

112TH CONGRESS
2D SESSION

H. R. 6429

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, to eliminate the diversity immigrant program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2012

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CUELLAR, Mr. LABRADOR, Mr. DREIER, Mr. ROYCE, Mr. GRIFFIN of Arkansas, Mr. GALLEGLY, Mr. DANIEL E. LUNGREN of California, Mr. CHABOT, Mr. ISSA, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. CHAFFETZ, Mr. LEWIS of California, Mr. HERGER, Mr. BACHUS, Mr. CALVERT, Mr. MANZULLO, Mrs. MYRICK, Ms. GRANGER, Mr. SESSIONS, Mr. BILBRAY, Mr. FLAKE, Mrs. BLACKBURN, Mr. CARTER, Mr. NEUGEBAUER, Mr. CONAWAY, Mr. DENT, Mr. MCCAUL, Mr. PEARCE, Mr. CASSIDY, Mr. COFFMAN of Colorado, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Ms. BUERKLE, Mr. GRIMM, Mr. HANNA, Mr. HULTGREN, Mr. LANKFORD, Mr. MCKINLEY, Mr. PALAZZO, Mr. SCHWEIKERT, Mr. STIVERS, Mr. YODER, and Mr. ROSKAM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, to eliminate the diversity immigrant program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “STEM Jobs Act of
3 2012”.

4 **SEC. 2. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM**
5 **GRADUATES.**

6 (a) WORLDWIDE LEVEL OF IMMIGRATION.—Section
7 201(d)(2) of the Immigration and Nationality Act (8
8 U.S.C. 1151(d)(2)) is amended by adding at the end the
9 following:

10 “(D)(i) In addition to the increase provided under
11 subparagraph (C), the number computed under this para-
12 graph for fiscal year 2013 and subsequent fiscal years
13 shall be further increased by the number specified in
14 clause (ii), to be used in accordance with paragraphs (6)
15 and (7) of section 203(b), except that—

16 “(I) immigrant visa numbers made available
17 under this subparagraph but not required for the
18 classes specified in paragraphs (6) and (7) of section
19 203(b) shall not be counted for purposes of sub-
20 section (c)(3)(C); and

21 “(II) for purposes of paragraphs (1) through
22 (5) of section 203(b), the increase under this sub-
23 paragraph shall not be counted for purposes of com-
24 puting any percentage of the worldwide level under
25 this subsection.

1 “(ii) The number specified in this clause is 55,000,
2 reduced for any fiscal year by the number by which the
3 number of visas under section 201(e) would have been re-
4 duced in that year pursuant to section 203(d) of the Nica-
5 ragan Adjustment and Central American Relief Act (8
6 U.S.C. 1151 note) if section 201(e) had not been repealed
7 by section 3 of the STEM Jobs Act of 2012.

8 “(iii) Immigrant visa numbers made available under
9 this subparagraph for fiscal year 2013, but not used for
10 the classes specified in paragraphs (6) and (7) of section
11 203(b) in such year, may be made available in subsequent
12 years as if they were included in the number specified in
13 clause (ii), but only to the extent to which the cumulative
14 number of petitions under section 204(a)(1)(F), and appli-
15 cations for a labor certification under section
16 212(a)(5)(A), filed in fiscal year 2013 with respect to
17 aliens seeking a visa under paragraph (6) or (7) of section
18 203(b) was less than the number specified in clause (ii)
19 for such year. Such immigrant visa numbers may only be
20 made available in fiscal years after fiscal year 2013 in con-
21 nection with a petition under section 204(a)(1)(F), or an
22 application for a labor certification under section
23 212(a)(5)(A), that was filed in fiscal year 2013.

