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AMENDMENT NO._____ Calendar No._____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

H. R. 1044

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Re[illegible] and

AMENDMENT Nº. 2690

By Lee

To: H.R. 1044

36

Page(s)

GPO: 2018 33-682 (mac)

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

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fairness for High-Skilled Immigrants Act of 2020".

SEC. 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.

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

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

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

(1) in subsection (a)—

(A) in paragraph (3), by striking "both subsections (a) and (b) of section 203" and inserting "section 203(a)"; and

(B) by striking paragraph (5); and

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

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

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

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

(1) in subsection (a), by striking "(as defined in subsection (c))";

(2) by striking subsection (d); and

(3) by redesignating subsection (c) as subsection (d).

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

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

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

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

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

(i) For the first fiscal year after the effective date, 30 percent of the immigrant visas made available under paragraphs (2) and (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are natives of a foreign state or de-

pendent area that is not one of the two states with the largest aggregate numbers of natives waiting for immigrant status.

(ii) For the second fiscal year after the effective date, 25 percent of the immigrant visas made available under paragraphs (2) and (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) shall be allotted to immigrants who are natives of a foreign state or dependent area that is not one of the two states with the largest aggregate numbers of natives waiting for immigrant status.

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

(iv) For the fourth fiscal year after the effective date, 15 percent of the immi-

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

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

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

a foreign state or dependent area that is not one of the two states with the largest aggregate numbers of natives waiting for immigrant status.

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

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

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

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

(D) The two states with the largest aggregate numbers of natives who are beneficiaries of approved petitions referred to in subparagraphs (B) and (C) are the two states with the largest aggregate number of approved cases awaiting visa number availability for immigrant visas under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)), as identified by adding the numbers associated with aliens awaiting employment-based immigrant status in the most recent and available Count Of Approved Employment-Based Immigrant Petitions With Priority Dates On Or After the State Department's Visa Bulletin from the Department of Homeland Security and such num-

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

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

(F) Family members described in section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)) who are accompanying or following to join a principal beneficiary seeking admission under subparagraph (E) shall be entitled to an unreserved visa in the same status and in the same order of consideration as such principal beneficiary, but shall not be counted

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

(2) PER-COUNTRY LEVELS.—

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

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

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

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

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

(5) EFFECTIVE DATE DEFINED.—In this subsection, the term "effective date" means the first day of the second fiscal year beginning after the date of enactment of this Act.

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

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

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

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

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

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

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

(c) APPLICATION.—The amendment made by subsection (a) shall apply to any application filed on or after

the date that is 90 days after the date described in subsection (b).

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

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

(2) by striking "(i) has provided" and inserting the following:

"(ii)(I) has provided"; and

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

"(i) except in the case of an employer filing a petition on behalf of an H–1B nonimmigrant who has already been counted against the numerical limitations and is not eligible for a full 6-year period, as described in section 214(g)(7), or on behalf of an H–1B nonimmigrant authorized to accept employment under section 214(n), has posted on the internet website described in paragraph (6), for at least 30 calendar days, a description of each position for which a nonimmigrant is sought, that includes—

"(I) the occupational classification, and if different the employer's job title for the position, in which the nonimmigrant(s) will be employed;

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

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

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

"(V) the process for applying for a position; and".

SEC. 4. H–1B EMPLOYER PETITION REQUIREMENTS.

(a) WAGE DETERMINATION INFORMATION.—Section 212(n)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(D)) is amended by inserting "the prevailing wage determination methodology used under subparagraph (A)(i)(II)," after "shall contain".

(b) NEW APPLICATION REQUIREMENTS.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G)(ii) the following:

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

"(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

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

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

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

(c) ADDITIONAL REQUIREMENT FOR NEW H–1B PETITIONS.—

(1) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C.

1182(n)(1)), as amended by subsection (b), is further amended by inserting after subparagraph (I), the following:

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

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

(2) RULE OF CONSTRUCTION.—Nothing in subparagraph (J) of section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as added by paragraph (1), may be construed to prohibit renewal applications or change of employer applications for H-1B nonimmigrants employed by an employer on the date of enactment of this Act.

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

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

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

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

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

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

"(12)(A) Unless otherwise authorized by law, an alien normally classifiable under section 101(a)(15)(H)(i) who seeks admission to the United States to provide services

in a specialty occupation described in paragraph (1) or (3) of subsection (i) may not be issued a visa or admitted under section 101(a)(15)(B) for such purpose.

