[DISCUSSION DRAFT]

117TH CONGRESS  1ST SESSION

H. R. ______

To amend the Immigration and Nationality Act to reform the H–1B visa program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. BANKS introduced the following bill; which was referred to the Committee on ______________________

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A BILL

To amend the Immigration and Nationality Act to reform the H–1B visa 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 Tech Work-
5  force Act of 2021”.

6  SEC. 2. FINDINGS.

7  Congress finds the following:
(1) The H-1B visa has become a program used to supplant American workers with inexpensive foreign labor.

(2) 60 percent of H-1B visas are assigned wage levels substantially below the local median wages for their relevant occupations.

(3) The ability to hire non-American workers at wages substantially below median wage levels, adjusted for locality and occupation, clearly disincentivizes the hiring of American workers.

(4) In 2019, Big Tech companies like Amazon, Google, Microsoft, Facebook, IBM, and Apple were 6 of the top 8 initial approval recipients for H-1B visas. This trend has existed since 2014.

(5) The Optional Practical Training program was created without Congressional Authority, was expanded by the Obama Administration, and is most beneficial to Big Tech.

(6) The Optional Practical Training program allows student visa holders who have completed their studies and earned a degree in Science, Technology, Engineering, or Math (STEM) to work for up to three years, and waives their employer’s payroll tax obligations for the OPT participant.
(7) The Optional Practical Training program functions as a tax break for employers who do not employ Americans, and actively incentivizes such.

SEC. 3. OPTIONAL PRACTICAL TRAINING PROGRAM TERMINATED; EMPLOYMENT AUTHORIZATION TO TERMINATE AFTER COMPLETION OF COURSE OF STUDIES.

(a) IN GENERAL.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by adding at the end the following:

“(4) Employment authorization for aliens no longer engaged in full-time study in the United States.—Notwithstanding any other provision of law, no alien present in the United States as a nonimmigrant under section 101(a)(15)(F)(i) may be provided employment authorization in the United States pursuant to the Optional Practical Training Program, or any such successor program, and the Optional Practical Training Program shall be terminated. Any employment authorization for a nonimmigrant under section 101(a)(15)(F) shall terminate upon completion of the alien’s course of studies and may not be granted or extended thereafter.”.
(b) TRANSITION RULE.—Any application for the Optional Practical Training Program that is pending as of the date of enactment of this Act shall be rejected and any fees paid pertaining to such application shall be refunded.

SEC. 4. OTHER PROVISIONS REGARDING H–1B NON–IMMIGRANTS.

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(1) in subparagraph (A), to read as follows:

“(A) That the employer is offering, and will offer during the period of authorized employment, an annual wage to the H–1B non–immigrant that is the greater of—

“(i) the annual wage that was paid to the United States citizen or lawful permanent resident employee who did identical or similar work during the 2 years before the employer filed such application; or

“(ii) $110,000, if offered not later than 1 year after the date of the enactment of the American Tech Workforce Act of 2021, which amount shall be annually adjusted for inflation by July 1 of each year.”; and
(2) by adding at the end the following:

“(6) Period of Validity.—A visa granted under section 101(a)(15)(H)(i)(b) to an H–1B non-immigrant pursuant to a petition by any employer who has specific and non-speculative qualifying assignments in a specialty occupation for the beneficiary of such petition for the entire time requested in the petition, if any part of such an assignment will be performed at a third-party worksite, shall be valid for a period of not more than 1 year.

“(7) Order of Priority.—In issuing visa or according status under section 101(a)(15)(H)(i)(b) for a fiscal year, applications from employers in accordance with this subsection shall be granted in order of the highest compensation rate included in the application to the lowest.”.