

1 Purpose: In the nature of a substitute.

2
3

4 H. R. 1044

5 To amend the Immigration and Nationality Act to eliminate the
6 per-country numerical limitation for employment-based
7 immigrants, to increase the per-country numerical limitation for
8 family-sponsored immigrants, and for other purposes.

9 Referred to the Committee on _____ and ordered to be
10 printed

11 Ordered to lie on the table and to be printed

12 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE
13 PROPOSED BY MR. LEE

14 Viz:

15 Strike all after the enacting clause and insert the following:

16 **SECTION 1. SHORT TITLE.**

17 This Act may be cited as the “Fairness for High-Skilled Immigrants Act of **2019** **2020**”.

18 **SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE**
19 **FOREIGN STATE.**

20 (a) In General.—Section 202(a)(2) of the Immigration and Nationality Act (8 U.S.C.
21 1152(a)(2)) is amended to read as follows:

22 “(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED IMMIGRANTS.—Subject to paragraphs
23 (3) and (4), the total number of immigrant visas made available to natives of any single
24 foreign state or dependent area under section 203(a) in any fiscal year may not exceed 15
25 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area)
26 of the total number of such visas made available under such section in that fiscal year.”.

27 (b) Conforming Amendments.—Section 202 of such Act (8 U.S.C. 1152) is amended—

28 (1) in subsection (a)—

29 (A) in paragraph (3), by striking “both subsections (a) and (b) of section 203” and
30 inserting “section 203(a)”; and

31 (B) by striking paragraph (5); and

32 (2) by amending subsection (e) to read as follows:

33 “(e) Special Rules for Countries at Ceiling.—If the total number of immigrant visas made

1 available under section 203(a) to natives of any single foreign state or dependent area will
2 exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, immigrant visas
3 shall be allotted to such natives under section 203(a) (to the extent practicable and otherwise
4 consistent with this section and section 203) in a manner so that, except as provided in
5 subsection (a)(4), the proportion of the visas made available under each of paragraphs (1)
6 through (4) of section 203(a) is equal to the ratio of the total visas made available under the
7 respective paragraph to the total visas made available under section 203(a).”.

8 (c) Country-specific Offset.—Section 2 of the Chinese Student Protection Act of 1992 (8
9 U.S.C. 1255 note) is amended—

10 (1) in subsection (a), by striking “(as defined in subsection (e))”;

11 (2) by striking subsection (d); and

12 (3) by redesignating subsection (e) as subsection (d).

13 (d) Effective Date.—The amendments made by this section shall take effect beginning the
14 fiscal year after the date of enactment of this Act, and shall apply to that fiscal year and each
15 subsequent fiscal year.

16 (e) Transition Rules for Employment-based Immigrants.—

17 (1) IN GENERAL.—Subject to paragraphs (2) through (4), and notwithstanding title II of
18 the Immigration and Nationality Act (8 U.S.C. 1151 et seq.), the following rules shall apply:

19 (A) ~~During the first nine~~ No alien who is the beneficiary of a petition for an
20 immigrant visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C.
21 1153(b)) that was approved prior to the date of the enactment of this Act shall receive a
22 visa later than the alien otherwise would have received such visa had this Act not been
23 enacted.

24 (B) ~~During the first three~~ fiscal years after the date of enactment of this Act, certain
25 visas will be reserved within the immigrant visas made available under each of
26 paragraphs (2) and (3) of section 203(b) of the Immigration and Nationality Act (8
27 U.S.C. 1153(b)).

28 (C) ~~(B)~~ With regard to immigrant visas made available under paragraphs (2) and (3)
29 of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) for the
30 first ~~three~~ **nine** fiscal years after the date of enactment of this Act, visas will be
31 reserved for immigrants native to countries other than the two states with the largest
32 aggregate number of natives who are beneficiaries of approved but backlogged
33 petitions for immigrant status under section 203(b) of the Immigration and Nationality
34 Act (8 U.S.C. 1153(b)), as follows:

35 (i) For the first fiscal year after the date of enactment of this Act, ~~15~~ **30** percent
36 of the immigrant visas made available under paragraphs (2) and (3) of section
37 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be allotted
38 to immigrants who are natives of a foreign state or dependent area that is not one
39 of the two states with the largest aggregate numbers of natives waiting for
40 immigrant status.

