I

118TH CONGRESS
1ST SESSION

H. R. 6542

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 HOUSE OF REPRESENTATIVES

DECEMBER 1, 2023

Mr. MCCORMICK (for himself, Mr. KRISHNAMOORTHI, and Ms. JAYAPAL) introduced the following bill; which was referred to the Committee on the Judiciary

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Immigration Visa Efficiency and Security Act of 2023''.

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 the Immigration and Nationality 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) APPLICATION.—The amendments made by this section shall apply beginning on the date that is the first day of the second fiscal year beginning after the date of the enactment of this Act.

(d) TRANSITION RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—Notwithstanding title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.), the following transition rules shall apply to employment-based immigrants, beginning on the date referred to in subsection (d):

(1) RESERVED VISAS FOR LOWER ADMISSION STATES.—

(A) IN GENERAL.—For the first nine fiscal years after the date referred to in subsection

(d), immigrant visas 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 reserved and 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 as follows:

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

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

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

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

(v) For the fifth and sixth fiscal years 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 immi-

grant 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 adjustment of status to lawful permanent residence under paragraph (2) or (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

(ii) NEW PRINCIPAL ARRIVALS.—If at the end of the second quarter of any fiscal year, the total number of visas reserved

under this subparagraph exceeds the number of qualified immigrants described in clause (i), such visas may also be allocated, for the remainder of the fiscal year, to 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)) to enter the United States as new immigrants, and who have not resided or worked in the United States at any point in the four-year period immediately preceding the filing of the immigrant visa petition.

(iii) OTHER NEW ARRIVALS.—If at 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).

(B) FAMILY MEMBERS.—Family members who are accompanying or following to join a principal beneficiary described in subparagraph (A) shall be entitled to a visa in the same status and in the same order of consideration as such principal beneficiary, but such visa shall

not be counted against the 4,400 immigrant visas reserved under such subparagraph.

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

(A) not more than 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 visas reserved under paragraph (1) shall be allocated to immigrants who are natives of any single foreign state or dependent area; and

(B) 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), may be allocated to immigrants who are native to any single foreign state or dependent area.

(4) SPECIAL RULE TO PREVENT UNUSED VISAS.—If, at the end of the third quarter of any fiscal year, the Secretary of State determines that the application of paragraphs (1) through (3) would result in visas made available under paragraph (2) or (3) of section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) going unused in

that fiscal year, such visas may be allocated during the remainder of such fiscal year without regard to paragraphs (1) through (3).

(5) 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 such Act (8 U.S.C. 1153(d)) shall apply in allocating immigrant visas to family members, for purposes of this subsection.

(6) DETERMINATION OF TWO FOREIGN STATES OR DEPENDENT AREAS WITH HIGHEST DEMAND.—The two foreign states or dependent areas with the highest demand for immigrant visas, as referred to in this subsection, are the two foreign states or dependent areas with the largest aggregate number beneficiaries of petitions for an immigrant visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) that have been approved, but where an immigrant visa is not yet available, as determined by the Secretary of State, in consultation with the Secretary of Homeland Security.

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 Immigration Visa Efficiency and Security 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.

''(B) The Secretary may delay the launch of the website described in subparagraph (A) for a single period identified by the Secretary by notice in the Federal Register that shall not exceed 30 days.

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

''(D) 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 beginning on 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 notice of the filing under this paragraph'' and inserting the following:

''(ii)(I) has provided notice of the filing under this paragraph''; 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 each nonimmigrant will be employed;

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

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

''(IV) each location at which a nonimmigrant 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) the following new subparagraph:

''(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.

''(iii) 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 Immigra-

tion 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 the enactment of this Act.

(3) APPLICATION.—The amendment made by this subsection shall apply with respect to an employer commencing on the date that is 180 days after the date of the 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.''.

