

113TH CONGRESS
2^D SESSION

H. R. 4178

To amend the Immigration and Nationality Act to provide for reforms to the EB–5 immigrant investor program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2014

Mr. POLIS (for himself, Mr. SALMON, Mr. GARCIA, and Mr. AMODEI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for reforms to the EB–5 immigrant investor 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Entrepre-
5 neurship and Investment Act of 2014”.

6 **SEC. 2. THE EB–5 EMPLOYMENT-CREATION IMMIGRANT IN-**
7 **VESTOR PROGRAM.**

8 (a) **REFORMING THE EB–5 IMMIGRANT INVESTOR**
9 **PROGRAM.**—Section 203(b)(5) of the Immigration and

1 Nationality Act (8 U.S.C. 1153(b)(5)) is amended as fol-
2 lows:

3 (1) TYPE OF INVESTMENT.—In subparagraph
4 (A), by inserting “or similar entity” after “including
5 a limited partnership”.

6 (2) TARGETED EMPLOYMENT AREA.—In sub-
7 paragraph (B)—

8 (A) by amending clause (i) to read as fol-
9 lows:

10 “(i) IN GENERAL.—Not fewer than
11 5,000 of the visas made available under
12 this paragraph in each fiscal year shall be
13 reserved for qualified immigrants who in-
14 vest in a new commercial enterprise de-
15 scribed in subparagraph (A), which—

16 “(I) is investing such capital in a
17 targeted employment area; and

18 “(II) will create employment in
19 such targeted employment area.”.

20 (B) by amending clause (ii) to read as fol-
21 lows:

22 “(ii) TARGETED EMPLOYMENT AREA
23 DEFINED.—In this paragraph, the term
24 ‘targeted employment area’ means, at the
25 time of investment—

1 “(I) a rural area;

2 “(II) an area that has experi-
3 enced high unemployment (of at least
4 150 percent of the national average
5 rate) within the preceding 12 months;

6 “(III) a county that has had a
7 decline in population of 20 percent or
8 more since 1970;

9 “(IV) a military installation
10 closed pursuant to a base closure law
11 (as defined in section 101(a)(17) of
12 title 10, United States Code); or

13 “(V) an area that is within the
14 boundaries established for purposes of
15 a Federal, State, County, or City eco-
16 nomic development incentive program,
17 including areas defined as Enterprise
18 Zones, Renewal Communities and
19 Empowerment Zones.”;

20 (C) in clause (iii), by striking “within a
21 metropolitan statistical area or”; and

22 (D) by inserting after clause (iii) the fol-
23 lowing:

24 “(iv) STATE DETERMINATIONS.—In a
25 case in which a geographic area is deter-

1 mined under clause (ii) to be a targeted
2 employment area by a delegated State
3 agency, and such a determination has been
4 made using acceptable data sources to in-
5 clude U.S. Census Bureau data (including
6 data from the American Community Sur-
7 vey) and data from the Bureau of Labor
8 Statistics (including data from the Local
9 Area Unemployment Statistics), The Sec-
10 retary of Homeland Security or her des-
11 ignee shall defer to a State’s designation
12 as conclusive.

13 “(v) EFFECT OF PRIOR DETERMINA-
14 TION.—In a case in which an area is deter-
15 mined under clause (ii) to be a targeted
16 employment area, such determination shall
17 remain in effect during the 2-year period
18 beginning on the date of the determination
19 for purposes of an alien seeking a visa re-
20 served under this subparagraph.”.

21 (3) CAPITAL.—In subparagraph (C)—

22 (A) in clause (i)—

23 (i) by striking “The Attorney General,
24 in consultation with the Secretary of Labor
25 and the Secretary of State” and inserting

1 “The Secretary of Commerce, in consulta-
2 tion with the Secretary of Homeland Secu-
3 rity and Secretary of Labor”; and

4 (ii) by adding at the end the fol-
5 lowing: “Unless adjusted by the Secretary
6 of Commerce, the amount specified in this
7 clause shall automatically adjust, on Janu-
8 ary 1, 2016, by the percentage change in
9 the Consumer Price Index for all urban
10 consumers published by the Department of
11 Labor during fiscal year 2015, and on
12 every fifth subsequent January 1 by the
13 cumulative percentage change in the Con-
14 sumer Price Index during the previous 5
15 fiscal years, for any petition filed to clas-
16 sify an alien under this paragraph on or
17 after the date of each automatic adjust-
18 ment.”;

19 (B) in clause (ii), by striking “Attorney
20 General” and inserting “Secretary of Homeland
21 Security”;

22 (C) in clause (iii)(II), by striking “Attor-
23 ney General” and inserting “Secretary of
24 Homeland Security”; and

1 (D) by adding after clause (iii) the fol-
2 lowing:

3 “(iv) CAPITAL DEFINED.—For pur-
4 poses of this paragraph, the term ‘capital’
5 does not include any assets acquired, di-
6 rectly or indirectly, by unlawful means”.

