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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. POLIS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to provide for reforms to the EB-5 immigrant investor program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Entrepre-
5 neurship and Investment Act of 2015”.

1 **SEC. 2. THE EB-5 EMPLOYMENT-CREATION IMMIGRANT IN-**
2 **VESTOR PROGRAM.**

3 (a) REFORMING THE EB-5 IMMIGRANT INVESTOR
4 PROGRAM.—Section 203(b)(5) of the Immigration and
5 Nationality Act (8 U.S.C. 1153(b)(5)) is amended as fol-
6 lows:

7 (1) TYPE OF INVESTMENT.—In subparagraph
8 (A), by inserting “or similar entity” after “including
9 a limited partnership”.

10 (2) TARGETED EMPLOYMENT AREA.—In sub-
11 paragraph (B)—

12 (A) by amending clause (i) to read as fol-
13 lows:

14 “(i) IN GENERAL.—Not fewer than
15 5,000 of the visas made available under
16 this paragraph in each fiscal year shall be
17 reserved for qualified immigrants who in-
18 vest in a new commercial enterprise de-
19 scribed in subparagraph (A), which—

20 “(I) is investing such capital in a
21 targeted employment area; and

22 “(II) will create employment in
23 such targeted employment area.”; and

24 (B) by inserting after clause (iii) the fol-
25 lowing:

1 “(iv) STATE DETERMINATIONS.—In a
2 case in which a geographic area is deter-
3 mined under clause (ii) to be a targeted
4 employment area by an delegated State
5 agency, and such a determination has been
6 made using acceptable data sources to in-
7 clude U.S. Census Bureau data (including
8 data from the American Community Sur-
9 vey) and data from the Bureau of Labor
10 Statistics (including data from the Local
11 Area Unemployment Statistics), The Sec-
12 retary of Homeland Security or her des-
13 ignee shall defer to a state’s designation as
14 conclusive.

15 “(v) EFFECT OF PRIOR DETERMINA-
16 TION.—In a case in which an area is deter-
17 mined under clause (ii) to be a targeted
18 employment area, such determination shall
19 remain in effect during the 2-year period
20 beginning on the date of the determination
21 for purposes of an alien seeking a visa re-
22 served under this subparagraph.”.

23 (3) PERMANENT AUTHORIZATION OF REGIONAL
24 CENTER PROGRAM.—By adding after subparagraph
25 (D) the following:

1 “(E) EMPLOYMENT CREATION REGIONAL
2 CENTERS.—

3 “(i) IN GENERAL.—Visas under this
4 paragraph shall be made available to quali-
5 fied immigrants who participate in a pro-
6 gram involving a regional center in the
7 United States, which has been designated
8 by the Secretary of Homeland Security, in
9 consultation with the Secretary of Com-
10 merce, on the basis of a general proposal,
11 for the promotion of economic growth, in-
12 cluding increased exports, improved re-
13 gional productivity, job creation, and in-
14 creased domestic capital investment. A re-
15 gional center shall have jurisdiction over a
16 specific geographic area, which shall be de-
17 scribed in the proposal and consistent with
18 the purpose of concentrating pooled invest-
19 ment in defined economic zones. The es-
20 tablishment of a regional center under this
21 subparagraph may be based on general
22 predictions, contained in the proposal, con-
23 cerning—

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

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

7 “(III) other positive economic ef-
8 fects such investments will have.

9 “(ii) METHODOLOGIES.—In deter-
10 mining compliance with this subparagraph,
11 and notwithstanding requirements applica-
12 ble to investors not involving regional cen-
13 ters, the Secretary of Homeland Security,
14 in consultation with the Secretary of Com-
15 merce, shall recognize reasonable meth-
16 odologies for determining the number of
17 jobs created by a designated regional cen-
18 ter, including such jobs that are estimated
19 to have been created indirectly through
20 revenues generated from increased exports,
21 improved regional productivity, or in-
22 creased domestic capital investment result-
23 ing from the regional center.

