

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

H. R. 1044

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEE

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for High-
5 Skilled Immigrants Act of 2019”.

6 **SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**
7 **STATE.**

8 (a) IN GENERAL.—Section 202(a)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is
10 amended to read as follows:

1 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
2 SORED IMMIGRANTS.—Subject to paragraphs (3)
3 and (4), the total number of immigrant visas made
4 available to natives of any single foreign state or de-
5 pendent area under section 203(a) in any fiscal year
6 may not exceed 15 percent (in the case of a single
7 foreign state) or 2 percent (in the case of a depend-
8 ent area) of the total number of such visas made
9 available under such section in that fiscal year.”.

10 (b) CONFORMING AMENDMENTS.—Section 202 of
11 such Act (8 U.S.C. 1152) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (3), by striking “both
14 subsections (a) and (b) of section 203” and in-
15 serting “section 203(a)”; and

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

17 (2) by amending subsection (e) to read as fol-
18 lows:

19 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—
20 If the total number of immigrant visas made available
21 under section 203(a) to natives of any single foreign state
22 or dependent area will exceed the numerical limitation
23 specified in subsection (a)(2) in any fiscal year, immigrant
24 visas shall be allotted to such natives under section 203(a)
25 (to the extent practicable and otherwise consistent with

1 this section and section 203) in a manner so that, except
2 as provided in subsection (a)(4), the proportion of the
3 visas made available under each of paragraphs (1) through
4 (4) of section 203(a) is equal to the ratio of the total visas
5 made available under the respective paragraph to the total
6 visas made available under section 203(a).”.

7 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
8 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
9 note) is amended—

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

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

13 (3) by redesignating subsection (e) as sub-
14 section (d).

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect beginning the fiscal year after
17 the date of enactment of this Act, and shall apply to that
18 fiscal year and each subsequent fiscal year.

19 (e) TRANSITION RULES FOR EMPLOYMENT-BASED
20 IMMIGRANTS.—

21 (1) IN GENERAL.—Subject to paragraphs (2)
22 through (4), and notwithstanding title II of the Im-
23 migration and Nationality Act (8 U.S.C. 1151 et
24 seq.), the following rules shall apply:

1 (A) No alien who is the beneficiary of a pe-
2 tition for an immigrant visa under section
3 203(b) of the Immigration and Nationality Act
4 (8 U.S.C. 1153(b)) that was approved prior to
5 the date of the enactment of this Act shall re-
6 ceive a visa later than the alien otherwise would
7 have received such visa had this Act not been
8 enacted.

9 (B) During the first three fiscal years after
10 the date of enactment of this Act, certain visas
11 will be reserved within the immigrant visas
12 made available under each of paragraphs (2)
13 and (3) of section 203(b) of the Immigration
14 and Nationality Act (8 U.S.C. 1153(b)).

15 (C) With regard to immigrant visas made
16 available under paragraphs (2) and (3) of sec-
17 tion 203(b) of the Immigration and Nationality
18 Act (8 U.S.C. 1153(b)) for the first three fiscal
19 years after the date of enactment of this Act,
20 visas will be reserved for immigrants native to
21 countries other than the two states with the
22 largest aggregate number of natives who are
23 beneficiaries of approved but backlogged peti-
24 tions for immigrant status under section 203(b)

1 of the Immigration and Nationality Act (8
2 U.S.C. 1153(b)), as follows:

3 (i) For the first fiscal year after the
4 date of enactment of this Act, 15 percent
5 of the immigrant visas made available
6 under paragraphs (2) and (3) of section
7 203(b) of the Immigration and Nationality
8 Act (8 U.S.C. 1153(b)) shall be allotted to
9 immigrants who are natives of a foreign
10 state or dependent area that is not one of
11 the two states with the largest aggregate
12 numbers of natives waiting for immigrant
13 status.