24 “(iv) Immigrant visa numbers made available under
25 this subparagraph for fiscal year 2014, but not used for

1 the classes specified in paragraphs (6) and (7) of section
 2 203(b) during such year, may be made available in subse-
 3 quent years as if they were included in the number speci-
 4 fied in clause (ii), but only to the extent to which the cu-
 5 mulative number of petitions under section 204(a)(1)(F),
 6 and applications for a labor certification under section
 7 212(a)(5)(A), filed in fiscal year 2014 with respect to
 8 aliens seeking a visa under paragraph (6) or (7) of section
 9 203(b) was less than the number specified in clause (ii)
 10 for such year. Such immigrant visa numbers may only be
 11 made available in fiscal years after fiscal year 2014 in con-
 12 nection with a petition under section 204(a)(1)(F), or an
 13 application for a labor certification under section
 14 212(a)(5)(A), that was filed in fiscal year 2014.”.

15 (b) NUMERICAL LIMITATION TO ANY SINGLE FOR-
 16 EIGN STATE.—Section 202(a)(5)(A) of such Act (8 U.S.C.
 17 1152(a)(5)(A)) is amended by striking “or (5)” and in-
 18 serting “(5), (6), or (7)”.

19 (c) PREFERENCE ALLOCATION FOR EMPLOYMENT-
 20 BASED IMMIGRANTS.—Section 203(b) of such Act (8
 21 U.S.C. 1153(b)) is amended—

22 (1) by redesignating paragraph (6) as para-
 23 graph (8); and

24 (2) by inserting after paragraph (5) the fol-
 25 lowing:

1 “(6) ALIENS HOLDING DOCTORATE DEGREES
2 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER
3 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-
4 ING, OR MATHEMATICS.—

5 “(A) IN GENERAL.—Visas shall be made
6 available, in a number not to exceed the number
7 specified in section 201(d)(2)(D)(ii), to quali-
8 fied immigrants who—

9 “(i) hold a doctorate degree in a field
10 of science, technology, engineering, or
11 mathematics from a United States doctoral
12 institution of higher education;

13 “(ii) agree to work for a total of not
14 less than 5 years in the aggregate for the
15 petitioning employer or in the United
16 States in a field of science, technology, en-
17 gineering, or mathematics upon being law-
18 fully admitted for permanent residence;
19 and

20 “(iii) have taken all doctoral courses
21 in a field of science, technology, engineer-
22 ing, or mathematics, including all courses
23 taken by correspondence (including courses
24 offered by telecommunications) or by dis-

1 tance education, while physically present in
2 the United States.

3 “(B) DEFINITIONS.—For purposes of this
4 paragraph, paragraph (7), and sections
5 101(a)(15)(F)(i)(I) and 212(a)(5)(A)(iii)(III):

6 “(i) The term ‘distance education’ has
7 the meaning given such term in section
8 103 of the Higher Education Act of 1965
9 (20 U.S.C. 1003).

10 “(ii) The term ‘field of science, tech-
11 nology, engineering, or mathematics’
12 means a field included in the Department
13 of Education’s Classification of Instruc-
14 tional Programs taxonomy within the sum-
15 mary groups of computer and information
16 sciences and support services, engineering,
17 mathematics and statistics, and physical
18 sciences.

19 “(iii) The term ‘United States doc-
20 toral institution of higher education’ means
21 an institution that—

22 “(I) is described in section
23 101(a) of the Higher Education Act
24 of 1965 (20 U.S.C. 1001(a)) or is a
25 proprietary institution of higher edu-

1 cation (as defined in section 102(b) of
2 such Act (20 U.S.C. 1002(b)));

3 “(II) was classified by the Car-
4 negie Foundation for the Advance-
5 ment of Teaching on January 1,
6 2012, as a doctorate-granting univer-
7 sity with a very high or high level of
8 research activity or classified by the
9 National Science Foundation after the
10 date of enactment of this paragraph,
11 pursuant to an application by the in-
12 stitution, as having equivalent re-
13 search activity to those institutions
14 that had been classified by the Car-
15 negie Foundation as being doctorate-
16 granting universities with a very high
17 or high level of research activity;

18 “(III) has been in existence for
19 at least 10 years;

20 “(IV) does not provide any com-
21 mission, bonus, or other incentive pay-
22 ment based directly or indirectly on
23 success in securing enrollments or fi-
24 nancial aid to any persons or entities
25 engaged in any recruitment or admis-

1 sion activities for nonimmigrant stu-
2 dents or in making decisions regard-
3 ing the award of student financial as-
4 sistance to nonimmigrant students;
5 and

6 “(V) is accredited by an accred-
7 iting body that is itself accredited ei-
8 ther by the Department of Education
9 or by the Council for Higher Edu-
10 cation Accreditation.