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

''(13) An alien normally classifiable under section 101(a)(15)(I) who seeks admission to the United States solely as a representative of the foreign press, radio, film, or other foreign information media, may not be issued a visa or admitted under section 101(a)(15)(H)(i) to engage in such vocation.''.

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 em-

ployer 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. WAGE REQUIREMENT.

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

(1) in paragraph (1)—

(A) by amending subparagraph (A) to read as follows:

''(A) Subject to subparagraphs (B) and (C), the employer—

''(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least the greater of—

''(I) $90,000 or the applicable adjusted amount under subclause (II), or

"(II) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

"(III) the prevailing wage level for the occupational classification in the area of employment, and

"(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

"(B) Effective for the third fiscal year that begins after the date of the enactment of this clause, and each third fiscal year thereafter, the amount described in subparagraph (A)(i)(I) (as of the last increase to such amount) shall be increased by the percentage by which the Consumer Price Index, as calculated by the Bureau of Labor Statistics, for the month of June preceding the date on which such increase would take effect exceeds the Consumer Price Index for the June of the third preceding calendar year.

"(C) Post-secondary education institutions, any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, and any health care provider located in designated health professional shortage areas pursuant to section 332 of the Public Health Service Act, shall be exempt from the minimum under subparagraph (A) and have their applications considered equally."; and

(B) by redesignating subparagraphs (B), (C), (D), (E), (F), and (G) as subparagraphs (D), (E), (F), (G), (H), and (I), respectively; and

(2) in paragraph (3)(B), by striking clause (i) and inserting the following:

"(i) the term 'exempt H–1B nonimmigrant' means an H–1B nonimmigrant who receives wages in accordance with paragraph (1)(A);".

SEC. 8. PROHIBITION OF CERTAIN VISAS FOR NATIONALS OF FOREIGN ADVERSARY COUNTRIES.

Notwithstanding any other provision of law, an alien from a foreign adversary country as defined in 47 U.S.C. 1607(c)(2) may not be admitted as a nonimmigrant under

section 101(a)(15)(H)(i)(b) or section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b); 1101(a)(1)(H)(iii)) for employment in any matter with respect to the vital national interest.

SEC. 9. ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.

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

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

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

''(A) the alien—

''(i) is present in the United States pursuant to a lawful admission as a nonimmigrant, other than a nonimmigrant described in subparagraph (B), (C), (D), or (S) of section 101(a)(15), section 212(l), or section 217; and

''(ii) subject to subsection (k), is not ineligible for adjustment of status under subsection (c); and

''(B) not less than 2 years have elapsed since the immigrant visa petition filed by or on behalf of the alien under subparagraph (E) or (F) of section 204(a)(1) was approved.

''(2) PROTECTION FOR CHILDREN.—The child of a principal alien who files an application for adjustment of status under this subsection shall continue to qualify as a child for purposes of the application, regardless of the child's age or whether the principal alien is deceased at the time an immigrant visa becomes available.

''(3) TRAVEL AND EMPLOYMENT AUTHORIZATION.—

''(A) ADVANCE PAROLE.—Applicants for adjustment of status under this subsection shall be eligible for advance parole under the same terms and conditions as applicants for adjustment of status under subsection (a).

''(B) EMPLOYMENT AUTHORIZATION.—

''(i) PRINCIPAL ALIEN.—Subject to paragraph (4), a principal applicant for adjustment of status under this subsection

shall be eligible for work authorization under the same terms and conditions as applicants for adjustment of status under subsection (a).

''(ii) LIMITATIONS ON EMPLOYMENT AUTHORIZATION FOR DEPENDENTS.—A dependent alien who was neither authorized to work nor eligible to request work authorization at the time an application for adjustment of status is filed under this subsection shall not be eligible to receive work authorization due to the filing of such application.

