

110TH CONGRESS  
1ST SESSION

# S. 1397

To increase the allocation of visas for certain highly skilled workers and to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

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## IN THE SENATE OF THE UNITED STATES

MAY 15, 2007

Mr. LIEBERMAN (for himself, Mr. HAGEL, Ms. CANTWELL, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To increase the allocation of visas for certain highly skilled workers and to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Skilled Worker Immigration and Fairness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. H-1B visas.

Sec. 3. Employment-based immigration.

Sec. 4. H-1B visa fraud and abuse protections.

1 **SEC. 2. H-1B VISAS.**

2 (a) EXEMPTIONS TO NUMERICAL LIMITATIONS.—

3 (1) IN GENERAL.—Section 214(g)(5) of the Im-  
4 migration and Nationality Act (8 U.S.C. 1184(g)(5))  
5 is amended—

6 (A) in subparagraph (C), by striking “until  
7 the number of aliens who are exempted from  
8 such numerical limitation during such year ex-  
9 ceeds 20,000.” and inserting “or has been  
10 awarded a medical specialty certification based  
11 on post-doctoral training and experience in the  
12 United States; or”; and

13 (B) by adding at the end the following:

14 “(D) has earned a masters or higher de-  
15 gree in science, technology, engineering, or  
16 mathematics from an institution of higher edu-  
17 cation outside of the United States.”.

18 (2) APPLICABILITY.—The amendments made  
19 by paragraph (1) shall apply to—

20 (A) any petition or visa application pend-  
21 ing on the date of the enactment of this Act;  
22 and

23 (B) any petition or visa application filed on  
24 or after such date.

1 (b) MARKET-BASED VISA LIMITS.—Section 214(g) of  
2 such Act (8 U.S.C. 1184(g)), as amended by subsection  
3 (a), is further amended—

4 (1) in paragraph (1)—

5 (A) in the matter preceding subparagraph  
6 (A), by striking “(beginning with fiscal year  
7 1992)”; and

8 (B) in subparagraph (A), by striking  
9 clauses (i) through (vii) and inserting the fol-  
10 lowing:

11 “(i) 115,000 in fiscal year 2007; and

12 “(ii) in fiscal year 2008, and in each sub-  
13 sequent fiscal year, the greater of—

14 “(I) 115,000; or

15 “(II) the number calculated under  
16 paragraph (9);”;

17 (2) in paragraph (8)—

18 (A) in subparagraph (B), by striking  
19 clause (iv); and

20 (B) by striking subparagraph (D);

21 (3) by redesignating paragraphs (9), (10), and  
22 (11) as paragraphs (10), (11), and (12), respec-  
23 tively; and

24 (4) by inserting after paragraph (8) the fol-  
25 lowing:

1 “(9) If the numerical limitation under paragraph  
2 (1)(A)—

3 “(A) is reached during a given fiscal year, the  
4 numerical limitation under paragraph (1)(A) for the  
5 subsequent fiscal year shall be equal to the lesser  
6 of—

7 “(i) 120 percent of the numerical limita-  
8 tion for the given fiscal year; or

9 “(ii) 180,000; and

10 “(B) is not reached during a given fiscal year,  
11 the numerical limitation under paragraph (1)(A) for  
12 the subsequent fiscal year shall be equal to the nu-  
13 merical limitation for the given fiscal year.”.

14 **SEC. 3. EMPLOYMENT-BASED IMMIGRATION.**

15 (a) IN GENERAL.—Section 201(b)(1) of the Immi-  
16 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is  
17 amended by adding at the end the following:

18 “(F) Aliens who have earned a master’s or  
19 higher degree from an accredited university in the  
20 United States.

21 “(G) Aliens who—

22 “(i) have earned an advanced degree in  
23 science, technology, engineering, or mathe-  
24 matics; and

1           “(ii) have been working in a related field  
2           in the United States under a nonimmigrant visa  
3           during the 3-year period preceding their appli-  
4           cation for an immigrant visa under section  
5           203(b).

