

## **EAGLE Act (H.R. 3648) Amendment in the Nature of a Substitute Section-by-Section**

H.R. 3648 would (1) raise the per-country caps on family-sponsored immigrant visas from 7 percent to 15 percent; (2) eliminate the per-country caps on employment-based immigrant visas; (3) temporarily allow the beneficiaries of certain employment-based immigration petitions to file for adjustment of status even if an immigrant visa is not immediately available; and (4) implement reforms for the H-1B nonimmigrant visa program. The Amendment in the Nature of a Substitute makes mostly technical corrections to H.R. 3648 and one additional restriction on the use of H-1B visas by media companies. The section-by-section below is based on the on this amendment.

### ***Sec. 1. Short Title***

- Sets forth the short title of the bill as the “Equal Access to Green cards for Legal Employment Act of 2022” or “EAGLE Act.”

### ***Sec. 2. Numerical Limitation to Any Single Foreign State***

- Eliminates the “per country” limitation on employment-based immigrant visas and raises it from 7 percent to 15 percent for family-sponsored immigrant visas.
- Restores 1,000 employment-based visas per fiscal year that have been set aside for applicants under the Chinese Student Protection Act of 1992.
- Establishes an application date of the first day of the second fiscal year after the date of the enactment of the Act.
- Provides for a 9-year transition period for the elimination of the per-country limit for the employment-based second (EB-2 advanced degree professionals/exceptional ability aliens) and employment-based third (EB-3 professionals/skilled workers/other worker) preference categories as follows:
  - *Reserved Visas for Lower Admission States.* Reserves visas for countries other than the two countries with highest demand for such visas (India and China) for nine fiscal years (FY) as follows:
    - FY 1: 30 percent of such visas.
    - FY 2: 25 percent of such visas.
    - FY 3: 20 percent of such visas.
    - FY 4: 15 percent of such visas.
    - FY 5 and 6: 10 percent of such visas.
    - FY 7, 8, and 9: 5 percent of such visas.
  - *Reserved Visas for New Arrivals.* For FY 1 through FY 9, reserves an additional 5.75 percent of such visas for individuals from countries other than India and China, to be allocated in the following order of priority: (1) derivatives who are

accompanying or following-to-join a principal in the United States; (2) new principal arrivals who have not lived or worked in the United States in the 4 years preceding the filing of the immigrant visa petition; and (3) other new arrivals.

- *Reserved Visas for Shortage Occupations.* For FY 1 through FY 7, reserves 4,400 EB-3 visas for individuals who will work in shortage occupations as designated in 20 C.F.R. § 656.5(a) (nurses and physical therapists).
- *Additional Parameters.* For FY 1 through FY 9, no country may receive more than 25 percent of reserved visas and no country may receive more than 85 percent of unreserved visas. The bill also includes a safety provision to prevent visas from going unused during the 9-year period.

### ***Sec. 3. Posting Available Positions Through the Department of Labor***

- Directs the DOL to establish a searchable internet website for the posting of H-1B positions, within 180 days of bill enactment. Requires employers to provide public notice of new H-1B positions on the newly established DOL searchable website for at least 30 days. Employers are *not* required to post positions that will be filled by individuals who are currently in H-1B status and have already been counted against the numerical limitations or are authorized to accept new employment upon the filing of an H-1B petition by the prospective employer. Online job postings must include the occupational classification, job title, education and experience requirements, salary or wage range, benefits offered, location, and the employer's process for applying for a position.

### ***Sec. 4. H-1B Employer Application Requirements***

- *Prevailing Wage.* Requires employers to submit to DOL, documentation of the methodology used to establish the prevailing wage for a prospective H-1B employee.
- *New Labor Condition Application (LCA) Attestations.* Requires prospective H-1B employers to attest that:
  - Advertisements for the position do not state that the position is only open to H-1B workers or that H-1B workers will be given a preference;
  - The employer has not primarily recruited H-1B workers for the position;
  - The employer agrees to submit Forms W-2 filed on behalf of H-1B employees if requested by DOL; and
  - If the employer has 50 or more employees in the United States, not more than 50 percent of the employer's U.S. workforce consists of H-1B or L-1 nonimmigrants. The Internal Revenue Code definition of "single employer" is used for this purpose. This means, for example, that a company with a subsidiary that has 100 employees, 55 of whom are H-1B or L-1 nonimmigrants, would not be excluded from the H-1B program so long as not more than 50 percent of the company's entire workforce are H-1B or L-1 nonimmigrants. This provision may not be

construed to prohibit petitions to extend or renew H-1B status or change H-1B employers.

- *LCA Fee.* Requires DOL to establish an administrative processing fee for LCAs.
- *Elimination of “B-1 in lieu of H-1.”* Prohibits the Department of State from issuing B-1 business visitor visas to individuals seeking to perform H-1 services where the source of remuneration or salary comes from a foreign employer.
- *Ending Foreign Media Abuse of H-1B.* Prohibits individuals who are classifiable as representative of the foreign press, radio, film, or other foreign information media, and who are seeking entry into the United States for that purpose, from receiving a H-1B visa or being admitted into the United States in H-1B status.

