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S. 3414

To recapture family-sponsored and employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family-sponsored and employment-based immigrant visas in the future, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Mr. MENENDEZ (for himself, Mrs. MURRAY, Mr. KENNEDY, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To recapture family-sponsored and employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family-sponsored and employment-based immigrant visas in the future, 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 ''Visa Efficiency and E-Verify Extension Act of 2008''.

SEC. 2. RECAPTURE OF IMMIGRANT VISAS LOST TO BUREAUCRATIC DELAY.

(a) 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) 140,000, plus

''(B) the number computed under paragraph (2), plus

''(C) the number computed under paragraph (3).

''(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

''(A) the worldwide level of employment-based immigrant visas established for the previous fiscal year; and

''(B) the number of visas actually issued under section 203(b), subject to this subsection, during the previous fiscal year.

''(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—The number computed under this paragraph is the difference, if any, between—

''(A) the difference, if any, between—

''(i) the sum of the worldwide levels of employment-based immigrant visas established for each of fiscal years 1992 through 2007; and

''(ii) the number of visas actually issued under section 203(b), subject to this subsection, during such fiscal years; and

''(B) the number of unused visas from fiscal years 1992 through 2007 that were issued after fiscal year 2007 under section 203(b), subject to this subsection.''.

(b) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

''(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

''(1) IN GENERAL.—

''(A) BASE LEVEL.—Subject to subparagraph (B), the worldwide level of family-spon-

sored immigrants under this subsection for a fiscal year is equal to—

"(i) 480,000 minus the number computed under paragraph (2), plus

"(ii) the sum of—

"(I) the number computed under paragraph (3), plus

"(II) the number computed under paragraph (4).

"(B) MINIMUM.—In no case shall the number computed under subparagraph (A)(i) be less than 226,000.

"(2) NUMBER OF CERTAIN ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—The number computed under this paragraph for a fiscal year is the number of aliens described in subparagraph (A) or (B) of subsection (b)(2) who were issued immigrant visas or who otherwise acquired the status of an alien lawfully admitted to the United States for permanent residence in the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

''(A) the worldwide level of family-sponsored immigrant visas established for the previous fiscal year; and

''(B) the number of visas actually issued under section 203(a), subject to this subsection, during the previous fiscal year.

''(4) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—The number computed under this paragraph is the difference, if any, between—

''(A) the difference, if any, between—

''(i) the sum of the worldwide levels family-sponsored immigrant visas established for fiscal years 1992 through 2007; and

''(ii) the number of visas actually issued under section 203(a), subject to this subsection, during such fiscal years; and

''(B) the number of unused visas from fiscal years 1992 through 2007 that were issued after fiscal year 2007 under section 203(a), subject to this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of the enactment of this Act.

SEC. 3. EXTENSION OF THE CONRAD STATE 30 PROGRAM.

Subsection (c) of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416; 8 U.S.C. 1182 note) is amended by striking ''June 1, 2008'' and inserting ''June 1, 2013''.

SEC. 4. SPECIAL IMMIGRANT NONMINISTER RELIGIOUS WORKER PROGRAM.

(a) REGULATIONS.—Not later than December 31, 2008, the Secretary of Homeland Security shall issue final regulations to eliminate or reduce fraud related to the granting of special immigrant status for special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(C)(ii)).

(b) EXTENSION.—Subclause (II) and subclause (III) of section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(C)(ii)) are amended by striking ''October 1, 2008,'' both places such term appears and inserting ''October 1, 2011,''.

(c) REPORT.—Not later than September 30, 2010, the Inspector General of the Department of Homeland Security shall submit to Congress a report on the effectiveness of the regulations described in subsection (a).

SEC. 5. EXTENSION OF THE BASIC PILOT PROGRAM.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a

note) is amended by striking ''11-year period'' and inserting ''16-year period''.

SEC. 6. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

(a) FUNDING UNDER AGREEMENT.—Effective for fiscal years beginning on or after October 1, 2008, the Commissioner of Social Security and the Secretary of Homeland Security shall enter into and maintain an agreement which shall—

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), including (but not limited to)—

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 404, but only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation provided by the basic pilot confirmation system established under such section;

(2) provide such funds quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Office of Inspector General of the Social Security Administration and the Department of Homeland Security.

(b) CONTINUATION OF EMPLOYMENT VERIFICATION IN ABSENCE OF TIMELY AGREEMENT.—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2008, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary of Homeland Security providing for funding to cover the costs of the responsibilities of the Commissioner under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the

terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the basic pilot confirmation system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

SEC. 7. GAO STUDY OF BASIC PILOT CONFIRMATION SYSTEM.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study regarding erro-

neous tentative nonconfirmations under the basic pilot confirmation system established under section 404(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) MATTERS TO BE STUDIED.—In the study required under subsection (a), the Comptroller General shall determine and analyze—

(1) the causes of erroneous tentative nonconfirmations under the basic pilot confirmation system;

(2) the processes by which such erroneous tentative nonconfirmations are remedied; and

(3) the effect of such erroneous tentative nonconfirmations on individuals, employers, and Federal agencies.

(c) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit the results of the study required under subsection (a) to the Committee on Ways and Means and the Committee on the Judiciary of the House of Representatives and the Committee on Finance and the Committee on the Judiciary of the Senate.

SEC. 8. GAO STUDY OF EFFECTS OF BASIC PILOT PROGRAM ON SMALL ENTITIES.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General

of the United States shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the Comptroller General's analysis of the effects of the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) on small entities (as defined in section 601 of title 5, United States Code). The report shall detail—

(1) the costs of compliance with such program on small entities;

(2) a description and an estimate of the number of small entities enrolled and participating in such program or an explanation of why no such estimate is available;

(3) the projected reporting, recordkeeping and other compliance requirements of such program on small entities;

(4) factors that impact small entities' enrollment and participation in such program, including access to appropriate technology, geography, entity size, and class of entity; and

(5) the steps, if any, the Secretary of Homeland Security has taken to minimize the economic impact of participating in such program on small entities.

(b) DIRECT AND INDIRECT EFFECTS.—The report shall cover, and treat separately, direct effects (such as wages, time, and fees spent on compliance) and indirect effects (such as the effect on cash flow, sales, and competitiveness).

(c) SPECIFIC CONTENTS.—The report shall provide specific and separate details with respect to—

(1) small businesses (as defined in section 601 of title 5, United States Code) with fewer than 50 employees; and

(2) small entities operating in States that have mandated use of the basic pilot program.

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