

AMENDMENT NO. _____ Calendar No. _____

Purpose: To facilitate and admission and naturalization of
aliens who are current or potential employees of certain
Federal national security facilities.

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

AMENDMENTS intended to be proposed by Mr. WHITEHOUSE

Viz:

1 On page 320, strike line 4 and all that follows
2 through page 320, line 18, and insert the following

3 “(2) ALIENS WHO ARE MEMBERS OF PROFES-
4 SIONS HOLDING ADVANCED DEGREES OR PROSPEC-
5 TIVE EMPLOYEES OF NATIONAL SECURITY FACILI-
6 TIES.—

7 “(A) IN GENERAL.—Visas shall be made
8 available, in a number not to exceed 40 percent
9 of the worldwide level authorized in section
10 201(d), plus any visas not required for the

1 classes specified in paragraph (5) to qualified
2 immigrants who are either of the following:

3 “(i) Members of the professions hold-
4 ing advanced degrees or their equivalent
5 whose services in the sciences, arts, profes-
6 sions, or business are sought by an em-
7 ployer in the United States, including alien
8 physicians holding foreign medical degrees
9 that have been deemed sufficient for ac-
10 ceptance by an accredited United States
11 medical residency or fellowship program.

12 “(ii) Prospective employees, in a re-
13 search capacity, of Federal national secu-
14 rity, science, and technology laboratories,
15 centers, and agencies, if such immigrants
16 have been lawfully present in the United
17 States for two years prior to employment
18 (unless the Secretary of Homeland Secu-
19 rity determines, including upon request of
20 the prospective laboratory, center, or agen-
21 cy, that exceptional circumstances exist
22 justifying waiver of the presence require-
23 ment).

24 On page 325, strike line 9 and insert the following:

1 “214(l).

2 “(C) GUIDANCE AND RULES.—The Sec-
3 retary may prescribe such policy guidance and
4 rules as the Secretary considers appropriate for
5 purposes of subparagraph (A) to ensure na-
6 tional security and promote the interests and
7 competitiveness of the United States. Such
8 rules shall include a definition of the term ‘Fed-
9 eral national security, science, and technology
10 laboratories, centers, and agencies’ for purposes
11 of clause (ii) of subparagraph (A) which shall
12 include the following:

13 “(i) The national security, science,
14 and technology laboratories, centers, and
15 agencies of the Department of Defense, the
16 Department of Energy, the Department of
17 Homeland Security, the elements of the in-
18 telligence community (as that term is de-
19 fined in section 4(3) of the National Secu-
20 rity Act of 1947), and any other depart-
21 ment or agency of the Federal Government
22 that conducts or funds research and devel-
23 opment in the essential national interest.

24 “(ii) Federally funded research and
25 development centers (FFRDCs) that are

1 primarily supported by a department or
2 agency of the Federal Government speci-
3 fied in clause (i).”.

4 On page 326, after line 22, add the following:

5 (d) NATURALIZATION OF EMPLOYEES OF CERTAIN
6 NATIONAL SECURITY FACILITIES WITHOUT REGARD TO
7 RESIDENCY REQUIREMENTS.—Section 316 (8 U.S.C.
8 1427) is amended by adding at the end the following:

9 “(g)(1) Any person who, while an alien or a noncit-
10 izen national of the United States, has been employed in
11 a research capacity at a Federal national security, science,
12 and technology laboratory, center, or agency (as defined
13 pursuant to section 203(b)(2)(C)) for a period or periods
14 aggregating one year or more may, in the discretion of
15 the Secretary, be naturalized without regard to the resi-
16 dence requirements of this section if the person—

17 “(A) has complied with all requirements as de-
18 termined by the Secretary of Homeland Security, the
19 Secretary of Defense, the Secretary of Energy, or
20 the head of a petitioning department or agency of
21 the Federal Government, including contractual re-
22 quirements to maintain employment in a research
23 capacity with a Federal national security, science,

1 and technology laboratory, center, or agency for a
2 period not to exceed five years; and

3 “(B) has favorably completed and adjudicated a
4 background investigation at the appropriate level,
5 from the employing department or agency of the
6 Federal Government within the last five years.

7 “(2) The number of aliens or noncitizen nationals
8 naturalized in any fiscal year under this subsection shall
9 not exceed a number as defined by the Secretary of Home-
10 land Security, in consultation with the head of the peti-
11 tioning department or agency of the Federal Govern-
12 ment.”.

