

S. 2122

To increase the worldwide level of employment-based immigrants and to reauthorize the EB-5 regional center program.

IN THE SENATE OF THE UNITED STATES

October 1, 2015

Mr. Paul introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase the worldwide level of employment-based immigrants and to reauthorize the EB-5 regional center program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Invest in Our Communities Act".

SEC. 2. EXEMPTION OF DEPENDENTS FROM BEING COUNTED TOWARDS WORLDWIDE EMPLOYMENT-BASED IMMIGRATION LEVEL.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who are spouses or children of an alien admitted as an employment-based immigrant under section 203(b)(5)."

SEC. 3. WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.

Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) Worldwide Level of Employment-Based Immigrants.--

"(1) In general.--The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of--

"(A) 150,000; and

"(B) the number computed under paragraph (2).

"(2) Adjustment.--The number computed under this paragraph for fiscal year 2015 and each subsequent fiscal year is the difference (if any) between--

"(A) the maximum number of visas which may be issued under section 203(a) (relating to family-sponsored immigrants) during the previous fiscal year;

and

“(B) the number of visas issued under that section during that year.”.

SEC. 4. EXCLUSION OF EB-5 VISAS FROM COUNTRY CAPS.

Section 202(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(5)) is amended by adding at the end the following:

“(C) Exclusion of eb-5 visas from per country limitation.--Visas issued under section 203(b)(5) shall not be counted toward the numerical limitation under paragraph (2).”.

SEC. 5. PERMANENT REAUTHORIZATION OF EMPLOYMENT CREATION REGIONAL CENTERS.

Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended--

(1) by redesignating subparagraph (D) as subparagraph (H); and

(2) by inserting after subparagraph (C) the following:

“(D) Employment creation regional centers.--

“(i) In general.--Visas under this paragraph shall be made available to qualified immigrants who participate in a program involving a regional center in the United States, which has been designated by the Secretary of Homeland Security, in consultation with the Secretary of Commerce, on the basis of a general proposal filed with the Secretary of Homeland Security, for the promotion of economic growth, including--

“(I) increased exports;

“(II) improved regional productivity;

“(III) job creation; and

“(IV) increased domestic capital investment.

“(ii) Jurisdiction.--A regional center shall have jurisdiction over a specific geographic area, which shall be--

“(I) described in the proposal filed under clause (i); and

“(II) consistent with the purpose of concentrating pooled investment in defined economic zones.

“(iii) General predictions.--The establishment of a regional center under this subparagraph may be based on general predictions contained in the proposal concerning--

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

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

“(III) other positive economic effects such investments will have.

“(iv) Methodologies for determining job creation.--Notwithstanding requirements applicable to investors not involved in a regional center, in determining compliance with

this subparagraph, the Secretary of Homeland Security shall recognize reasonable methodologies for determining the number of jobs created by a designated regional center, including jobs that are estimated to have been created indirectly through revenues generated from--

- ``(I) increased exports;
- ``(II) improved regional productivity; or
- ``(III) increased domestic capital investment resulting from the regional center.

``(v) Special procedures.--

``(I) Preapproval of new commercial enterprises.--The Secretary of Homeland Security shall establish a preapproval procedure for new commercial enterprises that--

``(aa) allows a regional center or potential regional center to apply to the Secretary for preapproval of a new commercial enterprise before any alien files a petition for classification under this paragraph by reason of investment in the new commercial enterprise;

``(bb) allows the applicant to address and cure any deficiencies identified by the Secretary in the application before a final determination on the application;

``(cc) requires that the Secretary make final decisions on all issues under this paragraph other than those issues unique to each individual investor in the new commercial enterprise; and

``(dd) requires that the Secretary eliminate the need for the repeated submission of documentation that is common to multiple petitions for classification under this paragraph through a regional center.

``(II) Deference to prior rulings.--Absent material change, fraud, or legal deficiency, the Secretary of Homeland Security shall give deference to, and not revisit, favorable determinations made pertaining to a commercial enterprise during the adjudication of--

``(aa) petitions filed by immigrants investing in the commercial enterprise under this subparagraph; and

``(bb) petitions filed by

such immigrants under section 216A for the removal of conditional basis.

“(vi) Processing times.--

“(I) In general.--The Secretary of Homeland Security shall make determinations on a proposal filed under clause (i) or an application filed under clause (v) not later than 180 days after the date on which the proposal or application is filed.

“(II) Additional information.--If the Secretary determines that an initial filing under this section does not meet the standards for approval, the Secretary shall--

“(aa) not later than 30 days after the date of such filing, notify the applicant of the reasons such proposal or application was not approved and the additional information or documentation that is required for approval;

“(bb) permit the applicant to promptly resubmit a modified filing; and

“(cc) adjudicate the modified proposal or application not later than 30 days after it is received.”.

