

In the Senate of the United States,

December 2, 2020.

Resolved, That the bill from the House of Representatives (H.R. 1044) entitled “An Act 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.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE.***

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

4 ***SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN***
5 ***STATE.***

6 *(a) IN GENERAL.—Section 202(a)(2) of the Immigra-*
7 *tion and Nationality Act (8 U.S.C. 1152(a)(2)) is amended*
8 *to read as follows:*

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

10 (b) *CONFORMING AMENDMENTS.*—Section 202 of such
11 *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 this*

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

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

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

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

13 *(3) by redesignating subsection (e) as subsection*
14 *(d).*

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

20 *(e) TRANSITION RULES FOR EMPLOYMENT-BASED IM-*
21 *MIGRANTS.—*

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

1 (A) During the first nine fiscal years after
2 the effective date, certain visas will be reserved
3 within the immigrant visas made available
4 under each of paragraphs (2) and (3) of section
5 203(b) of the Immigration and Nationality Act
6 (8 U.S.C. 1153(b)).

7 (B) With regard to immigrant visas made
8 available under paragraphs (2) and (3) of sec-
9 tion 203(b) of the Immigration and Nationality
10 Act (8 U.S.C. 1153(b)) for the first nine fiscal
11 years after the effective date, visas will be re-
12 served for immigrants native to countries other
13 than the two states with the largest aggregate
14 number of natives who are beneficiaries of ap-
15 proved but backlogged petitions for immigrant
16 status under section 203(b) of the Immigration
17 and Nationality Act (8 U.S.C. 1153(b)), as fol-
18 lows:

19 (i) For the first fiscal year after the ef-
20 fective date, 30 percent of the immigrant
21 visas made available under paragraphs (2)
22 and (3) of section 203(b) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1153(b))
24 shall be allotted to immigrants who are na-
25 tives of a foreign state or dependent area

1 that is not one of the two states with the
2 largest aggregate numbers of natives wait-
3 ing for immigrant status.

4 (ii) For the second fiscal year after the
5 effective date, 25 percent of the immigrant
6 visas made available under paragraphs (2)
7 and (3) of section 203(b) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1153(b))
9 shall be allotted to immigrants who are na-
10 tives of a foreign state or dependent area
11 that is not one of the two states with the
12 largest aggregate numbers of natives wait-
13 ing for immigrant status.

14 (iii) For the third fiscal year after the
15 effective date, 20 percent of the immigrant
16 visas made available under paragraphs (2)
17 and (3) of section 203(b) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1153(b))
19 shall be allotted to immigrants who are na-
20 tives of a foreign state or dependent area
21 that is not one of the two states with the
22 largest aggregate numbers of natives wait-
23 ing for immigrant status.

24 (iv) For the fourth fiscal year after the
25 effective date, 15 percent of the immigrant

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

9 *(v) For the fifth and sixth fiscal years*
10 *after the effective date, 10 percent of the im-*
11 *migrant visas made available under para-*
12 *graphs (2) and (3) of section 203(b) of the*
13 *Immigration and Nationality Act (8 U.S.C.*
14 *1153(b)) shall be allotted to immigrants*
15 *who are natives of a foreign state or de-*
16 *pendent area that is not one of the two*
17 *states with the largest aggregate numbers of*
18 *natives waiting for immigrant status.*

19 *(vi) For the seventh, eighth, and ninth*
20 *fiscal years after the effective date, 5 percent*
21 *of the immigrant visas made available*
22 *under paragraphs (2) and (3) of section*
23 *203(b) of the Immigration and Nationality*
24 *Act (8 U.S.C. 1153(b)) shall be allotted to*
25 *immigrants who are natives of a foreign*

1 state or dependent area that is not one of
2 the two states with the largest aggregate
3 numbers of natives waiting for immigrant
4 status.

5 (C) 5.75 percent of the immigrant visas
6 made available under paragraphs (2) and (3) of
7 section 203(b) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1153(b)) shall be reserved an-
9 nually for the first nine fiscal years after the ef-
10 fective date for immigrants who are native to
11 countries other than the two states with the larg-
12 est aggregate number of natives who are bene-
13 ficiaries of approved but backlogged petitions for
14 immigrant status under such section. Such visas
15 will be made available by the following priority
16 ordering:

17 (i) Derivative dependents described in
18 section 203(d) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1153(d)) who seek to
20 join a principal beneficiary of a petition for
21 an immigrant visa under paragraphs (2)
22 and (3) of section 203(b) of the Immigra-
23 tion and Nationality Act (8 U.S.C.
24 1153(b)).