41 (ii) For the second fiscal year after the date of enactment of this Act, ~~10~~ **25**

1 percent of the immigrant visas made available under paragraphs (2) and (3) of
2 section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be
3 allotted to immigrants who are natives of a foreign state or dependent area that is
4 not one of the two states with the largest aggregate numbers of natives waiting for
5 immigrant status.

6 (iii) For the third fiscal year after the date of enactment of this Act, ~~10~~ **20**
7 percent of the immigrant visas made available under paragraphs (2) and (3) of
8 section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be
9 allotted to immigrants who are natives of a foreign state or dependent area that is
10 not one of the two states with the largest aggregate numbers of natives waiting for
11 immigrant status.

12 **(iv) For the fourth fiscal year after the date of enactment of this Act, 15**
13 **percent of the immigrant visas made available under paragraphs (2) and (3)**
14 **of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b))**
15 **shall be allotted to immigrants who are natives of a foreign state or**
16 **dependent area that is not one of the two states with the largest aggregate**
17 **numbers of natives waiting for immigrant status.**

18 **(v) For the fifth and sixth fiscal years after the date of enactment of this**
19 **Act, 10 percent of the immigrant visas made available under paragraphs (2)**
20 **and (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C.**
21 **1153(b)) shall be allotted to immigrants who are natives of a foreign state or**
22 **dependent area that is not one of the two states with the largest aggregate**
23 **numbers of natives waiting for immigrant status.**

24 **(vi) For the seventh, eighth, and ninth fiscal years after the date of**
25 **enactment of this Act, 5 percent of the immigrant visas made available under**
26 **paragraphs (2) and (3) of section 203(b) of the Immigration and Nationality**
27 **Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are natives of a**
28 **foreign state or dependent area that is not one of the two states with the**
29 **largest aggregate numbers of natives waiting for immigrant status.**

30 **(C)(D)** 5.75 percent of the immigrant visas made available under paragraphs (2) and
31 (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall
32 be reserved annually for the first nine fiscal years after the date of enactment of this
33 Act for immigrants who are native to countries other than the two states with the
34 largest aggregate number of natives who are beneficiaries of approved but backlogged
35 petitions for immigrant status under such section. Such visas will be made available by
36 the following priority ordering:

37 (i) Derivative dependents described in section 203(d) of the Immigration and
38 Nationality Act (8 U.S.C. 1153(d)) who seek to join a principal beneficiary of a
39 petition for an immigrant visa under paragraphs (2) and (3) of section 203(b) of
40 the Immigration and Nationality Act (8 U.S.C. 1153(b)).

41 (ii) Immigrants who seek to enter the United States as new arrivals and who
42 have not resided or worked in the United States at any point in the four-year
43 period immediately preceding the filing of their petition for an immigrant visa

1 under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

2 (iii) Other immigrants who meet the criteria of this subparagraph.

3 ~~(E)(D)~~ The two states with the largest aggregate numbers of natives who are
4 beneficiaries of approved petitions referred to in subparagraphs ~~(C)(B)~~ and ~~(D)(C)~~ are
5 the two states with the largest aggregate number of approved but backlogged cases for
6 immigrant visas under section 203(b) of the Immigration and Nationality Act (8 U.S.C.
7 1153(b)), as identified by adding the numbers associated with aliens awaiting
8 employment-based immigrant status in the most recent and available Count Of
9 Approved Employment-Based Immigrant Petitions With Priority Dates On Or After
10 the State Department's Visa Bulletin from the Department of Homeland Security and
11 such numbers in the most recent Annual Report of Immigrant Visa Applicants in the
12 Employment-Based Preferences Registered at the National Visa Center from the
13 Department of State.