11 “(C) LABOR CERTIFICATION REQUIRED.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the Secretary of Homeland Security
14 may not approve a petition filed for classi-
15 fication of an alien under subparagraph
16 (A) unless the Secretary of Homeland Se-
17 curity is in receipt of a determination
18 made by the Secretary of Labor pursuant
19 to the provisions of section 212(a)(5)(A),
20 except that the Secretary of Homeland Se-
21 curity may, when the Secretary deems it to
22 be in the national interest, waive this re-
23 quirement.

24 “(ii) REQUIREMENT DEEMED SATIS-
25 FIED.—The requirement of clause (i) shall

1 be deemed satisfied with respect to an em-
2 ployer and an alien in a case in which a
3 certification made under section
4 212(a)(5)(A)(i) has already been obtained
5 with respect to the alien by that employer.

6 “(7) ALIENS HOLDING MASTER’S DEGREES
7 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER
8 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-
9 ING, OR MATHEMATICS.—

10 “(A) IN GENERAL.—Any visas not required
11 for the class specified in paragraph (6) shall be
12 made available to the class of aliens who—

13 “(i) hold a master’s degree in a field
14 of science, technology, engineering, or
15 mathematics from a United States doctoral
16 institution of higher education that was ei-
17 ther part of a master’s program that re-
18 quired at least 2 years of enrollment or
19 part of a 5-year combined baccalaureate-
20 master’s degree program in such field;

21 “(ii) agree to work for a total of not
22 less than 5 years in the aggregate for the
23 petitioning employer or in the United
24 States in a field of science, technology, en-

1 gineering, or mathematics upon being law-
2 fully admitted for permanent residence;

3 “(iii) have taken all master’s degree
4 courses in a field of science, technology,
5 engineering, or mathematics, including all
6 courses taken by correspondence (including
7 courses offered by telecommunications) or
8 by distance education, while physically
9 present in the United States; and

10 “(iv) hold a baccalaureate degree in a
11 field of science, technology, engineering, or
12 mathematics or in a field included in the
13 Department of Education’s Classification
14 of Instructional Programs taxonomy within
15 the summary group of biological and bio-
16 medical sciences.

17 “(B) LABOR CERTIFICATION REQUIRED.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), the Secretary of Homeland Security
20 may not approve a petition filed for classi-
21 fication of an alien under subparagraph
22 (A) unless the Secretary of Homeland Se-
23 curity is in receipt of a determination
24 made by the Secretary of Labor pursuant
25 to the provisions of section 212(a)(5)(A),

1 except that the Secretary of Homeland Se-
2 curity may, when the Secretary deems it to
3 be in the national interest, waive this re-
4 quirement.

5 “(ii) REQUIREMENT DEEMED SATIS-
6 FIED.—The requirement of clause (i) shall
7 be deemed satisfied with respect to an em-
8 ployer and an alien in a case in which a
9 certification made under section
10 212(a)(5)(A)(i) has already been obtained
11 with respect to the alien by that employer.

12 “(C) DEFINITIONS.—The definitions in
13 paragraph (6)(B) shall apply for purposes of
14 this paragraph.”.