1 (ii) *Immigrants who seek to enter the*
2 *United States as new arrivals and who have*
3 *not resided or worked in the United States*
4 *at any point in the four-year period imme-*
5 *diately preceding the filing of their petition*
6 *for an immigrant visa under section 203(b)*
7 *of the Immigration and Nationality Act (8*
8 *U.S.C. 1153(b)).*

9 (iii) *Other immigrants who meet the*
10 *criteria of this subparagraph.*

11 (D) *The two states with the largest aggre-*
12 *gate numbers of natives who are beneficiaries of*
13 *approved petitions referred to in subparagraphs*
14 *(B) and (C) are the two states with the largest*
15 *aggregate number of approved cases awaiting*
16 *visa number availability for immigrant visas*
17 *under section 203(b) of the Immigration and Na-*
18 *tionality Act (8 U.S.C. 1153(b)), as identified by*
19 *adding the numbers associated with aliens*
20 *awaiting employment-based immigrant status in*
21 *the most recent and available Count Of Ap-*
22 *proved Employment-Based Immigrant Petitions*
23 *With Priority Dates On Or After the State De-*
24 *partment's Visa Bulletin from the Department of*
25 *Homeland Security and such numbers in the*

1 *most recent Annual Report of Immigrant Visa*
2 *Applicants in the Employment-Based Preferences*
3 *Registered at the National Visa Center from the*
4 *Department of State (or successor publications).*

5 *(E) Notwithstanding subparagraphs (A)*
6 *through (D), for each of the seven fiscal years*
7 *after the effective date, not fewer than 4,400 of*
8 *the immigrant visas made available under para-*
9 *graph (3) of section 203(b) of the Immigration*
10 *and Nationality Act (8 U.S.C. 1153(b)) and not*
11 *reserved by subparagraphs (B) and (C) shall be*
12 *allotted to immigrants who are described in sec-*
13 *tion 656.5(a) of title 20, Code of Federal Regula-*
14 *tions (or a successor regulation) and are seeking*
15 *admission to the United States to work in an oc-*
16 *cupation described in that section.*

17 *(F) Family members described in section*
18 *203(d) of the Immigration and Nationality Act*
19 *(8 U.S.C. 1153(d)) who are accompanying or fol-*
20 *lowing to join a principal beneficiary seeking*
21 *admission under subparagraph (E) shall be enti-*
22 *tled to an unreserved visa in the same status and*
23 *in the same order of consideration as such prin-*
24 *icipal beneficiary, but shall not be counted*

1 *against the 4,400 immigrant visas allotted under*
2 *that subparagraph.*

3 (2) *PER-COUNTRY LEVELS.*—

4 (A) *RESERVED VISAS.*—*The number of visas*
5 *reserved under each of clauses (i) through (iv) of*
6 *paragraph (1)(B) and each of clauses (i) through*
7 *(iii) of paragraph (1)(C) made available to na-*
8 *tives of any single foreign state or dependent*
9 *area in the appropriate fiscal year may not ex-*
10 *ceed 25 percent (in the case of a single foreign*
11 *state) or 2 percent (in the case of a dependent*
12 *area) of the total number of such visas.*

13 (B) *UNRESERVED VISAS.*—*Not more than*
14 *85 percent of the immigrant visas made avail-*
15 *able under each of paragraphs (2) and (3) of sec-*
16 *tion 203(b) of the Immigration and Nationality*
17 *Act (8 U.S.C. 1153(b)) and not reserved under*
18 *paragraph (1), for each of the first nine fiscal*
19 *years after the effective date, may be allotted to*
20 *immigrants who are natives of any single foreign*
21 *state.*

22 (3) *SPECIAL RULE TO PREVENT UNUSED*
23 *VISAS.*—*If, with respect to first nine fiscal years after*
24 *the effective date, the application of paragraphs (1)*
25 *and (2) would prevent the total number of immigrant*