13 At the appropriate place insert the following:

14 **SEC. ____ . CONDITIONAL PERMANENT RESIDENT STATUS**
15 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**
16 **GRANTS.**

17 (a) IN GENERAL.—Section 216A (8 U.S.C. 1186b)
18 is amended to read as follows:

19 **“SEC. 216A. CONDITIONAL PERMANENT RESIDENT STATUS**
20 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**
21 **GRANTS, SPOUSES, AND CHILDREN.**

22 “(a) IN GENERAL.—

23 “(1) CONDITIONAL BASIS FOR STATUS.—Not-
24 withstanding any other provision of this Act, em-

1 ployment-based immigrants (as defined in subsection
2 (f) (1) or (2)), alien spouses, and alien children (as
3 defined in subsection (f)(3)) shall be considered, at
4 the time of obtaining the status of an alien lawfully
5 admitted for permanent residence, to have obtained
6 such status on a conditional basis subject to the pro-
7 visions of this section.

8 “(2) NOTICE OF REQUIREMENTS.—

9 “(A) AT TIME OF OBTAINING PERMANENT
10 RESIDENCE.—At the time an employment-based
11 immigrant, alien spouse, or alien child obtains
12 permanent resident status on a conditional
13 basis under paragraph (1), the Secretary of
14 Homeland Security shall provide for notice to
15 the alien, spouse, or child respecting the provi-
16 sions of this section and the requirements of
17 subsection (c)(1) to have the conditional basis
18 of such status removed.

19 “(B) AT TIME OF REQUIRED PETITION.—

20 In addition, the Secretary of Homeland Secu-
21 rity shall attempt to provide notice to an em-
22 ployment-based immigrant, alien spouse, or
23 alien child, at or about the beginning of the 90-
24 day period described in subsection (d)(3), of the
25 requirements of subsection (c)(1).

1 “(C) EFFECT OF FAILURE TO PROVIDE
2 NOTICE.—The failure of the Secretary of
3 Homeland Security to provide a notice under
4 this paragraph shall not affect the enforcement
5 of the provisions of this section with respect to
6 an employment-based immigrant, alien spouse,
7 or alien child.

8 “(b) TERMINATION OF STATUS IF FINDING THAT
9 QUALIFYING EMPLOYMENT IMPROPER.—

10 “(1) ALIEN INVESTOR.—In the case of an alien
11 investor with permanent resident status on a condi-
12 tional basis under subsection (a), if the Secretary of
13 Homeland Security determines, before the second
14 anniversary of the alien’s obtaining the status of
15 lawful admission for permanent residence, that—

16 “(A) the investment in the commercial en-
17 terprise was intended as a means of evading the
18 immigration laws of the United States;

19 “(B)(i) the alien did not invest, or was not
20 actively in the process of investing, the requisite
21 capital; or

22 “(ii) the alien was not sustaining the ac-
23 tions described in clause (i) throughout the pe-
24 riod of the alien’s residence in the United
25 States; or

1 “(C) the alien was otherwise not con-
2 forming to the requirements of section
3 203(b)(5),
4 then the Secretary shall so notify the alien investor
5 and, subject to paragraph (3), shall terminate the
6 permanent resident status of the alien (and the alien
7 spouse and alien child) involved as of the date of the
8 determination.

9 “(2) EMPLOYEE OF A FEDERAL NATIONAL SE-
10 curity, science, and technology laboratory,
11 center or agency.—In the case of an employee of
12 a Federal national security, science, and technology
13 laboratory, center, or agency (as defined pursuant to
14 section 203(b)(2)(C)) with permanent resident sta-
15 tus on a conditional basis under subsection (a), if
16 the Secretary of Homeland Security, in consultation
17 with the relevant employing department or agency,
18 determines, before the first anniversary of the alien’s
19 obtaining the status of lawful admission for perma-
20 nent residence, that—

21 “(A) the qualifying employment was in-
22 tended as a means of evading the immigration
23 laws of the United States;

1 “(B) the alien has not completed or is not
2 likely to complete 12 months of qualifying con-
3 tinuous employment; or

4 “(C) the alien did not otherwise conform
5 with the requirements of section 203(b)(2),
6 then the Secretary shall so notify the alien involved
7 and, subject to paragraph (3), shall terminate the
8 permanent resident status of the alien (and the alien
9 spouse and alien child) involved as of the date of the
10 determination.

11 “(3) HEARING IN REMOVAL PROCEEDING.—Any
12 alien whose permanent resident status is terminated
13 under paragraph (1) or (2) may request a review of
14 such determination in a proceeding to remove the
15 alien. In such proceeding, the burden of proof shall
16 be on the Secretary of Homeland Security to estab-
17 lish, by a preponderance of the evidence, that a con-
18 dition described in paragraph (1) or (2), as appro-
19 priate, is met.