7 (4) CALCULATING JOB CREATION.—By amend-
8 ing subparagraph (D) to read as follows:

9 “(D) FULL-TIME EMPLOYMENT.—Job cre-
10 ation under this paragraph may consist of em-
11 ployment measured in full-time equivalents,
12 such as intermittent or seasonal employment
13 opportunities and construction jobs. A full-time
14 employment position is not a requirement for
15 indirect job creation. In this paragraph, the
16 term ‘full-time employment’ means employment
17 in a position that requires at least 35 hours of
18 service per week at any time, regardless of who
19 fills the position. Such employment may be sat-
20 isfied on a full-time equivalent basis by calcu-
21 lating the number of full-time employees that
22 could have been employed if the reported num-
23 ber of hours worked by part-time employees had
24 been worked by full-time employees. Full-time
25 equivalent employment shall be calculated by di-

1 viding the part-time hours paid by the standard
2 number of hours for full-time employees.”.

3 (5) PERMANENT AUTHORIZATION OF REGIONAL
4 CENTER PROGRAM.—By adding after subparagraph
5 (D) the following:

6 “(E) EMPLOYMENT CREATION REGIONAL
7 CENTERS.—

8 “(i) IN GENERAL.—Visas under this
9 paragraph shall be made available to quali-
10 fied immigrants who participate in a pro-
11 gram involving a regional center in the
12 United States, which has been designated
13 by the Secretary of Homeland Security, in
14 consultation with the Secretary of Com-
15 merce, on the basis of a general proposal,
16 for the promotion of economic growth, in-
17 cluding increased exports, improved re-
18 gional productivity, job creation, and in-
19 creased domestic capital investment. A re-
20 gional center shall have jurisdiction over a
21 specific geographic area, which shall be de-
22 scribed in the proposal and consistent with
23 the purpose of concentrating pooled invest-
24 ment in defined economic zones. The es-
25 tablishment of a regional center under this

1 subparagraph may be based on general
2 predictions, contained in the proposal, con-
3 cerning—

4 “(I) the kinds of new commercial
5 enterprises that will receive capital
6 from aliens;

7 “(II) the jobs that will be created
8 directly or indirectly as a result of
9 such investments; and

10 “(III) other positive economic ef-
11 fects such investments will have.

12 “(ii) **METHODOLOGIES.**—In deter-
13 mining compliance with this subparagraph,
14 and notwithstanding requirements applica-
15 ble to investors not involving regional cen-
16 ters, the Secretary of Homeland Security,
17 in consultation with the Secretary of Com-
18 merce, shall recognize reasonable meth-
19 odologies for determining the number of
20 jobs created by a designated regional cen-
21 ter, including such jobs that are estimated
22 to have been created indirectly through
23 revenues generated from increased exports,
24 improved regional productivity, or in-

1 creased domestic capital investment result-
2 ing from the regional center.

3 “(iii) SPECIAL PROCEDURES.—

4 “(I) PREAPPROVAL OF NEW COM-
5 MERCIAL ENTERPRISES.—The Sec-
6 retary of Homeland Security shall es-
7 tablish a preapproval procedure for
8 commercial enterprises that—

9 “(aa) allows a regional cen-
10 ter or potential regional center to
11 apply to the Secretary for
12 preapproval of a new commercial
13 enterprise before any alien files a
14 petition for classification under
15 this paragraph by reason of in-
16 vestment in the new commercial
17 enterprise;

18 “(bb) in considering an ap-
19 plication under subclause (I)—

20 “(AA) allows the appli-
21 cant to address and cure
22 any deficiencies identified by
23 the Secretary in the applica-
24 tion prior to final determina-
25 tion on the application; and

1 “(BB) requires that the
2 Secretary make final deci-
3 sions on all issues under this
4 paragraph other than those
5 issues unique to each indi-
6 vidual investor in the new
7 commercial enterprise; and

8 “(cc) requires that the Sec-
9 retary eliminate the need for the
10 repeated submission of docu-
11 mentation that is common to
12 multiple petitions for classifica-
13 tion under this paragraph
14 through a regional center.