1 *visas made available under paragraph (2) or (3) of*
2 *section 203(b) of the Immigration and Nationality*
3 *Act (8 U.S.C. 1153(b)) from being issued, such visas*
4 *may be issued during the remainder of such fiscal*
5 *year without regard to paragraphs (1) and (2).*

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

14 (5) *EFFECTIVE DATE DEFINED.—In this sub-*
15 *section, the term “effective date” means the first day*
16 *of the second fiscal year beginning after the date of*
17 *enactment of this Act.*

18 **SEC. 3. POSTING AVAILABLE POSITIONS THROUGH THE DE-**

19 **PARTMENT OF LABOR.**

20 (a) *DEPARTMENT OF LABOR WEBSITE.—Section*
21 *212(n) of the Immigration and Nationality Act (8 U.S.C.*
22 *1182(n)) is amended by adding at the end the following:*

23 “(6) *For purposes of complying with paragraph*
24 *(1)(C)—*

1 “(A) Not later than 180 days after the date
2 of the enactment of the Fairness for High-Skilled
3 Immigrants Act of 2020, the Secretary of Labor
4 shall establish a searchable internet website for
5 posting positions in accordance with paragraph
6 (1)(C) that is available to the public without
7 charge, except that the Secretary may delay the
8 launch of such website for a single period identi-
9 fied by the Secretary by notice in the Federal
10 Register that shall not exceed 30 days.

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

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

18 (b) *PUBLICATION REQUIREMENT.*—The Secretary of
19 Labor shall submit to Congress, and publish in the Federal
20 Register and in other appropriate media, a notice of the
21 date on which the internet website required under section
22 212(n)(6) of the Immigration and Nationality Act, as estab-
23 lished by subsection (a), will be operational.

24 (c) *APPLICATION.*—The amendment made by sub-
25 section (a) shall apply to any application filed on or after

1 *the date that is 90 days after the date described in sub-*
2 *section (b).*

3 (d) *INTERNET POSTING REQUIREMENT.*—Section
4 *212(n)(1)(C) of the Immigration and Nationality Act (8*
5 *U.S.C. 1182(n)(1)(C)) is amended—*

6 (1) *by redesignating clause (ii) as subclause (II);*

7 (2) *by striking “(i) has provided” and inserting*
8 *the following:*

9 “(ii)(I) *has provided*”; and

10 (3) *by inserting before clause (ii), as redesign-*
11 *ated by paragraph (2), the following:*

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

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

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

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

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

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

15 **SEC. 4. H-1B EMPLOYER PETITION REQUIREMENTS.**

16 (a) *WAGE DETERMINATION INFORMATION.*—Section
17 *212(n)(1)(D) of the Immigration and Nationality Act (8*
18 *U.S.C. 1182(n)(1)(D)) is amended by inserting “the pre-*
19 *vailing wage determination methodology used under sub-*
20 *paragraph (A)(i)(II),” after “shall contain”.*

21 (b) *NEW APPLICATION REQUIREMENTS.*—Section
22 *212(n)(1) of the Immigration and Nationality Act (8*
23 *U.S.C. 1182(n)(1)) is amended by inserting after subpara-*
24 *graph (G)(i) the following:*

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

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

8 “(II) *an individual who is or will be an H–*
9 *1B nonimmigrant shall receive priority or a*
10 *preference in the hiring process for such position.*

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

14 “(I) *If the employer, in a previous period speci-*
15 *fied by the Secretary, employed one or more H–1B*
16 *nonimmigrants, the employer shall submit to the Sec-*
17 *retary the Internal Revenue Service Form W–2 Wage*
18 *and Tax Statements filed by the employer with re-*
19 *spect to the H–1B nonimmigrants for such period.”.*

20 (c) *ADDITIONAL REQUIREMENT FOR NEW H–1B PETI-*
21 *TIONS.—*

22 (1) *IN GENERAL.—Section 212(n)(1) of the Im-*
23 *migration and Nationality Act (8 U.S.C. 1182(n)(1)),*
24 *as amended by subsection (b), is further amended by*
25 *inserting after subparagraph (I), the following:*

1 “(J)(i) *If the employer employs 50 or more em-*
2 *ployees in the United States, the sum of the number*
3 *of such employees who are H–1B nonimmigrants plus*
4 *the number of such employees who are nonimmigrants*
5 *described in section 101(a)(15)(L) does not exceed 50*
6 *percent of the total number of employees.*

