

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 Beginning on page 672, strike line 15 and all that
2 follows through page 691, line 5, and insert the following:

3 **Subtitle A—Increasing the Avail-**
4 **ability of Employment-based**
5 **Visas**

6 **SEC. 4101. SHORT TITLE.**

7 This subtitle may be cited as the “Immigration Inno-
8 vation Act of 2013” or the “I-Squared Act of 2013”.

1 **CHAPTER 1—EMPLOYMENT-BASED**
2 **NONIMMIGRANT VISAS**

3 **SEC. 4111. MARKET-BASED H-1B VISA LIMITS.**

4 (a) IN GENERAL.—Section 214(g) (8 U.S.C.
5 1184(g)) is amended—

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph
8 (A), by striking “(beginning with fiscal year
9 1992)”; and

10 (B) by amending subparagraph (A) to read
11 as follows:

12 “(A) under section 101(a)(15)(H)(i)(b)
13 may not exceed the sum of—

14 “(i) the base allocation calculated
15 under paragraph (9)(A); and

16 “(ii) the allocation adjustment cal-
17 culated under paragraph (9)(B); and”;

18 (2) in paragraph (5)—

19 (A) in subparagraph (B), by striking “or”
20 at the end; and

21 (B) in subparagraph (C), by striking “,
22 until the number of aliens who are exempted
23 from such numerical limitation during such
24 year exceeds 20,000.” and inserting “; or”;

1 (3) in paragraph (8), by striking subparagraphs
2 (B)(iv) and (D);

3 (4) by redesignating paragraph (10) as sub-
4 paragraph (D) of paragraph (9);

5 (5) by redesignating paragraph (9) as para-
6 graph (10); and

7 (6) by inserting after paragraph (8) the fol-
8 lowing:

9 “(9)(A) The base allocation of nonimmigrant visas
10 under section 101(a)(15)(H)(i)(b) for each fiscal year
11 shall be equal to—

12 “(i) the sum of—

13 “(I) the base allocation for the most re-
14 cently completed fiscal year; and

15 “(II) the allocation adjustment for the
16 most recently completed fiscal year;

17 “(ii) if the number calculated under clause (i)
18 is less than 115,000, 115,000; or

19 “(iii) if the number calculated under clause (i)
20 is more than 300,000, 300,000.

21 “(B)(i) If the number of cap-subject nonimmigrant
22 visa petitions approved under section 101(a)(15)(H)(i)(b)
23 during the first 45 days petitions may be filed for a fiscal
24 year is equal to the base allocation for such fiscal year,
25 an additional 20,000 such visas shall be made available

1 beginning on the 46th day on which petitions may be filed
2 for such fiscal year.

3 “(ii) If the base allocation of cap-subject non-
4 immigrant visa petitions approved under section
5 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
6 15-day period ending on the 60th day on which petitions
7 may be filed for such fiscal year, an additional 15,000
8 such visas shall be made available beginning on the 61st
9 day on which petitions may be filed for such fiscal year.

10 “(iii) If the base allocation of cap-subject non-
11 immigrant visa petitions approved under section
12 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
13 30-day period ending on the 90th day on which petitions
14 may be filed for such fiscal year, an additional 10,000
15 such visas shall be made available beginning on the 91st
16 day on which petitions may be filed for such fiscal year.

17 “(iv) If the base allocation of cap-subject non-
18 immigrant visa petitions approved under section
19 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
20 185-day period ending on the 275th day on which peti-
21 tions may be filed for such fiscal year, an additional 5,000
22 such visas shall be made available beginning on the date
23 on which such allocation is reached.

24 “(v) If the number of cap-subject nonimmigrant visa
25 petitions approved under section 101(a)(15)(H)(i)(b) for

1 a fiscal year is at least 5,000 fewer than the base alloca-
2 tion, but is not more than 9,999 fewer than the base allo-
3 cation, the allocation adjustment for the following fiscal
4 year shall be -5,000.

5 “(vi) If the number of cap-subject nonimmigrant visa
6 petitions approved under section 101(a)(15)(H)(i)(b) for
7 a fiscal year is at least 10,000 fewer than the base alloca-
8 tion, but not more than 14,999 fewer than the base alloca-
9 tion, the allocation adjustment for the following fiscal year
10 shall be -10,000.