15 (d) PROCEDURE FOR GRANTING IMMIGRANT STA-
16 TUS.—Section 204(a)(1)(F) of such Act (8 U.S.C.
17 1154(a)(1)(F)) is amended—

18 (1) by striking “(F)” and inserting “(F)(i)”;

19 (2) by striking “or 203(b)(3)” and inserting
20 “203(b)(3), 203(b)(6), or 203(b)(7)”;

21 (3) by striking “Attorney General” and insert-
22 ing “Secretary of Homeland Security”; and

23 (4) by adding at the end the following:

24 “(ii) The following processing standards shall apply
25 with respect to petitions under clause (i) relating to alien

1 beneficiaries qualifying under paragraph (6) or (7) of sec-
2 tion 203(b):

3 “(I) The Secretary of Homeland Security shall
4 adjudicate such petitions not later than 60 days
5 after the date on which the petition is filed. In the
6 event that additional information or documentation
7 is requested by the Secretary during such 60-day pe-
8 riod, the Secretary shall adjudicate the petition not
9 later than 30 days after the date on which such in-
10 formation or documentation is received.

11 “(II) The petitioner shall be notified in writing
12 within 30 days of the date of filing if the petition
13 does not meet the standards for approval. If the pe-
14 tition does not meet such standards, the notice shall
15 include the reasons therefore and the Secretary shall
16 provide an opportunity for the prompt resubmission
17 of a modified petition.”.

18 (e) LABOR CERTIFICATION AND QUALIFICATION FOR
19 CERTAIN IMMIGRANTS.—Section 212(a)(5) of such Act (8
20 U.S.C. 1182(a)(5)) is amended—

21 (1) in subparagraph (A)—

22 (A) in clause (ii)—

23 (i) in subclause (I), by striking “, or”
24 at the end and inserting a semicolon;

1 (ii) in subclause (II), by striking the
2 period at the end and inserting “; or”; and

3 (iii) by adding at the end the fol-
4 lowing:

5 “(III) holds a doctorate degree in
6 a field of science, technology, engi-
7 neering, or mathematics from a
8 United States doctoral institution of
9 higher education (as defined in section
10 203(b)(6)(B)(iii)).”;

11 (B) by redesignating clauses (ii) through
12 (iv) as clauses (iii) through (v), respectively;

13 (C) by inserting after clause (i) the fol-
14 lowing:

15 “(ii) JOB ORDER.—

16 “(I) IN GENERAL.—An employer
17 who files an application under clause
18 (i) shall submit a job order for the
19 labor the alien seeks to perform to the
20 State workforce agency in the State in
21 which the alien seeks to perform the
22 labor. The State workforce agency
23 shall post the job order on its official
24 agency website for a minimum of 30
25 days and not later than 3 days after

1 receipt using the employment statis-
2 tics system authorized under section
3 15 of the Wagner-Peyser Act (29
4 U.S.C. 49 et seq.).

5 “(II) LINKS.—The Secretary of
6 Labor shall include links to the offi-
7 cial websites of all State workforce
8 agencies on a single webpage of the
9 official website of the Department of
10 Labor.”; and

11 (D) by adding at the end the following:

12 “(vi) PROCESSING STANDARDS FOR
13 ALIEN BENEFICIARIES QUALIFYING UNDER
14 PARAGRAPHS (6) AND (7) OF SECTION
15 203(b).—The following processing stand-
16 ards shall apply with respect to applica-
17 tions under clause (i) relating to alien
18 beneficiaries qualifying under paragraph
19 (6) or (7) of section 203(b):

20 “(I) The Secretary of Labor shall
21 adjudicate such applications not later
22 than 180 days after the date on which
23 the application is filed. In the event
24 that additional information or docu-
25 mentation is requested by the Sec-

1 retary during such 180-day period,
2 the Secretary shall adjudicate the ap-
3 plication not later than 60 days after
4 the date on which such information or
5 documentation is received.

6 “(II) The applicant shall be noti-
7 fied in writing within 60 days of the
8 date of filing if the application does
9 not meet the standards for approval.
10 If the application does not meet such
11 standards, the notice shall include the
12 reasons therefore and the Secretary
13 shall provide an opportunity for the
14 prompt resubmission of a modified ap-
15 plication.”; and

16 (2) in subparagraph (D), by striking “(2) or
17 (3)” and inserting “(2), (3), (6), or (7)”.