15 “(II) DEFERENCE TO PRIOR
16 RULINGS.—Except in the case of ma-
17 terial change, fraud, or legal defi-
18 ciency, the Secretary of Homeland Se-
19 curity shall give deference to, and not
20 revisit, favorable determinations made
21 pertaining to a commercial enterprise
22 during the adjudication of—

23 “(aa) petitions filed by im-
24 migrants investing in the com-

1 mercant enterprise under this sub-
2 paragraph; or

3 “(bb) petitions filed by such
4 immigrants under section 216A
5 for removal of conditional basis.

6 “(iv) PROCESSING TIMES.—The Sec-
7 retary of Homeland Security shall make
8 determinations on a proposal under clause
9 (i) or an application under clause (iii) not
10 later than 180 days after the date on
11 which the proposal or application is filed.
12 In the event that additional information or
13 documentation is requested by the Sec-
14 retary, the Secretary shall adjudicate the
15 proposal or application not later than 30
16 days after the receipt of such information
17 or documentation. The filing party shall be
18 notified in writing within 30 days of the
19 date of filing if the filing does not meet the
20 standards for approval. If the filing does
21 not meet such standards, the notice shall
22 include the reasons therefore and the Sec-
23 retary shall provide an opportunity for the
24 prompt resubmission of a modified filing.”.

1 (6) PREVENTING FRAUD IN THE REGIONAL
2 CENTER PROGRAM.—In subparagraph (E) (as added
3 by paragraph (5)), by inserting after clause (iii) the
4 following:

5 “(v) BONA FIDES OF REGIONAL CEN-
6 TER PRINCIPALS.—No person may serve as
7 an owner, director or officer of a regional
8 center, or hold other positions of sub-
9 stantive authority for the operations, man-
10 agement or promotion of a regional center,
11 if the Secretary of Homeland Security de-
12 termines based on substantial evidence
13 that the person—

14 “(I) has been found liable within
15 the previous 5 years for any criminal
16 or civil violation of any law relating to
17 fraud or deceit;

18 “(II) has been found liable at
19 any time for any such criminal or civil
20 violation if such violation involved—

21 “(aa) a criminal conviction
22 with a term of imprisonment of
23 at least 1 year; or

1 “(bb) any law or agency reg-
2 ulation in connection with the
3 purchase or sale of a security; or

4 “(III) is engaged in, has ever
5 been engaged in, or seeks to engage in
6 any—

7 “(aa) terrorist activity (as
8 defined in clauses (iii) and (iv) of
9 section 212(a)(3)(B));

10 “(bb) activity relating to es-
11 pionage or sabotage;

12 “(cc) illicit trafficking in any
13 controlled substance;

14 “(dd) activity related to
15 money laundering (as described
16 in section 1956 or 1957 of title
17 18, United States Code);

18 “(ee) violation of any stat-
19 ute, regulation or Executive order
20 regarding foreign financial trans-
21 actions or foreign asset control;
22 or

23 “(ff) human trafficking or
24 any other human rights offense.

1 The Secretary of Homeland Security shall
2 require such attestations and information
3 (including fingerprints) and shall perform
4 such background checks as the Secretary
5 in the Secretary’s discretion considers ap-
6 propriate to determine whether a regional
7 center is in compliance with this clause.
8 The Secretary may terminate any regional
9 center from the program under this section
10 if the Secretary determines that the re-
11 gional center is violation of this clause, the
12 regional center fails to provide such attes-
13 tations and information requested by the
14 Secretary under this clause, or the regional
15 center or any person described in this
16 clause is engaged in fraud, misrepresenta-
17 tion, criminal misuse, or threats to na-
18 tional security. The Secretary shall provide
19 for procedures for the appeal and review of
20 such a termination, and any determina-
21 tions pertaining to such termination shall
22 be subject to review under chapter 7 of
23 title 5, United States Code.