20 “(c) REQUIREMENTS OF TIMELY PETITION AND
21 INTERVIEW FOR REMOVAL OF CONDITION.—

22 “(1) IN GENERAL.—In order for the conditional
23 basis established under subsection (a) for an employ-
24 ment-based immigrant, alien spouse, or alien child to
25 be removed—

1 “(A) the employment-based immigrant
2 must submit to the Secretary of Homeland Se-
3 curity, during the period described in subsection
4 (d)(3), a petition which requests the removal of
5 such conditional basis and which states, under
6 penalty of perjury, the facts and information
7 described in subsection (d)(1) or (2), as appro-
8 priate, and

9 “(B) in accordance with subsection (d)(3),
10 the employment-based immigrant must appear
11 for a personal interview before an officer or em-
12 ployee of U.S. Citizenship and Immigration
13 Services respecting such facts and information.

14 “(2) TERMINATION OF PERMANENT RESIDENT
15 STATUS FOR FAILURE TO FILE PETITION OR HAVE
16 PERSONAL INTERVIEW.—

17 “(A) IN GENERAL.—In the case of an alien
18 with permanent resident status on a conditional
19 basis under subsection (a), if—

20 “(i) no petition is filed with respect to
21 the alien in accordance with the provisions
22 of paragraph (1)(A); or

23 “(ii) unless there is good cause shown,
24 the employment-based immigrant fails to
25 appear at the interview described in para-

1 graph (1)(B) (if required under subsection
2 (d)(4)),
3 the Secretary of Homeland Security shall termi-
4 nate the permanent resident status of the alien
5 (and the alien's spouse and children if it was
6 obtained on a conditional basis under this sec-
7 tion or section 216) as of the second anniver-
8 sary of the alien's lawful admission for perma-
9 nent residence.

10 “(B) HEARING IN REMOVAL PRO-
11 CEEDING.—In any removal proceeding with re-
12 spect to an alien whose permanent resident sta-
13 tus is terminated under subparagraph (A), the
14 burden of proof shall be on the alien to estab-
15 lish compliance with the conditions of para-
16 graphs (1)(A) and (1)(B).

17 “(3) DETERMINATION AFTER PETITION AND
18 INTERVIEW.—

19 “(A) IN GENERAL.—If—

20 “(i) a petition is filed in accordance
21 with the provisions of paragraph (1)(A);
22 and

23 “(ii) the employment-based immigrant
24 appears at any interview described in para-
25 graph (1)(B),

1 the Secretary of Homeland Security shall make
2 a determination, within 90 days of the date of
3 such filing or interview (whichever is later), as
4 to whether the facts and information described
5 in subsection (d)(1) or (2), as appropriate, and
6 alleged in the petition are true.

7 “(B) REMOVAL OF CONDITIONAL BASIS IF
8 FAVORABLE DETERMINATION.—

9 “(i) HEADER.—If the Secretary of
10 Homeland Security determines with re-
11 spect to a petition filed by an alien inves-
12 tor that such facts and information are
13 true, the Secretary shall so notify the alien
14 investor and shall remove the conditional
15 basis of the alien’s status effective as of
16 the second anniversary of the alien’s lawful
17 admission for permanent residence.

18 “(ii) REMOVAL OF CONDITIONAL
19 BASIS FOR EMPLOYEE OF A FEDERAL NA-
20 TIONAL SECURITY, SCIENCE, AND TECH-
21 NOLOGY LABORATORY, CENTER OR AGEN-
22 CY.—If the Secretary of Homeland Secu-
23 rity determines with respect to a petition
24 filed by an employee of a Federal national
25 security, science, and technology labora-

1 tory, center, or agency that such facts and
2 information are true, the Secretary shall so
3 notify the alien and shall remove the condi-
4 tional basis of the alien's status effective
5 as of the first anniversary of the alien's
6 lawful admission for permanent residence.

7 “(C) TERMINATION IF ADVERSE DETER-
8 MINATION.—If the Secretary of Homeland Se-
9 curity determines that such facts and informa-
10 tion are not true, the Secretary shall so notify
11 the alien involved and, subject to subparagraph
12 (D), shall terminate the permanent resident
13 status of an employment-based immigrant, alien
14 spouse, or alien child as of the date of the de-
15 termination.

16 “(D) HEARING IN REMOVAL PRO-
17 CEEDING.—Any alien whose permanent resident
18 status is terminated under subparagraph (C)
19 may request a review of such determination in
20 a proceeding to remove the alien. In such pro-
21 ceeding, the burden of proof shall be on the
22 Secretary of Homeland Security to establish, by
23 a preponderance of the evidence, that the facts
24 and information described in subsection (d)(1)
25 and alleged in the petition are not true.

1 “(d) DETAILS OF PETITION AND INTERVIEW.—

2 “(1) CONTENTS OF PETITION BY ALIEN INVES-
3 TOR.—Each petition under section (c)(1)(A) filed by
4 an alien investor shall contain facts and information
5 demonstrating that the alien—

6 “(A)(i) invested, or is actively in the proc-
7 ess of investing, the requisite capital; and

8 “(ii) sustained the actions described in
9 clause (i) throughout the period of the alien’s
10 residence in the United States; and

11 “(B) is otherwise conforming to the re-
12 quirements of section 203(b)(5).

