117TH CONGRESS 1ST SESSION
H. R. ______

To amend the Immigration and Nationality Act to establish a new class of nonimmigrant visas for entrepreneurs and essential employees affiliated with start-up entities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. LOFGREN introduced the following bill; which was referred to the Committee on

A BILL

To amend the Immigration and Nationality Act to establish a new class of nonimmigrant visas for entrepreneurs and essential employees affiliated with start-up entities, 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 “Let Immigrants

5 Kickstart Employment Act of 2021” or the “LIKE Act”.

(Original Signature of Member)
SEC. 2. W VISAS.

Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (U)(iii), by striking “or” at the end;

(2) in subparagraph (V)(ii)(II), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(W) START-UP ENTITIES.—

“(i) ENTREPRENEURS.—Subject to section 218A(a), an alien who is an entrepreneur with an ownership interest in a start-up entity.

“(ii) EMPLOYEES.—Subject to section 218A(b), an alien who is or will be an essential employee of a start-up entity.

“(iii) DERIVATIVES.—Subject to section 218A(c), the spouse or child of an alien described in clause (i) or (ii) who is accompanying, or following to join, the alien.”.

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

Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding after section 218 the following:
“SEC. 218A. START-UP ENTITIES; ADMISSION OF NON-
IMMIGRANT ENTREPRENEURS AND EMPLOY-
EES.

“(a) NONIMMIGRANT ENTREPRENEURS.—

“(1) IN GENERAL.—The Secretary shall estab-
lish procedures for an alien to self-petition for classi-
fication as a nonimmigrant under section
101(a)(15)(W)(i). Status under such section shall be
valid for an initial period of 3 years and may be ex-
tended thereafter in accordance with this subsection.
The Secretary may approve the petition of an alien
for initial classification as such a nonimmigrant if
the Secretary determines—

“(A) the alien possesses an ownership in-
terest in a start-up entity of not less than 10
percent;

“(B) the alien will play a central and ac-
tive role in the management or operations of
the start-up entity;

“(C) the alien possesses the knowledge,
skills, or experience to substantially assist the
start-up entity with the growth and success of
its business; and

“(D) subject to paragraph (4), the start-up
entity, during the 18-month period preceding
the filing of the petition, received—
“(i) at least $250,000 in qualifying investments from one or more qualified investors; or

“(ii) at least $100,000 in qualifying government awards or grants.

“(2) 3-YEAR EXTENSION ELIGIBILITY CRITERIA.—The Secretary may approve a petition to extend the status of an alien as a nonimmigrant under section 101(a)(15)(W)(i) for an additional 3-year period, if the Secretary determines—

“(A) the alien—

“(i) possesses an ownership interest of not less than 5 percent in the start-up entity that formed the basis for the alien’s initial petition for classification as a non-immigrant under section 101(a)(15)(W)(i);

and

“(ii) will continue to play a central and active role in the management or operations of the start-up entity; and

“(B) subject to paragraph (4), during the alien’s initial period of status as a non-immigrant under section 101(a)(15)(W)(i), the start-up entity—
“(i) received at least $500,000 in additional qualifying investments from one or more qualified investors, qualifying government awards or grants, or a combination of such funding;

“(ii) created at least 5 qualified jobs;

or

“(iii) generated not less than $500,000 in annual revenue in the United States and averaged 20 percent in annual revenue growth.

“(3) ADDITIONAL EXTENSIONS IN 1-YEAR INCREMENTS.—With respect to an alien whose status as a nonimmigrant under section 101(a)(15)(W)(i) was extended under paragraph (2), the Secretary may approve a petition to further extend such status in 1-year increments, for up to 2 years, if the Secretary determines—

“(A) the alien—

“(i) possesses an ownership interest in the start-up entity that formed the basis for the alien’s initial petition for classification as a nonimmigrant under section 101(a)(15)(W)(i); and
“(ii) will continue to play a central and active role in the management or operations of the start-up entity; and

“(B) the start-up entity has made substantial progress in satisfying the requirements under paragraphs (2) and (3) of section 218B(c) and is reasonably expected to satisfy such requirements within the 1 year period following the expiration of the alien’s status as a nonimmigrant under section 101(a)(15)(W)(i).

