

AMENDMENT NO. _____ Calendar No. _____

Purpose: To make various improvements to the H-1B and L-1 visa programs and for other purposes.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. HATCH (for himself and Mr. SCHUMER) to the amendment (No. 10) proposed by Mr. HATCH

Viz:

1 Strike all after “Viz:” and insert the following:

2 On page 673, strike lines 1 through 10, and insert
3 the following:

4 “(A) under section 101(a)(15)(H)(i)(b)
5 may not exceed the sum of—

6 “(i) the base allocation calculated
7 under paragraph (9)(A); and

8 “(ii) the allocation adjustment cal-
9 culated under paragraph (9)(B); and”;

1 Beginning on page 673, strike line 17 and all that
2 follows through page 675, line 25, and insert the following:

3 “(9)(A) Except as provided in subparagraph (C), the
4 base allocation of nonimmigrant visas under section
5 101(a)(15)(H)(i)(b) for each fiscal year shall be equal
6 to—

7 “(i) the sum of—

8 “(I) the base allocation for the most re-
9 cently completed fiscal year; and

10 “(II) the allocation adjustment under sub-
11 paragraph (B) for the most recently completed
12 fiscal year;

13 “(ii) if the number calculated under clause (i)
14 is less than 115,000, 115,000; or

15 “(iii) if the number calculated under clause (i)
16 is more than 180,000, 180,000.

17 “(B)(i) If the number of cap-subject nonimmigrant
18 visa petitions accepted for filing under section
19 101(a)(15)(H)(i)(b) during the first 45 days petitions may
20 be filed for a fiscal year is equal to the base allocation
21 for such fiscal year, an additional 20,000 such visas shall
22 be made available beginning on the 46th day on which pe-
23 titions may be filed for such fiscal year.

24 “(ii) If the base allocation of cap-subject non-
25 immigrant visa petitions accepted for filing under section

1 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
2 15-day period ending on the 60th day on which petitions
3 may be filed for such fiscal year, an additional 15,000
4 such visas shall be made available beginning on the 61st
5 day on which petitions may be filed for such fiscal year.

6 “(iii) If the base allocation of cap-subject non-
7 immigrant visa petitions accepted for filing under section
8 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
9 30-day period ending on the 90th day on which petitions
10 may be filed for such fiscal year, an additional 10,000
11 such visas shall be made available beginning on the 91st
12 day on which petitions may be filed for such fiscal year.

13 “(iv) If the base allocation of cap-subject non-
14 immigrant visa petitions accepted for filing under section
15 101(a)(15)(H)(i)(b) for a fiscal year is reached during the
16 185-day period ending on the 275th day on which peti-
17 tions may be filed for such fiscal year, an additional 5,000
18 such visas shall be made available beginning on the date
19 on which such allocation is reached.

20 “(v) If the number of cap-subject nonimmigrant visa
21 petitions accepted for filing under section
22 101(a)(15)(H)(i)(b) for a fiscal year is at least 5,000
23 fewer than the base allocation, but is not more than 9,999
24 fewer than the base allocation, the allocation adjustment
25 for the following fiscal year shall be -5,000.

1 “(vi) If the number of cap-subject nonimmigrant visa
2 petitions accepted for filing under section
3 101(a)(15)(H)(i)(b) for a fiscal year is at least 10,000
4 fewer than the base allocation, but not more than 14,999
5 fewer than the base allocation, the allocation adjustment
6 for the following fiscal year shall be -10,000.

7 “(vii) If the number of cap-subject nonimmigrant visa
8 petitions accepted for filing under section
9 101(a)(15)(H)(i)(b) for a fiscal year is at least 15,000
10 fewer than the base allocation, but not more than 19,999
11 fewer than the base allocation, the allocation adjustment
12 for the following fiscal year shall be -15,000.

13 “(viii) If the number of cap-subject nonimmigrant
14 visa petitions accepted for filing under section
15 101(a)(15)(H)(i)(b) for a fiscal year is at least 20,000
16 fewer than the base allocation, the allocation adjustment
17 for the following fiscal year shall be -20,000.

