

118TH CONGRESS
1ST SESSION

S. 3291

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2023

Mr. CRAMER (for himself, Mr. HICKENLOOPER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Access to Green
5 cards for Legal Employment Act of 2023” or the
6 “EAGLE Act of 2023”.

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

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

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

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

17 (1) in subsection (a)—

18 (A) in paragraph (3), by striking “both
 19 subsections (a) and (b) of section 203” and in-
 20 serting “section 203(a)”; and

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

22 (2) by amending subsection (e) to read as fol-
 23 lows:

24 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—
 25 If the total number of immigrant visas made available
 26 under section 203(a) to natives of any single foreign state

1 or dependent area will exceed the numerical limitation
 2 specified in subsection (a)(2) in any fiscal year, immigrant
 3 visas shall be allotted to such natives under section 203(a)
 4 (to the extent practicable and otherwise consistent with
 5 this section and section 203) in a manner so that, except
 6 as provided in subsection (a)(4), the proportion of the
 7 visas made available under each of paragraphs (1) through
 8 (4) of section 203(a) is equal to the ratio of the total visas
 9 made available under the respective paragraph to the total
 10 visas made available under section 203(a).”.

11 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
 12 Chinese Student Protection Act of 1992 (Public Law 102–
 13 404; 8 U.S.C. 1255 note) is amended—

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

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

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

19 (d) APPLICATION.—The amendments made by this
 20 section shall apply beginning on the date that is the first
 21 day of the second fiscal year beginning after the date of
 22 the enactment of this Act.

23 (e) TRANSITION RULES FOR EMPLOYMENT-BASED
 24 IMMIGRANTS.—Notwithstanding title II of the Immigra-
 25 tion and Nationality Act (8 U.S.C. 1151 et seq.), the fol-

1 lowing transition rules shall apply to employment-based
2 immigrants, beginning on the date referred to in sub-
3 section (d):

4 (1) RESERVED VISAS FOR LOWER ADMISSION
5 STATES.—

6 (A) IN GENERAL.—For the first nine fiscal
7 years after the date referred to in subsection
8 (d), immigrant visas under each of paragraphs
9 (2) and (3) of section 203(b) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1153(b))
11 shall be reserved and allocated to immigrants
12 who are natives of a foreign state or dependent
13 area that is not one of the two foreign states
14 or dependent areas with the highest demand for
15 immigrant visas as follows:

16 (i) For the first fiscal year after such
17 date, 30 percent of such visas.

18 (ii) For the second fiscal year after
19 such date, 25 percent of such visas.

20 (iii) For the third fiscal year after
21 such date, 20 percent of such visas.

22 (iv) For the fourth fiscal year after
23 such date, 15 percent of such visas.

24 (v) For the fifth and sixth fiscal years
25 after such date, 10 percent of such visas.

(vi) For the seventh, eighth, and ninth fiscal years after such date, 5 percent of such visas.

(B) ADDITIONAL RESERVED VISAS FOR NEW ARRIVALS.—For each of the first nine fiscal years after the date referred to in subsection (d), an additional 5.75 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)) shall be allocated to immigrants who are natives of a foreign state or dependent area that is not one of the two foreign states or dependent areas with the highest demand for immigrant visas. Such additional visas shall be allocated in the following order of priority:

(i) FAMILY MEMBERS ACCOMPANYING OR FOLLOWING TO JOIN.—Visas reserved under this subparagraph shall be allocated to 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 who is in the United States and has been granted an immigrant visa or ad-

1 justment of status to lawful permanent
2 residence under paragraph (2) or (3) of
3 section 203(b) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1153(b)).

5 (ii) NEW PRINCIPAL ARRIVALS.—If at
6 the end of the second quarter of any fiscal
7 year, the total number of visas reserved
8 under this subparagraph exceeds the num-
9 ber of qualified immigrants described in
10 clause (i), such visas may also be allocated,
11 for the remainder of the fiscal year, to in-
12 dividuals (and their family members de-
13 scribed in section 203(d) of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1153(d))) who are seeking an immigrant
16 visa under paragraph (2) or (3) of section
17 203(b) of the Immigration and Nationality
18 Act (8 U.S.C. 1153(b)) to enter the United
19 States as new immigrants, and who have
20 not resided or worked in the United States
21 at any point in the four-year period imme-
22 diately preceding the filing of the immi-
23 grant visa petition.