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

11 (2) *RULE OF CONSTRUCTION.—Nothing in sub-*
12 *paragraph (J) of section 212(n)(1) of the Immigra-*
13 *tion and Nationality Act (8 U.S.C. 1182(n)(1)), as*
14 *added by paragraph (1), may be construed to prohibit*
15 *renewal applications or change of employer applica-*
16 *tions for H–1B nonimmigrants employed by an em-*
17 *ployer on the date of enactment of this Act.*

18 (3) *EFFECTIVE DATE.—The amendment made by*
19 *this subsection shall take effect on the date that is 180*
20 *days after the date of enactment of this Act.*

21 (d) *LABOR CONDITION APPLICATION FEE.—Section*
22 *212(n) of the Immigration and Nationality Act (8 U.S.C.*
23 *1182(n)), as amended by section 3(a), is further amended*
24 *by adding at the end the following:*

1 “(7)(A) *The Secretary of Labor shall promulgate a reg-*
2 *ulation that requires applicants under this subsection to*
3 *pay an administrative fee to cover the average paperwork*
4 *processing costs and other administrative costs.*

5 “(B)(i) *Fees collected under this paragraph shall be*
6 *deposited as offsetting receipts within the general fund of*
7 *the Treasury in a separate account, which shall be known*
8 *as the ‘H–1B Administration, Oversight, Investigation, and*
9 *Enforcement Account’ and shall remain available until ex-*
10 *pended.*

11 “(ii) *The Secretary of the Treasury shall refund*
12 *amounts in such account to the Secretary of Labor for sala-*
13 *ries and related expenses associated with the administra-*
14 *tion, oversight, investigation, and enforcement of the H–1B*
15 *nonimmigrant visa program.”.*

16 (e) *ELIMINATION OF B–1 IN LIEU OF H–1.—Section*
17 *214(g) of the Immigration and Nationality Act (8 U.S.C.*
18 *1184(g)) is amended by adding at the end the following:*

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

1 “(B) Nothing in this paragraph may be construed to
2 authorize the admission of an alien under section
3 101(a)(15)(B) who is coming to the United States for the
4 purpose of performing skilled or unskilled labor if such ad-
5 mission is not otherwise authorized by law.”.

6 **SEC. 5. INVESTIGATION AND DISPOSITION OF COMPLAINTS**
7 **AGAINST H-1B EMPLOYERS.**

8 (a) INVESTIGATION, WORKING CONDITIONS, AND PEN-
9 ALTIES.—Section 212(n)(2)(C) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1182(n)(2)(C)) is amended by strik-
11 ing clause (iv) and inserting the following:

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

18 “(aa) disclosed information that the employee
19 reasonably believes evidences a violation of this sub-
20 section or any rule or regulation pertaining to this
21 subsection; or

22 “(bb) cooperated or sought to cooperate with the
23 requirements under this subsection or any rule or reg-
24 ulation pertaining to this subsection.

1 “(II) An employer that violates this clause shall be lia-
2 ble to the employee harmed by such violation for lost wages
3 and benefits.

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

5 “(aa) a current employee;

6 “(bb) a former employee; and

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

8 (b) *INFORMATION SHARING.*—Section 212(n)(2)(H) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1182(n)(2)(H)) is amended to read as follows:

11 “(H)(i) The Director of U.S. Citizenship and Immi-
12 gration Services shall provide the Secretary of Labor with
13 any information contained in the materials submitted by
14 employers of H-1B nonimmigrants as part of the petition
15 adjudication process that indicates that the employer is not
16 complying with visa program requirements for H-1B non-
17 immigrants.

18 “(ii) The Secretary may initiate and conduct an in-
19 vestigation and hearing under this paragraph after receiv-
20 ing information of noncompliance under this subpara-
21 graph.”.