SEC. 6. SECURITY REFORMS.

Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), as amended by section 5, is further amended by adding at the end the following:

“(E) Appellate rights.--

“(i) In general.--Any person subject to the suspension or termination of rights under this paragraph, if such decision was under the discretion of the Secretary of Homeland Security, may appeal such decision and be entitled to a hearing before an administrative law judge.

“(ii) Appellant's rights.--An appellant under this subparagraph has the right--

“(I) to access the facts and documentation underlying the allegations that are the basis of the suspension or termination referred to in clause (i); and

“(II) to cross-examine witnesses during proceedings.

“(iii) Burden of proof.--In a hearing under this subparagraph, the Secretary has the burden to prove, by a preponderance of the evidence, that the suspension or termination was valid under applicable law.

“(iv) Finality.--A determination of the administrative law judge in an appeal under this subparagraph shall be final and may not be subject to judicial review.”.

SEC. 7. REGIONAL CENTERS.

(a) In General.--Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), as amended by sections 5 and 6, is further amended by adding at the end the following:

“(F) Bona fides of persons associated with regional centers or regional center associated commercial enterprises.--

“(i) In general.--No person shall be permitted by any regional center or regional center associated commercial enterprise to be directly or indirectly involved with the regional center or commercial enterprise as its principal, representative, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, marketer, promoter, or other similar position of substantive authority for the operations, management, or promotion of the regional center or commercial enterprise if--

“(I) the person has been found liable within the previous 5 years for any criminal or civil violation of any law relating to fraud or deceit, or at any time if such violation involved a civil liability in excess of \$1,000,000, a criminal conviction with a term of imprisonment of more than 1 year or a criminal or civil violation of any law or agency regulation in connection with the offer, purchase, or sale of a security;

“(II) the person is subject to a final order of a State securities commission (or an agency or officer of a State who performs similar functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency of or officer of a State who performs similar functions), an appropriate Federal banking agency, the Commodity Futures Trading Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that--

“(aa) prohibits fraudulent, manipulative, or deceptive conduct; or

“(bb) bars the person from--

“(AA) association with an entity regulated by such commission, authority, agency, or officer;

“(BB) engaging in the business of securities, insurance,

or banking; or

((CC) engaging in savings association or credit union activities;

((III) the person has been convicted of--

((aa) any activity relating to espionage, sabotage, or theft of intellectual property;

((bb) any activity related to money laundering (as described in section 1956 or 1957 of title 18, United States Code);

((cc) any terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)); or

((dd) any activity related to human trafficking or a human rights offense; or

((IV) the person--

((aa) is, or during the preceding 5 years has been, included on the Department of Justice's List of Currently Disciplined Practitioners; or

((bb) during the preceding 5 years, has received a reprimand or otherwise been publicly disciplined by a bar association of which the person is or was a member.

((ii) Status of regional center principals.--

((I) Lawful status required.--No person may be directly or indirectly involved with a regional center as its principal, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, or other similar position of significant authority for the operations or management of the regional center unless the person is a national of the United States or an individual who has been lawfully admitted for permanent residence.

((II) Foreign governments.--No foreign government entity may be directly or indirectly involved with the ownership or administration of a regional center.

((iii) Information required.--The Secretary of Homeland Security shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation, and shall perform such criminal

record checks and other background checks with respect to a regional center or regional center associated commercial enterprise, and persons involved in a regional center or regional center associated commercial enterprise, to determine whether such regional center or regional center associated commercial enterprise is in compliance with clauses (i) and (ii).

“(iv) Termination.--The Secretary shall terminate any regional center or regional center associated commercial enterprise from the regional center program if the Secretary determines that--

“(I) the regional center or regional center associated commercial enterprise has violated clause (i);

“(II) the regional center has violated clause (ii); or

“(III) the regional center, a regional center associated commercial enterprise, or any person involved with the regional center or regional center associated commercial enterprise--

“(aa) fails to provide an attestation or information requested by the Secretary;

“(bb) provides any false attestation or information under clause (iii);

“(cc) has engaged in fraud, misrepresentation, or criminal misuse; or

“(dd) poses a threat to public safety or national security.

“(G) Compliance with securities laws.--

“(i) Jurisdiction.--In view of the objective of promoting investment in the United States, in an action filed by the Securities and Exchange Commission, the purchase or sale of securities offered or sold by any regional center or any party associated with a regional center shall be deemed to have occurred within the territory of the United States for purposes of the securities laws, and subject matter jurisdiction shall also lie within the United States.