11 “(vii) If the number of cap-subject nonimmigrant visa
12 petitions approved under section 101(a)(15)(H)(i)(b) for
13 a fiscal year is at least 15,000 fewer than the base alloca-
14 tion, but not more than 19,999 fewer than the base alloca-
15 tion, the allocation adjustment for the following fiscal year
16 shall be -15,000.

17 “(viii) If the number of cap-subject nonimmigrant
18 visa petitions approved under section 101(a)(15)(H)(i)(b)
19 for a fiscal year is at least 20,000 fewer than the base
20 allocation, the allocation adjustment for the following fis-
21 cal year shall be -20,000.”.

22 (b) REPORTING REQUIREMENT.—The Secretary
23 shall—

24 (1) timely upload to a public website data that
25 summarizes the adjudication of nonimmigrant peti-

1 tions under section 101(a)(15)(H)(b) of the Immi-
2 gration and Nationality Act (8 U.S.C.
3 1101(a)(15)(H)(b)) during each fiscal year; and

4 (2) allow the timely adjustment of visa alloca-
5 tions under section 214(g)(9)(B) of such Act, as
6 added by subsection (a).

7 **SEC. 4112. EMPLOYMENT AUTHORIZATION FOR DEPEND-**
8 **ENTS OF H-1B NONIMMIGRANTS.**

9 Section 214(c) (8 U.S.C. 1184(c)) is amended—

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

13 (2) in paragraph (2), by amending subpara-
14 graph (E) to read as follows:

15 “(E) The Secretary of Homeland Security
16 shall—

17 “(i) authorize an alien spouse admitted
18 under subparagraph (H)(i)(b) or (L) of section
19 101(a)(15) who is accompanying or following to
20 join the principal alien to engage in employment
21 in the United States; and

22 “(ii) provide the spouse with an ‘employ-
23 ment authorized’ endorsement or other appro-
24 priate work permit.”.

1 **SEC. 4113. ELIMINATING IMPEDIMENTS TO WORKER MO-**
2 **BILITY.**

3 (a) DEFERENCE TO PRIOR APPROVALS.—Section
4 214(e) (8 U.S.C. 1184(e)) is amended by adding at the
5 end the following:

6 “(9) The Secretary of Homeland Security may not
7 deny a petition to extend the status of a nonimmigrant
8 admitted under subparagraph (H)(i)(b) or (L) of section
9 101(a)(15) in which the petition involves the same alien
10 and petitioner unless the Secretary determines that—

11 “(A) there was a material error with regard to the
12 previous petition approval;

13 “(B) a substantial change in circumstances has taken
14 place that renders the nonimmigrant ineligible for such
15 status under this Act; or

16 “(C) new material information has been discovered
17 that adversely impacts the eligibility of the employer or
18 the nonimmigrant.”.

19 (b) EFFECT OF EMPLOYMENT TERMINATION.—Sec-
20 tion 214(n) (8 U.S.C. 1184(n)) is amended by adding at
21 the end the following:

22 “(3) A nonimmigrant admitted under section
23 101(a)(15)(H)(i)(b) whose employment relationship termi-
24 nates before the expiration of the nonimmigrant’s period
25 of authorized admission shall be deemed to have retained
26 such legal status throughout the entire 60-day period be-

1 ginning on the date such employment is terminated if an
2 employer files a petition to extend, change, or adjust the
3 status of the nonimmigrant at any point during such pe-
4 riod.”.

5 (c) VISA REVALIDATION.—Section 222(c) (8 U.S.C.
6 1202(c)) is amended by inserting “The Secretary of State
7 shall authorize an alien admitted under subparagraph (E),
8 (H), (L), (O), or (P) of section 101(a)(15) to renew his
9 or her nonimmigrant visa in the United States if the alien
10 has remained eligible for such status.”.

11 **CHAPTER 2—STUDENT VISAS**

12 **SEC. 4121. AUTHORIZATION OF DUAL INTENT.**

13 (a) DEFINITION.—Section 101(a)(15)(F)(i) (8
14 U.S.C. 1101(a)(15)(F)(i)) is amended by striking “which
15 he has no intention of abandoning”.