22 **SEC. 6. LABOR CONDITION APPLICATIONS.**

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

1 *U.S.C. 1182(n)(1)) is amended, in the undesignated matter*
2 *following subparagraph (I), as added by section 4(b)—*

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

6 (2) *in the fifth sentence, by striking “only for*
7 *completeness” and inserting “for completeness, clear*
8 *indicators of fraud or misrepresentation of material*
9 *fact,”;*

10 (3) *in the sixth sentence, by striking “or obvi-*
11 *ously inaccurate” and inserting “, presents clear in-*
12 *dicators of fraud or misrepresentation of material*
13 *fact, or is obviously inaccurate”;* and

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

19 (b) *ENSURING PREVAILING WAGES ARE FOR AREA OF*
20 *EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMILARLY*
21 *EMPLOYED.—Section 212(n)(1)(A) of the Immigration and*
22 *Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended—*

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

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

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

4 “(iii) *will ensure that—*

5 “(I) *the actual wages or range*
6 *identified in clause (i) relate solely to*
7 *employees having substantially the*
8 *same duties and responsibilities as the*
9 *H–1B nonimmigrant in the geo-*
10 *graphical area of intended employ-*
11 *ment, considering experience, qualifica-*
12 *tions, education, job responsibility and*
13 *function, specialized knowledge, and*
14 *other legitimate business factors, except*
15 *in a geographical area there are no*
16 *such employees, and*

17 “(II) *the prevailing wages identi-*
18 *fied in clause (ii) reflect the best avail-*
19 *able information for the geographical*
20 *area within normal commuting dis-*
21 *tance of the actual address of employ-*
22 *ment at which the H–1B non-*
23 *immigrant is or will be employed.”.*

1 (c) *PROCEDURES FOR INVESTIGATION AND DISPOSI-*
2 *TION.—Section 212(n)(2)(A) of the Immigration and Na-*
3 *tionality Act (8 U.S.C. 1182(n)(2)(A)) is amended—*

4 (1) *by striking “(2)(A) Subject” and inserting*
5 *“(2)(A)(i) Subject”;*

6 (2) *by striking the fourth sentence; and*

7 (3) *by adding at the end the following:*

8 *“(i)(I) Upon receipt of a complaint under*
9 *clause (i), the Secretary may initiate an inves-*
10 *tigation to determine whether such a failure or*
11 *misrepresentation has occurred.*

12 *“(II) The Secretary may conduct—*

13 *“(aa) surveys of the degree to which*
14 *employers comply with the requirements*
15 *under this subsection; and*

16 *“(bb) subject to subclause (IV), annual*
17 *compliance audits of any employer that em-*
18 *ployes H-1B nonimmigrants during the ap-*
19 *plicable calendar year.*

20 *“(III) Subject to subclause (IV), the Sec-*
21 *retary shall—*

22 *“(aa) conduct annual compliance au-*
23 *ditions of each employer that employs more*
24 *than 100 full-time equivalent employees who*
25 *are employed in the United States if more*

1 *than 15 percent of such full-time employees*
2 *are H-1B nonimmigrants; and*

3 “(bb) *make available to the public an*
4 *executive summary or report describing the*
5 *general findings of the audits conducted*
6 *under this subclause.*”

7 “(IV) *In the case of an employer subject to*
8 *an annual compliance audit in which there was*
9 *no finding of a willful failure to meet a condi-*
10 *tion under subparagraph (C)(ii), no further an-*
11 *ual compliance audit shall be conducted with*
12 *respect to such employer for a period of not less*
13 *than 4 years, absent evidence of misrepresenta-*
14 *tion or fraud.*”

15 (d) *PENALTIES FOR VIOLATIONS.—Section*
16 *212(n)(2)(C) of the Immigration and Nationality Act (8*
17 *U.S.C. 1182(n)(2)(C)) is amended –*

18 (1) *in clause (i)—*

19 (A) *in the matter preceding subclause (I),*
20 *by striking “a condition of paragraph (1)(B),*
21 *(1)(E), or (1)(F)” and inserting “a condition of*
22 *paragraph (1)(B), (1)(E), (1)(F), (1)(H), or*
23 *1(I)”;* and

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

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

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

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

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

10 (1) in clause (i), by striking “In the case of an
11 investigation” in the second sentence and all that fol-
12 lows through the period at the end of the clause;

13 (2) in clause (ii), in the first sentence, by strik-
14 ing “and whose identity” and all that follows through
15 “failure or failures.” and inserting “the Secretary of
16 Labor may conduct an investigation into the employ-
17 er’s compliance with the requirements under this sub-
18 section.”;

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

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

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

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

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

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

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

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

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

15 “(III) The Secretary is not required to com-
16 ply with this clause if the Secretary determines
17 that such compliance would interfere with an ef-
18 fort by the Secretary to investigate or secure
19 compliance by the employer with the require-
20 ments of this subsection.

