

112TH CONGRESS
1ST SESSION

S. 565

To establish an employment-based immigrant visa for alien entrepreneurs who have received significant capital from investors to establish a business in the United States.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2011

Mr. KERRY (for himself, Mr. LUGAR, and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish an employment-based immigrant visa for alien entrepreneurs who have received significant capital from investors to establish a business 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.**

4 This Act may be cited as the “StartUp Visa Act of
5 2011”.

6 **SEC. 2. STARTUP VISAS.**

7 (a) IN GENERAL.—Section 203(b) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 203(b)) is amended—

1 (1) by redesignating paragraph (6) as para-
2 graph (7); and

3 (2) by inserting after paragraph (5) the fol-
4 lowing:

5 “(6) SPONSORED ENTREPRENEURS.—

6 “(A) IN GENERAL.—StartUp visas shall be
7 made available, from the number of visas allo-
8 cated under paragraph (5), to qualified immi-
9 grant entrepreneurs—

10 “(i)(I) who have proven that a quali-
11 fied venture capitalist, a qualified super
12 angel investor, or a qualified government
13 entity, as determined by the Secretary of
14 Homeland Security, has invested not less
15 than \$100,000 on behalf of each such en-
16 trepreneur; and

17 “(II) whose commercial activities will,
18 during the 2-year period beginning on the
19 date on which the visa is issued under this
20 subparagraph—

21 “(aa) create not fewer than 5
22 new full-time jobs in the United
23 States employing people other than
24 the immigrant’s spouse, sons, or
25 daughters;

1 “(bb) raise not less than
2 \$500,000 in capital investment in fur-
3 therance of a commercial entity based
4 in the United States; or

5 “(cc) generate not less than
6 \$500,000 in revenue;

7 “(ii)(I) who—

8 “(aa) hold an unexpired H1–B
9 visa; or

10 “(bb) have completed a graduate
11 level degree in science, technology, en-
12 gineering, math, computer science, or
13 other relevant academic discipline
14 from an accredited United States col-
15 lege, university, or other institution of
16 higher education;

17 “(II) who demonstrate—

18 “(aa) annual income of not less
19 than 250 percent of the Federal pov-
20 erty level; or

21 “(bb) the possession of assets
22 equivalent to not less than 2 years of
23 income at 250 percent of the Federal
24 poverty level; and

1 “(III) who have proven that a quali-
2 fied venture capitalist, a qualified super
3 angel investor, or a qualified government
4 entity, as determined by the Secretary of
5 Homeland Security, has invested not less
6 than \$20,000 on behalf of each such entre-
7 preneur; or

8 “(iii) who have a controlling interest
9 in a foreign company—

10 “(I) that has generated, during
11 the most recent 12-month period, not
12 less than \$100,000 in revenue from
13 sales in the United States; and

14 “(II) whose commercial activities,
15 during the 2-year period beginning on
16 the date on which the visa is issued
17 under this subparagraph, will—

18 “(aa) create not fewer than
19 3 new full-time jobs in the
20 United States that employ people
21 other than the immigrant’s
22 spouse, sons, or daughters;

23 “(bb) raise not less than
24 \$100,000 in capital investment in

1 furtherance of a commercial enti-
2 ty based in the United States; or

3 “(cc) generate not less than
4 \$100,000 in revenue.

5 “(B) REVOCATION.—If the Secretary of
6 Homeland Security determines that the com-
7 mercial activities of an alien who received a
8 StartUp visa pursuant to subparagraph
9 (A)(i)(II) fail to meet the requirements under
10 such subparagraph, the Secretary shall, not
11 later than 1 year after the end of the applicable
12 2-year period described in such subparagraph—

13 “(i) revoke such visa; and

14 “(ii) notify the alien that he or she—

15 “(I) may voluntarily depart from
16 the United States in accordance to
17 section 240B; or

18 “(II) will be subject to removal
19 proceedings under section 240 if the
20 alien does not depart from the United
21 States not later than 6 months after
22 receiving such notification.

23 “(C) DEFINITIONS.—In this paragraph:

1 “(i) QUALIFIED SUPER ANGEL INVES-
2 TOR.—The term ‘qualified super angel in-
3 vestor’ means an individual who—

4 “(I) is an accredited investor (as
5 defined in section 230.501(a) of title
6 17, Code of Federal Regulations);

7 “(II) is a United States citizen;
8 and

9 “(III) has made at least 2 equity
10 investments of not less than \$50,000
11 in each of the previous 3 years.