24 “(vi) FEE FOR REGIONAL CENTER
25 DESIGNATION.—In addition to any other

1 fees authorized by law, the Secretary of
2 Homeland Security shall impose—

3 “(I) a fee to apply for designa-
4 tion as a regional center under this
5 subparagraph; and

6 “(II) a fee for preapproval of a
7 new commercial enterprise as provided
8 under clause (iii)(I).”.

9 (7) EB-5 PETITIONS.—By adding after sub-
10 paragraph (E) (as amended by paragraph (6)) the
11 following:

12 “(F) EB-5 PETITIONS.—

13 “(i) PROCESSING TIMES.—The Sec-
14 retary of Homeland Security shall adju-
15 dicate a petition filed pursuant to this
16 paragraph not later than 180 days after
17 the date on which the petition is filed. In
18 the event that additional information or
19 documentation is requested by the Sec-
20 retary, the Secretary shall adjudicate the
21 petition not later than 30 days after the
22 receipt of such information or documenta-
23 tion. The filing party shall be notified in
24 writing within 30 days of the date of filing
25 if the filing does not meet the standards

1 for approval. If the filing does not meet
2 such standards, the notice shall include the
3 reasons therefore and the Secretary shall
4 provide an opportunity for the prompt re-
5 submission of a modified filing.

6 “(ii) COMMUNICATIONS WITH EB-5
7 PETITIONERS.—The Secretary of Home-
8 land Security shall establish a means by
9 which a petitioner for status under this
10 paragraph, a petitioner under section 216A
11 for removal of conditional basis, who is the
12 recipient of a request for additional infor-
13 mation or documentation, a regional cen-
14 ter, or a project developer may, prior to
15 the deadline to respond to that request,
16 communicate directly with U.S. Citizenship
17 and Immigration Services to address con-
18 cerns underlying the request.

19 “(iii) FRAUD.—The Secretary of
20 Homeland Security, in consultation with
21 the Commissioner of the Securities and
22 Exchange Commission, shall develop a
23 strategy to review securities-related mate-
24 rials included in any immigration petition
25 under this paragraph, or a petition under

1 section 216A for removal of conditional
2 basis, when there is evidence of fraud.”.

3 (b) CONFORMING AMENDMENT.—Section 610 of the
4 Departments of Commerce, Justice, and State, the Judici-
5 ary, and Related Agencies Appropriations Act, 1993 (8
6 U.S.C. 1153 note) is repealed.

7 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
8 **IMMIGRANT INVESTORS AND ENTRE-**
9 **PRENEURS.**

10 (a) PROCEDURE FOR GRANTING IMMIGRANT STA-
11 TUS.—Section 204(a)(1)(H) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1154(a)(1)(H)) is amended by
13 striking “Attorney General” and inserting “Secretary of
14 Homeland Security”.

15 (b) CONDITIONAL PERMANENT RESIDENT STA-
16 TUS.—Section 216A of the Immigration and Nationality
17 Act (8 U.S.C. 1186b) is amended—

18 (1) by striking “Attorney General” and “Attor-
19 ney General’s” each place such terms appear, except
20 for the reference to the Attorney General in section
21 216A(d)(2)(C), and inserting “Secretary of Home-
22 land Security” and “Secretary of Homeland Secu-
23 rity’s”, respectively;

1 (2) by striking “the Service” each place such
2 term appears and inserting “U.S. Citizenship and
3 Immigration Services”;

4 (3) in subsection (b)(1)—

5 (A) in subparagraph (A), by striking “in-
6 vestment” and inserting “investment or engage-
7 ment”; and

8 (B) by amending subparagraph (B) to read
9 as follows:

10 “(B)(i) the requisite investment or engage-
11 ment was not made or was not sustained
12 throughout the period of the alien’s residence in
13 the United States; or

14 “(ii) the alien was otherwise not con-
15 forming to the requirements of section
16 203(b)(5), as applicable;”;

17 (4) in subsection (c)(3)(A), by striking “the”
18 before “such filing”;

19 (5) in subsection (d)—

20 (A) in paragraph (1)—

21 (i) in the matter preceding subpara-
22 graph (A), by striking “the alien”; and

23 (ii) by amending subparagraph (A) to
24 read as follows:

1 “(A) the requisite investment or engage-
2 ment was made and was sustained throughout
3 the period of the alien’s residence in the United
4 States; and”;