24 (iii) OTHER NEW ARRIVALS.—If at
25 the end of the third quarter of any fiscal

year, the total number of visas reserved under this subparagraph exceeds the number of qualified immigrants described in clauses (i) and (ii), such visas may be also be allocated, for the remainder of the fiscal year, to other individuals (and their family members described in section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) who are seeking an immigrant visa under paragraph (2) or (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

(2) RESERVED VISAS FOR SHORTAGE OCCUPATIONS.—

(A) IN GENERAL.—For each of the first seven fiscal years after the date referred to in subsection (d), not fewer than 4,400 of the immigrant visas made available under section 203(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)), and not reserved under paragraph (1), shall be allocated to immigrants who are seeking admission to the United States to work in an occupation described in section 656.5(a) of title 20, Code of Federal Regulations (or any successor regulation).

1 (B) FAMILY MEMBERS.—Family members
2 who are accompanying or following to join a
3 principal beneficiary described in subparagraph
4 (A) shall be entitled to a visa in the same sta-
5 tus and in the same order of consideration as
6 such principal beneficiary, but such visa shall
7 not be counted against the 4,400 immigrant
8 visas reserved under such subparagraph.

9 (3) PER-COUNTRY LEVELS.—For each of the
10 first nine fiscal years after the date referred to in
11 subsection (d)—

12 (A) not more than 25 percent (in the case
13 of a single foreign state) or 2 percent (in the
14 case of a dependent area) of the total number
15 of visas reserved under paragraph (1) shall be
16 allocated to immigrants who are natives of any
17 single foreign state or dependent area; and

18 (B) not more than 85 percent of the immi-
19 grant visas made available under each of para-
20 graphs (2) and (3) of section 203(b) of the Im-
21 migration and Nationality Act (8 U.S.C.
22 1153(b)) and not reserved under paragraph (1),
23 may be allocated to immigrants who are native
24 to any single foreign state or dependent area.

1 (4) SPECIAL RULE TO PREVENT UNUSED
2 VISAS.—If, at the end of the third quarter of any
3 fiscal year, the Secretary of State determines that
4 the application of paragraphs (1) through (3) would
5 result in visas made available under paragraph (2)
6 or (3) of section 203(b) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1153(b)) going unused in
8 that fiscal year, such visas may be allocated during
9 the remainder of such fiscal year without regard to
10 paragraphs (1) through (3).

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

18 (6) DETERMINATION OF TWO FOREIGN STATES
19 OR DEPENDENT AREAS WITH HIGHEST DEMAND.—
20 The two foreign states or dependent areas with the
21 highest demand for immigrant visas, as referred to
22 in this subsection, are the two foreign states or de-
23 pendent areas with the largest aggregate number
24 beneficiaries of petitions for an immigrant visa
25 under section 203(b) of the Immigration and Na-

(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:

“(A) Not later than 180 days after the date of the enactment of the Equal Access to Green cards for Legal Employment Act of 2023, 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.

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1 erate the internet website described in subparagraph
2 (A).

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

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

12 (c) APPLICATION.—The amendment made by sub-
13 section (a) shall apply beginning on the date that is 90
14 days after the date described in subsection (b).

15 (d) INTERNET POSTING REQUIREMENT.—Section
16 212(n)(1)(C) of the Immigration and Nationality Act (8
17 U.S.C. 1182(n)(1)(C)) is amended—

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

20 (2) by striking “(I) has provided” and inserting
21 the following:

22 “(ii)(I) has provided”; and

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

1 “(i) except in the case of an employer fil-
2 ing a petition on behalf of an H-1B non-
3 immigrant who has already been counted
4 against the numerical limitations and is not eli-
5 gible for a full 6-year period, as described in
6 section 214(g)(7), or on behalf of an H-1B
7 nonimmigrant authorized to accept employment
8 under section 214(n), has posted on the inter-
9 net website described in paragraph (6), for at
10 least 30 calendar days, a description of each po-
11 sition for which a nonimmigrant is sought, that
12 includes—

13 “(I) the occupational classification,
14 and if different the employer’s job title for
15 the position, in which each nonimmigrant
16 will be employed;

17 “(II) the education, training, or expe-
18 rience qualifications for the position;

19 “(III) the salary or wage range and
20 employee benefits offered;

21 “(IV) each location at which a non-
22 immigrant will be employed; and

23 “(V) the process for applying for a
24 position; and”.