6           “(H) Aliens who—

7                 “(i) are described in subparagraph (A) or  
8                 (B) of section 203(b)(1); or

9                 “(ii) have received a national interest waiv-  
10                er under section 203(b)(2)(B).

11           “(I) The immediate relatives of an alien who is  
12           admitted as an employment-based immigrant under  
13           section 203(b).”.

14           (b) ADJUSTMENT OF STATUS FOR EMPLOYMENT-  
15           BASED IMMIGRANTS.—

16                 (1) IN GENERAL.—Section 245 of the Immigra-  
17                 tion and Nationality Act (8 U.S.C. 1255) is amend-  
18                 ed by adding at the end the following:

19                 “(n) ADJUSTMENT OF STATUS TO EMPLOYMENT-  
20                 BASED IMMIGRANT.—

21                 “(1) ELIGIBILITY.—An alien, and any eligible  
22                 dependents of such alien, may file an application for  
23                 adjustment of status with the Secretary of Home-  
24                 land Security, whether or not an employment-based

1 immigrant visa is immediately available at the time  
2 the application is filed, if—

3 “(A) a petition filed under subparagraph  
4 (E) or (F) of section 204(a)(1) on behalf of the  
5 alien has been approved; or

6 “(B) in the discretion of the Secretary, the  
7 adjudication of such petition is pending.

8 “(2) VISA AVAILABILITY.—An application filed  
9 under paragraph (1) may not be approved until the  
10 appropriate employment-based immigrant visa be-  
11 comes available under section 203(b).

12 “(3) FEES.—If an employment-based immi-  
13 grant visa is not available on the date on which an  
14 application is filed under paragraph (1), a supple-  
15 mental fee of \$500 shall be paid on behalf of the  
16 beneficiary of such application. Such fee may not be  
17 charged with respect to any dependent accom-  
18 panying or following to join such beneficiary.

19 “(o) EXTENSION OF EMPLOYMENT AUTHORIZATION  
20 AND ADVANCED PAROLE DOCUMENT.—The Secretary of  
21 Homeland Security—

22 “(1) shall issue a 3-year employment authoriza-  
23 tion and 3-year advanced parole document to any  
24 beneficiary of an application for adjustment of sta-

1       tus if a petition has been filed or is pending under  
2       subparagraph (E) or (F) of section 204(a)(1); and

3               “(2) may adjust fees assessed under this sec-  
4       tion in accordance to the 3-year period of validity as-  
5       signed to the employment authorization or advanced  
6       parole documents issued under subparagraph (1).”.

7               (2) USE OF FEES.—Section 286 of such Act (8  
8       U.S.C. 1356) is amended—

9               (A) in subsection (m), by striking “provi-  
10       sions of law, all adjudication fees” and inserting  
11       “provision of law, all adjudication fees and the  
12       fees collected under section 245(n)(3)”;

13              (B) in subsection (n)—

14              (i) by striking “All deposits” and in-  
15       serting the following: “(1) Except as pro-  
16       vided in paragraph (2), all deposits”; and

17              (ii) by adding at the end the fol-  
18       lowing:

19       “(2) All deposits in the Immigration Examinations  
20       Fee Account that were originally collected under section  
21       245(n)(3) shall be used to clear security background check  
22       delays.”.

23              (c) APPLICABILITY.—The amendments made by sub-  
24       sections (a) and (b) shall apply to any visa application—

1           (1) pending on the date of the enactment of  
2           this Act; or

3           (2) filed on or after such date.

4 **SEC. 4. H-1B VISA FRAUD AND ABUSE PROTECTIONS.**

5           (a) PROHIBITION AGAINST ADVERTISING EXCLU-  
6 SIVELY TO H-1B NONIMMIGRANTS.—Section 212(n)(1)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1182(n)(1)) is amended—

9           (1) by redesignating subparagraph (G) as sub-  
10          paragraph (H);

11          (2) by inserting after subparagraph (H), as re-  
12          designated, the following:

13                 “(I) The employer has not advertised the avail-  
14          able jobs specified in the application in an advertise-  
15          ment that states or indicates that—

16                         “(i) the jobs are only available to persons  
17          who are, or may become, H-1B nonimmigrants;  
18          or

19                         “(ii) persons will receive priority or pref-  
20          erence in the hiring process because they are, or  
21          may become, H-1B nonimmigrants.”; and

22          (3) in the undesignated paragraph at the end,  
23          by striking “The employer” and inserting the fol-  
24          lowing:

25                 “(K) The employer”.