5 (B) in paragraph (2)(A), by adding at the
6 end the following: “A date specified by the ap-
7 plicant (but not later than the fourth anniver-
8 sary) shall be substituted for the second anni-
9 versary in applying the preceding sentence if
10 the applicant demonstrates that the applicant
11 has attempted to follow the applicant’s business
12 model in good faith, provides an explanation for
13 the delay in filing the petition that is based on
14 circumstances outside of the applicant’s control,
15 and demonstrates that such circumstances will
16 be able to be resolved within the specified pe-
17 riod.”;

18 (6) by redesignating subsection (f) as sub-
19 section (i);

20 (7) by adding after subsection (e) the following:

21 “(f) AGE DETERMINATION FOR CHILDREN OF ALIEN
22 ENTREPRENEURS.—An immigrant admitted under section
23 203(d) as a lawful permanent resident on a conditional
24 basis as the child of an alien entrepreneur, whose lawful
25 permanent resident status on a conditional basis is termi-

1 nated under this section, shall continue to be considered
2 a child of the alien entrepreneur for the purpose of a sub-
3 sequent immigrant petition by the alien entrepreneur
4 under paragraph (b)(5) if the immigrant remains unmar-
5 ried and the subsequent petition by the alien entrepreneur
6 is filed within 1 year after the termination of lawful per-
7 manent resident status on a conditional basis. No alien
8 shall be considered a child under this paragraph with re-
9 spect to more than 1 petition filed after the alien's 21st
10 birthday.

11 “(g) CONSOLIDATED PETITION.—If an alien entre-
12 preneur submits a petition under this section, the alien
13 spouse and alien child shall be deemed to have timely sub-
14 mitted such petitions as well.

15 “(h) PROCESSING TIME.—The Secretary of Home-
16 land Security shall adjudicate a petition filed pursuant to
17 this paragraph not later than 180 days after the date on
18 which the petition is filed. In the event that additional in-
19 formation or documentation is requested by the Secretary,
20 the Secretary shall adjudicate the petition not later than
21 30 days after the receipt of such information or docu-
22 mentation. The filing party shall be notified in writing
23 within 30 days of the date of filing if the filing does not
24 meet the standards for approval. If the filing does not
25 meet such standards, the notice shall include the reasons

1 therefore and the Secretary shall provide an opportunity
2 for the prompt resubmission of a modified filing.”; and

3 (8) in subsection (h) (as redesignated by para-
4 graph (6)), in paragraph (3), by inserting “or simi-
5 lar entity” before the period.

6 (c) CONCURRENT FILING; ADJUSTMENT OF STA-
7 TUS.—Section 245 of the Immigration and Nationality
8 Act (8 U.S.C. 1255) is amended—

9 (1) in subsection (k), in the matter preceding
10 paragraph (1), by striking “(1), (2), or (3)” and in-
11 serting “(1), (2), (3), or (5)”;

12 (2) by adding at the end the following:

13 “(n) If, at the time a petition is filed under section
14 204 for classification under section 203(b)(5), approval of
15 the petition would make a visa immediately available to
16 the alien beneficiary, the alien beneficiary’s adjustment
17 application under this section shall be considered to be
18 properly filed whether the application is submitted concur-
19 rently with, or subsequent to, the visa petition.”.

20 (d) PREMIUM PROCESSING.—Section 286(u) of the
21 Immigration and Nationality Act (8 U.S.C. 1356(u)) is
22 amended by adding at the end the following: “In the case
23 of a petition filed under section 204(a)(1)(H) for classi-
24 fication under section 203(b)(5), if the petitioner desires
25 a guarantee of a decision on the petition in 60 days or

1 less, the premium processing fee under this subsection
 2 shall be set at \$5,000”.

