John Cornyn

112TH CONGRESS
2D SESSION

S. _____

To amend the Immigration and Nationality Act to provide certain immigration benefits for aliens with advanced degrees in science, technology, engineering, or mathematics and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend the Immigration and Nationality Act to provide certain immigration benefits for aliens with advanced degrees in science, technology, engineering, or mathematics and for other purposes.

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 "Securing the Talent America Requires for the 21st Century Act of 2012" or the "STAR Act of 2012".

SEC. 2. DEFINITIONS.

(a) STEM FIELD.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by inserting after paragraph (52) the following new paragraph:

"(53) STEM FIELD.—The term 'STEM field' means a field of study or occupation included on the 2012 STEM Designated Degree Program List published by the Department of Homeland Security and referred to in section 214.2(f)(11)(C)(2) of title 8, Code of Federal Regulations, (or any similar successor regulation) or any field of study or occupation added to such list by the Secretary of Homeland Security.".

(b) UNITED STATES RESEARCH INSTITUTION.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by subsection (a), is further amended by adding at the end, the following new paragraph:

"(54) UNITED STATES RESEARCH INSTITUTION.—The term 'United States research institution' means an institution of higher education that—

"(A) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

"(B) received, or is part of a system of institutions of higher education that received, at least $5,000,000 in direct Federal science and engineering funding for research and development in the preceding fiscal year; or

"(C) has been in existence for at least 10 years.".

SEC. 3. LABOR MARKET PROVISIONS.

(a) LABOR CERTIFICATION AND QUALIFICATION FOR CERTAIN IMMIGRANTS.—Section 212(a)(5)(A)(ii) of such Act (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ", or" at the end and inserting a semicolon;

(2) in subclause (II), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(III) holds a Master's degree in a STEM field from a United States research institution if the alien will be employed by an employer who engages in a competitive recruitment and selection process and determines that the alien was found to be more qualified than any willing and able United

States worker who applied for the job.".

(b) DESIGNATION AS SHORTAGE OCCUPATIONS.—A job described in an immigrant petition under paragraph (1) or (2) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) that is filed on behalf of an alien who holds a doctorate degree from a United States research institution in a STEM field (as that term is defined in paragraph (53) of section 101(a) of the Immigration and Nationality Act, as added by section 2(a)) shall be deemed a Schedule A shortage occupation and the petitioner may apply for a certification directly with the appropriate office of the Department of Homeland Security.

(c) LABOR CERTIFICATION.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)) is amended by adding at the end the following:

"(v) CONTINUED VALIDITY OF LABOR MARKET TEST.—A certification made under clause (i) with respect to an individual who seeks to immigrate under section 203(b)(2)(A)(i) shall remain valid if the individual files an immigrant petition under section 204(a)(1)(F) of the Immi-

gration and Nationality Act (8 U.S.C. 1154(a)(1)(F)). Recruitment conducted to satisfy clause (i) shall remain valid for an application submitted under clause (ii)(III).".

SEC. 4. ALLOCATION OF VISAS.

(a) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(2)) is amended by adding at the end the following:

"(D) In addition to the increase provided under subparagraph (C), the number computed under this paragraph for fiscal year 2013 and subsequent fiscal years shall be increased by 55,000, to be used in accordance with section 203(b)(2)(A)(i).".

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b)(2)(A) of such Act is amended—

(1) by striking "Visas shall be"; and inserting the following:

"(i) ADVANCED DEGREE HOLDERS AND ALIENS OF EXCEPTIONAL ABILITY.—Visas shall be"; and

(2) by adding at the end the following:

"(ii) STEM VISA HOLDER.—Visas allocated under section 203(b)(2) shall be made available first to aliens who graduate from a United States research institution with a doctorate or master's degree in a STEM field and who intend to work in a related field. Visas made available under this clause shall not be counted for purposes of computing any percentage of the worldwide level under this subsection.".

(c) UTILIZING VISAS.—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) CARRY OVER VISAS.—The total number of visas available under paragraph (1), (2), (3), (4) or (5) of section 203(b) shall be increased by the difference between the number of visas available under section 203(b) in the prior fiscal year and the amount used during that fiscal year.".

SEC. 5. RETAINING STUDENTS IN STEM FIELDS.

(a) DUAL INTENT.—Section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) is amended by striking "an alien having a residence in a foreign country which he has no inten-

tion of abandoning, who is a bona fide student qualified to pursue a full course of study and who" and inserting "an alien who is a bona fide student qualified to pursue a full course of study, who (except for a student who intends to pursue a Master's or higher degree in a STEM field from a United States research institution) has a residence in a foreign country which the alien has no intention of abandoning, and who".

(b) CONFORMING AMENDMENTS.—

(1) PRESUMPTION OF STATUS.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking "(other than a nonimmigrant" and inserting "(other than a nonimmigrant described in section 101(a)(15)(F) if the student intends to pursue a Master's or higher degree in a STEM field from a United States research institution)".

(2) INTENTION TO ABANDON FOREIGN RESIDENCE.—Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting "(F) (if the student intends to pursue a Master's or higher degree in a field of science, technology, engineering or mathematics from a qualifying research institution)" before "(H)(i)(b)".

SEC. 6. RETAINING SKILLED WORKERS SUBJECT TO VISA BACKLOG.

(a) IN GENERAL.—Section 245(a) of the Immigration and Nationality Act (8 U.S.C. 1255(a)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "(a) The status of" and inserting the following:

"(a) IN GENERAL.—

"(1) ADJUSTMENT OF STATUS.—The status of"; and

(3) by adding at the end the following:

"(2) SUPPLEMENTAL FEE.—An application that is based on a petition approved or approvable under subparagraph (E) or (F) of section 204(a)(1) may be filed without regard to the limitation set forth in paragraph (1)(C) if a supplemental fee of $500 is paid by the principal alien at the time the application is filed. A supplemental fee may not be required for any dependent alien accompanying or following to join the principal alien.

"(3) VISA AVAILABILITY.—An application for adjustment filed under this paragraph may not be approved until such time as an immigrant visa becomes available.".

(b) USE OF FEES.—Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended by inserting before the period at the end "and the fees collected under section 245(a)(2).".

SEC. 7. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

(a) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) in subsection (a)—

(A) by inserting "and" at the end of paragraph (1);

(B) by striking "; and" at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—Section 203 of such Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (c);

(2) in subsection (d), by striking "(a), (b), or (c)," and inserting "(a) or (b),";

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking "(a), (b), or (c)" and inserting "(a) or (b)"; and

(5) in subsection (g), by striking "(a), (b), and (c)" and inserting "(a) and (b)".

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of such Act (8 U.S.C. 1154) is amended—

(1) by striking subsection (a)(1)(I); and

(2) in subsection (e), by striking "(a), (b), or (c)" and inserting "(a) or (b)".

(d) USE OF VISAS.—There shall be 55,000 immigrant visas available for the aliens described in clause (ii) of section 203(b)(2)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), as added by section 4.