18 (f) GAO STUDY.—Not later than June 30, 2017, the
19 Comptroller General of the United States shall provide to
20 the Congress the results of a study on the use by the Na-
21 tional Science Foundation of the classification authority
22 provided under section 203(b)(6)(B)(iii)(II) of the Immi-
23 gration and Nationality Act (8 U.S.C.
24 1153(b)(6)(B)(iii)(II)), as added by this section.

1 (g) PUBLIC INFORMATION.—The Secretary of Home-
2 land Security shall make available to the public on the
3 official website of the Department of Homeland Security,
4 and shall update not less than monthly, the following in-
5 formation (which shall be organized according to month
6 and fiscal year) with respect to aliens granted status
7 under paragraph (6) or (7) of section 203(b) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1153(b)), as added
9 by this section:

10 (1) The name, city, and State of each employer
11 who petitioned pursuant to either of such para-
12 graphs on behalf of one or more aliens who were
13 granted status in the month and fiscal year to date.

14 (2) The number of aliens granted status under
15 either of such paragraphs in the month and fiscal
16 year to date based upon a petition filed by such em-
17 ployer.

18 (3) The occupations for which such alien or
19 aliens were sought by such employer and the job ti-
20 tles listed by such employer on the petition.

21 (h) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on October 1, 2012, and shall
23 apply with respect to fiscal years beginning on or after
24 such date.

1 **SEC. 3. ELIMINATION OF DIVERSITY IMMIGRANT PRO-**
2 **GRAM.**

3 (a) WORLDWIDE LEVEL OF DIVERSITY IMMI-
4 GRANTS.—Section 201 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1151) is amended—

6 (1) in subsection (a)—

7 (A) by inserting “and” at the end of para-
8 graph (1);

9 (B) by striking “; and” at the end of para-
10 graph (2) and inserting a period; and

11 (C) by striking paragraph (3); and

12 (2) by striking subsection (e).

13 (b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—
14 Section 203 of such Act (8 U.S.C. 1153) is amended—

15 (1) by striking subsection (c);

16 (2) in subsection (d), by striking “(a), (b), or
17 (c),” and inserting “(a) or (b),”;

18 (3) in subsection (e), by striking paragraph (2)
19 and redesignating paragraph (3) as paragraph (2);

20 (4) in subsection (f), by striking “(a), (b), or
21 (c)” and inserting “(a) or (b),” and

22 (5) in subsection (g), by striking “(a), (b), and
23 (c)” and inserting “(a) and (b)”.

24 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
25 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
26 ed—

1 (1) by striking subsection (a)(1)(I); and

2 (2) in subsection (e), by striking “(a), (b), or
3 (c)” and inserting “(a) or (b)”.

4 (d) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect on October 1, 2012, and shall
6 apply with respect to fiscal years beginning on or after
7 such date.

8 **SEC. 4. PERMANENT PRIORITY DATES.**

9 (a) **IN GENERAL.**—Section 203 of the Immigration
10 and Nationality Act (8 U.S.C. 1153) is amended by add-
11 ing at the end the following:

12 “(i) **PERMANENT PRIORITY DATES.**—

13 “(1) **IN GENERAL.**—Subject to subsection
14 (h)(3) and paragraph (2), the priority date for any
15 employment-based petition shall be the date of filing
16 of the petition with the Secretary of Homeland Secu-
17 rity (or the Secretary of State, if applicable), unless
18 the filing of the petition was preceded by the filing
19 of a labor certification with the Secretary of Labor,
20 in which case that date shall constitute the priority
21 date.