#### ***Sec. 5. Investigation and Disposition of Complaints Against H-1B Employers***

- Expands whistleblower protections to preclude employers from “taking, failing to take, or threatening to take or fail to take a personnel action” against a whistleblower.
- Specifies that an employer who violates whistleblower protections shall be liable to the employee for lost wages and benefits. Protected individuals include current and former employees, as well as applicants for employment.
- Requires U.S. Citizenship and Immigration Services (USCIS) to share with DOL information submitted by employers in H-1B petitions that indicates the employer is not complying with H-1B program requirements and allows DOL to initiate an investigation upon receipt of such information.

#### ***Sec. 6. Labor Condition Applications***

- *Public Examination of LCAs.* Requires DOL to publish lists of LCAs filed on its website.
- *Certification Standard.* In addition to “incompleteness” and “obvious inaccuracies,” adds “clear indicators of fraud or misrepresentation of material fact” to the exceptions for certifying an LCA within seven days of filing. Allows DOL to initiate an investigation if there are such clear indicators.
- *Prevailing Wage Clarifications.* Ensures that the prevailing wage relates to substantially similar employees within the geographical area and is based on the best available information for the area within normal commuting distance of the place of employment.
- *Audits.* Allows DOL to survey employers for LCA compliance and conduct compliance audits of any H-1B employer. Requires annual compliance audits of employers with more than 100 full time employees, if more than 15 percent are H-1B nonimmigrants. Requires DOL to publish results of required annual compliance audits. Any audited company cannot be re-audited for four years unless there was a willful failure to comply with program requirements or if there is evidence of misrepresentation or fraud.

- *Increased Penalties.* Increases penalties for various LCA violations from \$1,000 to \$3,000; from \$5,000 to \$15,000; and from \$35,000 to \$100,000.
- *Investigations.* Eases the process for investigating LCA abuses by:
  - Striking the requirement that the Secretary of Labor personally certify reasonable cause for commencing an LCA investigation;
  - Allowing investigations to commence based on credible information from an anonymous source and striking a provision that says officers or employees of DOL cannot report LCA violations;
  - Striking the provision that prohibits investigations unless there is reasonable cause to believe the employer willfully engaged in LCA abuses or a pattern of violations, or there is a substantial failure that affects multiple employees;
  - Striking the provision prohibiting the use of information submitted in connection with an LCA or H-1B petition to initiate an investigation;
  - Eliminating the 60-day temporal limit on investigations, thereby allowing investigations to proceed for as long as necessary;
  - Changing the deadline for providing notice to an employer and an opportunity for a hearing from 120 days to 60 days from the date the Secretary determines there is sufficient cause for failure to comply; and
  - Providing DOL with discretionary authority to impose a penalty if it is determined that the employer violated an LCA term or condition.

### ***Sec. 7. Adjustment of Status for Employment-Based Immigrants***

- Amends the INA by adding a new section 245(n) to allow most nonimmigrants (and their dependents) who are the beneficiaries of an employment-based petition that has been approved for two years to file an application for adjustment of status, even if an immigrant visa is not immediately available. Children remain eligible for adjustment of status regardless of their age or if the principal applicant is deceased at the time a visa becomes available.
- *Travel Authorization.* Principal applicants and dependents are eligible for advance parole (travel authorization) while the adjustment of status application is pending.
- *Employment Authorization.* While the adjustment of status application is pending, principal applicants are eligible for work authorization, subject to the conditions and special filing procedures described below. Dependents are likewise eligible for work authorization if they were authorized to work or were in a status that allowed them to request such authorization at the time the adjustment application is filed.
- *Conditions on Adjustment of Status for Principal Aliens.* Specifies that during the time an application for adjustment of status remains pending and until an immigrant visa becomes available, the terms and conditions of employment offered to the alien must be commensurate with the terms and conditions offered to similarly situated U.S. workers in the area of employment. Applications must be accompanied by a letter from the employer

attesting to such. If the alien changes positions or employers, the new position must be in the same or a similar occupational classification as the job for which the petition was filed.

- *Special Filing Procedures for Employment Authorization.* Requires an application for employment authorization filed by the principal applicant to be accompanied by a Confirmation of Bona Fide Job Offer or Portability. If approved, employment authorization shall be valid for 3 years.
- *Decision.* Prohibits the approval of an application for adjustment of status until an immigrant visa is available or if the principal applicant has not filed a Confirmation of Bona Fide Job Offer or Portability within the last 12 months. Requires the Secretary to issue a request for evidence if such Form is required and issue a notice of intent to deny if any such form indicates a lack of compliance. An application for adjustment of status may be denied if the principal applicant fails to respond to a request for evidence or establish compliance with the required conditions.
- *Fees.* Authorizes the Secretary of Homeland Security to collect a \$2,000 fee in connection with each Confirmation of Bona Fide Job Offer or Portability filed in connection with an application for adjustment of status under this section. Fifty percent of such fees shall be deposited in the Immigration Examinations Fee Account and 50 percent shall be deposited in the Treasury as miscellaneous receipts.
- *Application Dates.* The ability to file for adjustment of status under this section takes effect one year after the date of the enactment of the Act and sunsets on the date that is 9 years after the date of enactment. Applications that are filed prior to the sunset date are grandfathered.