24 “(iii) SPECIAL PROCEDURES.—

1 “(I) PREAPPROVAL OF NEW COM-
2 MERCIAL ENTERPRISES.—The Sec-
3 retary of Homeland Security shall es-
4 tablish a preapproval procedure for
5 commercial enterprises that—

6 “(aa) allows a regional cen-
7 ter or potential regional center to
8 apply to the Secretary for
9 preapproval of a new commercial
10 enterprise before any alien files a
11 petition for classification under
12 this paragraph by reason of in-
13 vestment in the new commercial
14 enterprise;

15 “(bb) in considering an ap-
16 plication under subclause (I)—

17 “(AA) allows the appli-
18 cant to address and cure
19 any deficiencies identified by
20 the Secretary in the applica-
21 tion prior to final determina-
22 tion on the application; and

23 “(BB) requires that the
24 Secretary make final deci-
25 sions on all issues under this

1 paragraph other than those
2 issues unique to each indi-
3 vidual investor in the new
4 commercial enterprise; and

5 “(cc) requires that the Sec-
6 retary eliminate the need for the
7 repeated submission of docu-
8 mentation that is common to
9 multiple petitions for classifica-
10 tion under this paragraph
11 through a regional center.

12 “(II) DEFERENCE TO PRIOR
13 RULINGS.—Except in the case of ma-
14 terial change, fraud, or legal defi-
15 ciency, the Secretary of Homeland Se-
16 curity shall give deference to, and not
17 revisit, favorable determinations made
18 pertaining to a commercial enterprise
19 during the adjudication of—

20 “(aa) petitions filed by im-
21 migrants investing in the com-
22 mercial enterprise under this sub-
23 paragraph; or

1 “(bb) petitions filed by such
2 immigrants under section 216A
3 for removal of conditional basis.

4 “(iv) PROCESSING TIMES.—The Sec-
5 retary of Homeland Security shall make
6 determinations on a proposal under clause
7 (i) or an application under clause (iii) not
8 later than 180 days after the date on
9 which the proposal or application is filed.
10 In the event that additional information or
11 documentation is requested by the Sec-
12 retary, the Secretary shall adjudicate the
13 proposal or application not later than 30
14 days after the receipt of such information
15 or documentation. The filing party shall be
16 notified in writing within 30 days of the
17 date of filing if the filing does not meet the
18 standards for approval. If the filing does
19 not meet such standards, the notice shall
20 include the reasons therefore and the Sec-
21 retary shall provide an opportunity for the
22 prompt resubmission of a modified filing.”.

23 (4) PREVENTING FRAUD IN THE REGIONAL
24 CENTER PROGRAM.—In subparagraph (E) (as added

1 by paragraph (5)), by inserting after clause (iii) the
2 following:

3 “(v) BONA FIDES OF REGIONAL CEN-
4 TER PRINCIPALS.—No person may serve as
5 an owner, director or officer of a regional
6 center, or hold other positions of sub-
7 stantive authority for the operations, man-
8 agement or promotion of a regional center,
9 if the Secretary of Homeland Security de-
10 termines based on substantial evidence
11 that the person—

12 “(I) has been found liable within
13 the previous 5 years for any criminal
14 or civil violation of any law relating to
15 fraud or deceit;

16 “(II) has been found liable at
17 any time for any such criminal or civil
18 violation if such violation involved—

19 “(aa) a criminal conviction
20 with a term of imprisonment of
21 at least 1 year; or

22 “(bb) any law or agency reg-
23 ulation in connection with the
24 purchase or sale of a security; or

1 “(III) is engaged in, has ever
2 been engaged in, or seeks to engage in
3 any—

4 “(aa) terrorist activity (as
5 defined in clauses (iii) and (iv) of
6 section 212(a)(3)(B));

7 “(bb) activity relating to es-
8 pionage or sabotage;

9 “(cc) illicit trafficking in any
10 controlled substance;

11 “(dd) activity related to
12 money laundering (as described
13 in section 1956 or 1957 of title
14 18, United States Code);

15 “(ee) violation of any stat-
16 ute, regulation or Executive
17 Order regarding foreign financial
18 transactions or foreign asset con-
19 trol; or

20 “(ff) human trafficking or
21 any other human rights offense.