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

2 (a) WAGE DETERMINATION INFORMATION.—Section
3 212(n)(1)(D) of the Immigration and Nationality Act (8
4 U.S.C. 1182(n)(1)(D)) is amended by inserting “the pre-
5 vailing wage determination methodology used under sub-
6 paragraph (A)(i)(II),” after “shall contain”.

7 (b) NEW APPLICATION REQUIREMENTS.—Section
8 212(n)(1) of the Immigration and Nationality Act (8
9 U.S.C. 1182(n)(1)) is amended by inserting after subpara-
10 graph (G) the following:

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

15 “(I) such position is only available to an
16 individual who is or will be an H-1B non-
17 immigrant; or

18 “(II) an individual who is or will be an H-
19 1B nonimmigrant shall receive priority or a
20 preference in the hiring process for such posi-
21 tion.

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

25 “(I) If the employer, in a previous period speci-
26 fied by the Secretary, employed one or more H-1B

1 nonimmigrants, the employer shall submit to the
 2 Secretary the Internal Revenue Service Form W-2
 3 Wage and Tax Statements filed by the employer
 4 with respect to the H-1B nonimmigrants for such
 5 period.”.

6 (c) ADDITIONAL REQUIREMENT FOR NEW H-1B PE-
 7 TITIONS.—

8 (1) IN GENERAL.—Section 212(n)(1) of the Im-
 9 migration and Nationality Act (8 U.S.C.
 10 1182(n)(1)), as amended by subsection (b), is fur-
 11 ther amended by inserting after subparagraph (I),
 12 the following:

13 “(J)(i) If the employer employs 50 or more em-
 14 ployees in the United States, the sum of the number
 15 of such employees who are H-1B nonimmigrants
 16 plus the number of such employees who are non-
 17 immigrants described in section 101(a)(15)(L) does
 18 not exceed 50 percent of the total number of em-
 19 ployees.

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

24 (2) RULE OF CONSTRUCTION.—Nothing in sub-
 25 paragraph (J) of section 212(n)(1) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1182(n)(1)), as
2 added by paragraph (1), may be construed to pro-
3 hibit renewal applications or change of employer ap-
4 plications for H–1B nonimmigrants employed by an
5 employer on the date of the enactment of this Act.

6 (3) APPLICATION.—The amendment made by
7 this subsection shall apply with respect to an em-
8 ployer commencing on the date that is 180 days
9 after the date of the enactment of this Act.

10 (d) LABOR CONDITION APPLICATION FEE.—Section
11 212(n) of the Immigration and Nationality Act (8 U.S.C.
12 1182(n)), as amended by section 3(a), is further amended
13 by adding at the end the following:

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

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

24 “(ii) The Secretary of the Treasury shall refund
25 amounts in such account to the Secretary of Labor for

1 salaries and related expenses associated with the adminis-
 2 tration, oversight, investigation, and enforcement of the
 3 H-1B nonimmigrant visa program.”.

4 (e) ELIMINATION OF B-1 IN LIEU OF H-1.—Section
 5 214(g) of the Immigration and Nationality Act (8 U.S.C.
 6 1184(g)) is amended by adding at the end the following:

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

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

18 (f) ENDING MEDIA ABUSE OF H-1B.—Section
 19 214(g) of the Immigration and Nationality Act (8 U.S.C.
 20 1184(g)), as amended by subsection (e), is further amend-
 21 ed by adding at the end the following:

22 “(13) An alien normally classifiable under section
 23 101(a)(15)(I) who seeks admission to the United States
 24 solely as a representative of the foreign press, radio, film,
 25 or other foreign information media, may not be issued a

1 visa or admitted under section 101(a)(15)(H)(i) to engage
2 in such vocation.”.

3 (g) MEMBERSHIP IN TOTALITARIAN PARTY.—Sec-
4 tion 214(g) of the Immigration and Nationality Act (8
5 U.S.C. 1184(g)), as amended by subsections (e) and (f),
6 is further amended by adding at the end the following:

7 “(14)(A) Except as provided in this paragraph, an
8 alien who is or has been a member of or affiliated with
9 the Communist or any other totalitarian party (or subdivi-
10 sion or affiliate thereof), domestic or foreign, may not be
11 issued a visa or admitted under section 101(a)(15)(H)(i).

12 “(B) Subparagraph (A) shall not apply to an alien
13 because of membership or affiliation if the alien estab-
14 lishes to the satisfaction of the consular officer when ap-
15 plying for a visa (or to the satisfaction of the Secretary
16 of Homeland Security when applying for admission) under
17 section 101(a)(15)(H)(i) that the membership or affili-
18 ation is or was involuntary, or is or was solely when under
19 16 years of age, by operation of law, or for purposes of
20 obtaining employment, food rations, or other essentials of
21 living and whether necessary for such purposes.