“(4) OTHER COMPARABLE EVIDENCE.—The Secretary may grant a petition to classify an alien as a nonimmigrant under section 101(a)(15)(W)(i) if the start-up entity partially meets one or more of the criteria described in paragraphs (1)(D) or (2)(B) and the Secretary determines, based on other reliable and compelling evidence, that the start-up entity has substantial potential for rapid growth and job creation.

“(5) REPORTING OF MATERIAL CHANGES.—

“(A) IN GENERAL.—An alien with status under section 101(a)(15)(W)(i) shall immediately notify the Secretary in writing, in accordance with procedures established by the Secretary, if he or she will no longer play a cen-
tral 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.

“(B) QUALIFYING OWNERSHIP INTEREST.—For purposes of subparagraph (A), the alien will cease to possess a qualifying ownership interest in the start-up entity if—

“(i) during the initial 3-year period of status described under paragraph (1), the alien’s ownership interest falls below 5 percent; or

“(ii) during the periods of status described under paragraphs (2) or (3), the alien ceases to maintain any ownership interest.

“(6) CLARIFICATION.—With respect to an alien who establishes a qualifying ownership interest in a start-up entity and is otherwise eligible for status under section 101(a)(15)(W)(i) based on such ownership, the Secretary shall grant the alien such status in accordance with this subsection notwithstanding any time previously spent in such status with a different start-up entity.

“(b) NONIMMIGRANT ESSENTIAL EMPLOYEES.—
“(1) IN GENERAL.—The Secretary shall establish procedures for a start-up entity that serves as the basis for an approved petition under subsection (a) to file a petition to classify an alien as a non-immigrant under section 101(a)(15)(W)(ii). Status under such section shall be valid for an initial period of 3 years and may be extended thereafter in accordance with paragraph (3). The Secretary may approve the petition of an alien for initial classification as such a nonimmigrant if the Secretary determines the alien—

“(A) has an offer from the start-up entity for employment in an executive capacity or managerial capacity; and

“(B) possesses knowledge, skills, or experience that are essential to the growth and success of the start-up entity.

“(2) NUMERICAL LIMITATIONS.—The number of aliens with status under section 101(a)(15)(W)(ii) that may be employed by a start-up entity at any one time may not exceed—

“(A) 2 such aliens if such entity has 10 or fewer full-time employees in the United States;
“(B) 3 such aliens if such entity has at least 11 and not more than 30 full-time employees in the United States;

“(C) 4 such aliens if such entity has at least 31 and not more than 70 full-time employees in the United States; and

“(D) 5 such aliens if such entity has more than 70 full-time employees in the United States.

“(3) 3-YEAR EXTENSION.—The Secretary may approve a petition to extend the status of an alien as a nonimmigrant under section 101(a)(15)(W)(ii) for an additional 3-year period, if the Secretary determines the alien continues to meet the criteria for initial classification as such a nonimmigrant described in paragraph (1).

“(4) TERMINATION OF ELIGIBILITY TO PETITION FOR W-2 NONIMMIGRANTS.—A start-up entity’s eligibility to submit new petitions for aliens under paragraph (1) shall terminate on the date the start-up entity no longer serves as the basis for status of nonimmigrants under section 101(a)(15)(W)(i).

“(c) SPOUSES AND CHILDREN.—

“(1) IN GENERAL.—The spouse and children accompanying or following to join an alien with sta-
tus as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(W) shall be entitled to classification as nonimmigrants under clause (iii) of such section.

“(2) EMPLOYMENT AUTHORIZATION.—In the case of an alien spouse with status as a nonimmigrant under section 101(a)(15)(W)(iii), the Secretary shall authorize such spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.

“(d) TERMINATION OF NONIMMIGRANT STATUS.—

“(1) IN GENERAL.—The Secretary shall provide written notice of the Secretary’s intent to terminate status under clause (i) or (ii) of section 101(a)(15)(W) if the Secretary has reasonable grounds to believe that—

“(A) the facts or information contained in the petition for such status were not true and accurate;

“(B) the alien failed to timely file or otherwise comply with the material change reporting requirement in subsection (a)(5), if applicable; or

“(C) the petition was erroneously granted.
“(2) NOTICE AND DECISION.—A notice of intent to terminate issued under paragraph (1) shall identify the grounds for termination and provide at least 60 days for the alien to submit rebuttal evidence.