16 (b) PRESUMPTION OF STATUS; INTENTION TO ABAN-
17 DON FOREIGN RESIDENCE.—Section 214 (8 U.S.C. 1184)
18 is amended—

19 (1) in subsection (b), by striking “(L) or (V)”
20 and inserting “(F), (L), or (V)”; and

21 (2) in subsection (h), by striking “(H)(i)(b) or
22 (c)” and inserting “(F), (H)(i)(b), (H)(i)(c)”.

1 **CHAPTER 3—EMPLOYMENT-BASED**
2 **IMMIGRANT VISAS**

3 **SEC. 4131. ELIMINATION OF PER-COUNTRY NUMERICAL**
4 **LIMITATIONS.**

5 (a) IN GENERAL.—Section 202(a)(2) (8 U.S.C.
6 1152(a)(2)) is amended to read as follows:

7 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
8 SORED IMMIGRANTS.—Subject to paragraphs (3)
9 and (4), the total number of immigrant visas made
10 available to natives of any single foreign state or de-
11 pendent area under section 203(a) in any fiscal year
12 may not exceed 15 percent (in the case of a single
13 foreign state) or 2 percent (in the case of a depend-
14 ent area) of the total number of such visas made
15 available under such section in that fiscal year.”.

16 (b) CONFORMING AMENDMENTS.—Section 202 (8
17 U.S.C. 1152) is amended—

18 (1) in subsection (a)—

19 (A) in paragraph (3), by striking “both
20 subsections (a) and (b) of section 203” and in-
21 serting “section 203(a)”; and

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

23 (2) by amending subsection (e) to read as fol-
24 lows:

1 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—
2 If the total number of immigrant visas made available
3 under section 203(a) to natives of any single foreign state
4 or dependent area will exceed the numerical limitation
5 specified in subsection (a)(2) in any fiscal year, the num-
6 ber of visas for natives of that state or area shall be allo-
7 cated under section 203(a) so that, except as provided in
8 subsection (a)(4), the proportion of the visa numbers
9 made available under each of paragraphs (1) through (4)
10 of section 203(a) is equal to the ratio of the total number
11 of visas made available under the respective paragraph to
12 the total number of visas made available under section
13 203(a).”.

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

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

19 (2) by striking subsection (d) and redesignating
20 subsection (e) as subsection (d).

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on October 1, 2013, and shall
23 apply to fiscal years beginning with fiscal year 2014.

1 **SEC. 4132. RECAPTURING LOST EMPLOYMENT-BASED IMMI-**
2 **GRANT VISAS.**

3 Section 201(d) (8 U.S.C. 1151(d)) is amended to
4 read as follows:

5 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
6 IMMIGRANTS.—

7 “(1) IN GENERAL.—The worldwide level of em-
8 ployment-based immigrants under this subsection for
9 a fiscal year is equal to the sum of—

10 “(A) 140,000; and

11 “(B) the number computed under para-
12 graph (2).

13 “(2) UNUSED VISAS.—The number computed
14 under this paragraph is the difference, if any, be-
15 tween—

16 “(A) the sum of the worldwide levels estab-
17 lished under paragraph (1) for fiscal years
18 1992 through the current fiscal year; and

19 “(B) the number of visas actually issued
20 under section 203(b), subject to this subsection,
21 during such fiscal years.”.

22 **SEC. 4133. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
23 **LIMITATION.**

24 (a) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
25 1151(b)(1)), as amended by sections 2103(c)(2),

1 2212(d)(2), 2307(b), and 2402, is further amended by
2 adding at the end the following:

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

6 “(Q) Aliens who have earned a master’s or
7 higher degree in a field listed on the STEM
8 Designated Degree Program List published by
9 the Department of Homeland Security on the
10 Student and Exchange Visitor Program website
11 from an institution of higher education (as de-
12 fined in section 101(a) of the Higher Education
13 Act of 1965 (20 U.S.C. 1001(a))).

14 “(R) Aliens for whom a petition for an em-
15 ployment-based immigrant visa under para-
16 graph (A) or (B) of section 203(b)(1) has been
17 approved.”.

18 (b) CONFORMING AMENDMENTS.—Section 203(b) (8
19 U.S.C. 1153(b)) is amended—

20 (1) in paragraph (1), by striking “28.6 per-
21 cent” and inserting “12 percent”;

22 (2) in paragraph (2)(A), by striking “28.6 per-
23 cent” and inserting “36.9 percent”; and

24 (3) in paragraph (3)—

1 (A) in subparagraph (A), by striking “28.6
2 percent” and inserting “36.9 percent”;
3 (B) by striking subparagraph (B); and
4 (C) by redesignating subparagraph (C) as
5 subparagraph (B).

