

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# 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.

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## 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.

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 “Visa Efficiency and  
5       E-Verify Extension Act of 2008”.

1 **SEC. 2. RECAPTURE OF IMMIGRANT VISAS LOST TO BU-**  
 2 **REAUCRATIC DELAY.**

3 (a) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
 4 IMMIGRANTS.—Section 201(d) of the Immigration and  
 5 Nationality Act (8 U.S.C. 1151(d)) is amended to read  
 6 as follows:

7 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
 8 IMMIGRANTS.—

9 “(1) IN GENERAL.—The worldwide level of em-  
 10 ployment-based immigrants under this subsection for  
 11 a fiscal year is equal to the sum of—

12 “(A) 140,000, plus

13 “(B) the number computed under para-  
 14 graph (2), plus

15 “(C) the number computed under para-  
 16 graph (3).

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

21 “(A) the worldwide level of employment-  
 22 based immigrant visas established for the pre-  
 23 vious fiscal year; and

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

1           “(3) UNUSED VISA NUMBERS FROM FISCAL  
2 YEARS 1992 THROUGH 2007.—The number computed  
3 under this paragraph is the difference, if any, be-  
4 tween—

5           “(A) the difference, if any, between—

6           “(i) the sum of the worldwide levels of  
7 employment-based immigrant visas estab-  
8 lished for each of fiscal years 1992  
9 through 2007; and

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

13           “(B) the number of unused visas from fis-  
14 cal years 1992 through 2007 that were issued  
15 after fiscal year 2007 under section 203(b),  
16 subject to this subsection.”.

17           (b) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-  
18 MIGRANTS.—Section 201(c) of the Immigration and Na-  
19 tionality Act (8 U.S.C. 1151(c)) is amended to read as  
20 follows:

21           “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED  
22 IMMIGRANTS.—

23           “(1) IN GENERAL.—

24           “(A) BASE LEVEL.—Subject to subpara-  
25 graph (B), the worldwide level of family-spon-

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

3                   “(i) 480,000 minus the number com-  
4                   puted under paragraph (2), plus

5                   “(ii) the sum of—

6                           “(I) the number computed under  
7                           paragraph (3), plus

8                           “(II) the number computed  
9                           under paragraph (4).

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

13                   “(2) NUMBER OF CERTAIN ALIENS NOT SUB-  
14                   JECT TO DIRECT NUMERICAL LIMITATIONS.—The  
15                   number computed under this paragraph for a fiscal  
16                   year is the number of aliens described in subpara-  
17                   graph (A) or (B) of subsection (b)(2) who were  
18                   issued immigrant visas or who otherwise acquired  
19                   the status of an alien lawfully admitted to the  
20                   United States for permanent residence in the pre-  
21                   vious fiscal year.

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

1           “(A) the worldwide level of family-spon-  
2           sored immigrant visas established for the pre-  
3           vious fiscal year; and

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

7           “(4) UNUSED VISA NUMBERS FROM FISCAL  
8           YEARS 1992 THROUGH 2007.—The number computed  
9           under this paragraph is the difference, if any, be-  
10          tween—

11           “(A) the difference, if any, between—

12           “(i) the sum of the worldwide levels  
13           family-sponsored immigrant visas estab-  
14           lished for fiscal years 1992 through 2007;  
15           and

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

19           “(B) the number of unused visas from fis-  
20           cal years 1992 through 2007 that were issued  
21           after fiscal year 2007 under section 203(a),  
22           subject to this subsection.”.

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

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

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

6 **SEC. 4. SPECIAL IMMIGRANT NONMINISTER RELIGIOUS**  
7 **WORKER PROGRAM.**

8 (a) REGULATIONS.—Not later than December 31,  
9 2008, the Secretary of Homeland Security shall issue final  
10 regulations to eliminate or reduce fraud related to the  
11 granting of special immigrant status for special immi-  
12 grants described in subclause (II) or (III) of section  
13 101(a)(27)(C)(ii) of the Immigration and Nationality Act  
14 (8 U.S.C. 1101(a)(27)(C)(ii)).

15 (b) EXTENSION.—Subclause (II) and subclause (III)  
16 of section 101(a)(27)(C)(ii) of the Immigration and Na-  
17 tionality Act (8 U.S.C. 1101(a)(27)(C)(ii)) are amended  
18 by striking “October 1, 2008,” both places such term ap-  
19 pears and inserting “October 1, 2011,”.