“(e) GRACE PERIOD.—An alien admitted or otherwise provided status under section 101(a)(15)(W) shall be considered to be maintaining such status for a period of not less than 60 days upon expiration or termination of such status.

“(f) DUAL INTENT.—Notwithstanding section 214(b), an alien may obtain a visa or be granted status under section 101(a)(15)(W) even if such alien intends to seek lawful permanent resident status in the United States.

“(g) DEFINITIONS.—In this section:

“(1) EXECUTIVE CAPACITY.—The term ‘executive capacity’ has the meaning given such term in section 101(a)(44)(B).

“(2) FULL-TIME EMPLOYEE.—The term ‘full-time employee’ means an individual performing services in a position that requires a minimum of 35 working hours per week, and does not include independent contractors or combinations of part-time employees.
“(3) MANAGERIAL CAPACITY.—The term ‘managerial capacity’ has the meaning given such term in section 101(a)(44)(A).

“(4) QUALIFIED INVESTOR.—

“(A) IN GENERAL.—Except as provided in subparagraph (B) and consistent with subparagraph (C), the term ‘qualified investor’ means—

“(i) an individual who is a United States citizen or lawful permanent resident of the United States; or

“(ii) an organization that is located in the United States and operates through a legal entity that has its principal place of business in the United States, that is majority owned and controlled by United States citizens or lawful permanent residents of the United States, which individual or organization regularly makes substantial investments in start-up entities that subsequently exhibit substantial growth in revenue generation or job creation.

“(B) EXCEPTIONS.—The term ‘qualified investor’ does not include an individual or organization that has been—
“(i) permanently or temporarily enjoined from participating in the offer or sale of a security or in the provision of services as an investment adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent or credit rating agency;

“(ii) barred from association with any entity involved in the offer or sale of securities or the provision of such services; or

“(iii) otherwise found to have participated in the offer or sale of securities or the provision of such services in violation of law.

“(C) Substantial Investment History.—An individual or organization shall be considered to regularly make substantial investments in start-up entities that subsequently exhibit substantial growth in revenue generation or job creation if—

“(i) during the preceding 5 years, the individual or organization invested a total of not less than $600,000 in start-up entities in exchange for equity, convertible
debt, or other security convertible into equity commonly used in financing transactions within their respective industries; and

“(ii) subsequent to such investment, at least 2 such entities each created at least 5 qualified jobs or generated at least $500,000 in revenue with average annualized revenue growth of at least 20 percent.

“(5) QUALIFIED JOB.—The term ‘qualified job’ means a job located in the United States that requires a minimum of 35 working hours per week that has been filled for at least 1 year by one or more qualifying employees.

“(6) QUALIFYING EMPLOYEE.—The term ‘qualifying employee’ means a United States citizen, a lawful permanent resident, or other immigrant lawfully authorized to be employed in the United States. Such term does not include independent contractors, nonimmigrant entrepreneurs or essential start-up employees of the start-up entity, or the parents, spouses, brothers, sisters, sons, or daughters of such nonimmigrant entrepreneurs.
“(7) QUALIFYING GOVERNMENT AWARD OR
GRANT.—The term ‘qualifying government award or
grant’ means an award or grant for economic devel-
opment, research and development, or job creation
(or other similar monetary award typically given to
start-up entities) made by a Federal, State, or local
government entity (not including foreign government
entities) that regularly provides such awards or
grants to start-up entities. The term does not in-
clude any contractual commitment for goods or serv-
ices.

“(8) QUALIFYING INVESTMENT.—

“(A) IN GENERAL.—The term ‘qualifying
investment’ means an investment of lawfully de-
rived capital made in good faith in a start-up
entity that is a purchase from such entity of its
equity, convertible debt, or other security con-
vertible into its equity that is or becomes com-
monly used in financing transactions within
such entity’s industry.

“(B) EXCLUSIONS.—The term ‘qualifying
investment’ does not include a direct or indirect
investment from the entrepreneur, the parents,
spouse, brother, sister, son, or daughter of such
entrepreneur, or any corporation, limited liabil-
ity company, partnership, or other entity in which such entrepreneur or the parents, spouse, brother, sister, son, or daughter of such entrepreneur has any direct or indirect ownership interest.

