

110TH CONGRESS
1ST SESSION

S. 1351

To amend the Immigration and Nationality Act to improve the competitiveness of the United States in the global economy and to protect against potential visa fraud and abuse.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2007

Mr. GREGG 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 improve the competitiveness of the United States in the global economy and to protect against potential visa fraud and abuse.

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 “H–1B Visa Program
5 Modernization Act of 2007”.

6 **SEC. 2. MARKET-BASED LIMITS FOR H-1B VISAS.**

7 Section 214(g) of the Immigration and Nationality
8 Act (8 U.S.C. 1184(g)) is amended—

1 (1) in paragraph (1)—

2 (A) in the matter preceding subparagraph
3 (A), by striking “(beginning with fiscal year
4 1992)”; and

5 (B) in subparagraph (A)—

6 (i) in clause (vi) by striking “and”;

7 (ii) in clause (vii), by striking “each
8 succeeding fiscal year; or” and inserting
9 “each of fiscal years 2004, 2005, 2006,
10 and 2007;”; and

11 (iii) by adding after clause (vii) the
12 following:

13 “(viii) 150,000 for fiscal year 2008;
14 and

15 “(ix) the number calculated under
16 paragraph (9) for each fiscal year after fis-
17 cal year 2008; or”;

18 (2) by redesignating paragraphs (9), (10), and
19 (11) as paragraphs (10), (11), and (12), respec-
20 tively; and

21 (3) by inserting after paragraph (8) the fol-
22 lowing:

23 “(9) If the numerical limitation in paragraph
24 (1)(A)—

1 “(A) is reached during the previous fiscal year,
2 the numerical limitation under paragraph (1)(A)(ix)
3 for the subsequent fiscal year shall be equal to 120
4 percent of the numerical limitation of the previous
5 fiscal year; or

6 “(B) is not reached during the previous fiscal
7 year, the numerical limitation under paragraph
8 (1)(A)(ix) for the subsequent fiscal year shall be
9 equal to the numerical limitation of the previous fis-
10 cal year.”.

11 **SEC. 3. H-1B VISA PROGRAM IMPROVEMENTS.**

12 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
13 SENTATION IN APPLICATION REVIEW PROCESS.—Section
14 212(n)(1)(G) of the Immigration and Nationality Act (8
15 U.S.C. 1182(n)(1)(G)) is amended—

16 (1) by inserting “, clear indicators of fraud or
17 misrepresentation of material fact,” after “complete-
18 ness”;

19 (2) by striking “or obviously inaccurate” and
20 inserting “, presents clear indicators of fraud or
21 misrepresentation of material fact, or is obviously in-
22 accurate”; and

23 (3) by adding at the end the following: “If the
24 Secretary’s review of an application identifies clear
25 indicators of fraud or misrepresentation of material

1 fact, the Secretary may conduct an investigation and
2 hearing under paragraph (2).”.

3 (b) H-1B NONIMMIGRANTS NOT ADMITTED FOR
4 JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-
5 IMMIGRANTS.—Section 212(n)(1) of such Act, as amended
6 by this section, is further amended by inserting after sub-
7 paragraph (G) the following:

8 “(H)(i) The employer has not advertised the
9 available jobs specified in the application in an ad-
10 vertisement that states or indicates that—

11 “(I) the job or jobs are only available to
12 persons who are or who may become H-1B
13 nonimmigrants; or

14 “(II) persons who are or who may become
15 H-1B nonimmigrants shall receive priority or a
16 preference in the hiring process.

17 “(ii) The employer has not only recruited per-
18 sons who are, or who may become, H-1B non-
19 immigrants to fill the job or jobs.”.

20 (c) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—
21 Section 212(n)(1) of such Act, as amended by this section,
22 is further amended by inserting after subparagraph (H),
23 as added by subsection (b), the following:

24 “(I) If the employer employs not less than 50
25 employees in the United States, not more than 50

1 percent of such employees are H-1B non-
2 immigrants.”.

3 (d) PENALTIES.—Section 212(n)(2)(C) of such Act
4 is amended—

5 (1) in clause (i)(I), by striking “\$1,000” and
6 inserting “\$2,000”;

7 (2) in clause (ii)(I), by striking “\$5,000” and
8 inserting “\$10,000”; and

9 (3) in clause (vi)(III), by striking “\$1,000” and
10 inserting “\$2,000”.