18 “(C) No allocation adjustment may take place under
19 any of clauses (i) through (iv) of subparagraph (B) to
20 make additional visas available for any fiscal year in which
21 the national occupational unemployment rate for ‘Manage-
22 ment, Professional, and Related Occupations’, as pub-
23 lished by the Bureau of Labor Statistics each month, aver-
24 ages 4.5 percent or greater over the 12-month period pre-

1 ceding the date of the Secretary’s determination of wheth-
2 er the cap should be increased or decreased.”.

3 On page 678, lines 9 through 11, strike “only if such
4 spouse is a national of a foreign country that permits re-
5 ciprocal employment”.

6 On page 678, strike lines 15 through 21, and insert
7 the following:

8 “(iii)(I) Upon the request of the Secretary of State,
9 the Secretary of Homeland Security may suspend employ-
10 ment authorizations under clause (ii) to nationals of a for-
11 eign country that does not permit reciprocal employment
12 to nationals of the United States who are accompanying
13 or following to join the employment-based nonimmigrant
14 husband or wife of such spouse to be employed in such
15 foreign country based on that status.

16 On page 699, strike lines 1 through 15, and insert
17 the following:

18 “(E)(i)(I) In the case of an application filed by
19 an employer that is an H–1B skilled worker depend-
20 ent employer, and is not an H–1B dependent em-
21 ployer, the employer did not displace and will not
22 displace a United States worker employed by the

1 employer during the period beginning 90 days before
2 the date on which a visa petition supported by the
3 application is filed and ending 90 days after such fil-
4 ing.

5 “(II) An employer that is not an H–1B skilled
6 worker dependent employer shall not be subject to
7 subclause (I) unless—

8 “(aa) the employer is filing the H–1B peti-
9 tion with the intent or purpose of displacing a
10 specific United States worker from the position
11 to be occupied by the beneficiary of the petition;
12 or

13 “(bb) workers are displaced who—

14 “(AA) provide services, in whole or in
15 part, at 1 or more worksites owned, oper-
16 ated, or controlled by a Federal, State, or
17 local government entity that directs and
18 controls the work of the H–1B worker; or

19 “(BB) are employed as public school
20 kindergarten, elementary, middle school, or
21 secondary school teachers.

22 “(III) In the case of an application filed by an
23 H–1B-dependent employer, the employer did not dis-
24 place and will not displace a United States worker
25 employed by the employer during the period begin-

1 ning 180 days before the date on which a visa peti-
2 tion supported by the application is filed and ending
3 180 days after such filing.

4 Beginning on page 700, strike line 18 and all that
5 follows through page 701, line 14, and insert the following:

6 (2) RECRUITMENT.—Section 212(n)(1)(G) (8
7 U.S.C. 1182(n)(1)(G)) is amended to read as fol-
8 lows:

9 “(G) An employer, prior to filing the applica-
10 tion—

11 “(i) has taken good faith steps to recruit
12 United States workers for the occupational clas-
13 sification for which the nonimmigrant or non-
14 immigrants is or are sought, using procedures
15 that meet industry-wide standards and offering
16 compensation that is at least as great as that
17 required to be offered to H–1B nonimmigrants
18 under subparagraph (A);

19 “(ii) has advertised the job on an Internet
20 website maintained by the Secretary of Labor
21 for the purpose of such advertising; and

22 “(iii) if the employer is an H–1B skilled
23 worker dependent employer, has offered the job
24 to any United States worker who applies and is

1 equally or better qualified for the job for which
2 the nonimmigrant or nonimmigrants is or are
3 sought.”.

4 On page 702, lines 11 and 12, strike “For purposes
5 of complying with the requirements related to outplace-
6 ment of an employee, the term” and insert “The term”.