14 (ii) For the second fiscal year after
15 the date of enactment of this Act, 10 per-
16 cent of the immigrant visas made available
17 under paragraphs (2) and (3) of section
18 203(b) of the Immigration and Nationality
19 Act (8 U.S.C. 1153(b)) shall be allotted to
20 immigrants who are natives of a foreign
21 state or dependent area that is not one of
22 the two states with the largest aggregate
23 numbers of natives waiting for immigrant
24 status.

1 (iii) For the third fiscal year after the
2 date of enactment of this Act, 10 percent
3 of the immigrant visas made available
4 under paragraphs (2) and (3) of section
5 203(b) of the Immigration and Nationality
6 Act (8 U.S.C. 1153(b)) shall be allotted to
7 immigrants who are natives of a foreign
8 state or dependent area that is not one of
9 the two states with the largest aggregate
10 numbers of natives waiting for immigrant
11 status.

12 (D) 5.75 percent of the immigrant visas
13 made available under paragraphs (2) and (3) of
14 section 203(b) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1153(b)) shall be reserved
16 annually for the first nine fiscal years after the
17 date of enactment of this Act for immigrants
18 who are native to countries other than the two
19 states with the largest aggregate number of na-
20 tives who are beneficiaries of approved but
21 backlogged petitions for immigrant status under
22 such section. Such visas will be made available
23 by the following priority ordering:

24 (i) Derivative dependents described in
25 section 203(d) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1153(d)) who seek
2 to join a principal beneficiary of a petition
3 for an immigrant visa under paragraphs
4 (2) and (3) of section 203(b) of the Immi-
5 gration and Nationality Act (8 U.S.C.
6 1153(b)).

7 (ii) Immigrants who seek to enter the
8 United States as new arrivals and who
9 have not resided or worked in the United
10 States at any point in the four-year period
11 immediately preceding the filing of their
12 petition for an immigrant visa under sec-
13 tion 203(b) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1153(b)).

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

17 (E) The two states with the largest aggre-
18 gate numbers of natives who are beneficiaries of
19 approved petitions referred to in subparagraphs
20 (C) and (D) are the two states with the largest
21 aggregate number of approved but backlogged
22 cases for immigrant visas under section 203(b)
23 of the Immigration and Nationality Act (8
24 U.S.C. 1153(b)), as identified by adding the
25 numbers associated with aliens awaiting em-

1 employment-based immigrant status in the most
2 recent and available Count Of Approved Em-
3 ployment-Based Immigrant Petitions With Pri-
4 ority Dates On Or After the State Depart-
5 ment's Visa Bulletin from the Department of
6 Homeland Security and such numbers in the
7 most recent Annual Report of Immigrant Visa
8 Applicants in the Employment-Based Pref-
9 erences Registered at the National Visa Center
10 from the Department of State.

11 (F) Notwithstanding subparagraphs (A)
12 through (E), for each of fiscal years 2020
13 through 2026, not fewer than 4,400 of the im-
14 migrant visas made available under paragraph
15 (3) of section 203(b) of the Immigration and
16 Nationality Act (8 U.S.C. 1153(b)) and not re-
17 served by subparagraphs (C) and (D) shall be
18 allotted to immigrants who are described in sec-
19 tion 656.5(a) of title 20, Code of Federal Regu-
20 lations (or a successor regulation) and are seek-
21 ing admission to the United States to work in
22 an occupation described in that section.

23 (G) Family members described in section
24 203(d) of the Immigration and Nationality Act
25 (8 U.S.C. 1153(d)) who are accompanying or

1 following to join a principal beneficiary seeking
2 admission under subparagraph (F) shall be en-
3 titled to an unreserved visa in the same status
4 and in the same order of consideration as such
5 principal beneficiary, but shall not be counted
6 against the 4,400 immigrant visas allotted
7 under that subparagraph.

8 (2) PER-COUNTRY LEVELS.—

9 (A) RESERVED VISAS.—The number of
10 visas reserved under each of clauses (i), (ii),
11 and (iii) of paragraph (1)(C) and (1)(D) made
12 available to natives of any single foreign state
13 or dependent area in the appropriate fiscal year
14 may not exceed 25 percent (in the case of a sin-
15 gle foreign state) or 2 percent (in the case of
16 a dependent area) of the total number of such
17 visas.

