AMENDMENT NO. ________  Calendar No. ________

Purpose: In the nature of a substitute.


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 follow-

2 ing:

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 STATE.

7 (a) IN GENERAL.—Section 202(a)(2) of the Immig-

8 ration and Nationality Act (8 U.S.C. 1152(a)(2)) is

9 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)”;

(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).”.

(e) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
note) is amended—

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

(2) by striking subsection (d); and

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

(d) EFFECTIVE DATE.—The amendments made by
this section shall take effect beginning the fiscal year 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 Im-
migration and Nationality Act (8 U.S.C. 1151 et
seq.), the following rules shall apply:
(A) No alien who is the beneficiary of a petition for an immigrant visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) that was approved prior to the date of the enactment of this Act shall receive a visa later than the alien otherwise would have received such visa had this Act not been enacted.

(B) During the first three fiscal years after the date of enactment of this Act, 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)).

(C) 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 three fiscal years after the date of enactment of this Act, 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 date of enactment of this Act, 15 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.

(ii) For the second fiscal year after the date of enactment of this Act, 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.
(iii) For the third fiscal year after the date of enactment of this Act, 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.

(D) 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 date of enactment of this Act 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 Na-
tionality 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.

(E) The two states with the largest aggregate numbers of natives who are beneficiaries of approved petitions referred to in subparagraphs (C) and (D) are the two states with the largest aggregate number of approved but backlogged cases 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 em-
ployment-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 numbers 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.

(F) Notwithstanding subparagraphs (A) through (E), for each of fiscal years 2020 through 2026, 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 (C) and (D) 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.

(G) 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 (F) 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), (ii), and (iii) of paragraph (1)(C) and (1)(D) 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 three fiscal years after the date of enactment of this
Act, 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 enactment of this Act, 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.

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

(a) Department of Labor Website.—Section 212(n)(6) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(6)) is amended to read as follows:
“(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 2019, 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 posi-
tion 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 APPLICATION 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 subpara-
graph (G)(ii) the following:

“(H)(i) The employer, or a person or entity act-
ing 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 non-
immigrant; 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 posi-
tion.

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

“(I) If the employer, in a previous period speci-
ified 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.

“(J)(i) If the employer employs 50 or more em-
ployees 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 non-immigrants 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), (e), (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).”.

(c) LABOR CONDITION APPLICATION FEE.—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)(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 adminis-
tration, oversight, investigation, and enforcement of the
H–1B nonimmigrant visa program.”.

(d) 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 Simi-
larly Employed.—Section 212(n)(1)(A) of the Immi-
gration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is
amended—

(1) in clause (i), in the undesignated matter fol-
lowing 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 geo-
ographical area of intended employ-
ment, considering experience, qual-
ications, 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.”

(e) 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 strik-
ing “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)”;

(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.—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) Petition.—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 2019) 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 has been approved, or if the petition has been pending for more than 270 days, regardless of whether an immigrant visa is immediately available at the time the application is filed. 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 situ-
ated United States workers in the area of employment. 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 filing 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) LIMITATIONS ON WORK AUTHORIZATION.—
“(A) Except as provided in subparagraph (B), 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.

“(B) An alien with a pending application under this subsection who is otherwise ineligible to receive work authorization may seek work authorization pursuant to section 274a.12(c)(9) of title 8, Code of Federal Regulations, if the Director of United States Citizenship and Immigration Services determines, as a matter of discretion, that the alien demonstrates compelling circumstances that justify the issuance of employment authorization.”.

(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)”.

(e) EFFECTIVE DATE.—

(1) This section and the amendments made by this section—
(A) shall take effect on the date of the enactment of this Act; and

(B) except as provided in paragraph (2),

shall cease to have effect as of the date that is 9 years after the 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.