7 On page 702, line 7, strike the end quote and final
8 period and insert the following:

9 “(iv) An H-1B dependent employer
10 shall be exempt from the prohibition on
11 outplacement under clause (i) if the em-
12 ployer is a nonprofit institution of higher
13 education, a nonprofit research organiza-
14 tion, or primarily a health care business
15 and is petitioning for a physician, a nurse,
16 or a physical therapist or a substantially
17 equivalent health care occupation. Such
18 employer shall be subject to the fee set
19 forth in clause (ii).”.

20 On page 702, strike lines 14 through 19.

1 On page 703, line 13, strike “(f)” and insert the fol-
2 lowing:

3 (f) H-1B SKILLED WORKER DEPENDENT DE-
4 FINED.—Section 212(n)(3) (8 U.S.C. 1182(n)(3)) is
5 amended—

6 (1) by redesignating subparagraph (B) as sub-
7 paragraph (D); and

8 (2) by inserting after subparagraph (A) the fol-
9 lowing:

10 “(B)(i) For purposes of this subsection, an ‘H-1B
11 skilled worker dependent employer’ means an employer
12 who employs H-1B nonimmigrants in the United States
13 in a number that in total is equal to at least 15 percent
14 of the number of its full-time equivalent employees in the
15 United States employed in occupations contained within
16 Occupational Information Network Database (O*NET)
17 Job Zone 4 and Job Zone 5.

18 “(ii) An H-1B nonimmigrant who is an intending im-
19 migrant shall be counted as a United States worker in
20 making a determination under clause (i).”.

21 On page 704, line 2, insert “by a covered employer”
22 before the period at the end.

1 On page 704, strike lines 4 through 15 and insert
2 the following:

3 “(i) The term ‘covered employer’ means an
4 employer that has filed immigrant status peti-
5 tions for not less than 90 percent of current
6 employees who were the beneficiaries of applica-
7 tions for labor certification that were approved
8 during the 1-year period ending 6 months be-
9 fore the filing of an application or petition for
10 which the number of intending immigrants is
11 relevant.”.

12 On page 720, line 10, strike the end quote and final
13 period and insert the following:

14 “(K) The Secretary of Labor shall facilitate the post-
15 ing of the descriptions described in paragraph (1)(C)(i)
16 on the Internet website of the State labor or workforce
17 agency for the State in which the position will be primarily
18 located during the same period as the posting under para-
19 graph (1)(C)(i).”.

20 On page 720, between lines 10 and 11, insert the fol-
21 lowing:

1 **SEC. 4225. TRANSPARENCY OF HIGH-SKILLED IMMIGRA-**
2 **TION PROGRAMS.**

3 Section 416(c) of the American Competitiveness and
4 Workforce Improvement Act of 1998 (8 U.S.C. 1184 note)
5 is amended—

6 (1) by amending paragraph (2) to read as fol-
7 lows:

8 “(2) ANNUAL H–1B NONIMMIGRANT CHARAC-
9 TERISTICS REPORT.—The Bureau of Immigration
10 and Labor Market Research shall submit an annual
11 report to the Committee on the Judiciary of the
12 Senate and the Committee on the Judiciary of the
13 House of Representatives that contains—

14 “(A) information on the countries of origin
15 of, occupations of, educational levels attained
16 by, and compensation paid to, aliens who were
17 issued visas or otherwise provided non-
18 immigrant status under section
19 101(a)(15)(H)(i)(b) of the Immigration and
20 Nationality Act (8 U.S.C.
21 1101(a)(15)(H)(i)(b)) during the previous fiscal
22 year;

23 “(B) a list of all employers who petition
24 for H–1B visas, the number of such petitions
25 filed and approved for each such employer, the
26 occupational classifications for the approved po-

1 sitions, and the number of H-1B non-
2 immigrants for whom each such employer files
3 for adjustment to permanent resident status;

4 “(C) the number of immigrant status peti-
5 tions filed during the prior year on behalf of H-
6 1B nonimmigrants;

7 “(D) a list of all employers who are H-1B-
8 dependent employers;

9 “(E) a list of all employers who are H-1B
10 skilled worker dependent employers;

11 “(F) a list of all employers for whom more
12 than 30 percent of their United States work-
13 force is H-1B or L-1 nonimmigrants;