14 ~~(E)(E)~~ Notwithstanding subparagraphs (A) through ~~(E)(D)~~, for each of **the seven**
15 fiscal years **2020 through 2026 after the date of enactment of this Act**, not fewer
16 than 4,400 of the immigrant visas made available under paragraph (3) of section 203(b)
17 of the Immigration and Nationality Act (8 U.S.C. 1153(b)) and not reserved by
18 subparagraphs ~~(C)(B)~~ and ~~(D)(C)~~ shall be allotted to immigrants who are described in
19 section 656.5(a) of title 20, Code of Federal Regulations (or a successor regulation)
20 and are seeking admission to the United States to work in an occupation described in
21 that section.

22 ~~(G)(F)~~ Family members described in section 203(d) of the Immigration and
23 Nationality Act (8 U.S.C. 1153(d)) who are accompanying or following to join a
24 principal beneficiary seeking admission under subparagraph ~~(F)(E)~~ shall be entitled to
25 an unreserved visa in the same status and in the same order of consideration as such
26 principal beneficiary, but shall not be counted against the 4,400 immigrant visas
27 allotted under that subparagraph.

28 (2) PER-COUNTRY LEVELS.—

29 (A) RESERVED VISAS.—The number of visas reserved under each of clauses (i), ~~(ii),~~
30 ~~and~~ **through (iv) of paragraph (1)(B) and each of clauses (i) through** (iii) of
31 paragraph (1)(C) ~~and (1)(D)~~ made available to natives of any single foreign state or
32 dependent area in the appropriate fiscal year may not exceed 25 percent (in the case of
33 a single foreign state) or 2 percent (in the case of a dependent area) of the total number
34 of such visas.

35 (B) UNRESERVED VISAS.—Not more than 85 percent of the immigrant visas made
36 available under each of paragraphs (2) and (3) of section 203(b) of the Immigration
37 and Nationality Act (8 U.S.C. 1153(b)) and not reserved under paragraph (1), for each
38 of the first ~~three~~ **four** fiscal years after the date of enactment of this Act, may be
39 allotted to immigrants who are natives of any single foreign state.

40 (3) SPECIAL RULE TO PREVENT UNUSED VISAS.—If, with respect to first nine fiscal years
41 after the enactment of this Act, the application of paragraphs (1) and (2) would prevent the
42 total number of immigrant visas made available under paragraph (2) or (3) of section 203(b)
43 of the Immigration and Nationality Act (8 U.S.C. 1153(b)) from being issued, such visas

1 may be issued during the remainder of such fiscal year without regard to paragraphs (1) and
2 (2).

3 (4) RULES FOR CHARGEABILITY AND DEPENDENTS.—Section 202(b) of the Immigration
4 and Nationality Act (8 U.S.C. 1152(b)) shall apply in determining the foreign state to which
5 an alien is chargeable, and section 203(d) of the Immigration and Nationality Act (8 U.S.C.
6 1153(d)) shall apply in allocating immigrant visas to dependents, for purposes of this
7 subsection.

8 SEC. 3. POSTING AVAILABLE POSITIONS THROUGH 9 THE DEPARTMENT OF LABOR.

10 (a) Department of Labor Website.—Section 212(n)(6) of the Immigration and Nationality Act
11 (8 U.S.C. 1182(n)(6)) is amended to read as follows:

12 “(6) For purposes of complying with paragraph (1)(C)—

13 “(A) Not later than 180 days after the date of the enactment of the Fairness for High-
14 Skilled Immigrants Act of ~~2019~~ 2020, the Secretary of Labor shall establish a
15 searchable internet website for posting positions in accordance with paragraph (1)(C)
16 that is available to the public without charge, except that the Secretary may delay the
17 launch of such website for a single period identified by the Secretary by notice in the
18 Federal Register that shall not exceed 30 days.

19 “(B) The Secretary may work with private companies or nonprofit organizations to
20 develop and operate the internet website described in subparagraph (A).

21 “(C) The Secretary shall promulgate rules, after notice and a period for comment, to
22 carry out this paragraph.”.

23 (b) Publication Requirement.—The Secretary of Labor shall submit to Congress, and publish
24 in the Federal Register and in other appropriate media, a notice of the date on which the internet
25 website required under section 212(n)(6) of the Immigration and Nationality Act, as established
26 by subsection (a), will be operational.

27 (c) Application.—The amendment made by subsection (a) shall apply to any application filed
28 on or after the date that is 90 days after the date described in subsection (b).

