whether the alien entered the enterprise after
16 its formation) which the alien desires to have
17 considered under this paragraph, regardless of
18 whether such enterprise was created before or
19 after the determinations made under paragraph
20 (1).

21 (C) PERIOD FOR FILING PETITION.—

22 (i) 90-DAY PERIOD BEFORE SECOND
23 ANNIVERSARY.—Except as provided in
24 clause (ii), the petition under subpara-
25 graph (B) must be filed during the 90-day

1 period before the second anniversary of the
2 continuation, under paragraph (1)(F)(ii),
3 of the conditional basis of the alien's law-
4 ful admission for permanent residence.

5 (ii) DATE PETITIONS FOR GOOD
6 CAUSE.—Such a petition may be consid-
7 ered if filed after such date, but only if the
8 alien establishes to the satisfaction of the
9 Attorney General good cause and extenu-
10 ating circumstances for failure to file the
11 petition during the period described in
12 clause (i).

13 (D) TERMINATION OF PERMANENT RESI-
14 DENT STATUS FOR FAILURE TO FILE PETI-
15 TION.—

16 (i) IN GENERAL.—In the case of an
17 alien with permanent resident status on a
18 conditional basis under paragraph
19 (1)(F)(ii), if no petition is filed with re-
20 spect to the alien in accordance with sub-
21 paragraph (B), the Attorney General shall
22 terminate the permanent resident status of
23 the alien (and the alien's spouse and chil-
24 dren if it was obtained on a conditional
25 basis under section 216A of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1186b))
2 as of the second anniversary of the con-
3 tinuation, under paragraph (1)(F)(ii), of
4 the conditional basis of the alien's lawful
5 admission for permanent residence.

6 (ii) HEARING IN REMOVAL PRO-
7 CEEDING.—In any removal proceeding with
8 respect to an alien whose permanent resi-
9 dent status is terminated under clause (i),
10 the burden of proof shall be on the alien
11 to establish compliance with subparagraph
12 (B).

13 (E) DETERMINATIONS AFTER PETITION.—
14 If a petition is filed by an eligible alien in ac-
15 cordance with subparagraph (B), the Attorney
16 General shall make a determination, within 90
17 days of the date of such filing, whether—

18 (i) the petition contains any material
19 misrepresentation in the facts and infor-
20 mation alleged in the petition with respect
21 to the commercial enterprises included in
22 such petition;

23 (ii) all such enterprises, considered to-
24 gether, created full-time jobs for not fewer
25 than 10 United States citizens or aliens

1 lawfully admitted for permanent residence
2 or other immigrants lawfully authorized to
3 be employed in the United States (other
4 than the eligible alien and the alien's
5 spouse, sons, or daughters), and those jobs
6 exist on the date on which the determina-
7 tion is made, except that—

8 (I) this clause shall apply only if
9 the Attorney General made an adverse
10 determination with respect to the eli-
11 gible alien under paragraph (1)(A)(ii);

12 (II) the provisions of subpara-
13 graphs (B) and (C) of paragraph (1)
14 shall apply to a determination under
15 this clause in the same manner as
16 they apply to a determination under
17 paragraph (1)(A)(ii); and

18 (III) if the Attorney General de-
19 termined under paragraph (1)(A)(ii)
20 that any jobs satisfying the require-
21 ment of such paragraph were created,
22 the number of those jobs shall be sub-
23 tracted from the number of jobs oth-
24 erwise needed to satisfy the require-
25 ment of this clause; and

1 (iii) considering all such enterprises
2 together, on the date on which the deter-
3 mination is made, the eligible alien is in
4 substantial compliance with the capital in-
5 vestment requirement described in section
6 216A(d)(1)(B) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1186b(d)(1)(B)),
8 except that—

9 (I) this clause shall apply only if
10 the Attorney General made an adverse
11 determination with respect to the eli-
12 gible alien under paragraph
13 (1)(A)(iii); and

14 (II) if the Attorney General de-
15 termined under paragraph (1)(A)(iii)
16 that any capital amount was invested
17 that could be credited towards compli-
18 ance with the capital investment re-
19 quirement described in section
20 216A(d)(1)(B) of the Immigration
21 and Nationality Act (8 U.S.C.
22 1186b(d)(1)(B)), such amount shall
23 be subtracted from the amount of
24 capital otherwise needed to satisfy the
25 requirement of this clause.

1 (F) REMOVAL OF CONDITIONAL BASIS IF
2 FAVORABLE DETERMINATION.—If the Attorney
3 General renders an affirmative determination
4 with respect to clauses (ii) and (iii) of subpara-
5 graph (E), and if the Attorney General renders
6 a negative determination with respect to clause
7 (i) of such subparagraph, the Attorney General
8 shall so notify the alien involved and shall re-
9 move the conditional basis of the alien’s status
10 (and that of the alien’s spouse and children if
11 it was obtained under section 216A of the Im-
12 migration and Nationality Act (8 U.S.C.
13 1186b)) effective as of the second anniversary
14 of the continuation, under paragraph (1)(F)(ii),
15 of the conditional basis of the alien’s lawful ad-
16 mission for permanent residence.