18 (B) UNRESERVED VISAS.—Not more than
19 85 percent of the immigrant visas made avail-
20 able under each of paragraphs (2) and (3) of
21 section 203(b) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1153(b)) and not reserved
23 under paragraph (1), for each of the first three
24 fiscal years after the date of enactment of this

1 Act, may be allotted to immigrants who are na-
2 tives of any single foreign state.

3 (3) SPECIAL RULE TO PREVENT UNUSED
4 VISAS.—If, with respect to first nine fiscal years
5 after the enactment of this Act, the application of
6 paragraphs (1) and (2) would prevent the total num-
7 ber of immigrant visas made available under para-
8 graph (2) or (3) of section 203(b) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1153(b)) from
10 being issued, such visas may be issued during the re-
11 mainder of such fiscal year without regard to para-
12 graphs (1) and (2).

13 (4) RULES FOR CHARGEABILITY AND DEPEND-
14 ENTS.—Section 202(b) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1152(b)) shall apply in deter-
16 mining the foreign state to which an alien is charge-
17 able, and section 203(d) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1153(d)) shall apply in allo-
19 cating immigrant visas to dependents, for purposes
20 of this subsection.

21 **SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DE-**
22 **PARTMENT OF LABOR.**

23 (a) DEPARTMENT OF LABOR WEBSITE.—Section
24 212(n)(6) of the Immigration and Nationality Act (8
25 U.S.C. 1182(n)(6)) is amended to read as follows:

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

3 “(A) Not later than 180 days after the
4 date of the enactment of the Fairness for High-
5 Skilled Immigrants Act of 2019, the Secretary
6 of Labor shall establish a searchable internet
7 website for posting positions in accordance with
8 paragraph (1)(C) that is available to the public
9 without charge, except that the Secretary may
10 delay the launch of such website for a single pe-
11 riod identified by the Secretary by notice in the
12 Federal Register that shall not exceed 30 days.

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

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

20 (b) **PUBLICATION REQUIREMENT.**—The Secretary of
21 Labor shall submit to Congress, and publish in the Fed-
22 eral Register and in other appropriate media, a notice of
23 the date on which the internet website required under sec-
24 tion 212(n)(6) of the Immigration and Nationality Act,
25 as established by subsection (a), will be operational.

1 (c) APPLICATION.—The amendment made by sub-
2 section (a) shall apply to any application filed on or after
3 the date that is 90 days after the date described in sub-
4 section (b).

5 (d) INTERNET POSTING REQUIREMENT.—Section
6 212(n)(1)(C) of the Immigration and Nationality Act (8
7 U.S.C. 1182(n)(1)(C)) is amended—

8 (1) by redesignating clause (ii) as subclause
9 (II);

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

12 “(ii)(I) has provided”; and

13 (3) by inserting before clause (ii), as redesign-
14 nated by paragraph (2), the following:

15 “(i) except in the case of an employer
16 filing a petition on behalf of an H–1B non-
17 immigrant who has already been counted
18 against the numerical limitations and is
19 not eligible for a full 6-year period, as de-
20 scribed in section 214(g)(7), or on behalf
21 of an H–1B nonimmigrant authorized to
22 accept employment under section 214(n),
23 has posted on the internet website de-
24 scribed in paragraph (6), for at least 30
25 calendar days, a description of each posi-

1 tion for which a nonimmigrant is sought,
2 that includes—

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

7 “(II) the education, training, or
8 experience qualifications for the posi-
9 tion;

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

12 “(IV) the location(s) at which the
13 nonimmigrant(s) will be employed;
14 and

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

17 **SEC. 4. H-1B EMPLOYER APPLICATION REQUIREMENTS.**

18 (a) **WAGE DETERMINATION INFORMATION.**—Section
19 212(n)(1)(D) of the Immigration and Nationality Act (8
20 U.S.C. 1182(n)(1)(D)) is amended by inserting “the pre-
21 vailing wage determination methodology used under sub-
22 paragraph (A)(i)(II),” after “shall contain”.