29 (d) Internet Posting Requirement.—Section 212(n)(1)(C) of the Immigration and Nationality
30 Act (8 U.S.C. 1182(n)(1)(C)) is amended—

31 (1) by redesignating clause (ii) as subclause (II);

32 (2) by striking “(i) has provided” and inserting the following:

33 “(ii)(I) has provided”; and

34 (3) by inserting before clause (ii), as redesignated by paragraph (2), the following:

35 “(i) except in the case of an employer filing a petition on behalf of an H–1B
36 nonimmigrant who has already been counted against the numerical limitations and
37 is not eligible for a full 6-year period, as described in section 214(g)(7), or on
38 behalf of an H–1B nonimmigrant authorized to accept employment under section
39 214(n), has posted on the internet website described in paragraph (6), for at least

1 30 calendar days, a description of each position for which a nonimmigrant is
2 sought, that includes—

3 “(I) the occupational classification, and if different the employer’s job title
4 for the position, in which the nonimmigrant(s) will be employed;

5 “(II) the education, training, or experience qualifications for the position;

6 “(III) the salary or wage range and employee benefits offered;

7 “(IV) the location(s) at which the nonimmigrant(s) will be employed; and

8 “(V) the process for applying for a position; and”.

9 SEC. 4. H-1B EMPLOYER APPLICATION 10 REQUIREMENTS.

11 (a) Wage Determination Information.—Section 212(n)(1)(D) of the Immigration and
12 Nationality Act (8 U.S.C. 1182(n)(1)(D)) is amended by inserting “the prevailing wage
13 determination methodology used under subparagraph (A)(i)(II),” after “shall contain”.

14 (b) New Application Requirements.—Section 212(n)(1) of the Immigration and Nationality
15 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G)(ii) the following:

16 “(H)(i) The employer, or a person or entity acting on the employer’s behalf, has not
17 advertised any available position specified in the application in an advertisement that states
18 or indicates that—

19 “(I) such position is only available to an individual who is or will be an H-1B
20 nonimmigrant; or

21 “(II) an individual who is or will be an H-1B nonimmigrant shall receive priority or
22 a preference in the hiring process for such position.

23 “(ii) The employer has not primarily recruited individuals who are or who will be H-1B
24 nonimmigrants to fill such position.

25 “(I) If the employer, in a previous period specified by the Secretary, employed one or
26 more H-1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue
27 Service Form W-2 Wage and Tax Statements filed by the employer with respect to the H-
28 1B nonimmigrants for such ~~period.~~

29 **period.”.**

30 **(c) Additional Application Requirement.—**

31 **(1) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality Act (8**
32 **U.S.C. 1182(n)(1)), as amended by subsection (b), is further amended by inserting**
33 **after subparagraph (I), the following:**

34 “(J)(i) If the employer employs 50 or more employees in the United States, the sum of the
35 number of such employees who are H-1B nonimmigrants plus the number of such
36 employees who are nonimmigrants described in section 101(a)(15)(L) does not exceed 50
37 percent of the total number of employees.

38 “(ii) Any group treated as a single employer under subsection (b), (c), (m), or (o) of

1 section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for
2 purposes of clause (i).”.

3 **(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on**
4 **the date that is three years after the date of enactment of this Act.**

5 **(d)(e)** Labor Condition Application Fee.—Section 212(n) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

7 “(6)(A) The Secretary of Labor shall promulgate a regulation that requires applicants under
8 this subsection to pay an administrative fee to cover the average paperwork processing costs and
9 other administrative costs.

10 “(B)(i) Fees collected under this paragraph shall be deposited as offsetting receipts within the
11 general fund of the Treasury in a separate account, which shall be known as the ‘H–1B
12 Administration, Oversight, Investigation, and Enforcement Account’ and shall remain available
13 until expended.

14 “(ii) The Secretary of the Treasury shall refund amounts in such account to the Secretary of
15 Labor for salaries and related expenses associated with the administration, oversight,
16 investigation, and enforcement of the H–1B nonimmigrant visa program.”.