22 The Secretary of Homeland Security shall
23 require such attestations and information
24 (including fingerprints) and shall perform
25 such background checks as the Secretary

1 in the Secretary's discretion considers ap-
2 propriate to determine whether a regional
3 center is in compliance with this clause.
4 The Secretary may terminate any regional
5 center from the program under this section
6 if the Secretary determines that the re-
7 gional center is violation of this clause, the
8 regional center fails to provide such attes-
9 tations and information requested by the
10 Secretary under this clause, or the regional
11 center or any person described in this
12 clause is engaged in fraud, misrepresenta-
13 tion, criminal misuse, or threats to na-
14 tional security. The Secretary shall provide
15 for procedures for the appeal and review of
16 such a termination, and any determina-
17 tions pertaining to such termination shall
18 be subject to review under chapter 7 of
19 title 5, United States Code.

20 “(vi) FEE FOR REGIONAL CENTER
21 DESIGNATION.—In addition to any other
22 fees authorized by law, the Secretary of
23 Homeland Security shall impose—

1 “(I) a fee to apply for designa-
2 tion as a regional center under this
3 subparagraph; and

4 “(II) a fee for preapproval of a
5 new commercial enterprise as provided
6 under clause (iii)(I).”.

7 (5) EB-5 PETITIONS.—By adding after sub-
8 paragraph (E) (as amended by paragraph (6)) the
9 following:

10 “(F) EB-5 PETITIONS.—

11 “(i) PROCESSING TIMES.—The Sec-
12 retary of Homeland Security shall adju-
13 dicate a petition filed pursuant to this
14 paragraph not later than 180 days after
15 the date on which the petition is filed. In
16 the event that additional information or
17 documentation is requested by the Sec-
18 retary, the Secretary shall adjudicate the
19 petition not later than 30 days after the
20 receipt of such information or documenta-
21 tion. The filing party shall be notified in
22 writing within 30 days of the date of filing
23 if the filing does not meet the standards
24 for approval. If the filing does not meet
25 such standards, the notice shall include the

1 reasons therefore and the Secretary shall
2 provide an opportunity for the prompt re-
3 submission of a modified filing.

4 “(ii) FRAUD.—The Secretary of
5 Homeland Security, in consultation with
6 the Commissioner of the Securities and
7 Exchange Commission, shall develop a
8 strategy to review securities-related mate-
9 rials included in any immigration petition
10 under this paragraph, or a petition under
11 section 216A for removal of conditional
12 basis, when there is evidence of fraud.”.

13 (b) CONFORMING AMENDMENT.—Section 610 of the
14 Departments of Commerce, Justice, and State, the Judici-
15 ary, and Related Agencies Appropriations Act, 1993 (8
16 U.S.C. 1153 note) is repealed.

17 **SEC. 3. EB-5 VISA REFORMS.**

18 (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
19 LIMITATION.—Section 201(b)(1) of the Immigration and
20 Nationality Act (8 U.S.C. 1151(b)(1)) is amended by add-
21 ing at the end the following:

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

1 (b) AGE DETERMINATION FOR CHILDREN OF ALIEN
2 INVESTORS.—Section 203(h) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1153(h)) is amended by adding
4 at the end the following:

5 “(5) AGE DETERMINATION FOR CHILDREN OF
6 ALIEN INVESTORS.—An alien admitted under sub-
7 section (d) as a lawful permanent resident on a con-
8 ditional basis as the child of an alien lawfully admit-
9 ted for permanent residence under subsection (b)(5),
10 whose lawful permanent resident status on a condi-
11 tional basis is terminated under section 216A, shall
12 continue to be considered a child of the principal
13 alien for the purpose of a subsequent immigrant pe-
14 tition by such alien under subsection (b)(5) if the
15 alien remains unmarried and the subsequent petition
16 is filed by the principal alien not later than 1 year
17 after the termination of conditional lawful perma-
18 nent resident status. No alien shall be considered a
19 child under this paragraph with respect to more
20 than 1 petition filed after the alien’s 21st birth-
21 day.”.

22 (c) ENHANCED PAY SCALE FOR CERTAIN FEDERAL
23 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The
24 Secretary may establish, fix the compensation of, and ap-
25 point individuals to, designated critical administrative,

1 technical, and professional positions needed to administer
2 sections 203(b)(5) and 216A of the Immigration and Na-
3 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

4 (d) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

5 (1) IN GENERAL.—The Secretary of Homeland
6 Security may delegate to the Secretary of Commerce
7 authority and responsibility for determinations
8 under sections 203(b)(5) and 216A (with respect to
9 alien entrepreneurs) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-
11 ing determining whether an alien has met employ-
12 ment creation requirements.