23 (b) **NEW APPLICATION REQUIREMENTS.**—Section
24 212(n)(1) of the Immigration and Nationality Act (8

1 U.S.C. 1182(n)(1)) is amended by inserting after subpara-
2 graph (G)(ii) the following:

3 “(H)(i) The employer, or a person or entity act-
4 ing on the employer’s behalf, has not advertised any
5 available position specified in the application in an
6 advertisement that states or indicates that—

7 “(I) such position is only available to an
8 individual who is or will be an H–1B non-
9 immigrant; or

10 “(II) an individual who is or will be an H–
11 1B nonimmigrant shall receive priority or a
12 preference in the hiring process for such posi-
13 tion.

14 “(ii) The employer has not primarily recruited
15 individuals who are or who will be H–1B non-
16 immigrants to fill such position.

17 “(I) If the employer, in a previous period speci-
18 fied by the Secretary, employed one or more H–1B
19 nonimmigrants, the employer shall submit to the
20 Secretary the Internal Revenue Service Form W–2
21 Wage and Tax Statements filed by the employer
22 with respect to the H–1B nonimmigrants for such
23 period.

24 “(J)(i) If the employer employs 50 or more em-
25 ployees in the United States, the sum of the number

1 of such employees who are H–1B nonimmigrants
2 plus the number of such employees who are non-
3 immigrants described in section 101(a)(15)(L) does
4 not exceed 50 percent of the total number of em-
5 ployees.

6 “(ii) Any group treated as a single employer
7 under subsection (b), (c), (m), or (o) of section 414
8 of the Internal Revenue Code of 1986 shall be treat-
9 ed as a single employer for purposes of clause (i).”.

10 (c) LABOR CONDITION APPLICATION FEE.—Section
11 212(n) of the Immigration and Nationality Act (8 U.S.C.
12 1182(n)) is amended by adding at the end the following:

13 “(6)(A) The Secretary of Labor shall promulgate a
14 regulation that requires applicants under this subsection
15 to pay an administrative fee to cover the average paper-
16 work processing costs and other administrative costs.

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

23 “(ii) The Secretary of the Treasury shall refund
24 amounts in such account to the Secretary of Labor for
25 salaries and related expenses associated with the adminis-

1 tration, oversight, investigation, and enforcement of the
2 H-1B nonimmigrant visa program.”.

3 (d) ELIMINATION OF B-1 IN LIEU OF H-1.—Section
4 214(g) of the Immigration and Nationality Act (8 U.S.C.
5 1184(g)) is amended by adding at the end the following:

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

12 “(B) Nothing in this paragraph may be construed to
13 authorize the admission of an alien under section
14 101(a)(15)(B) who is coming to the United States for the
15 purpose of performing skilled or unskilled labor if such
16 admission is not otherwise authorized by law.”.

17 **SEC. 5. INVESTIGATION AND DISPOSITION OF COMPLAINTS**
18 **AGAINST H-1B EMPLOYERS.**

19 (a) INVESTIGATION, WORKING CONDITIONS, AND
20 PENALTIES.—Section 212(n)(2)(C) of the Immigration
21 and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended
22 by striking clause (iv) and inserting the following:

23 “(iv)(I) An employer that has filed an application
24 under this subsection violates this clause by taking, failing
25 to take, or threatening to take or fail to take a personnel

1 action, or intimidating, threatening, restraining, coercing,
2 blacklisting, discharging, or discriminating in any other
3 manner against an employee because the employee—

4 “(aa) disclosed information that the employee
5 reasonably believes evidences a violation of this sub-
6 section or any rule or regulation pertaining to this
7 subsection; or

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

11 “(II) An employer that violates this clause shall be
12 liable to the employee harmed by such violation for lost
13 wages and benefits.