17 **(d)(e)** Elimination of B–1 in Lieu of H–1.—Section 214(g) of the Immigration and Nationality
18 Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

19 “(12)(A) Unless otherwise authorized by law, an alien normally classifiable under section
20 101(a)(15)(H)(i) who seeks admission to the United States to provide services in a specialty
21 occupation described in paragraph (1) or (3) of subsection (i) may not be issued a visa or
22 admitted under section 101(a)(15)(B) for such purpose.

23 “(B) Nothing in this paragraph may be construed to authorize the admission of an alien under
24 section 101(a)(15)(B) who is coming to the United States for the purpose of performing skilled
25 or unskilled labor if such admission is not otherwise authorized by law.”.

26 SEC. 5. INVESTIGATION AND DISPOSITION OF 27 COMPLAINTS AGAINST H–1B EMPLOYERS.

28 (a) Investigation, Working Conditions, and Penalties.—Section 212(n)(2)(C) of the
29 Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended by striking clause (iv) and
30 inserting the following:

31 “(iv)(I) An employer that has filed an application under this subsection violates this clause by
32 taking, failing to take, or threatening to take or fail to take a personnel action, or intimidating,
33 threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other
34 manner against an employee because the employee—

35 “(aa) disclosed information that the employee reasonably believes evidences a violation
36 of this subsection or any rule or regulation pertaining to this subsection; or

37 “(bb) cooperated or sought to cooperate with the requirements under this subsection or
38 any rule or regulation pertaining to this subsection.

39 “(II) An employer that violates this clause shall be liable to the employee harmed by such

1 violation for lost wages and benefits.

2 “(III) In this clause, the term ‘employee’ includes—

3 “(aa) a current employee;

4 “(bb) a former employee; and

5 “(cc) an applicant for employment.”.

6 (b) Information Sharing.—Section 212(n)(2)(H) of the Immigration and Nationality Act (8
7 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

8 “(H)(i) The Director of U.S. Citizenship and Immigration Services shall provide the Secretary
9 of Labor with any information contained in the materials submitted by employers of H–1B
10 nonimmigrants as part of the petition adjudication process that indicates that the employer is not
11 complying with visa program requirements for H–1B nonimmigrants.

12 “(ii) The Secretary may initiate and conduct an investigation and hearing under this paragraph
13 after receiving information of noncompliance under this subparagraph.”.

14 SEC. 6. LABOR CONDITION APPLICATIONS.

15 (a) Application Review Requirements.—Section 212(n)(1) of the Immigration and Nationality
16 Act (8 U.S.C. 1182(n)(1)) is amended, in the undesignated matter following subparagraph (I), as
17 added by section 4(b)—

18 (1) in the fourth sentence, by inserting “, and through the internet website of the
19 Department of Labor, without charge.” after “Washington, D.C.”;

20 (2) in the fifth sentence, by striking “only for completeness” and inserting “for
21 completeness, clear indicators of fraud or misrepresentation of material fact,”;

22 (3) in the sixth sentence, by striking “or obviously inaccurate” and inserting “, presents
23 clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate”;
24 and

25 (4) by adding at the end the following: “If the Secretary’s review of an application
26 identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may
27 conduct an investigation and hearing in accordance with paragraph (2).”.

28 (b) Ensuring Prevailing Wages Are for Area of Employment and Actual Wages Are for
29 Similarly Employed.—Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C.
30 1182(n)(1)(A)) is amended—

31 (1) in clause (i), in the undesignated matter following subclause (II), by striking “and” at
32 the end;

33 (2) in clause (ii), by striking the period at the end and inserting “, and”; and

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

35 “(iii) will ensure that—

36 “(I) the actual wages or range identified in clause (i) relate solely to
37 employees having substantially the same duties and responsibilities as the H–
38 1B nonimmigrant in the geographical area of intended employment,

1 considering experience, qualifications, education, job responsibility and
2 function, specialized knowledge, and other legitimate business factors,
3 except in a geographical area there are no such employees, and

4 “(II) the prevailing wages identified in clause (ii) reflect the best available
5 information for the geographical area within normal commuting distance of
6 the actual address of employment at which the H–1B nonimmigrant is or will
7 be employed.”.