22 “(C) Subparagraph (A) shall not apply to an alien
23 because of membership or affiliation if the alien estab-
24 lishes to the satisfaction of the consular officer when ap-
25 plying for a visa (or to the satisfaction of the Secretary

1 of Homeland Security when applying for admission) under
2 section 101(a)(15)(H)(i) that—

3 “(i) the membership or affiliation terminated at
4 least—

5 “(I) 2 years before the date of such appli-
6 cation; or

7 “(II) 5 years before the date of such appli-
8 cation, in the case of an alien whose member-
9 ship or affiliation was with the party controlling
10 the government of a foreign state that is a to-
11 talitarian dictatorship as of such date; and

12 “(ii) the alien is not a threat to the security of
13 the United States.

14 “(D) The Secretary of Homeland Security may, in
15 the Secretary’s discretion, waive the application of sub-
16 paragraph (A) in the case of an alien who is the parent,
17 spouse, son, daughter, brother, or sister of a citizen of the
18 United States or a spouse, son, or daughter of an alien
19 lawfully admitted for permanent residence for humani-
20 tarian purposes, to assure family unity, or when it is oth-
21 erwise in the public interest if the alien is not a threat
22 to the security of the United States.”.

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

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

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

13 “(aa) disclosed information that the employee
14 reasonably believes evidences a violation of this sub-
15 section or any rule or regulation pertaining to this
16 subsection; or

17 “(bb) cooperated or sought to cooperate with
18 the requirements under this subsection or any rule
19 or regulation pertaining to this subsection.

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

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

24 “(aa) a current employee;

25 “(bb) a former employee; and

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

1 (b) INFORMATION SHARING.—Section 212(n)(2)(H)
 2 of the Immigration and Nationality Act (8 U.S.C.
 3 1182(n)(2)(H)) is amended to read as follows:

4 “(H)(i) The Director of U.S. Citizenship and Immi-
 5 gration Services shall provide the Secretary of Labor with
 6 any information contained in the materials submitted by
 7 employers of H–1B nonimmigrants as part of the petition
 8 adjudication process that indicates that the employer is
 9 not complying with visa program requirements for H–1B
 10 nonimmigrants.

11 “(ii) The Secretary may initiate and conduct an in-
 12 vestigation and hearing under this paragraph after receiv-
 13 ing information of noncompliance under this subpara-
 14 graph.”.

15 **SEC. 6. LABOR CONDITION APPLICATIONS.**

16 (a) APPLICATION REVIEW REQUIREMENTS.—Section
 17 212(n)(1) of the Immigration and Nationality Act (8
 18 U.S.C. 1182(n)(1)) is amended, in the undesignated mat-
 19 ter following subparagraph (I), as added by section 4(b)—

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

23 (2) in the fifth sentence, by striking “only for
 24 completeness” and inserting “for completeness, clear

1 indicators of fraud or misrepresentation of material
2 fact,”;

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

7 (4) by adding at the end the following: “If the
8 Secretary’s review of an application identifies clear
9 indicators of fraud or misrepresentation of material
10 fact, the Secretary may conduct an investigation and
11 hearing in accordance with paragraph (2).”.

12 (b) ENSURING PREVAILING WAGES ARE FOR AREA
13 OF EMPLOYMENT AND ACTUAL WAGES ARE FOR SIMI-
14 LARLY EMPLOYED.—Section 212(n)(1)(A) of the Immi-
15 gration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is
16 amended—

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

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

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

22 “(iii) will ensure that—

23 “(I) the actual wages or range identi-
24 fied in clause (i) relate solely to employees
25 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—

1 “(aa) surveys of the degree to which employers
 2 comply with the requirements under this subsection;
 3 and

4 “(bb) subject to subclause (IV), annual compli-
 5 ance audits of any employer that employs H-1B
 6 nonimmigrants during the applicable calendar year.

7 “(III) Subject to subclause (IV), the Secretary
 8 shall—

9 “(aa) conduct annual compliance audits of each
 10 employer that employs more than 100 full-time
 11 equivalent employees who are employed in the
 12 United States if more than 15 percent of such full-
 13 time employees are H-1B nonimmigrants; and

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

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

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

1 (1) in clause (i)—

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) by striking “clause (viii)” and insert-
10 ing “clause (vi)”;

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

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

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

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

23 “(III) The Secretary is not required to comply with
24 this clause if the Secretary determines that such compli-
25 ance would interfere with an effort by the Secretary to

1 investigate or secure compliance by the employer with the
2 requirements of this subsection.