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

15 “(aa) a current employee;

16 “(bb) a former employee; and

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

18 (b) INFORMATION SHARING.—Section 212(n)(2)(H)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1182(n)(2)(H)) is amended to read as follows:

21 “(H)(i) The Director of U.S. Citizenship and Immi-
22 gration Services shall provide the Secretary of Labor with
23 any information contained in the materials submitted by
24 employers of H–1B nonimmigrants as part of the petition
25 adjudication process that indicates that the employer is

1 not complying with visa program requirements for H-1B
2 nonimmigrants.

3 “(ii) The Secretary may initiate and conduct an in-
4 vestigation and hearing under this paragraph after receiv-
5 ing information of noncompliance under this subpara-
6 graph.”.

7 **SEC. 6. LABOR CONDITION APPLICATIONS.**

8 (a) APPLICATION REVIEW REQUIREMENTS.—Section
9 212(n)(1) of the Immigration and Nationality Act (8
10 U.S.C. 1182(n)(1)) is amended, in the undesignated mat-
11 ter following subparagraph (I), as added by section 4(b)—

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

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

19 (3) in the sixth sentence, by striking “or obvi-
20 ously inaccurate” and inserting “, presents clear in-
21 dicators of fraud or misrepresentation of material
22 fact, or is obviously inaccurate”; and

23 (4) by adding at the end the following: “If the
24 Secretary’s review of an application identifies clear
25 indicators of fraud or misrepresentation of material

1 fact, the Secretary may conduct an investigation and
2 hearing in accordance with paragraph (2).”.

3 (b) ENSURING PREVAILING WAGES ARE FOR AREA
4 OF EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMI-
5 LARLY EMPLOYED.—Section 212(n)(1)(A) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is
7 amended—

8 (1) in clause (i), in the undesignated matter fol-
9 lowing subclause (II), by striking “and” at the end;

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

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

13 “(iii) will ensure that—

14 “(I) the actual wages or range
15 identified in clause (i) relate solely to
16 employees having substantially the
17 same duties and responsibilities as the
18 H-1B nonimmigrant in the geo-
19 graphical area of intended employ-
20 ment, considering experience, quali-
21 fications, education, job responsibility
22 and function, specialized knowledge,
23 and other legitimate business factors,
24 except in a geographical area there
25 are no such employees, and

1 that employs H–1B nonimmigrants during
2 the applicable calendar year.

3 “(III) Subject to subclause (IV), the Sec-
4 retary shall—

5 “(aa) conduct annual compliance au-
6 dits of each employer that employs more
7 than 100 full-time equivalent employees
8 who are employed in the United States if
9 more than 15 percent of such full-time em-
10 ployees are H–1B nonimmigrants; and

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

15 “(IV) In the case of an employer subject to
16 an annual compliance audit in which there was
17 no finding of a willful failure to meet a condi-
18 tion under subparagraph (C)(ii), no further an-
19 nual compliance audit shall be conducted with
20 respect to such employer for a period of not less
21 than 4 years, absent evidence of misrepresenta-
22 tion or fraud.”.

23 (d) PENALTIES FOR VIOLATIONS.—Section
24 212(n)(2)(C) of the Immigration and Nationality Act (8
25 U.S.C. 1182(n)(2)(C)) is amended –

1 (1) in clause (i)—

2 (A) in the matter preceding subclause (I),
3 by striking “a condition of paragraph (1)(B),
4 (1)(E), or (1)(F)” and inserting “a condition of
5 paragraph (1)(B), (1)(E), (1)(F), (1)(H), or
6 1(I)”; and

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

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

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

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

15 (e) INITIATION OF INVESTIGATIONS.—Section
16 212(n)(2)(G) of the Immigration and Nationality Act (8
17 U.S.C. 1182(n)(2)(G)) is amended—

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

21 (2) in clause (ii), in the first sentence, by strik-
22 ing “and whose identity” and all that follows
23 through “failure or failures.” and inserting “the
24 Secretary of Labor may conduct an investigation

1 into the employer’s compliance with the require-
2 ments under this subsection.”;

3 (3) in clause (iii), by striking the second sen-
4 tence;

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

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

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

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

11 (B) by striking “meet a condition de-
12 scribed in clause (ii)” and inserting “comply
13 with the requirements under this subsection”;

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

16 “(v)(I) The Secretary of Labor shall pro-
17 vide notice to an employer of the intent to con-
18 duct an investigation under clause (i) or (ii).