6 **CHAPTER 4—STEM EDUCATION FUNDING**

7 **SEC. 2141. FUNDING FOR STEM EDUCATION AND TRAINING.**

8 (a) NONIMMIGRANT FEE ADJUSTMENT AND ALLOCA-
9 TION.—Section 214(c)(9) (8 U.S.C. 1184(c)(9)) is amend-
10 ed—

11 (1) by amending subparagraph (B) to read as
12 follows:

13 “(B) The amount of the fee imposed under this para-
14 graph shall be—

15 “(i) \$1,250 for each such petition filed by an
16 employer with not more than 25 full-time equivalent
17 employees who are employed in the United States
18 (determined by including any affiliate or subsidiary
19 of such employer); and

20 “(ii) \$2,500 for each such petition filed by an
21 employer with more than 25 such employees.”; and

22 (2) by amending subparagraph (C) to read as
23 follows:

24 “(C) Fees collected under this paragraph shall be dis-
25 tributed as follows:

1 “(i) Of the amounts collected pursuant to sub-
2 paragraph (B)(i)—

3 “(I) \$750 shall be deposited in the Treas-
4 ury in accordance with section 286(s); and

5 “(II) \$500 shall be deposited in the Treas-
6 ury in accordance with section 286(w).

7 “(ii) Of the amounts collected pursuant to sub-
8 paragraph (B)(ii)—

9 “(I) \$1,500 shall be deposited in the
10 Treasury in accordance with section 286(s); and

11 “(II) \$1,000 shall be deposited in the
12 Treasury in accordance with section 286(w).”.

13 (b) CONFORMING AMENDMENT.—Section
14 286(s)(1)(8 U.S.C. 1356(s)(1)) is amended by striking the
15 last sentence and inserting “There shall be deposited as
16 offsetting receipts into the account a portion of the fees
17 collected under paragraphs (9) and (11) of section
18 214(e).”.

19 (c) IMMIGRANT FEE.—Section 203(b) (8 U.S.C.
20 1153(b)) is amended by adding at the end the following:

21 “(7) FUNDING FOR STEM EDUCATION AND
22 TRAINING.—The Secretary of Homeland Security
23 shall impose a fee of \$1,000 on each I-140 immi-
24 grant visa petition filed under this subsection.
25 Amounts collected under this paragraph shall be de-

1 posited into the Treasury in accordance with section
2 286(w).”.

3 **SEC. 2142. PROMOTING AMERICAN INGENUITY ACCOUNT.**

4 Section 286 (8 U.S.C. 1356) is amended by adding
5 at the end the following:

6 “(w) PROMOTING AMERICAN INGENUITY AC-
7 COUNT.—

8 “(1) IN GENERAL.—There is established in the
9 general fund of the Treasury a separate account,
10 which shall be known as the ‘Promoting American
11 Ingenuity Account’. There shall be deposited as off-
12 setting receipts into the account fees collected under
13 section 203(b)(7) and a portion of the fees collected
14 under section 214(c)(9). Amounts deposited into the
15 account shall remain available to the Secretary of
16 Education until expended.

17 “(2) PURPOSES.—The purposes of the Pro-
18 moting American Ingenuity Account are to enhance
19 the economic competitiveness of the United States
20 by—

21 “(A) strengthening STEM education, in-
22 cluding in computer science, at all levels;

23 “(B) ensuring that schools have access to
24 well-trained and effective STEM teachers;

1 “(C) supporting efforts to strengthen the
2 elementary and secondary curriculum, including
3 efforts to make courses in computer science
4 more broadly available; and

5 “(D) helping colleges and universities
6 produce more graduates in fields needed by
7 American employers.