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

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

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

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

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

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

7 “(o) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
 8 BASED IMMIGRANTS.—

9 “(1) IN GENERAL.—Notwithstanding subsection
 10 (a)(3), an alien (including the alien’s spouse or
 11 child, if eligible to receive a visa under section
 12 203(d)), may file an application for adjustment of
 13 status if—

14 “(A) the alien—

15 “(i) is present in the United States
 16 pursuant to a lawful admission as a non-
 17 immigrant, other than a nonimmigrant de-
 18 scribed in subparagraph (B), (C), (D), or
 19 (S) of section 101(a)(15), section 212(l),
 20 or section 217; and

21 “(ii) subject to subsection (k), is not
 22 ineligible for adjustment of status under
 23 subsection (c); and

24 “(B) not less than 2 years have elapsed
 25 since the immigrant visa petition filed by or on

1 behalf of the alien under subparagraph (E) or
2 (F) of section 204(a)(1) was approved.

3 “(2) PROTECTION FOR CHILDREN.—The child
4 of a principal alien who files an application for ad-
5 justment of status under this subsection shall con-
6 tinue to qualify as a child for purposes of the appli-
7 cation, regardless of the child’s age or whether the
8 principal alien is deceased at the time an immigrant
9 visa becomes available.

10 “(3) TRAVEL AND EMPLOYMENT AUTHORIZA-
11 TION.—

12 “(A) ADVANCE PAROLE.—Applicants for
13 adjustment of status under this subsection shall
14 be eligible for advance parole under the same
15 terms and conditions as applicants for adjust-
16 ment of status under subsection (a).

17 “(B) EMPLOYMENT AUTHORIZATION.—

18 “(i) PRINCIPAL ALIEN.—Subject to
19 paragraph (4), a principal applicant for
20 adjustment of status under this subsection
21 shall be eligible for work authorization
22 under the same terms and conditions as
23 applicants for adjustment of status under
24 subsection (a).

1 “(ii) LIMITATIONS ON EMPLOYMENT
2 AUTHORIZATION FOR DEPENDENTS.—A
3 dependent alien who was neither author-
4 ized to work nor eligible to request work
5 authorization at the time an application for
6 adjustment of status is filed under this
7 subsection shall not be eligible to receive
8 work authorization due to the filing of
9 such application.

10 “(4) CONDITIONS ON ADJUSTMENT OF STATUS
11 AND EMPLOYMENT AUTHORIZATION FOR PRINCIPAL
12 ALIENS.—

13 “(A) IN GENERAL.—During the time an
14 application for adjustment of status under this
15 subsection is pending and until such time an
16 immigrant visa becomes available—

17 “(i) the terms and conditions of the
18 alien’s employment, including duties,
19 hours, and compensation, must be com-
20 mensurate with the terms and conditions
21 applicable to the employer’s similarly situ-
22 ated United States workers in the area of
23 employment, or if the employer does not
24 employ and has not recently employed
25 more than two such workers, the terms

1 and conditions of such employment must
2 be commensurate with the terms and con-
3 ditions applicable to other similarly situ-
4 ated United States workers in the area of
5 employment; and

6 “(ii) consistent with section 204(j), if
7 the alien changes positions or employers,
8 the new position is in the same or a similar
9 occupational classification as the job for
10 which the petition was filed.

11 “(B) SPECIAL FILING PROCEDURES.—An
12 application for adjustment of status filed by a
13 principal alien under this subsection shall be ac-
14 companied by—

15 “(i) a signed letter from the principal
16 alien’s current or prospective employer at-
17 testing that the terms and conditions of
18 the alien’s employment are commensurate
19 with the terms and conditions of employ-
20 ment for similarly situated United States
21 workers in the area of employment; and

22 “(ii) other information deemed nec-
23 essary by the Secretary of Homeland Secu-
24 rity to verify compliance with subpara-
25 graph (A).