13 (2) REGULATIONS.—The Secretary of Home-
14 land Security and the Secretary of Commerce may
15 each adopt such rules and regulations as are nec-
16 essary to carry out the delegation authorized under
17 paragraph (1), including regulations governing the
18 eligibility criteria for obtaining benefits pursuant to
19 the amendments made by this section.

20 (3) USE OF FEES.—Adjudication fees described
21 in section 286(m) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1356(m)) shall remain available
23 until expended to reimburse the Secretary of Com-
24 merce for the costs of any determinations made by
25 the Secretary of Commerce under paragraph (1).

1 (e) CONCURRENT FILING OF EB-5 PETITIONS AND
2 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section
3 245 (8 U.S.C. 1255) of the Immigration and Nationality
4 Act is amended—

5 (1) in subsection (k), in the matter preceding
6 paragraph (1), by striking “or (3)” and inserting
7 “(3), or (5)”; and

8 (2) by adding at the end the following:

9 “(n) At the time a petition is filed for classification
10 under section 203(b)(5), if the approval of such petition
11 would make a visa immediately available to the alien bene-
12 ficiary, the alien beneficiary’s application for adjustment
13 of status under this section shall be considered to be prop-
14 erly filed whether the application is submitted concur-
15 rently with, or subsequent to, the visa petition.”.

16 (f) TECHNICAL AMENDMENT.—Section 203(b)(5) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1153(b)(5)), as amended by this Act, is further amended
19 by striking “Attorney General” each place it appears and
20 inserting “Secretary of Homeland Security”.

21 **SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
22 **EIGN STATES.**

23 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
24 EIGN STATE.—Section 202(a)(2) of the Immigration and
25 Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

1 (1) in the paragraph heading, by striking “and
2 employment- based”;

3 (2) by striking “(3), (4), and (5),” and insert-
4 ing “(3) and (4),”;

5 (3) by striking “subsections (a) and (b) of sec-
6 tion 203” and inserting “section 203(a)”;

7 (4) by striking “7” and inserting “15”; and

8 (5) by striking “such subsections” and inserting
9 “such section”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of the
11 Immigration and Nationality Act (8 U.S.C. 1152) is
12 amended—

13 (1) in subsection (a)—

14 (A) in paragraph (3), by striking “both
15 subsections (a) and (b) of section 203” and in-
16 serting “section 203(a)”;

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

18 (2) by amending subsection (e) to read as fol-
19 lows:

20 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

21 If it is determined that the total number of immigrant
22 visas made available under section 202(a) to natives of
23 any single foreign state or dependent area will exceed the
24 numerical limitation specified in subsection (a)(2) in any
25 fiscal year, in determining the allotment of immigrant visa

1 numbers to natives under section 203(a), visa numbers
2 with respect to natives of that state or area shall be allo-
3 cated (to the extent practicable and otherwise consistent
4 with this section and section 203) in a manner so that,
5 except as provided in subsection (a)(4), the proportion of
6 the visa numbers made available under each of paragraphs
7 (1) through (4) of section 203(a) is equal to the ratio of
8 the total number of visas made available under the respec-
9 tive paragraph to the total number of visas made available
10 under section 203(a).”.

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

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

16 (2) by striking subsection (d) and redesignating
17 subsection (e) as subsection (d).

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 1 year after the date of the
20 enactment of this Act.

21 **SEC. 5. APPLICABILITY OF FOREIGN CORRUPT PRACTICES**

22 **ACT.**

23 The Foreign Corrupt Practices Act (15 U.S.C. 78a
24 et seq.) shall apply to any petition under section
25 203(b)(5).

1 **SEC. 6. REGULATIONS.**

2 Not later than 180 days after the effective date of
3 this subtitle, the Secretary of Homeland Security shall
4 make rules to carry out this Act and the amendments
5 made by this Act.

6 **SEC. 7. CONSULTATION WITH SECRETARY OF COMMERCE.**

7 The Secretary of Homeland Security may consult
8 with the Secretary of commerce in carrying out this Act
9 and the amendments made by this Act.

10 **SEC. 8. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect beginning on the date that is 6 months after
13 the date of enactment of this Act.