3 **SEC. 4. NATIONAL INTEREST WAIVERS FOR ENTRE-**
 4 **PRENEURS WITH A PROVEN RECORD OF JOB**
 5 **CREATION.**

6 (a) ALIENS WHO ARE MEMBERS OF THE PROFES-
 7 SIONS HOLDING ADVANCED DEGREES.—Section
 8 203(b)(1)(B) of the Immigration and Nationality Act (8
 9 U.S.C. 1153(b)(1)(B)) is amended—

10 (1) by striking “(B)(i) Subject to clause (ii)”
 11 and inserting the following:

12 “(B) NATIONAL INTEREST WAIVERS.—

13 “(i) IN GENERAL.—Subject to clauses
 14 (ii) and (iii)”;

15 (2) in clause (ii)—

16 (A) by striking “(ii)(I) The Attorney Gen-
 17 eral” and inserting the following:

18 “(ii) PHYSICIANS WORKING IN SHORT-
 19 AGE AREAS OR VETERAN FACILITIES.—

20 “(I) IN GENERAL.—The Sec-
 21 retary of Homeland Security”;

22 (B) in subclause (II), by striking “(II) No
 23 permanent resident visa” and inserting “(II)
 24 PROHIBITION.—No permanent resident visa”;

1 (C) in subclause (III), by striking “(III)
2 Nothing in this subparagraph” and inserting
3 the following: “(III) STATUTORY CONSTRUC-
4 TION.—Nothing in this subparagraph”; and

5 (D) in subclause (IV), by striking “(IV)
6 The requirements of” and inserting the fol-
7 lowing: “(IV) EFFECTIVE DATE.—The require-
8 ments of”; and

9 (3) by inserting after clause (ii) the following:

10 “(iii) ENTREPRENEURS AND JOB CRE-
11 ATORS.—The Secretary of Homeland Secu-
12 rity shall grant a national interest waiver
13 pursuant to clause (i) on behalf of any
14 alien entrepreneur with respect to whom a
15 petition for preference classification has
16 been filed under subparagraph (A) if—

17 “(I) the alien has engaged in a
18 new commercial enterprise (including
19 a limited partnership or similar enti-
20 ty) in the United States; and

21 “(II) such enterprise has bene-
22 fitted the United States economy and
23 satisfied the employment creation re-
24 quirements described in section
25 204(m).”.

1 (b) SKILLED WORKERS AND PROFESSIONALS;
2 OTHER WORKERS.—Section 203(b) of the Immigration
3 and Nationality Act (8 U.S.C. 1153(b)) is amended by
4 adding at the end the following:

5 “(6) NATIONAL INTEREST WAIVER FOR ENTRE-
6 PRENEURS AND JOB CREATORS.—The Secretary of
7 Homeland Security shall waive application of para-
8 graphs (2)(C) and (3)(B) on behalf of any alien en-
9 trepreneur with respect to whom a petition for pref-
10 erence classification has been filed under subpara-
11 graph (A) if—

12 “(A) the alien has engaged in a new com-
13 mercial enterprise (including a limited partner-
14 ship or similar entity) in the United States; and

15 “(B) such enterprise has benefitted the
16 United States economy and satisfied the em-
17 ployment creation requirements described in
18 section 204(m).”.

19 (c) REQUIREMENTS.—

20 (1) IN GENERAL.—Section 204 of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1154) is amend-
22 ed by adding at the end the following:

23 “(m) ENTREPRENEURS AND JOB CREATORS.—

24 “(1) JOB CREATION REQUIREMENTS.—For pur-
25 poses of paragraphs (1)(B)(iii) and (6) of section

1 203(b), a new commercial enterprise shall be deemed
2 to have benefitted the United States economy and
3 satisfied the employment creation requirements of
4 this subsection if the enterprise—

5 “(A) has, during the period beginning 4
6 years prior to the date that a petition for pref-
7 erence classification with respect to the alien
8 has been filed under subparagraph (A), created
9 direct, full-time employment—

10 “(i) for not less than 5 United States
11 workers; or

12 “(ii) in the case of an enterprise in a
13 Distressed Area Development Zone, for not
14 less than 3 United States workers; and

15 “(B) the enterprise has received enough in-
16 vestment or revenue during the period described
17 in subparagraph (A) to support the employment
18 creation requirements described in such sub-
19 paragraph.

20 “(2) DEFINITIONS.—For purposes of this sub-
21 section and paragraphs (1)(B)(iii) and (6) of section
22 203(b):

23 “(A) FULL-TIME EMPLOYMENT.—The
24 term ‘full-time employment’ means employment
25 in a position that requires at least 35 hours of

1 service per week at any time, regardless of who
2 fills the position. Such employment may be sat-
3 isfied on a full-time equivalent basis by calcu-
4 lating the number of full-time employees that
5 could have been employed if the reported num-
6 ber of hours worked by part-time employees had
7 been worked by full-time employees. Full-time
8 equivalent employment shall be calculated by di-
9 viding the part-time hours paid by the standard
10 number of hours for full-time employees.