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

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

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

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

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

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

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

"(III) In this clause, the term 'employee' includes—

"(aa) a current employee;

"(bb) a former employee; and

"(cc) an applicant for employment.".

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

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

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

SEC. 6. LABOR CONDITION APPLICATIONS.

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

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

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

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

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

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

(1) in clause (i), in the undesignated matter following subclause (II), by striking "and" at the end;

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

(3) by adding at the end the following:

"(iii) will ensure that—

"(I) the actual wages or range identified in clause (i) relate solely to employees having substantially the same duties and responsibilities as the H–1B nonimmigrant in the geographical area of intended employment, considering experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors, except in a geographical area there are no such employees, and

"(II) the prevailing wages identified in clause (ii) reflect the best available information for the geographical area within normal commuting distance of the actual address of employment at which the H–1B

nonimmigrant is or will be employed.".

(c) PROCEDURES FOR INVESTIGATION AND DISPOSITION.—Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) by striking "(2)(A) Subject" and inserting "(2)(A)(i) Subject";

(2) by striking the fourth sentence; and

(3) by adding at the end the following:

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

"(II) The Secretary may conduct—

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

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

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

"(aa) conduct annual compliance audits of each employer that employs more

than 100 full-time equivalent employees who are employed in the United States if more than 15 percent of such full-time employees are H–1B nonimmigrants; and

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

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

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

(1) in clause (i)—

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

(B) in subclause (I), by striking "$1,000" and inserting "$3,000";

(2) in clause (ii)(I), by striking "$5,000" and inserting "$15,000";

(3) in clause (iii)(I), by striking "$35,000" and inserting "$100,000"; and

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

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

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

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

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

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

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

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

(A) by striking"clause (viii)" and inserting "clause (vi)"; and

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

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

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

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

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

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

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

(9) by adding at the end the following:

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

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

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

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

"(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(1) IN GENERAL.—An alien who has status under section 214, other than an alien described in subsection (c) (as remedied by subsection (k), as amended by the Fairness for High-Skilled Immigrants Act of 2020) or subparagraph (B) or (C) of section 101(a)(15), and any eligible dependents of such alien, who has filed a petition or on whose behalf a petition has been filed for immigrant status pursuant to subparagraph (E) or (F) of section 204(a)(1), may file an application with the Secretary of Homeland Security for adjustment of status if such petition was approved not less than two years before the date on which the application for adjustment of status is filed, regardless of whether an immigrant visa is immediately available on that date. For any dependent child who files an application under this subsection, that individual may continue to qualify as a dependent child for purposes of the application regardless of the individual's age or whether the principal beneficiary is deceased at the

time an immigrant visa becomes available. Except as otherwise provided in paragraphs (3), (4), and (5), an alien who files an application under this subsection shall be eligible for work authorization and travel permission on the same terms as an alien who files an application under subsection (a).

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

"(3) DUTIES, HOURS, AND COMPENSATION.—The terms and conditions of a qualifying employment position offered to an alien who has filed a petition or on whose behalf a petition has been filed, for immigrant status pursuant to subparagraph (E) or (F) of section 204(a)(1), including duties, hours, and compensation, during the period following the filing of an application for adjustment under paragraph (1) and before a visa becomes immediately available, must be commensurate with the terms and conditions applicable to the employer's similarly situated United States workers in the area of employ-

ment. If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of the alien's employment are commensurate with the terms and conditions of employment for other similarly situated United States workers in the area of employment. 'Similarly situated United States workers' includes United States workers performing similar duties, subject to similar supervision, and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the alien in the same geographic area of employment as the alien. The duties, hours, and compensation of such aliens are 'commensurate' with those offered to United States workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated United States employees.

