

The Let Immigrants Kickstart Employment (LIKE) Act of 2021

Section-by-Section

SEC. 1. SHORT TITLE.

Establishes the short titles of the bill as the “Let Immigrants Kickstart Employment Act of 2021” or the “LIKE Act”.

SEC. 2. W VISAS.

Amends section 101(a)(15) of the Immigration and Nationality Act (INA) to create a new classification of “W” nonimmigrants as follows:

- W-1: Entrepreneurs with an ownership interest in a start-up entity;
- W-2: Essential employees of a start-up entity; and
- W-3: The spouses and children of W-1 or W-2 nonimmigrants.

SEC. 3. START-UP ENTITIES; NONIMMIGRANT ENTREPRENEURS AND EMPLOYEES.

Amends chapter 2 of title II of the INA by adding a new sections 218A, 218B, and 218C:

New sec. 218A.—Start-Up Entities; Admission of Nonimmigrant Entrepreneurs and Employees.

New sec. 218A(a)(1).—Nonimmigrant Entrepreneurs. Directs the Secretary of Homeland Security (hereinafter “Secretary”) to establish procedures for aliens to self-petition for classification as a W-1 nonimmigrant. Provides the Secretary with discretion to classify an alien as a W-1 nonimmigrant for an initial 3-year period if—

- (1) the alien possesses an ownership interest of not less than 10 percent in a start-up entity;
- (2) the alien will play a central and active role in the management or operations of the start-up entity;
- (3) the alien possesses the knowledge, skills, or experience to substantially assist the start-up entity with the growth and success of its business; and
- (4) during the 18-month period preceding the filing of the petition, the start-up entity received at least \$250,000 in qualifying investments from one or more qualified investors; or at least \$100,000 in qualifying government awards or grants.

New sec. 218A(a)(2).—3-Year Extension Eligibility Criteria. Provides the Secretary with discretion to approve a petition to extend W-1 nonimmigrant status for an additional 3 years if—

- (1) the alien possesses an ownership interest of not less than 5 percent in the start-up entity that formed the basis for the initial petition for classification as a W-1 nonimmigrant;
- (2) the alien will continue to play a central and active role in the management or operations of the start-up entity; and
- (3) during the alien’s initial period of status as a W-1 nonimmigrant, the start-up entity—
 - (a) received not less than \$500,000 in additional qualifying investments from one or more qualified investors, qualifying government awards or grants, or a combination of such funding;
 - (b) created at least 5 qualified jobs; or

(c) generated not less than \$500,000 in annual revenue in the United States and averaged 20% in annual revenue growth.

New sec. 218A(a)(3).—Additional Extensions in 1-Year Increments. Provides the Secretary with discretion to approve a petition to further extend W-1 nonimmigrant status in 1-year increments, for up to 2 years, if the Secretary determines—

- (1) the alien maintains an ownership interest in the start-up entity;
- (2) the alien will continue to play an active and central role in the management or operations of the start-up entity; and
- (3) the start-up entity has made substantial progress in satisfying the job growth requirement and the capital or revenue requirement for an immigrant visa under paragraphs (2) and (3) of new section 218B(c) and is reasonably expected to meet such requirement in not less than 1 year.

New sec. 218A(a)(4).—Other Comparable Evidence. Provides the Secretary with discretion to grant an initial 3-year period of W-1 status or a 3-year extension of such status if the start-up entity partially meets the capital requirement, or the revenue or job growth requirement, if applicable, and the Secretary determines, based on other reliable and compelling evidence, that the entity has substantial potential for rapid growth and job creation.

New sec. 218A(a)(5).—Reporting of Material Changes. Requires a W-1 nonimmigrant to immediately notify the Secretary in writing if he or she will no longer play a central and active role in the management or operations of the start-up entity or ceases to possess a qualifying ownership interest in the start-up entity. Provides that the W-1 nonimmigrant will cease to possess a qualifying ownership interest in the start-up entity if (1) during the initial 3-year period of W-1 status, the alien's ownership interest falls below 5 percent; or (2) during any period of extension of such status, the alien ceases to maintain any ownership interest.

New sec 218A(a)(6).—Clarification. Clarifies that with respect to an alien who establishes a qualifying ownership interest in a new start-up entity and is otherwise eligible for classification as a W-1 nonimmigrant, the Secretary shall grant such alien W-1 status in accordance with this subsection, notwithstanding any time previously spent in such status with a different start-up entity.

New sec. 218A(b)(1).—Nonimmigrant Essential Employees. Directs the Secretary to establish procedures for a start-up entity that serves as the basis for an approved petition under subsection (a) to petition for W-2 classification for certain essential personnel. Provides the Secretary with discretion to approve such a petition if the Secretary determines that the alien—

- (1) has an offer of employment from the start-up entity to serve in an executive or managerial capacity; and
- (2) possesses knowledge, skills, or experience that are essential to the growth and success of the start-up entity.