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

24 (8) in clause (vi), as so redesignated, by striking
25 “An investigation” in the first sentence and all that

1 follows through “the determination.” in the second
2 sentence and inserting “If the Secretary of Labor,
3 after an investigation under clause (i) or (ii), deter-
4 mines that a reasonable basis exists to make a finding
5 that the employer has failed to comply with the re-
6 quirements under this subsection, the Secretary shall
7 provide interested parties with notice of such deter-
8 mination and an opportunity for a hearing in ac-
9 cordance with section 556 of title 5, United States
10 Code, not later than 60 days after the date of such de-
11 termination.”; and

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

13 “(vii) If the Secretary of Labor, after a
14 hearing, finds that the employer has violated a
15 requirement under this subsection, the Secretary
16 may impose a penalty pursuant to subparagraph
17 (C).”.

18 **SEC. 7. ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED**

19 **IMMIGRANTS.**

20 (a) **ADJUSTMENT OF STATUS FOR EMPLOYMENT-**
21 **BASED IMMIGRANTS.—**

22 (1) **IN GENERAL.—**Section 245 of such Act (8
23 U.S.C. 1255) is amended by adding at the end the fol-
24 lowing:

1 “(n) *ADJUSTMENT OF STATUS FOR EMPLOYMENT-*
2 *BASED IMMIGRANTS.*—

3 “(1) *IN GENERAL.*—*An alien who has status*
4 *under section 214, other than an alien described in*
5 *subsection (c) (as remedied by subsection (k), as*
6 *amended by the Fairness for High-Skilled Immi-*
7 *grants Act of 2020) or subparagraph (B) or (C) of*
8 *section 101(a)(15), and any eligible dependents of*
9 *such alien, who has filed a petition or on whose behalf*
10 *a petition has been filed for immigrant status pursu-*
11 *ant to subparagraph (E) or (F) of section 204(a)(1),*
12 *may file an application with the Secretary of Home-*
13 *land Security for adjustment of status if such petition*
14 *was approved not less than two years before the date*
15 *on which the application for adjustment of status is*
16 *filed, regardless of whether an immigrant visa is im-*
17 *mediately available on that date. For any dependent*
18 *child who files an application under this subsection,*
19 *that individual may continue to qualify as a depend-*
20 *ent child for purposes of the application regardless of*
21 *the individual’s age or whether the principal bene-*
22 *ficiary is deceased at the time an immigrant visa be-*
23 *comes available. Except as otherwise provided in*
24 *paragraphs (3), (4), and (5), an alien who files an*
25 *application under this subsection shall be eligible for*

1 *work authorization and travel permission on the same*
2 *terms as an alien who files an application under sub-*
3 *section (a).*

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

10 “(3) *DUTIES, HOURS, AND COMPENSATION.*—*The*
11 *terms and conditions of a qualifying employment po-*
12 *sition offered to an alien who has filed a petition or*
13 *on whose behalf a petition has been filed, for immi-*
14 *grant status pursuant to subparagraph (E) or (F) of*
15 *section 204(a)(1), including duties, hours, and com-*
16 *pen-sation, during the period following the filing of an*
17 *application for adjustment under paragraph (1) and*
18 *before a visa becomes immediately available, must be*
19 *commensurate with the terms and conditions applica-*
20 *ble to the employer’s similarly situated United States*
21 *workers in the area of employment. If the employer*
22 *does not employ and has not recently employed more*
23 *than two similarly situated U.S. workers in the area*
24 *of employment, the employer nevertheless remains ob-*
25 *ligated to attest that the terms and conditions of the*

1 *alien’s employment are commensurate with the terms*
2 *and conditions of employment for other similarly sit-*
3 *uated United States workers in the area of employ-*
4 *ment. ‘Similarly situated United States workers’ in-*
5 *cludes United States workers performing similar du-*
6 *ties, subject to similar supervision, and with similar*
7 *educational backgrounds, industry expertise, employ-*
8 *ment experience, levels of responsibility, and skill sets*
9 *as the alien in the same geographic area of employ-*
10 *ment as the alien. The duties, hours, and compensa-*
11 *tion of such aliens are ‘commensurate’ with those of-*
12 *ferred to United States workers employed by the em-*
13 *ployer in the same area of employment when the em-*
14 *ployer can show that the duties, hours, and compensa-*
15 *tion are consistent with the range of such terms and*
16 *conditions the employer has offered or would offer to*
17 *similarly situated United States employees.*