22 “(2) **SUBSEQUENT EMPLOYMENT-BASED PETI-**
23 **TIONS.**—Subject to subsection (h)(3), an alien who
24 is the beneficiary of any employment-based petition
25 that was approvable when filed (including self-peti-

1 tioners) shall retain the priority date assigned with
 2 respect to that petition in the consideration of any
 3 subsequently filed employment-based petition (in-
 4 cluding self-petitions).”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 subsection (a) shall take effect on the date of the enact-
 7 ment of this Act and shall apply to aliens who are a bene-
 8 ficiary of a classification petition pending on or after such
 9 date.

10 **SEC. 5. STUDENT VISA REFORM.**

11 (a) IN GENERAL.—Section 101(a)(15)(F) of the Im-
 12 migration and Nationality Act (8 U.S.C. 1101(a)(15)(F))
 13 is amended to read as follows:

14 “(F) an alien—

15 “(i) who—

16 “(I) is a bona fide student qualified to
 17 pursue a full course of study in a field of
 18 science, technology, engineering, or mathe-
 19 matics (as defined in section
 20 203(b)(6)(B)(ii)) leading to a bachelors or
 21 graduate degree and who seeks to enter
 22 the United States for the purpose of pur-
 23 suing such a course of study consistent
 24 with section 214(m) at an institution of
 25 higher education (as described in section

1 101(a) of the Higher Education Act of
2 1965 (20 U.S.C. 1001(a))) or a propri-
3 etary institution of higher education (as
4 defined in section 102(b) of such Act (20
5 U.S.C. 1002(b))) in the United States,
6 particularly designated by the alien and
7 approved by the Secretary of Homeland
8 Security, after consultation with the Sec-
9 retary of Education, which institution shall
10 have agreed to report to the Secretary of
11 Homeland Security the termination of at-
12 tendance of each nonimmigrant student,
13 and if any such institution fails to make
14 reports promptly the approval shall be
15 withdrawn; or

16 “(II) is engaged in temporary employ-
17 ment for optional practical training related
18 to such alien’s area of study following com-
19 pletion of the course of study described in
20 subclause (I);

21 “(ii) who has a residence in a foreign coun-
22 try which the alien has no intention of aban-
23 doning, who is a bona fide student qualified to
24 pursue a full course of study, and who seeks to
25 enter the United States temporarily and solely

1 for the purpose of pursuing such a course of
2 study consistent with section 214(m) at an es-
3 tablished college, university, seminary, conserv-
4 atory, academic high school, elementary school,
5 or other academic institution or in a language
6 training program in the United States, particu-
7 larly designated by the alien and approved by
8 the Secretary of Homeland Security, after con-
9 sultation with the Secretary of Education,
10 which institution of learning or place of study
11 shall have agreed to report to the Secretary of
12 Homeland Security the termination of attend-
13 ance of each nonimmigrant student, and if any
14 such institution of learning or place of study
15 fails to make reports promptly the approval
16 shall be withdrawn;

17 “(iii) who is the spouse or minor child of
18 an alien described in clause (i) or (ii) if accom-
19 panying or following to join such an alien; or

20 “(iv) who is a national of Canada or Mex-
21 ico, who maintains actual residence and place of
22 abode in the country of nationality, who is de-
23 scribed in clause (i) or (ii) except that the
24 alien’s qualifications for and actual course of
25 study may be full or part-time, and who com-

1 mutes to the United States institution or place
2 of study from Canada or Mexico.”.

3 (b) ADMISSION.—Section 214(b) of the Immigration
4 and Nationality Act (8 U.S.C. 1184(b)) is amended by in-
5 serting “(F)(i),” before “(L) or (V)”.

6 (c) CONFORMING AMENDMENT.—Section 214(m)(1)
7 of the Immigration and Nationality Act (8 U.S.C.
8 1184(m)(1)) is amended, in the matter preceding subpara-
9 graph (A), by striking “(i) or (iii)” and inserting “(i), (ii),
10 or (iv)”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of the enactment
13 of this Act and shall apply to nonimmigrants who possess
14 or are granted status under section 101(a)(15)(F) of the
15 Immigration and Nationality Act (8 U.S.C.
16 1101(a)(15)(F)) on or after such date.

○