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

23 “(III) The Secretary is not required to
24 comply with this clause if the Secretary deter-
25 mines that such compliance would interfere

1 with an effort by the Secretary to investigate or
2 secure compliance by the employer with the re-
3 quirements of this subsection.

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

7 (8) in clause (vi), as so redesignated, by strik-
8 ing “An investigation” in the first sentence and all
9 that follows through “the determination.” in the sec-
10 ond sentence and inserting “If the Secretary of
11 Labor, after an investigation under clause (i) or (ii),
12 determines that a reasonable basis exists to make a
13 finding that the employer has failed to comply with
14 the requirements under this subsection, the Sec-
15 retary shall provide interested parties with notice of
16 such determination and an opportunity for a hearing
17 in accordance with section 556 of title 5, United
18 States Code, not later than 60 days after the date
19 of such determination.”; and

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

21 “(vii) If the Secretary of Labor, after a
22 hearing, finds that the employer has violated a
23 requirement under this subsection, the Sec-
24 retary may impose a penalty pursuant to sub-
25 paragraph (C).”.

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

3 (a) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
4 BASED IMMIGRANTS.—Section 245 of such Act (8 U.S.C.
5 1255) is amended by adding at the end the following:

6 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
7 BASED IMMIGRANTS.—

8 “(1) PETITION.—An alien who has status
9 under section 214, other than an alien described in
10 subsection (c) (as remedied by subsection (k), as
11 amended by the Fairness for High-Skilled Immi-
12 grants Act of 2019) or subparagraph (B) or (C) of
13 section 101(a)(15), and any eligible dependents of
14 such alien, who has filed a petition or on whose be-
15 half a petition has been filed for immigrant status
16 pursuant to subparagraph (E) or (F) of section
17 204(a)(1), may file an application with the Secretary
18 of Homeland Security for adjustment of status if
19 such petition has been approved, or if the petition
20 has been pending for more than 270 days, regardless
21 of whether an immigrant visa is immediately avail-
22 able at the time the application is filed. For any de-
23 pendent child who files an application under this
24 subsection, that individual may continue to qualify
25 as a dependent child for purposes of the application
26 regardless of the individual’s age or whether the

1 principal beneficiary is deceased at the time an im-
2 migrant visa becomes available. Except as otherwise
3 provided in paragraphs (3), (4), and (5), an alien
4 who files an application under this subsection shall
5 be eligible for work authorization and travel permis-
6 sion on the same terms as an alien who files an ap-
7 plication under subsection (a).

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

15 “(3) DUTIES, HOURS, AND COMPENSATION.—
16 The terms and conditions of a qualifying employ-
17 ment position offered to an alien who has filed a pe-
18 tition or on whose behalf a petition has been filed,
19 for immigrant status pursuant to subparagraph (E)
20 or (F) of section 204(a)(1), including duties, hours,
21 and compensation, during the period following the
22 filing of an application for adjustment under para-
23 graph (1) and before a visa becomes immediately
24 available, must be commensurate with the terms and
25 conditions applicable to the employer’s similarly situ-

1 ated United States workers in the area of employ-
2 ment. If the employer does not employ and has not
3 recently employed more than two similarly situated
4 U.S. workers in the area of employment, the em-
5 ployer nevertheless remains obligated to attest that
6 the terms and conditions of the alien’s employment
7 are commensurate with the terms and conditions of
8 employment for other similarly situated United
9 States workers in the area of employment. ‘Similarly
10 situated United States workers’ includes United
11 States workers performing similar duties, subject to
12 similar supervision, and with similar educational
13 backgrounds, industry expertise, employment experi-
14 ence, levels of responsibility, and skill sets as the
15 alien in the same geographic area of employment as
16 the alien. The duties, hours, and compensation of
17 such aliens are ‘commensurate’ with those offered to
18 United States workers employed by the employer in
19 the same area of employment when the employer can
20 show that the duties, hours, and compensation are
21 consistent with the range of such terms and condi-
22 tions the employer has offered or would offer to
23 similarly situated United States employees.