18 “(4) *ENFORCEMENT.*—*A principal applicant ap-*
19 *plying for adjustment pursuant to paragraph (1)*
20 *shall file a Confirmation of Bona Fide Job Offer or*
21 *Portability with any request for an employment au-*
22 *thorization document. Any employment authorization*
23 *document issued to such a principal applicant shall*
24 *expire after three years, and another Confirmation of*
25 *Bona Fide Offer or Portability shall be filed with any*

1 *request for a renewal of employment authorization.*
2 *No final decision on an application under paragraph*
3 *(1) may be issued without a filing of a Confirmation*
4 *of Bona Fide Job Offer or Portability by the prin-*
5 *cipal applicant received within 12 months of such de-*
6 *cision. A principal applicant shall provide sufficient*
7 *information to verify compliance with paragraph (3),*
8 *and an indication that the filing is to ensure compli-*
9 *ance for an adjustment applicant under this sub-*
10 *section, when the applicant files a Confirmation. A*
11 *principal applicant shall also provide a signed letter*
12 *from his or her current or prospective employer attest-*
13 *ing that the terms and conditions of the alien's em-*
14 *ployment are commensurate with the terms and con-*
15 *ditions of employment for other similarly situated*
16 *United States workers in the area of employment. If*
17 *a required Confirmation is not timely received by*
18 *United States Citizenship and Immigration Services,*
19 *the underlying Application to Adjust Status filed*
20 *under paragraph (1), including the applications for*
21 *eligible dependents, shall be denied. In adjudicating*
22 *the Application to Adjust Status, when an immigrant*
23 *visa becomes available, United States Citizenship and*
24 *Immigration Services shall request the filing of a*
25 *Confirmation of Bona Fide Job Offer or Portability*

1 *if a Confirmation of Bona Fide Job Offer or Port-*
2 *ability has not been filed within the previous 12*
3 *months and may consider the validity of any Con-*
4 *firmation filing that has not already been reviewed*
5 *and found satisfactory. If the most recent Confirma-*
6 *tion filing or prior filings not previously found satis-*
7 *factory do not warrant a finding of compliance with*
8 *section 204(j) or paragraph (3), United States Citi-*
9 *zenship and Immigration Services shall issue a Notice*
10 *of Intent to Deny the underlying Application to Ad-*
11 *just Status providing an opportunity for further evi-*
12 *dence to be submitted on such deficiency after which*
13 *any applicant that does not meet his or her burden*
14 *of proof shall receive a denial of the underlying Ap-*
15 *plication to Adjust Status and the applications of eli-*
16 *gible dependents.*

17 “(5) *LIMITATION ON WORK AUTHORIZATION.—*
18 *An alien who was neither authorized to work nor eli-*
19 *gible to request work authorization at the time an ap-*
20 *plication was filed under paragraph (1) shall not be*
21 *eligible to receive work authorization pursuant to*
22 *paragraph (1) or section 274a.12(c)(9) of title 8, Code*
23 *of Federal Regulations.*

24 “(6) *CONFIRMATIONS OF BONA FIDE JOB OFFER*
25 *OR PORTABILITY FEE.—*

1 “(A) *IN GENERAL.*— *Notwithstanding any*
2 *other provision of law, the Secretary of Home-*
3 *land Security shall charge and collect a fee in*
4 *the amount of \$2,000 for each Confirmation of*
5 *Bona Fide Job Offer or Portability filed under*
6 *this subsection.*

7 “(B) *DEPOSITS.*—*The fees collected under*
8 *subparagraph (A) shall be deposited and used as*
9 *follows:*

10 “(i) *Fifty percent of such fees shall be*
11 *deposited into the Immigration Examina-*
12 *tions Fee Account established by section*
13 *286(m) and available as provided in this*
14 *subsection.*

15 “(ii) *Fifty percent of such fees shall be*
16 *deposited into the Treasury as miscella-*
17 *neous receipts.”.*

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

22 (c) *EFFECTIVE DATE.*—

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

1 (A) shall take effect one year after the date
2 of enactment of this Act; and

3 (B) except as provided in paragraph (2),
4 shall cease to have effect as of the date that is
5 nine years after that date of enactment.