11 “(B) INVESTMENT OR REVENUE.—The
12 term ‘investment or revenue’ does not include
13 any assets acquired, directly or indirectly, by
14 unlawful means. The term ‘investment’ includes
15 assets provided by the alien entrepreneur and
16 may include assets, including venture capital in-
17 vestments, provided pursuant to an investment
18 agreement with investors who are United States
19 citizens or aliens lawfully admitted to the
20 United States for permanent residence.

21 “(C) UNITED STATES WORKER.—The term
22 ‘United States worker’ means an employee
23 (other than the immigrant or the immigrant’s
24 spouse, sons, or daughters) who—

1 “(i) is a citizen or national of the
2 United States; or

3 “(ii) is an alien who is lawfully admit-
4 ted for permanent residence, is admitted as
5 a refugee under section 207, is granted
6 asylum under section 208, or is an immi-
7 grant otherwise authorized to be employed
8 in the United States.

9 “(D) DISTRESSED AREA DEVELOPMENT
10 ZONES.—The term ‘Distressed Area Develop-
11 ment Zone’ means—

12 “(i) a low-income geographic area, as
13 such term is defined in section 351 of the
14 Small Business Investment Act of 1958
15 (15 U.S.C. 689); or

16 “(ii) a city or county in the United
17 States—

18 “(I) that has experienced high
19 unemployment (of not less than 150
20 percent of the national average, as de-
21 termined by the Secretary of Labor)
22 within the preceding 24 months; or

23 “(II) has had a 20 percent or
24 more decrease in population since
25 1970.

1 “(3) PRIORITY DATE.—The priority date for
2 any alien who is adjusting status from any non-
3 immigrant classification described in section
4 101(a)(15) and who receives a national interest
5 waiver under paragraph (1)(B)(iii) or (6) of section
6 203(b) shall be the date of the first petition or appli-
7 cation for status under section 101(a)(15) filed with
8 respect to that alien.”.

9 (2) CONFORMING AMENDMENT.—Section
10 204(a)(1)(E) of the Immigration and Nationality
11 Act is amended by inserting “or under paragraph
12 (1), (2) or (3) of section 203(b) if such alien is seek-
13 ing a national interest waiver under paragraph
14 (1)(B)(iii) or (6) of section 203(b)” after
15 “203(b)(1)(A)”.

16 **SEC. 5. EB-5 VISA REFORMS.**

17 (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
18 LIMITATION.—Section 201(b)(1) of the Immigration and
19 Nationality Act (8 U.S.C. 1151(b)(1)) is amended by add-
20 ing at the end the following:

21 “(P) Aliens who are the spouse or a child
22 of an alien admitted as an employment-based
23 immigrant under section 203(b)(5).”.

24 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN
25 INVESTORS.—Section 203(h) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1153(h)) is amended by adding
2 at the end the following:

3 “(5) AGE DETERMINATION FOR CHILDREN OF
4 ALIEN INVESTORS.—An alien admitted under sub-
5 section (d) as a lawful permanent resident on a con-
6 ditional basis as the child of an alien lawfully admit-
7 ted for permanent residence under subsection (b)(5),
8 whose lawful permanent resident status on a condi-
9 tional basis is terminated under section 216A, shall
10 continue to be considered a child of the principal
11 alien for the purpose of a subsequent immigrant pe-
12 tition by such alien under subsection (b)(5) if the
13 alien remains unmarried and the subsequent petition
14 is filed by the principal alien not later than 1 year
15 after the termination of conditional lawful perma-
16 nent resident status. No alien shall be considered a
17 child under this paragraph with respect to more
18 than 1 petition filed after the alien’s 21st birth-
19 day.”.

20 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
21 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
22 Secretary may establish, fix the compensation of, and ap-
23 point individuals to, designated critical administrative,
24 technical, and professional positions needed to administer

1 sections 203(b)(5) and 216A of the Immigration and Na-
2 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

3 (d) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

4 (1) IN GENERAL.—The Secretary of Homeland
5 Security may delegate to the Secretary of Commerce
6 authority and responsibility for determinations
7 under sections 203(b)(5) and 216A (with respect to
8 alien entrepreneurs) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-
10 ing determining whether an alien has met employ-
11 ment creation requirements.