17 (G) REQUIREMENTS RELATING TO AD-
18 VERSE DETERMINATIONS.—

19 (i) NOTICE.—If the Attorney General
20 renders an adverse determination under
21 subparagraph (E), the Attorney General
22 shall so notify the alien involved. The no-
23 tice shall be in writing and shall state the
24 factual basis for any adverse determina-
25 tion. The Attorney General shall provide

1 the alien with an opportunity to submit
2 evidence to rebut any adverse determina-
3 tion. If the Attorney General reverses all
4 adverse determinations pursuant to such
5 rebuttal, the Attorney General shall so no-
6 tify the alien involved and shall remove the
7 conditional basis of the alien's status (and
8 that of the alien's spouse and children if it
9 was obtained under section 216A of the
10 Immigration and Nationality Act (8 U.S.C.
11 1186b)) effective as of the second anniver-
12 sary of the continuation, under paragraph
13 (1)(F)(ii), of the conditional basis of the
14 alien's lawful admission for permanent res-
15 idence.

16 (ii) TERMINATION IF ADVERSE DE-
17 TERMINATION.—If the eligible alien's re-
18 buttal does not cause the Attorney General
19 to reverse each adverse determination
20 under subparagraph (E), the Attorney
21 General shall so notify the alien involved
22 and, subject to subsection (d), shall termi-
23 nate the permanent resident status of the
24 alien (and that of the alien's spouse and
25 children if it was obtained on a conditional

1 basis under section 216A of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1186b)).

4 (d) HEARING IN REMOVAL PROCEEDING.—Any alien
5 whose permanent resident status is terminated under
6 paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (c) may
7 request a review of such determination in a proceeding to
8 remove the alien. In such proceeding, the burden of proof
9 shall be on the Attorney General.

10 (e) CLARIFICATION WITH RESPECT TO CHILDREN.—
11 In the case of an alien who obtained the status of an alien
12 lawfully admitted for permanent residence on a conditional
13 basis before the date of the enactment of this Act by virtue
14 of being the child of an eligible alien described in sub-
15 section (b)(1), the alien shall be considered to be a child
16 for purposes of this section regardless of any change in
17 age or marital status after obtaining such status.

18 (f) DEFINITION OF FULL-TIME.—For purposes of
19 this section, the term “full-time” means a position that
20 requires at least 35 hours of service per week at any time,
21 regardless of who fills the position.

1 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
2 **CERTAIN ALIEN ENTREPRENEURS, SPOUSES,**
3 **AND CHILDREN.**

4 (a) IN GENERAL.—With respect to each eligible alien
5 described in subsection (b), the Attorney General or the
6 Secretary of State shall approve the application described
7 in subsection (b)(2) and grant the alien (and any spouse
8 or child of the alien, if the spouse or child is eligible to
9 receive a visa under section 203(d) of the Immigration and
10 Nationality Act (8 U.S.C. 1153(d))) the status of an alien
11 lawfully admitted for permanent residence on a conditional
12 basis under section 216A of such Act (8 U.S.C. 1186b).
13 Such application shall be approved not later than 180 days
14 after the date of the enactment of this Act.

15 (b) ELIGIBLE ALIENS DESCRIBED.—An alien is an
16 eligible alien described in this subsection if the alien—

17 (1) filed, under section 204(a)(1)(H) of the Im-
18 migration and Nationality Act (8 U.S.C.
19 1154(a)(1)(H)) (or any predecessor provision), a pe-
20 tition to accord the alien a status under section
21 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that
22 was approved by the Attorney General after January
23 1, 1995, and before August 31, 1998;

24 (2) pursuant to such approval, timely filed be-
25 fore the date of the enactment of this Act an appli-
26 cation for adjustment of status under section 245 of

1 such Act (8 U.S.C. 1255) or an application for an
2 immigrant visa under section 203(b)(5) of such Act
3 (8 U.S.C. 1153(b)(5)); and

4 (3) is not inadmissible or deportable on any
5 ground.

6 (c) TREATMENT OF CERTAIN APPLICATIONS.—

7 (1) REVOCATION OF APPROVAL OF PETI-
8 TIONS.—If the Attorney General revoked the ap-
9 proval of a petition described in subsection (b)(1),
10 such revocation shall be disregarded for purposes of
11 this section if it was based on a determination that
12 the alien failed to satisfy section 203(b)(5)(A)(ii) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1153(b)(5)(A)(ii)).