6 (2) This section shall continue in effect with re-
7 spect to any alien who has filed an application under
8 this section any time prior to the date on which this
9 section otherwise ceases to have effect.

10 **SEC. 8. LIMIT ON ADJUSTMENT OF STATUS FROM H-1B**
11 **NONIMMIGRANT OR H-4 NONIMMIGRANT TO**
12 **EB IMMIGRANT.**

13 (a) *IN GENERAL.*—Section 245 of the Immigration
14 and Nationality Act (8 U.S.C. 1235), as amended by section
15 7, is further amended by adding at the end the following:

16 “(o) *LIMIT ON ADJUSTMENT OF STATUS FROM H-1B*
17 *NONIMMIGRANT OR H-4 NONIMMIGRANT TO EB IMMI-*
18 *GRANT.*—

19 “(1) *IN GENERAL.*—In applying this section to
20 an alien who is (or has been during the most recent
21 2-year period) a nonimmigrant described in section
22 101(a)(15)(H)(i)(b), or to the spouse or any minor
23 children of such alien who is (or has been during the
24 most recent 2-year period) an H-4 nonimmigrant—

1 “(A) the number of such aliens (including
2 the spouses and children of such aliens) granted
3 an adjustment of status to that of an immigrant
4 described in section 203(b) or otherwise issued
5 an immigrant visa under this Act in a fiscal
6 year—

7 “(i) during the period beginning on the
8 date of enactment of this subsection and
9 ending on the date on which the ninth fiscal
10 year after the effective date ends, may not
11 exceed 70 percent of the total number of em-
12 ployment-based immigrants admitted in
13 such fiscal year; and

14 “(ii) after the date on which the ninth
15 fiscal year after the effective date ends, may
16 not exceed 50 percent of the total number of
17 employment-based immigrants admitted in
18 such fiscal year; and

19 “(B) the limitations set forth in subpara-
20 graph (A) shall not apply to any such alien (or
21 the spouse or children of such alien) if such
22 alien—

23 “(i) has graduated from medical school
24 and will be performing services in the

1 *United States as a member of the medical*
2 *profession; or*

3 “(i) *has been granted a national in-*
4 *terest waiver by U.S. Citizenship and Im-*
5 *migration Services under section*
6 *203(b)(2)(B).*”

7 “(2) *EFFECTIVE DATE DEFINED.—In this sub-*
8 *section, the term ‘effective date’ means the first day*
9 *of the second fiscal year beginning after the date of*
10 *enactment of this subsection.’.*”

11 (b) *UNUSED EMPLOYMENT-BASED IMMIGRANT*
12 *VISAS.—Any immigrant visas reserved under section*
13 *203(b) of the Immigration and Nationality Act (8 U.S.C.*
14 *1153(b)) for employment-based immigrants that are not*
15 *needed for an employment-based immigrant may be issued*
16 *to aliens described in subparagraph in section*
17 *101(a)(15)(H)(i)(b) of the Immigration and Nationality*
18 *Act (8 U.S.C. 1101(a)(15)(H)(i)(b)).*

19 ***SEC. 9. PROHIBITION ON ADMISSION OR ADJUSTMENT OF***
20 ***STATUS OF ALIENS AFFILIATED WITH THE***
21 ***MILITARY FORCES OF THE PEOPLE’S REPUB-***
22 ***LIC OF CHINA OR THE CHINESE COMMUNIST***
23 ***PARTY.***

24 *The Secretary of Homeland Security shall not adjust*
25 *status of any alien affiliated with the military forces of the*

1 *People's Republic of China or the Chinese Communist*
2 *Party, as determined by the Secretary of Homeland Secu-*
3 *rity, in consultation with the Secretary of State, the Sec-*
4 *retary of Defense, the Attorney General, the Secretary of*
5 *the Treasury, and the Director of National Intelligence.*

Attest:

Secretary.

116TH CONGRESS
2^D SESSION

H.R. 1044

AMENDMENT