“(9) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(10) START-UP ENTITY.—The term ‘start-up entity’ means a United States business entity that has lawfully conducted business during any period of operation since its formation, and that was formed within the 5-year period immediately preceding the date the alien files a petition for classification under section 101(a)(15)(W)(i).

“(11) UNITED STATES BUSINESS ENTITY.—The term ‘United States business entity’ means any corporation, limited liability company, partnership, or other entity that is organized under Federal law or the laws of any State, and that conducts business in the United States, that is not an investment vehicle primarily engaged in the offer, purchase, sale or trading of securities, futures contracts, derivatives or similar instruments.
“SEC. 218B. ADMISSION OF IMMIGRANT ENTREPRENEURS.

“(a) IN GENERAL.—The Secretary shall establish procedures for an alien who is eligible under subsection (c) to self-petition for classification as an immigrant entrepreneur.

“(b) EXCLUSION FROM NUMERICAL LIMITATIONS.—An alien classified as an immigrant entrepreneur under this section, and the spouse and children of such alien, shall be immediately eligible for immigrant visas and such visas shall not be subject to or counted against the numerical limitations under sections 201, 202, or 203.

“(c) ELIGIBILITY CRITERIA.—The Secretary may approve a petition filed by an alien for classification as an immigrant entrepreneur under this section if the Secretary determines—

“(1) the alien—

“(A) is present in the United States and has maintained status as a nonimmigrant under section 101(a)(15)(W)(i) or other non-immigrant status that forms the basis for employment with a start-up entity (as such term is defined in section 218A(g)(10));

“(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;

“(2) the start-up entity has created at least 10 qualified jobs (as such term is defined in section 218A); and

“(3) the start-up entity has—

“(A) raised not less than a total of $1,250,000 in qualifying investments, qualifying government grants or awards, or a combination of such funding; 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.

“(d) IMMIGRANT VISA PROCESSING OR ADJUSTMENT OF STATUS.—An alien classified as an immigrant entrepreneur under this section, and the spouse and children of such alien, may apply for an immigrant visa in accordance with the procedures described in section 221 or for adjustment of status under section 245 if such individuals are otherwise eligible for adjustment of status.

“SEC. 218C. INFLATION ADJUSTMENT; FEES.

“(a) INFLATION ADJUSTMENT.—The Secretary may adjust the monetary amounts described in paragraphs
(1)(D) and (2)(B) of section 218A(a) and section 218B(c)(3) on a biennial basis by the percentage (if any) by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year. Any such increase shall apply to aliens filing petitions on or after the date on which the increase takes effect.

“(b) Fees.—

“(1) IN GENERAL.—The Secretary may require an alien petitioning or applying for any benefit under section 218A or 218B to pay a reasonable fee that is commensurate with the cost of processing the petition or application.

“(2) SUPPLEMENTAL FEE FOR STEM SCHOLARSHIPS.—In addition to any required processing fee, the Secretary shall collect a $1,000 fee in connection with each petition for classification as a non-immigrant under section 101(a)(15)(W)(i) or as an immigrant under section 219B. Such funds shall be made available to programs described in section 286(s)(3).

“(3) PREMIUM PROCESSING.—Subject to any reasonable conditions, the Secretary shall establish
premium processing procedures for petitions or applications filed under sections 218A and 218B in accordance with section 286(u) and the Emergency Stopgap USCIS Stabilization Act (Public Law No. 116–159, Div. D, Title I).”.

SEC. 4. RULEMAKING.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State and the Secretary of Commerce, shall publish in the Federal Register, an interim final rule implementing the provisions of this Act. Notwithstanding section 553 of title 5, United States Code, the rule shall be effective, on an interim basis, immediately upon publication, but may be subject to change and revision after public notice and opportunity for comment. The Secretary shall finalize such rule not later than 1 year after the date of the enactment of this Act.

(b) DESIGNATED QUALIFIED INVESTORS.—The rules described in subsection (a) shall include—

(1) procedures for individuals and organizations to request designation as qualified investors (as such term is defined in section 218A(g) of the Immigration and Nationality Act); and

(2) streamlined filing procedures for petitions to classify an alien as an nonimmigrant under sec-
tion 101(A)(15)(W)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(W)(i)) or as an immigrant under section 218B of such Act based on such alien founding a start-up entity that has received investment capital from one or more qualified investors that have been designated as such pursuant to the procedures described in paragraph (1).