8 (c) Procedures for Investigation and Disposition.—Section 212(n)(2)(A) of the Immigration
9 and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

10 (1) by striking “(2)(A) Subject” and inserting “(2)(A)(i) Subject”;

11 (2) by striking the fourth sentence; and

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

13 “(i)(I) Upon receipt of a complaint under clause (i), the Secretary may initiate an
14 investigation to determine whether such a failure or misrepresentation has occurred.

15 “(II) The Secretary may conduct—

16 “(aa) surveys of the degree to which employers comply with the requirements
17 under this subsection; and

18 “(bb) subject to subclause (IV), annual compliance audits of any employer that
19 employs H–1B nonimmigrants during the applicable calendar year.

20 “(III) Subject to subclause (IV), the Secretary shall—

21 “(aa) conduct annual compliance audits of each employer that employs more
22 than 100 full-time equivalent employees who are employed in the United States if
23 more than 15 percent of such full-time employees are H–1B nonimmigrants; and

24 “(bb) make available to the public an executive summary or report describing
25 the general findings of the audits conducted under this subclause.

26 “(IV) In the case of an employer subject to an annual compliance audit in which
27 there was no finding of a willful failure to meet a condition under subparagraph (C)(ii),
28 no further annual compliance audit shall be conducted with respect to such employer
29 for a period of not less than 4 years, absent evidence of misrepresentation or fraud.”.

30 (d) Penalties for Violations.—Section 212(n)(2)(C) of the Immigration and Nationality Act (8
31 U.S.C. 1182(n)(2)(C)) is amended –

32 (1) in clause (i)—

33 (A) in the matter preceding subclause (I), by striking “a condition of paragraph
34 (1)(B), (1)(E), or (1)(F)” and inserting “a condition of paragraph (1)(B), (1)(E), (1)(F),
35 (1)(H), or 1(I)”; and

36 (B) in subclause (I), by striking “\$1,000” and inserting “\$3,000”;

37 (2) in clause (ii)(I), by striking “\$5,000” and inserting “\$15,000”;

38 (3) in clause (iii)(I), by striking “\$35,000” and inserting “\$100,000”; and

1 (4) in clause (vi)(III), by striking “\$1,000” and inserting “\$3,000”.

2 (e) Initiation of Investigations.—Section 212(n)(2)(G) of the Immigration and Nationality Act
3 (8 U.S.C. 1182(n)(2)(G)) is amended—

4 (1) in clause (i), by striking “In the case of an investigation” in the second sentence and
5 all that follows through the period at the end of the clause;

6 (2) in clause (ii), in the first sentence, by striking “and whose identity” and all that
7 follows through “failure or failures.” and inserting “the Secretary of Labor may conduct an
8 investigation into the employer’s compliance with the requirements under this subsection.”;

9 (3) in clause (iii), by striking the second sentence;

10 (4) by striking clauses (iv) and (v);

11 (5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi),
12 respectively;

13 (6) in clause (iv), as so redesignated—

14 (A) by striking “clause (viii)” and inserting “clause (vi)”;

15 (B) by striking “meet a condition described in clause (ii)” and inserting “comply
16 with the requirements under this subsection”;

17 (7) by amending clause (v), as so redesignated, to read as follows:

18 “(v)(I) The Secretary of Labor shall provide notice to an employer of the intent to
19 conduct an investigation under clause (i) or (ii).

20 “(II) The notice shall be provided in such a manner, and shall contain sufficient
21 detail, to permit the employer to respond to the allegations before an investigation is
22 commenced.

23 “(III) The Secretary is not required to comply with this clause if the Secretary
24 determines that such compliance would interfere with an effort by the Secretary to
25 investigate or secure compliance by the employer with the requirements of this
26 subsection.