12 (2) REGULATIONS.—The Secretary of Home-
13 land Security and the Secretary of Commerce may
14 each adopt such rules and regulations as are nec-
15 essary to carry out the delegation authorized under
16 paragraph (1), including regulations governing the
17 eligibility criteria for obtaining benefits pursuant to
18 the amendments made by this section.

19 (3) USE OF FEES.—Adjudication fees described
20 in section 286(m) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1356(m)) shall remain available
22 until expended to reimburse the Secretary of Com-
23 merce for the costs of any determinations made by
24 the Secretary of Commerce under paragraph (1).

1 (e) CONCURRENT FILING OF EB-5 PETITIONS AND
2 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
3 245 (8 U.S.C. 1255) of the Immigration and Nationality
4 Act is amended—

5 (1) in subsection (k), in the matter preceding
6 paragraph (1), by striking “or (3)” and inserting
7 “(3), or (5)”; and

8 (2) by adding at the end the following:

9 “(n) At the time a petition is filed for classification
10 under section 203(b)(5), if the approval of such petition
11 would make a visa immediately available to the alien bene-
12 ficiary, the alien beneficiary’s application for adjustment
13 of status under this section shall be considered to be prop-
14 erly filed whether the application is submitted concur-
15 rently with, or subsequent to, the visa petition.”.

16 (f) TECHNICAL AMENDMENT.—Section 203(b)(5) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)), as amended by this Act, is further amended
19 by striking “Attorney General” each place it appears and
20 inserting “Secretary of Homeland Security”.

21 **SEC. 6. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
22 **EIGN STATES.**

23 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
24 EIGN STATE.—Section 202(a)(2) of the Immigration and
25 Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

1 (1) in the paragraph heading, by striking “and
2 employment-based”;

3 (2) by striking “(3), (4), and (5),” and insert-
4 ing “(3) and (4),”;

5 (3) by striking “subsections (a) and (b) of sec-
6 tion 203” and inserting “section 203(a)”;

7 (4) by striking “7” and inserting “15”; and

8 (5) by striking “such subsections” and inserting
9 “such section”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of the
11 Immigration and Nationality Act (8 U.S.C. 1152) is
12 amended—

13 (1) in subsection (a)—

14 (A) in paragraph (3), by striking “both
15 subsections (a) and (b) of section 203” and in-
16 serting “section 203(a)”;

17 (B) by striking paragraph (5); and

18 (2) by amending subsection (e) to read as fol-
19 lows:

20 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

21 If it is determined that the total number of immigrant
22 visas made available under section 202(a) to natives of
23 any single foreign state or dependent area will exceed the
24 numerical limitation specified in subsection (a)(2) in any
25 fiscal year, in determining the allotment of immigrant visa

1 numbers to natives under section 203(a), visa numbers
2 with respect to natives of that state or area shall be allo-
3 cated (to the extent practicable and otherwise consistent
4 with this section and section 203) in a manner so that,
5 except as provided in subsection (a)(4), the proportion of
6 the visa numbers made available under each of paragraphs
7 (1) through (4) of section 203(a) is equal to the ratio of
8 the total number of visas made available under the respec-
9 tive paragraph to the total number of visas made available
10 under section 203(a).”.

11 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
12 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
13 note) is amended—

14 (1) in subsection (a), by striking “subsection
15 (e)” and inserting “subsection (d)”; and

16 (2) by striking subsection (d) and redesignating
17 subsection (e) as subsection (d).

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 1 year after the date of the
20 enactment of this Act.

21 **SEC. 7. APPLICABILITY OF FOREIGN CORRUPT PRACTICES**

22 **ACT.**

23 The Foreign Corrupt Practices Act (15 U.S.C. 78a
24 et seq.) shall apply to any petition under section
25 203(b)(5).

1 **SEC. 8. REGULATIONS.**

2 Not later than 180 days after the effective date of
3 this subtitle, the Secretary of Homeland Security shall
4 make rules to carry out this Act and the amendments
5 made by this Act.

6 **SEC. 9. CONSULTATION WITH SECRETARY OF COMMERCE.**

7 The Secretary of Homeland Security may consult
8 with the Secretary of Commerce in carrying out this Act
9 and the amendments made by this Act.

10 **SEC. 10. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect beginning on the date that is 6 months after
13 the date of enactment of this Act.

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