New sec. 218A(b)(2).—Numerical Limitations. Limits the number of aliens that may be employed by a start-up entity in W-2 status at any one time to:

- 2 if such entity has 10 or fewer full-time employees;
- 3 if such entity has at least 11 and not more than 30 full-time employees;
- 4 if such entity has at least 31 and not more than 70 full-time employees; and
- 5 if such entity has more than 70 full-time employees.

New sec. 218A(b)(3).—3-Year Extension. Provides the Secretary with discretion to extend the status of a W-2 nonimmigrant for 3 years.

New sec. 218A(b)(4).—Termination of Eligibility to Petition for W-2 Nonimmigrants. Specifies that a start-up entity's eligibility to file new petitions for W-2 nonimmigrants terminates on the date that the entity ceases to serve as the basis for W-1 nonimmigrant status for any of its founders.

New sec. 218A(c).—Spouses and Children. Provides that the spouses and children accompanying or following to join W-1 and W-2 nonimmigrants shall be entitled to classification as W-3 nonimmigrants. Requires the Secretary to authorize W-3 spouses for employment authorization.

New sec. 218A(d).—Termination of Nonimmigrant Status. Requires the Secretary to issue a notice of intent to terminate W-1 or W-2 status if the Secretary has reasonable grounds to believe that (1) the facts or information contained in the petition were not true and accurate; (2) the alien failed to timely file or otherwise comply with the material change reporting requirement, if applicable; or (3) the petition was erroneously granted. Requires the notice of intent to terminate to identify the grounds for termination and provide at least 60 days for the alien to respond.

New sec. 218A(e).—Grace Period. Provides that W nonimmigrants maintain their nonimmigrant status for 60 days upon expiration or termination of such status.

New sec. 218A(f).—Dual Intent. Specifies that W nonimmigrant classification may be conferred upon an alien notwithstanding any intention of the alien to seek lawful permanent residence in the United States.

New sec. 218A(g).—Definitions. Defines the terms “executive capacity”, “full-time employee”, “managerial capacity”, “qualified investor”, “qualified job”, “qualifying employee”, “qualifying government award or grant”, “qualifying investment”, “Secretary”, “Start-Up Entity”, and “United States business entity”.

New sec. 218B.—Admission of Immigrant Entrepreneurs.

New sec. 218B(a).—In General. Directs the Secretary to establish procedures for an alien to self-petition for classification as an immigrant entrepreneur.

New sec. 218B(b).—Exclusion from Numerical Limitations. Provides that an alien classified as an immigrant entrepreneur, and the spouse and children of such alien, are immediately eligible for immigrant visas and that such visas shall not be subject to or counted against the numerical limitations in the INA.

New sec. 218B(c).—Eligibility Criteria. Provides the Secretary with discretion to approve a petition for classification as an immigrant entrepreneur if the Secretary determines—

- (1) the alien—
 - (A) is present in the United States and has maintained W-1 or other nonimmigrant status that forms the basis for employment with the start-up entity;
 - (B) has maintained an ownership interest in the start-up entity since its formation; and
 - (C) plays an active and central role in the management or operations of the start-up entity; and
- (2) the start-up entity has created at least 10 qualified jobs; and
- (3) the start-up entity has—
 - (A) raised not less than a total of \$1,250,000 in qualifying investments; or

(B) generated not less than \$1,000,000 in annual revenue in the United States in the 2-year period preceding the filing of the petition.

New sec. 218B(d).—Immigrant Visa Processing or Adjustment of Status. Clarifies that an alien classified as an immigrant entrepreneur, and the spouse and children of such alien, may apply for visas at a U.S. consulate or embassy abroad or adjustment of status if they are otherwise eligible for adjustment.

New sec. 218C.—Inflation Adjustment; Fees.

New sec. 218C(a).—Inflation Adjustment. Allows the Secretary to adjust the monetary amounts for required revenue and capital investment on a biennial basis in accordance with the Consumer Price Index for All Urban Consumers.

New sec. 218C(b).—Fees. Provides the Secretary with discretion to charge a reasonable fee that is commensurate with the cost of processing petitions or applications under sections 218A or 218B. Requires the collection of an additional \$1,000 fee in connection with petitions for classification as a W-1 nonimmigrant and petitions for classification as an immigrant entrepreneur which will fund STEM scholarships for low income U.S. students. Requires the Secretary to establish premium processing for petitions and applications filed under sections 218A and 218B, subject to reasonable conditions.

SEC. 4. RULEMAKING.

Sec. 4(a).—In General. Requires the Secretary to consult with the Secretary of State and the Secretary of Commerce and publish an interim final rule implementing the provisions of this Act not later than 180 days after the date of enactment. Requires the Secretary to publish a final rule not later than 1 year after the date of enactment.

Sec. 4(b).—Designated Qualified Investors.—Requires the rule to include procedures for investors to request designation as “qualified investors,” and streamlined filing procedures for aliens seeking classification as a W-1 nonimmigrant or immigrant entrepreneur based on investments made by one or more designated qualified investors.