27 “(IV) A determination by the Secretary under this clause shall not be subject to
28 judicial review.”;

29 (8) in clause (vi), as so redesignated, by striking “An investigation” in the first sentence
30 and all that follows through “the determination.” in the second sentence and inserting “If the
31 Secretary of Labor, after an investigation under clause (i) or (ii), determines that a
32 reasonable basis exists to make a finding that the employer has failed to comply with the
33 requirements under this subsection, the Secretary shall provide interested parties with notice
34 of such determination and an opportunity for a hearing in accordance with section 556 of
35 title 5, United States Code, not later than 60 days after the date of such determination.”; and

36 (9) by adding at the end the following:

37 “(vii) If the Secretary of Labor, after a hearing, finds that the employer has violated
38 a requirement under this subsection, the Secretary may impose a penalty pursuant to
39 subparagraph (C).”.

1 SEC. 7. ADJUSTMENT OF STATUS FOR EMPLOYMENT-
2 BASED IMMIGRANTS.

3 (a) Adjustment of Status for Employment-based ~~Immigrants.—Section~~ ~~Immigrants.—~~

4 ~~(1) IN GENERAL.—Section~~ 245 of such Act (8 U.S.C. 1255) is amended by adding at the
5 end the following:

6 “(n) Adjustment of Status for Employment-based Immigrants.—

7 “(1) ~~PETITION.—AN~~ ~~IN GENERAL.—AN~~ alien who has status under section 214, other
8 than an alien described in subsection (c) (as remedied by subsection (k), as amended by the
9 Fairness for High-Skilled Immigrants Act of ~~2019)~~ ~~2020~~ or subparagraph (B) or (C) of
10 section 101(a)(15), and any eligible dependents of such alien, who has filed a petition or on
11 whose behalf a petition has been filed for immigrant status pursuant to subparagraph (E) or
12 (F) of section 204(a)(1), may file an application with the Secretary of Homeland Security
13 for adjustment of status if such petition ~~has been approved, or if the petition has been~~
14 ~~pending for more than 270 days~~ ~~was approved not less than two years before the date on~~
15 ~~which the application for adjustment of status is filed~~, regardless of whether an
16 immigrant visa is immediately available ~~at the time the application is filed~~ ~~on that date~~. For
17 any dependent child who files an application under this subsection, that individual may
18 continue to qualify as a dependent child for purposes of the application regardless of the
19 individual’s age or whether the principal beneficiary is deceased at the time an immigrant
20 visa becomes available. Except as otherwise provided in paragraphs (3), (4), and (5), an
21 alien who files an application under this subsection shall be eligible for work authorization
22 and travel permission on the same terms as an alien who files an application under
23 subsection (a).

24 “(2) AVAILABILITY.—An adjustment of status application filed pursuant to paragraph (1)
25 may not be approved until the date on which an immigrant visa becomes available. An
26 admissible alien who has properly filed such an application shall have the same status as an
27 alien who files under subsection (a).

28 “(3) DUTIES, HOURS, AND COMPENSATION.—The terms and conditions of a qualifying
29 employment position offered to an alien who has filed a petition or on whose behalf a
30 petition has been filed, for immigrant status pursuant to subparagraph (E) or (F) of section
31 204(a)(1), including duties, hours, and compensation, during the period following the filing
32 of an application for adjustment under paragraph (1) and before a visa becomes
33 immediately available, must be commensurate with the terms and conditions applicable to
34 the employer’s similarly situated United States workers in the area of employment. If the
35 employer does not employ and has not recently employed more than two similarly situated
36 U.S. workers in the area of employment, the employer nevertheless remains obligated to
37 attest that the terms and conditions of the alien’s employment are commensurate with the
38 terms and conditions of employment for other similarly situated United States workers in
39 the area of employment. ‘Similarly situated United States workers’ includes United States
40 workers performing similar duties, subject to similar supervision, and with similar
41 educational backgrounds, industry expertise, employment experience, levels of
42 responsibility, and skill sets as the alien in the same geographic area of employment as the
43 alien. The duties, hours, and compensation of such aliens are ‘commensurate’ with those

1 offered to United States workers employed by the employer in the same area of employment
2 when the employer can show that the duties, hours, and compensation are consistent with
3 the range of such terms and conditions the employer has offered or would offer to similarly
4 situated United States employees.