1 “(C) APPLICATION FOR EMPLOYMENT AU-
2 THORIZATION.—

3 “(i) IN GENERAL.—An application for
4 employment authorization filed by a prin-
5 cipal applicant for adjustment of status
6 under this subsection shall be accompanied
7 by a Confirmation of Bona Fide Job Offer
8 or Portability (or any form associated with
9 section 204(j)) attesting that—

10 “(I) the job offered in the immi-
11 grant visa petition remains a bona
12 fide job offer that the alien intends to
13 accept upon approval of the adjust-
14 ment of status application; or

15 “(II) the alien has accepted a
16 new full-time job in the same or a
17 similar occupational classification as
18 the job described in the approved im-
19 migrant visa petition.

20 “(ii) VALIDITY.—An employment au-
21 thorization document issued to a principal
22 alien who has filed an application for ad-
23 justment of status under this subsection
24 shall be valid for three years.

1 “(iii) RENEWAL.—Any request by a
2 principal alien to renew an employment au-
3 thorization document associated with such
4 alien’s application for adjustment of status
5 filed under this subsection shall be accom-
6 panied by the evidence described in sub-
7 paragraphs (B) and (C)(i).

8 “(5) DECISION.—

9 “(A) IN GENERAL.—An adjustment of sta-
10 tus application filed under paragraph (1) may
11 not be approved—

12 “(i) until the date on which an immi-
13 grant visa becomes available; and

14 “(ii) if the principal alien has not,
15 within the preceding 12 months, filed a
16 Confirmation of Bona Fide Job Offer or
17 Portability (or any form associated with
18 section 204(j)).

19 “(B) REQUEST FOR EVIDENCE.—If at the
20 time an immigrant visa becomes available, a
21 Confirmation of Bona Fide Job Offer or Port-
22 ability (or any form associated with section
23 204(j)) has not been filed by the principal alien
24 within the preceding 12 months, the Secretary

1 of Homeland Security shall notify the alien and
2 provide instructions for submitting such form.

3 “(C) NOTICE OF INTENT TO DENY.—If the
4 most recent Confirmation of Bona Fide Job
5 Offer or Portability (or any form associated
6 with section 204(j)) or any prior form indicates
7 a lack of compliance with paragraph (4)(A), the
8 Secretary of Homeland Security shall issue a
9 notice of intent to deny the application for ad-
10 justment of status and provide the alien the op-
11 portunity to submit evidence of compliance.

12 “(D) DENIAL.—An application for adjust-
13 ment of status under this subsection may be de-
14 nied if the alien fails to—

15 “(i) timely file a Confirmation of
16 Bona Fide Job Offer or Portability (or any
17 form associated with section 204(j)) in re-
18 sponse to a request for evidence issued
19 under subparagraph (B); or

20 “(ii) establish, by a preponderance of
21 the evidence, compliance with paragraph
22 (4)(A).

23 “(6) FEES.—

24 “(A) IN GENERAL.—Notwithstanding any
25 other provision of law, the Secretary of Home-

land Security shall charge and collect a fee in the amount of \$2,000 to process each Confirmation of Bona Fide Job Offer or Portability (or any form associated with section 204(j)) filed under this subsection.

“(B) DEPOSIT AND USE OF FEES.—Fees collected under subparagraph (A) shall be deposited and used as follows:

“(i) Fifty percent of such fees shall be deposited in the Immigration Examinations Fee Account established under section 286(m).

“(ii) Fifty percent of such fees shall be deposited in the Treasury of the United States as miscellaneous receipts.

“(7) APPLICATION.—

“(A) The provisions of this subsection—

“(i) shall apply beginning on the date that is one year after the date of the enactment of the Equal Access to Green cards for Legal Employment Act of 2023; and

“(ii) except as provided in subparagraph (B), shall cease to apply as of the

1 date that is nine years after the date of the
2 enactment of such Act.

3 “(B) This subsection shall continue to
4 apply with respect to any alien who has filed an
5 application for adjustment of status under this
6 subsection any time prior to the date on which
7 this subsection otherwise ceases to apply.

8 “(8) CLARIFICATIONS.—For purposes of this
9 subsection:

10 “(A) The term ‘similarly situated United
11 States workers’ includes United States workers
12 performing similar duties, subject to similar su-
13 pervision, and with similar educational back-
14 grounds, industry expertise, employment experi-
15 ence, levels of responsibility, and skill sets as
16 the alien in the same geographic area of em-
17 ployment as the alien.

18 “(B) The duties, hours, and compensation
19 of the alien are ‘commensurate’ with those of-
20 fered to United States workers in the same area
21 of employment if the employer can demonstrate
22 that the duties, hours, and compensation are
23 consistent with the range of such terms and
24 conditions the employer has offered or would

1 offer to similarly situated United States em-
2 ployees.”.

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

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