15 (2) APPLICATIONS NO LONGER PENDING.—

16 (A) IN GENERAL.—If an application de-
17 scribed in subsection (b)(2) is not pending on
18 the date of the enactment of this Act, the At-
19 torney General shall disregard the cir-
20 cumstances leading to such lack of pendency
21 and treat it as reopened, if such lack of pend-
22 ency is due to a determination that the alien—

23 (i) failed to satisfy section
24 203(b)(5)(A)(ii) of the Immigration and

1 Nationality Act (8 U.S.C.
2 1153(b)(5)(A)(ii)); or

3 (ii) departed the United States with-
4 out advance parole.

5 (B) APPLICANTS ABROAD.—In the case of
6 an eligible alien who filed an application for ad-
7 justment of status described in subsection
8 (b)(2), but who is no longer physically present
9 in the United States, the Attorney General shall
10 establish a process under which the alien may
11 be paroled into the United States if necessary
12 in order to obtain adjustment of status under
13 this section.

14 (d) RECORDATION OF DATE; REDUCTION OF NUM-
15 BERS.—Upon the approval of an application under sub-
16 section (a), the Attorney General shall record the alien's
17 lawful admission for permanent residence on a conditional
18 basis as of the date of such approval and the Secretary
19 of State shall reduce by one the number of visas author-
20 ized to be issued under sections 201(d) and 203(b)(5) of
21 the Immigration and Nationality Act (8 U.S.C. 1151(d)
22 and 1153(b)(5)) for the fiscal year then current.

23 (e) REMOVAL OF CONDITIONAL BASIS.—

24 (1) PETITION.—In order for a conditional basis
25 established under this section for an alien (and the

1 alien's spouse and children) to be removed, the alien
2 must satisfy the requirements of section 216A(c)(1)
3 of the Immigration and Nationality Act (8 U.S.C.
4 1186b(c)(1)), including the submission of a petition
5 in accordance with subparagraph (A) of such sec-
6 tion. Such petition may include the facts and infor-
7 mation described in subparagraphs (A) and (B) of
8 section 216A(d)(1) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1186b(d)(1)) with respect to any
10 commercial enterprise (regardless of whether such
11 enterprise is a limited partnership and regardless of
12 whether the alien entered the enterprise after its for-
13 mation) in the United States in which the alien has
14 made a capital investment at any time.

15 (2) DETERMINATION.—In carrying out section
16 216A(c)(3) of the Immigration and Nationality Act
17 (8 U.S.C. 1186b(c)(3)) with respect to an alien de-
18 scribed in paragraph (1), the Attorney General, in
19 lieu of the determination described in such section
20 216A(c)(3), shall make a determination, within 90
21 days of the date of such filing, whether—

22 (A) the petition described in paragraph (1)
23 contains any material misrepresentation in the
24 facts and information alleged in the petition

1 with respect to the commercial enterprises in-
2 cluded in the petition;

3 (B) subject to subparagraphs (B) and (C)
4 of section 2(c)(1), all such enterprises, consid-
5 ered together, created full-time jobs for not
6 fewer than 10 United States citizens or aliens
7 lawfully admitted for permanent residence or
8 other immigrants lawfully authorized to be em-
9 ployed in the United States (other than the
10 alien and the alien's spouse, sons, or daugh-
11 ters), and those jobs exist or existed on either
12 of the dates described in paragraph (3); and

13 (C) considering the alien's investments in
14 such enterprises on either of the dates described
15 in paragraph (3), or on both such dates, the
16 alien is or was in substantial compliance with
17 the capital investment requirement described in
18 section 216A(d)(1)(B) of the Immigration and
19 Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

20 (3) DATES.—The dates described in this para-
21 graph are the following:

22 (A) The date on which the application de-
23 scribed in subsection (b)(2) was filed.

24 (B) The date on which the determination
25 under paragraph (2) is made.

1 (f) CLARIFICATION WITH RESPECT TO CHILDREN.—
2 In the case of an alien who was a child on the date on
3 which the application described in subsection (b)(2) was
4 filed, the alien shall be considered to be a child for pur-
5 poses of this section regardless of any change in age or
6 marital status after such date.

7 **SEC. 4. REGULATIONS.**

8 The Immigration and Naturalization Service shall
9 promulgate regulations to implement this Act not later
10 than 120 days after the date of enactment of this Act.
11 Until such regulations are promulgated, the Attorney Gen-
12 eral shall not deny a petition filed or pending under sec-
13 tion 216A(c)(1)(A) of the Immigration and Nationality
14 Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible
15 alien described in section 2, or on an application filed or
16 pending under section 245 of such Act (8 U.S.C. 1255)
17 that relates to an eligible alien described in section 3.
18 Until such regulations are promulgated, the Attorney Gen-
19 eral shall not initiate or proceed with removal proceedings
20 under section 240 of the Immigration and Nationality Act
21 (8 U.S.C. 1229a) that relate to an eligible alien described
22 in section 2 or 3.

23 **SEC. 5. DEFINITIONS.**

24 Except as otherwise provided, the terms used in this
25 Act shall have the meaning given such terms in section

- 1 101(b) of the Immigration and Nationality Act (8 U.S.C.
- 2 1101(b)).