20 (c) REPORT.—Not later than September 30, 2010,  
21 the Inspector General of the Department of Homeland Se-  
22 curity shall submit to Congress a report on the effective-  
23 ness of the regulations described in subsection (a).

24 **SEC. 5. EXTENSION OF THE BASIC PILOT PROGRAM.**

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

1 note) is amended by striking “11-year period” and insert-  
2 ing “16-year period”.

3 **SEC. 6. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
4 **TION PROGRAMS.**

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

10 (1) provide funds to the Commissioner for the  
11 full costs of the responsibilities of the Commissioner  
12 under section 404 of the Illegal Immigration Reform  
13 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
14 1324a note), including (but not limited to)—

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

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

1           (2) provide such funds quarterly in advance of  
2           the applicable quarter based on estimating method-  
3           ology agreed to by the Commissioner and the Sec-  
4           retary (except in such instances where the delayed  
5           enactment of an annual appropriation may preclude  
6           such quarterly payments); and

7           (3) require an annual accounting and reconcili-  
8           ation of the actual costs incurred and the funds pro-  
9           vided under the agreement, which shall be reviewed  
10          by the Office of Inspector General of the Social Se-  
11          curity Administration and the Department of Home-  
12          land Security.

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



1 terms of such interim agreement shall be modified by the  
2 Director of the Office of Management and Budget to ad-  
3 just for inflation and any increase or decrease in the vol-  
4 ume of requests under the basic pilot confirmation system.  
5 In any case in which an interim agreement applies for any  
6 fiscal year under this subsection, the Commissioner and  
7 the Secretary shall, not later than October 1 of such fiscal  
8 year, notify the Committee on Ways and Means, the Com-  
9 mittee on the Judiciary, and the Committee on Appropria-  
10 tions of the House of Representatives and the Committee  
11 on Finance, the Committee on the Judiciary, and the  
12 Committee on Appropriations of the Senate of the failure  
13 to reach the agreement required under subsection (a) for  
14 such fiscal year. Until such time as the agreement re-  
15 quired under subsection (a) has been reached for such fis-  
16 cal year, the Commissioner and the Secretary shall, not  
17 later than the end of each 90-day period after October  
18 1 of such fiscal year, notify such Committees of the status  
19 of negotiations between the Commissioner and the Sec-  
20 retary in order to reach such an agreement.

21 **SEC. 7. GAO STUDY OF BASIC PILOT CONFIRMATION SYS-**

22 **TEM.**

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

1 neous tentative nonconfirmations under the basic pilot  
2 confirmation system established under section 404(a) of  
3 the Illegal Immigration Reform and Immigrant Responsi-  
4 bility Act of 1996 (8 U.S.C. 1324a note).

5 (b) MATTERS TO BE STUDIED.—In the study re-  
6 quired under subsection (a), the Comptroller General shall  
7 determine and analyze—

8 (1) the causes of erroneous tentative noncon-  
9 firmations under the basic pilot confirmation system;

10 (2) the processes by which such erroneous ten-  
11 tative nonconfirmations are remedied; and

12 (3) the effect of such erroneous tentative non-  
13 confirmations on individuals, employers, and Federal  
14 agencies.

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

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

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

1 of the United States shall submit to the Committees on  
2 the Judiciary of the United States House of Representa-  
3 tives and the Senate a report containing the Comptroller  
4 General's analysis of the effects of the basic pilot program  
5 described in section 403(a) of the Illegal Immigration Re-  
6 form and Immigrant Responsibility Act of 1996 (8 U.S.C.  
7 1324a note) on small entities (as defined in section 601  
8 of title 5, United States Code). The report shall detail—

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

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

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

18           (4) factors that impact small entities' enroll-  
19       ment and participation in such program, including  
20       access to appropriate technology, geography, entity  
21       size, and class of entity; and

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

1 (b) DIRECT AND INDIRECT EFFECTS.—The report  
2 shall cover, and treat separately, direct effects (such as  
3 wages, time, and fees spent on compliance) and indirect  
4 effects (such as the effect on cash flow, sales, and competi-  
5 tiveness).

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

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

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

○