24 “(4) ENFORCEMENT.—A principal applicant fil-
25 ing for adjustment pursuant to paragraph (1) shall

1 file a Confirmation of Bona Fide Job Offer or Port-
2 ability with any request for an employment author-
3 ization document. Any employment authorization
4 document issued to such a principal applicant shall
5 expire after three years, and another Confirmation
6 of Bona Fide Offer or Portability shall be filed with
7 any request for a renewal of employment authoriza-
8 tion. No final decision on an application under para-
9 graph (1) may be issued without a filing of a Con-
10 firmation of Bona Fide Job Offer or Portability by
11 the principal applicant received within 12 months of
12 such decision. A principal applicant shall provide
13 sufficient information to verify compliance with
14 paragraph (3), and an indication that the filing is to
15 ensure compliance for an adjustment applicant
16 under this subsection, when the applicant files a
17 Confirmation. A principal applicant shall also pro-
18 vide a signed letter from his or her current or pro-
19 spective employer attesting that the terms and con-
20 ditions of the alien's employment are commensurate
21 with the terms and conditions of employment for
22 other similarly situated United States workers in the
23 area of employment. If a required Confirmation is
24 not timely received by United States Citizenship and
25 Immigration Services, the underlying Application to

1 Adjust Status filed under paragraph (1), including
2 the applications for eligible dependents, shall be de-
3 nied. In adjudicating the Application to Adjust Sta-
4 tus, when an immigrant visa becomes available,
5 United States Citizenship and Immigration Services
6 shall request the filing of a Confirmation of Bona
7 Fide Job Offer or Portability if a Confirmation of
8 Bona Fide Job Offer or Portability has not been
9 filed within the previous 12 months and may con-
10 sider the validity of any Confirmation filing that has
11 not already been reviewed and found satisfactory. If
12 the most recent Confirmation filing or prior filings
13 not previously found satisfactory do not warrant a
14 finding of compliance with section 204(j) or para-
15 graph (3), United States Citizenship and Immigra-
16 tion Services shall issue a Notice of Intent to Deny
17 the underlying Application to Adjust Status pro-
18 viding an opportunity for further evidence to be sub-
19 mitted on such deficiency after which any applicant
20 that does not meet his or her burden of proof shall
21 receive a denial of the underlying Application to Ad-
22 just Status and the applications of eligible depend-
23 ents.

24 “(5) LIMITATIONS ON WORK AUTHORIZA-
25 TION.—

1 “(A) Except as provided in subparagraph
2 (B), an alien who was neither authorized to
3 work nor eligible to request work authorization
4 at the time an application was filed under para-
5 graph (1) shall not be eligible to receive work
6 authorization pursuant to paragraph (1) or sec-
7 tion 274a.12(c)(9) of title 8, Code of Federal
8 Regulations.

9 “(B) An alien with a pending application
10 under this subsection who is otherwise ineligible
11 to receive work authorization may seek work
12 authorization pursuant to section 274a.12(c)(9)
13 of title 8, Code of Federal Regulations, if the
14 Director of United States Citizenship and Im-
15 migration Services determines, as a matter of
16 discretion, that the alien demonstrates compel-
17 ling circumstances that justify the issuance of
18 employment authorization.”.

19 (b) CONFORMING AMENDMENT.— Section 245(k) of
20 the Immigration and Nationality Act (8 U.S.C. 1255(k))
21 is amended by adding “or (n)” after “pursuant to sub-
22 section (a)”.

23 (c) EFFECTIVE DATE.—

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