13 “(2) CONTENTS OF PETITION BY EMPLOYEE OF
14 A FEDERAL NATIONAL SECURITY, SCIENCE, AND
15 TECHNOLOGY LABORATORY, CENTER, OR AGENCY.—
16 Each petition under subsection (c)(1)(A) filed by an
17 employee of a Federal national security, science, and
18 technology laboratory, center, or agency shall con-
19 tain facts and information demonstrating that the
20 alien is conforming to the requirements of section
21 203(b)(2)).

22 “(3) PERIOD FOR FILING PETITION.—

23 “(A) 90-DAY PERIOD BEFORE ANNIVER-
24 SARY.—Except as provided in subparagraph

1 (B), the petition under subsection (c)(1)(A)
2 must be filed as follows:

3 “(i) In the case of an alien investor,
4 during the 90-day period before the second
5 anniversary of the alien’s lawful admission
6 for permanent residence.

7 “(ii) In the case of an employee of a
8 Federal national security, science, and
9 technology laboratory, center or agency,
10 during the 90-day period before the first
11 anniversary of the alien’s lawful admission
12 for permanent residence.

13 “(B) LATE PETITIONS.—Such a petition
14 may be considered if filed after such date, but
15 only if the alien establishes to the satisfaction
16 of the Secretary of Homeland Security good
17 cause and extenuating circumstances for failure
18 to file the petition during the period described
19 in subparagraph (A).

20 “(C) FILING OF PETITIONS DURING RE-
21 MOVAL.—In the case of an alien who is the sub-
22 ject of removal hearings as a result of failure
23 to file a petition on a timely basis in accordance
24 with subparagraph (A), the Secretary of Home-
25 land Security may stay such removal pro-

1 ceedings against an alien pending the filing of
2 the petition under subparagraph (B).

3 “(4) PERSONAL INTERVIEW.—The interview
4 under subsection (c)(1)(B) shall be conducted within
5 90 days after the date of submitting a petition under
6 subsection (c)(1)(A) and at a local office of U.S.
7 Citizenship and Immigration Services, designated by
8 the Secretary of Homeland Security, which is con-
9 venient to the parties involved. The Secretary, in the
10 discretion of the Secretary, may waive the deadline
11 for such an interview or the requirement for such an
12 interview in such cases as may be appropriate.

13 “(e) TREATMENT OF PERIOD FOR PURPOSES OF
14 NATURALIZATION.—For purposes of title III, in the case
15 of an alien who is in the United States as a lawful perma-
16 nent resident on a conditional basis under this section, the
17 alien shall be considered to have been admitted as an alien
18 lawfully admitted for permanent residence and to be in
19 the United States as an alien lawfully admitted to the
20 United States for permanent residence, if the alien has
21 had the conditional basis removed pursuant to this section.

22 “(f) DEFINITIONS.—In this section:

23 “(1) The term ‘alien investor’ means an alien
24 who obtains the status of an alien lawfully admitted

1 for permanent residence (whether on a conditional
2 basis or otherwise) under section 203(b)(5).

3 “(2) The term ‘alien spouse’ and the term ‘alien
4 child’ mean an alien who obtains the status of an
5 alien lawfully admitted for permanent residence
6 (whether on a conditional basis or otherwise) by vir-
7 tue of being the spouse or child, respectively, of an
8 alien investor or an employee of a Federal national
9 security, science, and technology laboratory, center,
10 or agency.

11 “(3) The term ‘commercial enterprise’ includes
12 a limited partnership.

13 “(4) The term ‘employment-based immigrant’
14 means an alien described in paragraph (1) or (5).

15 “(5) The term ‘employee of a Federal national
16 security, science, and technology laboratory, center
17 ,or agency’ means an alien who obtains the status of
18 an alien lawfully admitted for permanent residence
19 (whether on a conditional basis or otherwise) under
20 section 203(b)(2)(A)(ii).

21 “(g) TERMINATION OF STATUS.—In the case of any
22 alien with permanent resident status on a conditional basis
23 under section 203(b)(2)(A)(ii), if the Secretary of Home-
24 land Security determines, in the sole and unreviewable dis-
25 cretion of the Secretary, that such status is contrary to

1 the national interest of the United States for reasons of
2 fraud, misrepresentation, criminal misuse, or national se-
3 curity, then the Secretary shall so notify the alien involved
4 and shall terminate the permanent resident status of the
5 alien (and the alien spouse and alien child) involved as
6 of the date of the determination.”.

7 (b) CONFORMING AMENDMENT.—Section 216(e) (8
8 U.S.C. 1186a(e)) is amended by inserting before the pe-
9 riod at the end the following: “, if the alien has had the
10 conditional basis removed pursuant to this section”.