1 (b) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—  
2 Section 212(n)(1) of such Act, as amended by this section,  
3 is further amended by inserting after subparagraph (I),  
4 as added by subsection (a)(1), the following:

5 “(J) If the employer employs 50 or more em-  
6 ployees in the United States, not more than 50 per-  
7 cent of such employees are H-1B nonimmigrants.”.

8 (c) SAFEGUARDS AGAINST FRAUD AND MISREPRE-  
9 SENTATION IN APPLICATION REVIEW PROCESS.—Section  
10 212(n)(1)(K) of such Act, as designated by subsection  
11 (a)(2), is amended—

12 (1) by inserting “, clear indicators of fraud,  
13 misrepresentation of material fact,” after “complete-  
14 ness”;

15 (2) by striking “or obviously inaccurate” and  
16 inserting “, presents clear indicators of fraud or  
17 misrepresentation of material fact, or is obviously in-  
18 accurate”; and

19 (3) by adding at the end the following: “If the  
20 Secretary’s review of an application identifies clear  
21 indicators of fraud or misrepresentation of material  
22 fact, the Secretary may conduct an investigation and  
23 hearing under paragraph (2).”.

24 (d) INVESTIGATIONS BY DEPARTMENT OF LABOR.—  
25 Section 212(n)(2) of such Act is amended—

1           (1) in subparagraph (A), by striking “12  
2 months” and all that follows and inserting “24  
3 months after the date of the failure or misrepresen-  
4 tation, respectively. Upon the receipt of such a com-  
5 plaint, the Secretary may initiate an investigation to  
6 determine if such a failure or misrepresentation has  
7 occurred.”;

8           (2) in subparagraph (C)(i)—

9           (A) by striking “a condition of paragraph  
10 (1)(B), (1)(E), or (1)(F)” and inserting “a con-  
11 dition under subparagraph (B), (C), (E), (F),  
12 (H), (I), or (J) of paragraph (1)”;

13           (B) by striking “paragraph (1)(C), (1)(D),  
14 or (1)(G)(i)(I)” and inserting “subparagraph  
15 (C), (D) or (G)(i)(I) of paragraph (1)”;

16           (3) in subparagraph (G)—

17           (A) in clause (i), by striking “if the Sec-  
18 retary” and all that follows and inserting “with  
19 regard to the employer’s compliance with the  
20 requirements under this subsection.”;

21           (B) in clause (ii), by striking “and whose  
22 identity” and all that follows through “failure  
23 or failures.” and inserting “the Secretary of  
24 Labor may conduct an investigation into the

1 employer's compliance with the requirements  
2 under this subsection.”;

3 (C) in clause (iii), by striking the last sen-  
4 tence;

5 (D) by striking clauses (iv) and (v);

6 (E) by redesignating clauses (vi), (vii), and  
7 (viii) as clauses (iv), (v), and (vi), respectively;

8 (F) in clause (iv), as redesignated, by  
9 striking “meet a condition” and all that follows  
10 and inserting “comply with the requirements  
11 under this subsection, unless the Secretary of  
12 Labor receives the information not later than  
13 24 months after the date of the alleged fail-  
14 ure.”;

15 (G) by amending clause (v), as redesi-  
16 gnated, to read as follows:

17 “(v) The Secretary of Labor shall provide notice to  
18 an employer of the intent to conduct an investigation. The  
19 notice shall be provided in such a manner, and shall con-  
20 tain sufficient detail, to permit the employer to respond  
21 to the allegations before an investigation is commenced.  
22 The Secretary is not required to comply with this clause  
23 if the Secretary determines that such compliance would  
24 interfere with an effort by the Secretary to investigate the  
25 employer or secure the employer's compliance with this