14 “(G) a list of all employers for whom more
15 than 50 percent of their United States work-
16 force is H-1B or L-1 nonimmigrants;

17 “(H) a gender breakdown by occupation
18 and by country of H-1B nonimmigrants;

19 “(I) a list of all employers who have been
20 approved to conduct outplacement of H-1B
21 nonimmigrants; and

22 “(J) the number of H-1B nonimmigrants
23 categorized by their highest level of education
24 and whether such education was obtained in the
25 United States or in a foreign country.”;

1 (2) by redesignating paragraph (3) as para-
2 graph (5);

3 (3) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) ANNUAL L-1 NONIMMIGRANT CHARACTER-
6 ISTICS REPORT.—The Bureau of Immigration and
7 Labor Market Research shall submit an annual re-
8 port to the Committee on the Judiciary of the Sen-
9 ate and the Committee on the Judiciary of the
10 House of Representatives that contains—

11 “(A) information on the countries of origin
12 of, occupations of, educational levels attained
13 by, and compensation paid to, aliens who were
14 issued visas or otherwise provided —non-
15 immigrant status under section 101(a)(15)(L)
16 of the Immigration and Nationality Act (8
17 U.S.C. 1101(a)(15)(L)) during the previous fis-
18 cal year;

19 “(B) a list of all employers who petition
20 for L-1 visas, the number of such petitions
21 filed and approved for each such employer, the
22 occupational classifications for the approved po-
23 sitions, and the number of L-1 nonimmigrants
24 for whom each such employer files for adjust-
25 ment to permanent resident status;

1 “(C) the number of immigrant status peti-
2 tions filed during the prior year on behalf of L-
3 1 nonimmigrants;

4 “(D) a list of all employers who are L-1
5 dependent employers;

6 “(E) a gender breakdown by occupation
7 and by country of L-1 nonimmigrants;

8 “(F) a list of all employers who have been
9 approved to conduct outplacement of L-1 non-
10 immigrants; and

11 “(G) the number of H-1B nonimmigrants
12 categorized by their highest level of education
13 and whether such education was obtained in the
14 United States or in a foreign country.

15 “(4) ANNUAL EMPLOYER SURVEY.—The Bu-
16 reau of Immigration and Labor Market Research
17 shall—

18 “(A) conduct an annual survey of employ-
19 ers hiring foreign nationals under the H-1B
20 and L-1 visa programs; and

21 “(B) shall issue an annual report that—

22 “(i) describes the methods employers
23 are using to meet the requirement of tak-
24 ing good faith steps to recruit United
25 States workers for the occupational classi-

1 fication for which the nonimmigrants are
2 sought, using procedures that meet indus-
3 try-wide standards;

4 “(ii) describes the best practices for
5 recruiting among employers; and

6 “(iii) contains recommendations on
7 which recruiting steps employers can take
8 to maximize the likelihood of hiring Amer-
9 ican workers.”; and

10 (4) in paragraph (5), as redesignated, by strik-
11 ing “paragraph (2)” and inserting “paragraphs (2)
12 and (3)”.

13 On page 727, strike lines 13 through 16, and insert
14 the following:

15 **SEC. 4236. APPLICATION.**

16 (a) IN GENERAL.—Except as otherwise specifically
17 provided, the amendments made by this subtitle shall
18 apply to applications filed on or after the date of the en-
19 actment of this Act.

20 (b) SPECIAL REQUIREMENTS.—Notwithstanding any
21 other provision of law, the amendments made by section
22 4211(c) shall not apply to any application or petition filed
23 by an employer on behalf of an existing employee.