“(ii) Regional center certifications required.--

“(I) Initial certification.--The Secretary of Homeland Security may not approve an application for regional center designation or regional center amendment unless the regional center certifies that the regional center is in compliance with and has policies and procedures reasonably designed to ensure that all parties associated with the regional center remain in compliance with the securities laws of the United States and of any State in which the regional center operates in

connection with the offer, purchase, or sale of securities or the provision of investment advice by the regional center or parties associated with the regional center.

“(II) Reissue.--A regional center shall annually reissue a certification described in subclause (I). Annual certifications under this subclause shall certify compliance with clause (iii) by stating that--

“(a) the certifier is in a position to have knowledge of the offers, purchases, and sales of securities or the provision of investment advice by parties associated with the regional center; and

“(b) to the best of the certifier’s knowledge, after reasonable investigation--

“(AA) all such offers, purchases, and sales of securities or the provision of investment advice complied with securities laws of the United States; and

“(BB) records, data, and information related to such offers, purchases, and sales have been maintained.

“(III) Effect of noncompliance.--If a regional center, through its due diligence, discovered during the previous fiscal year that the regional center or any party associated with the regional center was not in compliance with the securities laws of the United States, the certifier shall--

“(a) describe the activities that led to noncompliance;

“(b) describe the actions taken to remedy the noncompliance; and

“(c) certify that the regional center and all parties associated with the regional center are currently in compliance.

“(iii) Oversight required.--Each regional center shall--

“(I) monitor and supervise all offers, purchases, and sales of, and advice relating to, securities made by parties associated with the regional center to ensure compliance with the

securities laws of the United States;

``(II) maintain records, data, and information relating to all such offers, purchases, sales, and advice during the 5-year period beginning on the date of their creation; and

``(III) make such records, data, and information available to the Securities and Exchange Commission and to the Secretary upon the receipt of a subpoena from the Securities and Exchange Commission.

``(iv) Suspension or termination.--The Secretary, in the Secretary's unreviewable discretion, shall suspend or terminate the designation of any regional center that does not provide the certification described in clause (ii). The Secretary, in the Secretary's unreviewable discretion, may suspend or terminate the designation of any regional center or impose other sanctions against the regional center if the regional center or any parties associated with the regional center--

``(I) are permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice;

``(II) are subject to any final order of the Securities and Exchange Commission that--

``(aa) bars such person from association with an entity regulated by the Securities and Exchange Commission; or

``(bb) constitutes a final order based on violations in connection with the offer, purchase, or sale of, or advice relating to, a security; or

``(III) knowingly submitted or caused to be submitted a certification described in clause (ii) that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

``(v) Savings provision.--Nothing in this subparagraph may be construed to impair or limit the authority of the Securities and Exchange Commission under the Federal securities laws.

``(vi) Defined term.--In this subparagraph, the term 'parties associated with a regional center' means--

``(I) the regional center;

``(II) any commercial enterprise associated with the regional center;

``(III) the regional center's and

associated commercial enterprise's owners, officers, directors, managers, partners, broker-dealers, employees, and attorneys; and

“(IV) any person in active concert or participation with the regional center or directly or indirectly controlling, controlled by, or under common control with the regional center.”.

(b) Study and Report.--

(1) In general.--Not later than 2 years after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Commerce and after consultation with relevant Federal agencies, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes--

(A) the percentage of completed and pending capital investment projects, within the scope of business plans both approved and awaiting approval--

- (i) in targeted rural employment areas;
- (ii) in targeted high unemployment areas;
- (iii) in high poverty areas;
- (iv) for infrastructure projects; and
- (v) not included in the areas described in clauses (i) through (iii);

(B) whether other Federal financial assistance programs, such as economic development programs administered by the Department of Agriculture, the Department of Housing and Urban Development, or the Community Development Financial Institutions Fund, are also used or intended to support projects described in subparagraph (A); and

(C) whether market demands to approve projects described in subparagraph (A) exceed the number of visas allowed under section 203(b)(5)(F) of the Immigration and Nationality Act, as added by subsection (a).

(2) Public input.--Not later than 60 days before the submission of the report under paragraph (1), the public shall receive notice and an opportunity to comment on such draft study.

SEC. 8. AGE DETERMINATION FOR CHILDREN OF ALIEN INVESTORS.

Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended by adding at the end the following:

“(5) Age determination for children of alien investors.--

“(A) In general.--Subject to subparagraph (B), an alien admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 216A, shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by such alien under subsection (b)(5) if--

- “(i) the alien remains unmarried; and
- “(ii) the subsequent petition is filed by the principal alien not later than 1 year after the termination of conditional lawful permanent

resident status.

“(B) Exception.--An alien shall not be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.