"(4) ENFORCEMENT.—A principal applicant applying for adjustment pursuant to paragraph (1) shall file a Confirmation of Bona Fide Job Offer or

Portability with any request for an employment authorization document. Any employment authorization document issued to such a principal applicant shall expire after three years, and another Confirmation of Bona Fide Offer or Portability shall be filed with any request for a renewal of employment authorization. No final decision on an application under paragraph (1) may be issued without a filing of a Confirmation of Bona Fide Job Offer or Portability by the principal applicant received within 12 months of such decision. A principal applicant shall provide sufficient information to verify compliance with paragraph (3), and an indication that the filing is to ensure compliance for an adjustment applicant under this subsection, when the applicant files a Confirmation. A principal applicant shall also provide a signed letter from his or her current or prospective employer attesting that the terms and conditions of the alien's employment are commensurate with the terms and conditions of employment for other similarly situated United States workers in the area of employment. If a required Confirmation is not timely received by United States Citizenship and Immigration Services, the underlying Application to Adjust Status filed under paragraph (1), including

the applications for eligible dependents, shall be denied. In adjudicating the Application to Adjust Status, when an immigrant visa becomes available, United States Citizenship and Immigration Services shall request the filing of a Confirmation of Bona Fide Job Offer or Portability if a Confirmation of Bona Fide Job Offer or Portability has not been filed within the previous 12 months and may consider the validity of any Confirmation filing that has not already been reviewed and found satisfactory. If the most recent Confirmation filing or prior filings not previously found satisfactory do not warrant a finding of compliance with section 204(j) or paragraph (3), United States Citizenship and Immigration Services shall issue a Notice of Intent to Deny the underlying Application to Adjust Status providing an opportunity for further evidence to be submitted on such deficiency after which any applicant that does not meet his or her burden of proof shall receive a denial of the underlying Application to Adjust Status and the applications of eligible dependents.

"(5) LIMITATION ON WORK AUTHORIZATION.—An alien who was neither authorized to work nor eligible to request work authorization at the time an

application was filed under paragraph (1) shall not be eligible to receive work authorization pursuant to paragraph (1) or section 274a.12(c)(9) of title 8, Code of Federal Regulations.

"(6) CONFIRMATIONS OF BONA FIDE JOB OFFER OR PORTABILITY FEE.—

"(A) IN GENERAL.— Notwithstanding any other provision of law, the Secretary of Homeland Security shall charge and collect a fee in the amount of $2,000 for each Confirmation of Bona Fide Job Offer or Portability filed under this subsection.

"(B) DEPOSITS.—The fees collected under subparagraph (A) shall be deposited and used as follows:

"(i) Fifty percent of such fees shall be deposited into the Immigration Examinations Fee Account established by section 286(m) and available as provided in this subsection.

"(ii) Fifty percent of such fees shall be deposited into the Treasury as miscellaneous receipts.".

(b) CONFORMING AMENDMENT.— Section 245(k) of the Immigration and Nationality Act (8 U.S.C. 1255(k))

is amended by adding "or (n)" after "pursuant to subsection (a)".

(c) EFFECTIVE DATE.—

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

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

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

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

SEC. 8. LIMIT ON ADJUSTMENT OF STATUS FROM H–1B NONIMMIGRANT OR H–4 NONIMMIGRANT TO EB IMMIGRANT.

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

"(o) LIMIT ON ADJUSTMENT OF STATUS FROM H–1B NONIMMIGRANT OR H–4 NONIMMIGRANT TO EB IMMIGRANT.—

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

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

"(i) during the period beginning on the date of enactment of this subsection and ending on the date on which the ninth fiscal year after the effective date ends, may not exceed 70 percent of the total number of employment-based immigrants admitted in such fiscal year; and

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

"(B) the limitations set forth in subparagraph (A) shall not apply to any such alien (or the spouse or children of such alien) if such alien—

"(i) has graduated from medical school and will be performing services in the United States as a member of the medical profession; or

"(ii) has been granted a national interest waiver by U.S. Citizenship and Immigration Services under section 203(b)(2)(B).

"(2) EFFECTIVE DATE DEFINED.—In this subsection, the term 'effective date' means the first day of the second fiscal year beginning after the date of enactment of this subsection.".

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

SEC. 9. PROHIBITION ON ADMISSION OR ADJUSTMENT OF STATUS OF ALIENS AFFILIATED WITH THE MILITARY FORCES OF THE PEOPLE'S REPUBLIC OF CHINA OR THE CHINESE COMMUNIST PARTY.

The Secretary of Homeland Security shall not ~~admit to the United States, or~~ adjust status of any alien affiliated with the military forces of the People's Republic of China or the Chinese Communist Party, as determined by the Secretary of Homeland Security, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of the Treasury, and the Director of National Intelligence.