1 subsection. A determination by the Secretary under this  
2 clause is not subject to judicial review.”;

3 (H) in clause (vi), as redesignated, by  
4 striking “An investigation” and all that follows  
5 through “the determination.” and inserting “If  
6 the Secretary of Labor, after an investigation  
7 under clause (i) or (ii), determines that a rea-  
8 sonable basis exists to make a finding that the  
9 employer has failed to comply with the require-  
10 ments under this subsection, the Secretary shall  
11 provide interested parties with notice of such  
12 determination and an opportunity for a hearing  
13 in accordance with section 556 of title 5,  
14 United States Code, not later than 120 days  
15 after the date of such determination.”; and

16 (I) by adding at the end the following:

17 “(vii) If the Secretary of Labor, after a hearing, finds  
18 a reasonable basis to believe that the employer has violated  
19 a requirement under this subsection, the Secretary may  
20 impose a penalty under subparagraph (C).”;

21 (4) by redesignating subparagraph (I) as sub-  
22 paragraph (J).

23 (e) ADDITIONAL DEPARTMENT OF LABOR EMPLOY-  
24 EES.—

1           (1) IN GENERAL.—The Secretary of Labor is  
2           authorized to hire 200 additional employees to ad-  
3           minister, oversee, investigate, and enforce programs  
4           involving H–1B nonimmigrant workers.

5           (2) AUTHORIZATION OF APPROPRIATIONS.—  
6           There are authorized to be appropriated such sums  
7           as may be necessary to carry out this subsection.

8           (f) SCHEDULE OF FEES.—Section 214(c)(12)(C) of  
9           the Immigration and Nationality Act (8 U.S.C.  
10          1184(c)(12)(C)) is amended by striking “\$500” and in-  
11          serting “\$1,000”.

12          (g) INFORMATION SHARING BETWEEN DEPARTMENT  
13          OF LABOR AND DEPARTMENT OF HOMELAND SECU-  
14          RITY.—Section 212(n)(2) of such Act, as amended by this  
15          section, is further amended by inserting after subpara-  
16          graph (H) the following:

17          “(I) If any information contained in the materials  
18          submitted by employers of H–1B nonimmigrants as part  
19          of the adjudication process indicates that the employer is  
20          not complying with the requirements under this sub-  
21          section, the Director of United States Citizenship and Im-  
22          migration Services shall provide such information to the  
23          Secretary of Labor. The Secretary may initiate and con-  
24          duct an investigation and hearing under this paragraph  
25          after receiving such information.”.

1 (h) AUDITS.—Section 212(n)(2)(A) of such Act, as  
2 amended by this section, is further amended by adding  
3 at the end the following: “The Secretary may conduct sur-  
4 veys regarding the degree to which employers comply with  
5 the requirements under this subsection and may conduct  
6 annual compliance audits of employers of H–1B non-  
7 immigrants. The Secretary shall conduct annual compli-  
8 ance audits of not less than 1 percent of the employers  
9 of H–1B nonimmigrants during the applicable calendar  
10 year. The Secretary shall conduct annual compliance au-  
11 dits of each employer with more than 100 employees who  
12 work in the United States if more than 15 percent of such  
13 employees are H–1B nonimmigrants.”.

14 (i) PENALTIES.—Section 212(n)(2)(C) of such Act,  
15 as amended by this section, is further amended—

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

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

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

22 (j) INFORMATION PROVIDED TO H–1B NON-  
23 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of  
24 such Act, as amended by this section, is further amended  
25 by adding at the end the following:

1       “(6)(A) Upon providing H–1B nonimmigrant status  
2 to an alien in the United States, the office processing the  
3 petition for such status 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; and

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

10       “(B) Upon issuing an H–1B nonimmigrant visa to  
11 an alien outside the United States, the officer of the De-  
12 partment of State shall provide the applicant with the  
13 items described in clauses (i) and (ii) of subparagraph  
14 (A).”.

○