8 “(3) ALLOCATION OF FUNDS.—

9 “(A) NATIONAL ACTIVITIES.—The Sec-
10 retary of Education may reserve up to 5 per-
11 cent of the amounts deposited into the Pro-
12 moting American Ingenuity Account for na-
13 tional research, development, demonstration,
14 evaluation, and dissemination activities carried
15 out directly or through grants, contracts, or co-
16 operative agreements, including—

17 “(i) activities undertaken jointly with
18 other Federal agencies, such as STEM
19 mission agencies; and

20 “(ii) grants to non-profit organiza-
21 tions for nationally significant activities
22 consistent with the purposes of the Immi-
23 gration Innovation Act of 2013.

24 “(B) ALLOCATIONS TO STATES.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), the Secretary of Education shall pro-
3 portionately allocate the remaining
4 amounts deposited into the account to the
5 States each fiscal year in an amount that
6 bears the same relationship to the remain-
7 der as the amount the State received under
8 subpart 2 of part A of title I of the Ele-
9 mentary and Secondary Education Act of
10 1965 (20 U.S.C. 6331 et seq.) for the pre-
11 ceding fiscal year bears to the amount all
12 States received under that subpart for the
13 preceding fiscal year.

14 “(ii) MINIMUM ALLOCATIONS.—No
15 State shall receive less than an amount
16 equal to 0.5 percent of the total amount
17 made available to all States from the Pro-
18 moting American Ingenuity Account. If a
19 State does not request an allocation from
20 the Account for a fiscal year, the Secretary
21 shall reallocate the State’s allocation to the
22 remaining States in accordance with this
23 section.”.

1 **SEC. 2143. STEM EDUCATION GRANT APPLICATION PROC-**
2 **ESS.**

3 (a) APPLICATION.—Each State desiring to receive an
4 allocation from the Promoting American Ingenuity Ac-
5 count established under section 286(w) of the Immigration
6 and Nationality Act (8 U.S.C. 1356(w)) shall submit an
7 application to the Secretary of Education that describes
8 how the State plans to improve STEM education to meet
9 the needs of employers in the State, at such time, in such
10 form, and including such information as the Secretary of
11 Education may prescribe.

12 (b) APPROVAL.—The Secretary of Education shall
13 approve any application submitted under subsection (a)
14 that meets the requirements prescribed by the Secretary
15 of Education if the Secretary of Education determines,
16 after evaluating the recommendations of peer reviewers,
17 that the State’s plan for the use of funds would be success-
18 ful in making progress toward meeting the purposes set
19 forth in section 286(w)(2) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1356(w)(2)).

21 **SEC. 2144. APPROVED ACTIVITIES.**

22 A State or other entity that receives funding from
23 the Promoting American Ingenuity Account may use such
24 funding—

1 (1) to strengthen the State’s academic achieve-
2 ment standards in science, technology, engineering,
3 and mathematics (STEM);

4 (2) to implement strategies for the recruitment,
5 training, placement, and retention of teachers in
6 STEM fields, including computer science;

7 (3) to carry out initiatives designed to assist
8 students in succeeding and graduating from postsec-
9 ondary STEM programs;

10 (4) to improve the availability and access to
11 STEM-related worker training programs, including
12 community college courses and programs; and

13 (5) for other activities approved by the Sec-
14 retary of Education to improve STEM education.

15 **SEC. 2145. NATIONAL EVALUATION.**

16 (a) **IN GENERAL.**—Using amounts reserved under
17 section 286(w)(3)(A) of the Immigration and Nationality
18 Act, as added by section 2142, the Secretary of Education
19 shall conduct, directly or through a grant or contract, an
20 annual evaluation of the implementation and impact of the
21 activities funded by the Promoting American Ingenuity
22 Account.

23 (b) **ANNUAL REPORT.**—The Secretary of Education
24 shall submit a report describing the results of each evalua-
25 tion conducted under subsection (a) to—

1 (1) the President;

2 (2) the Committee on the Judiciary of the Sen-

3 ate

4 (3) the Committee on the Judiciary of the

5 House of Representatives

6 (4) the Committee on Health, Education,

7 Labor, and Pensions of the Senate; and

8 (5) the Committee on Education and the Work-

9 force of the House of Representatives.

10 (c) DISSEMINATION.—The Secretary of Education

11 shall make the findings of the evaluation widely available

12 to educators, the business community, and the public.

13 **SEC. 2146. RULE OF CONSTRUCTION.**

14 Nothing in this chapter may be construed to permit

15 the Secretary of Education or any other Federal official

16 to approve the content or academic achievement standards

17 of a State.