11 (e) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
12 Section 212(n)(2) of such Act, as amended by this section,
13 is further amended—

14 (1) in subparagraph (A), by striking “12
15 months” and inserting “24 months”; and

16 (2) in subparagraph (G)—

17 (A) in clause (i), by striking the second
18 sentence;

19 (B) in clause (iii), by striking the last sen-
20 tence;

21 (C) by striking clauses (iv) and (v);

22 (D) by redesignating clauses (vi), (vii), and
23 (viii) as clauses (iv), (v), and (vi), respectively;

24 (E) in clause (iv), as redesignated—

1 (i) by striking “clause (viii)” and in-
2 sserting “clause (vi)”; and

3 (ii) by striking “12 months” and in-
4 sserting “24 months”; and

5 (F) by adding at the end the following:

6 “(vii) If the Secretary of Labor, after a hearing, finds
7 a reasonable basis to believe that the employer has violated
8 the requirements under this subsection, the Secretary may
9 impose a penalty under subparagraph (C).”.

10 (f) INFORMATION SHARING BETWEEN DEPARTMENT
11 OF LABOR AND DEPARTMENT OF HOMELAND SECUR-
12 RITY.—Section 212(n)(2) of such Act, as amended by this
13 section, is further amended—

14 (1) by redesignating subparagraph (I) as sub-
15 paragraph (J); and

16 (2) by inserting after subparagraph (H) the fol-
17 lowing:

18 “(I) The Director of United States Citizenship and
19 Immigration Services shall provide the Secretary of Labor
20 with any information contained in the materials submitted
21 by H–1B employers as part of the adjudication process
22 that indicates that the employer is not complying with H–
23 1B visa program requirements. The Secretary may initiate
24 and conduct an investigation and hearing under this para-

1 graph after receiving information of noncompliance under
2 this subparagraph.”.

3 (g) INFORMATION PROVIDED TO H-1B NON-
4 IMMIGRANTS UPON VISA ISSUANCE.—

5 (1) IN GENERAL.—Section 212(n) of such Act,
6 as amended by this section, is further amended—

7 (A) by redesignating paragraphs (3) and
8 (4) as paragraphs (4) and (5), respectively; and

9 (B) by inserting after paragraph (2) the
10 following:

11 “(3)(A) Upon issuing an H-1B visa to an applicant
12 outside the United States, the issuing office shall provide
13 the applicant with—

14 “(i) a brochure outlining the employer’s obliga-
15 tions and the employee’s rights under Federal law,
16 including labor and wage protections;

17 “(ii) the contact information for Federal agen-
18 cies that can offer more information or assistance in
19 clarifying employer obligations and workers’ rights;
20 and

21 “(iii) a copy of the employer’s H-1B applica-
22 tion for the position that the H-1B nonimmigrant
23 has been issued the visa to fill.

1 “(B) Upon the issuance of an H–1B visa to an alien
2 inside the United States, the officer of the Department
3 of Homeland Security shall provide the applicant with—

4 “(i) a brochure outlining the employer’s obliga-
5 tions and the employee’s rights under Federal law,
6 including labor and wage protections;

7 “(ii) the contact information for Federal agen-
8 cies that can offer more information or assistance in
9 clarifying employer’s obligations and workers’ rights;
10 and

11 “(iii) a copy of the employer’s H–1B applica-
12 tion for the position that the H–1B nonimmigrant
13 has been issued the visa to fill.”

14 (2) CONFORMING AMENDMENTS.—Section
15 212(n) of such Act, as amended by this section, is
16 further amended—

17 (A) in paragraph (1)(E)—

18 (i) in clause (i), by striking “(4)” and
19 inserting “(5)”; and

20 (ii) in clause (ii)—

21 (I) by striking “(3)” and insert-
22 ing “(4)”; and

23 (II) by striking “(5)” and insert-
24 ing “(6)”; and

25 (B) in paragraph (2)—

1 (i) in subparagraph (A), by striking
2 “(5)(A)” and inserting “(6)(A)”; and

3 (ii) in subparagraph (F), by striking
4 “(5)” and inserting “(6)”.

5 (h) EFFECTIVE DATE.—The amendments made by
6 subsections (b) and (c) shall only apply to applications
7 filed after the date of enactment of this Act.

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