5 “(4) ENFORCEMENT.—A principal applicant filing for adjustment pursuant to paragraph
6 (1) shall file a Confirmation of Bona Fide Job Offer or Portability with any request for an
7 employment authorization document. Any employment authorization document issued to
8 such a principal applicant shall expire after three years, and another Confirmation of Bona
9 Fide Offer or Portability shall be filed with any request for a renewal of employment
10 authorization. No final decision on an application under paragraph (1) may be issued
11 without a filing of a Confirmation of Bona Fide Job Offer or Portability by the principal
12 applicant received within 12 months of such decision. A principal applicant shall provide
13 sufficient information to verify compliance with paragraph (3), and an indication that the
14 filing is to ensure compliance for an adjustment applicant under this subsection, when the
15 applicant files a Confirmation. A principal applicant shall also provide a signed letter from
16 his or her current or prospective employer attesting that the terms and conditions of the
17 alien’s employment are commensurate with the terms and conditions of employment for
18 other similarly situated United States workers in the area of employment. If a required
19 Confirmation is not timely received by United States Citizenship and Immigration Services,
20 the underlying Application to Adjust Status filed under paragraph (1), including the
21 applications for eligible dependents, shall be denied. In adjudicating the Application to
22 Adjust Status, when an immigrant visa becomes available, United States Citizenship and
23 Immigration Services shall request the filing of a Confirmation of Bona Fide Job Offer or
24 Portability if a Confirmation of Bona Fide Job Offer or Portability has not been filed within
25 the previous 12 months and may consider the validity of any Confirmation filing that has
26 not already been reviewed and found satisfactory. If the most recent Confirmation filing or
27 prior filings not previously found satisfactory do not warrant a finding of compliance with
28 section 204(j) or paragraph (3), United States Citizenship and Immigration Services shall
29 issue a Notice of Intent to Deny the underlying Application to Adjust Status providing an
30 opportunity for further evidence to be submitted on such deficiency after which any
31 applicant that does not meet his or her burden of proof shall receive a denial of the
32 underlying Application to Adjust Status and the applications of eligible dependents.

33 “(5) ~~LIMITATION ON WORK AUTHORIZATION.—An~~ ~~Limitations on work~~
34 ~~authorization.—~~

35 “(A) ~~Except as provided in subparagraph (B), an~~ alien who was neither authorized to
36 work nor eligible to request work authorization at the time an application was filed under
37 paragraph (1) shall not be eligible to receive work authorization pursuant to paragraph (1) or
38 section 274a.12(c)(9) of title 8, Code of Federal ~~Regulations.~~ **Regulations.”**

39 “(B) ~~An alien with a pending application under this subsection who is otherwise~~
40 ~~ineligible to receive work authorization may seek work authorization pursuant to section~~
41 ~~274a.12(c)(9) of title 8, Code of Federal Regulations, if the Director of United States~~
42 ~~Citizenship and Immigration Services determines, as a matter of discretion, that the alien~~
43 ~~demonstrates compelling circumstances that justify the issuance of employment~~
44 ~~authorization.”~~ **(2) FEES.—Section 286 of the Immigration and Nationality Act (8 U.S.C.**
45 **1356) is amended by adding at the end the following:**

1 **“(w) Confirmations of Bona Fide Job Offer or Portability Fee.—Notwithstanding any**
2 **other provision of law, the Secretary of Homeland Security is authorized to establish, by**
3 **regulation, a fee that may be charged and collected for the adjudication of Confirmations**
4 **of Bona Fide Job Offer or Portability under section 245(n). Such fee shall be set at a level**
5 **that will ensure recovery of the full costs of providing such adjudication and any additional**
6 **costs associated with the administration of the fees collected.”.**

7 (b) Conforming Amendment.— Section 245(k) of the Immigration and Nationality Act (8
8 U.S.C. 1255(k)) is amended by adding “or (n)” after “pursuant to subsection (a)”.

9 (c) Effective Date.—

10 (1) This section and the amendments made by this section—

11 (A) shall take effect **on one year after** the date of **the** enactment of this Act; and

12 (B) except as provided in paragraph (2), shall cease to have effect as of the date that
13 is **9 nine** years after **the that** date of enactment.

14 (2) This section shall continue in effect with respect to any alien who has filed an
15 application under this section any time prior to the date on which this section otherwise
16 ceases to have effect.

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