12 “(ii) QUALIFIED VENTURE CAPI-
13 TALIST.—The term ‘qualified venture capi-
14 talist’ means an entity that—

15 “(I) is classified as a ‘venture
16 capital operating company’ under sec-
17 tion 2510.3–101(d) of title 29, Code
18 of Federal Regulations;

19 “(II) is based in the United
20 States;

21 “(III) is comprised of partners,
22 the majority of whom are United
23 States citizens;

24 “(IV) has capital commitments of
25 not less than \$10,000,000;

1 “(V) has been operating for at
2 least 2 years; and

3 “(VI) has made at least 2 invest-
4 ments of not less than \$500,000 dur-
5 ing each of the most recent 2 years.”.

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

9 (1) by striking “Attorney General” each place
10 such term appears and inserting “Secretary of
11 Homeland Security”;

12 (2) in subsection (a)—

13 (A) in paragraph (1)—

14 (i) by striking “(as defined in sub-
15 section (f)(1))” and inserting “, sponsored
16 entrepreneur”; and

17 (ii) by striking “(as defined in sub-
18 section (f)(2)) shall” and inserting “shall
19 each”; and

20 (B) in paragraph (2)(A), by inserting
21 “sponsored entrepreneur,” after “alien entre-
22 preneur,”;

23 (3) in subsection (b), by adding at the end the
24 following:

1 “(3) SPONSORED ENTREPRENEURS.—The Sec-
2 retary of Homeland Security shall terminate the per-
3 manent resident status of a sponsored entrepreneur
4 and the alien spouse and children of such entre-
5 preneur if the Secretary determines, not later than
6 3 years after the date on which such permanent resi-
7 dent status was conferred, that—

8 “(A) the qualified venture capitalist or
9 qualified super angel investor who sponsored
10 the entrepreneur failed to meet the investment
11 requirements under section 203(b)(6)(A)(i); or

12 “(B) the entrepreneur failed to meet the
13 job creation, capital investment, or revenue gen-
14 eration requirements under section
15 203(b)(6)(A)(ii).”;

16 (4) in subsection (c)—

17 (A) in paragraph (1)—

18 (i) in the matter preceding subpara-
19 graph (A), by inserting “sponsored entre-
20 preneur,” after “alien entrepreneur,”; and

21 (ii) by striking “alien entrepreneur
22 must” each place such term appears and
23 inserting “entrepreneur shall”; and

24 (B) in paragraph (3)—

1 (i) in subparagraph (A)(ii), by insert-
2 ing “or sponsored entrepreneur” after
3 “alien entrepreneur”; and

4 (ii) in subparagraph (C), by inserting
5 “sponsored entrepreneur,” after “alien en-
6 trepreneur”;

7 (5) in subsection (d)(1)—

8 (A) in the matter preceding subparagraph
9 (A), by striking “alien” and inserting “alien en-
10 trepreneur or sponsored entrepreneur, as appli-
11 cable”;

12 (B) in clause (i), by striking “invested, or
13 is actively in the process of investing,” and in-
14 serting “has invested, is actively in the process
15 of investing, or has been sponsored by a quali-
16 fied super angel investor or qualified venture
17 capitalist who has invested,”; and

18 (C) in clause (ii), by inserting “or
19 203(b)(6), as applicable” before the period at
20 the end; and

21 (6) in subsection (f), by adding at the end the
22 following:

23 “(4) The term ‘sponsored entrepreneur’ means
24 an alien who obtains the status of an alien lawfully

1 admitted for permanent residence under section
2 203(b)(6).”.

3 **SEC. 3. GOVERNMENT ACCOUNTABILITY OFFICE STUDY.**

4 (a) IN GENERAL.—Not later than 2 years after the
5 date of the enactment of this Act, the Comptroller General
6 of the United States shall submit a report to Congress
7 on the StartUp Visa Program, authorized under section
8 203(b)(6) of the Immigration and Nationality Act, as
9 added by section 2.

10 (b) CONTENTS.—The report described in subsection
11 (a) shall include information regarding—

12 (1) the number of immigrant entrepreneurs who
13 have received a visa under the immigrant entre-
14 preneurs program established under section
15 203(b)(6) of the Immigration and Nationality Act,
16 listed by country of origin;

17 (2) the localities in which such immigrant en-
18 trepreneurs have initially settled;

19 (3) whether such immigrant entrepreneurs gen-
20 erally remain in the localities in which they initially
21 settle;

22 (4) the types of commercial enterprises that
23 such immigrant entrepreneurs have established; and

- 1 (5) the types and number of jobs created by
- 2 such immigrant entrepreneurs.

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