1 **SEC. 4237. PORTABILITY FOR BENEFICIARIES OF IMMI-**
2 **GRANT PETITIONS.**

3 (a) INCREASED PORTABILITY.—Section 204(j) (8
4 U.S.C. 1154(j)) is amended—

5 (1) by amending the subsection heading to read
6 as follows:

7 “(j) INCREASED PORTABILITY.—”;

8 (2) by striking “A petition” and inserting the
9 following:

10 “(1) LONG DELAYED APPLICANTS FOR ADJUST-
11 MENT OF STATUS.—A petition”; and

12 (3) by adding at the end the following:

13 “(2) PORTABILITY FOR BENEFICIARIES OF IM-
14 MIGRANT PETITIONS.—Regardless of whether an em-
15 ployer withdraws a petition approved under para-
16 graph (1), (2), or (3) of section 203(b)—

17 “(A) the petition shall remain valid with
18 respect to a new job if—

19 “(i) the beneficiary changes jobs or
20 employers after the petition is approved;
21 and

22 “(ii) the new job is in the same or a
23 similar occupational classification as the
24 job for which the petition was approved;
25 and

1 “(B) the employer’s legal obligations with
2 respect to the petition shall terminate at the
3 time the beneficiary changes jobs or employers.

4 “(3) DOCUMENTATION.—The Secretary of
5 Labor shall develop a mechanism to provide the ben-
6 eficiary or prospective employer with sufficient infor-
7 mation to determine whether a new position or job
8 is in the same or similar occupation as the job for
9 which the petition was approved. The Secretary of
10 Labor shall provide confirmation of application ap-
11 proval if required for eligibility under this sub-
12 section. The Secretary of Homeland Security shall
13 provide confirmation of petition approval if required
14 for eligibility under this subsection.”.

15 (b) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
16 BASED IMMIGRANTS.—

17 (1) IN GENERAL.—Section 245 of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1255) is amend-
19 ed by adding at the end the following:

20 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
21 BASED IMMIGRANTS.—

22 “(1) PETITION.—An alien, and any eligible de-
23 pendents of such alien, who has filed a petition for
24 immigrant status, may concurrently, or at any time
25 thereafter, file an application with the Secretary of

1 Homeland Security for adjustment of status if such
2 petition is pending or has been approved, regardless
3 of whether an immigrant visa is immediately avail-
4 able at the time the application is filed.

5 “(2) SUPPLEMENTAL FEE.—If a visa is not im-
6 mediately available at the time an application is filed
7 under paragraph (1), the beneficiary of such applica-
8 tion shall pay a supplemental fee of \$500. This fee
9 shall not be collected from any dependent accom-
10 panying or following to join such beneficiary.

11 “(3) AVAILABILITY.—An application filed pur-
12 suant to paragraph (2) may not be approved until
13 the date on which an immigrant visa becomes avail-
14 able.”.

15 Beginning on page 727, strike line 19 and all that
16 follows through page 728, line 14, and insert the following:

17 **SEC. 4301. PROHIBITION ON OUTPLACEMENT OF L NON-**
18 **IMMIGRANTS.**

19 Section 214(c)(2)(F) (8 U.S.C. 1184(c)(2)(F)) is
20 amended to read as follows:

21 “(F)(i) An employer who employs L-1 nonimmigrants
22 in a number that is equal to at least 15 percent of the
23 total number of full-time equivalent employees employed
24 by the employer shall not place, outsource, lease, or other-

1 wise contract for the services or placement of such alien
2 with another employer. In determining the number of em-
3 ployees who are L-1 nonimmigrants, an intending immi-
4 grant shall count as a United States worker.

5 “(ii) The employer of an alien described in section
6 101(a)(15)(L) shall not place, outsource, lease, or other-
7 wise contract for the services or placement of such alien
8 with another employer unless—

9 “(I) such alien will not be controlled or super-
10 vised principally by the employer with whom such
11 alien would be placed;

12 “(II) the placement of such alien at the work-
13 site of the other employer is not essentially an ar-
14 rangement to provide labor for hire for the other
15 employer; and

16 “(III) the employer of such alien pays a fee of
17 \$500, which shall be deposited in the STEM Edu-
18 cation and Training Account established under sec-
19 tion 286(w).”.

20 On page 844, line 9, strike “any person” and insert
21 “an aggrieved applicant, employee, or nonimmigrant (or
22 a person acting on behalf of such applicant, employee, or
23 nonimmigrant)”.