''(4) CONDITIONS ON ADJUSTMENT OF STATUS AND EMPLOYMENT AUTHORIZATION FOR PRINCIPAL ALIENS.—

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

''(i) the terms and conditions of the alien's employment, including duties, hours, and compensation, must be commensurate with the terms and conditions applicable to the employer's similarly situ-

ated United States workers in the area of employment, or if the employer does not employ and has not recently employed more than two such workers, the terms and conditions of such employment must be commensurate with the terms and conditions applicable to other similarly situated United States workers in the area of employment; and

''(ii) consistent with section 204(j), if the alien changes positions or employers, the new position shall be in the same or a similar occupational classification as the job for which the petition was filed.

''(B) SPECIAL FILING PROCEDURES.—An application for adjustment of status filed by a principal alien under this subsection shall be accompanied by—

''(i) a signed letter from the principal alien's 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 similarly situated United States workers in the area of employment; and

''(ii) other information deemed necessary by the Secretary of Homeland Security to verify compliance with subparagraph (A).

''(C) APPLICATION FOR EMPLOYMENT AUTHORIZATION.—

''(i) IN GENERAL.—An application for employment authorization filed by a principal applicant for adjustment of status under this subsection shall be accompanied by a Confirmation of Bona Fide Job Offer or Portability (or any form associated with section 204(j)) attesting that—

''(I) the job offered in the immigrant visa petition remains a bona fide job offer that the alien intends to accept upon approval of the adjustment of status application; or

''(II) the alien has accepted a new full-time job in the same or a similar occupational classification as the job described in the approved immigrant visa petition.

''(ii) VALIDITY.—An employment authorization document issued to a principal

alien who has filed an application for adjustment of status under this subsection shall be valid for three years.

''(iii) RENEWAL.—Any request by a principal alien to renew an employment authorization document associated with such alien's application for adjustment of status filed under this subsection shall be accompanied by the evidence described in subparagraphs (B) and (C)(i).

''(5) DECISION.—

''(A) IN GENERAL.—An adjustment of status application filed under paragraph (1) may not be approved—

''(i) until the date on which an immigrant visa becomes available; and

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

''(B) REQUEST FOR EVIDENCE.—If at the time an immigrant visa becomes available, a Confirmation of Bona Fide Job Offer or Portability (or any form associated with section

204(j)) has not been filed by the principal alien within the preceding 12 months, the Secretary of Homeland Security shall notify the alien and provide instructions for submitting such form.

''(C) NOTICE OF INTENT TO DENY.—If the most recent Confirmation of Bona Fide Job Offer or Portability (or any form associated with section 204(j)) or any prior form indicates a lack of compliance with paragraph (4)(A), the Secretary of Homeland Security shall issue a notice of intent to deny the application for adjustment of status and provide the alien the opportunity to submit evidence of compliance.

''(D) DENIAL.—An application for adjustment of status under this subsection may be denied if the alien fails to—

''(i) timely file a Confirmation of Bona Fide Job Offer or Portability (or any form associated with section 204(j)) in response to a request for evidence issued under subparagraph (B); or

''(ii) establish, by a preponderance of the evidence, compliance with paragraph (4)(A).

''(6) FEES.—

''(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 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) IN GENERAL.—The provisions of this subsection—

''(i) shall apply beginning on the date that is one year after the date of the enactment of the Immigration Visa Efficiency and Security Act of 2023; and

"(ii) except as provided in subparagraph (B), shall cease to apply as of the date that is nine years after the date of the enactment of such Act.

"(B) APPLICABILITY.—This subsection shall continue to apply with respect to any alien who has filed an application for adjustment of status under this subsection any time prior to the date on which this subsection otherwise ceases to apply.

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

"(A) The term '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.

"(B) The duties, hours, and compensation of the alien are 'commensurate' with those offered to United States workers in the same area of employment if the employer can demonstrate 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.''.

(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)''.

SEC. 10. DESCRIPTIONS OF CERTAIN TERMS; REPORT REQUIRED.

(a) MATTER OF VITAL NATIONAL INTEREST DESCRIBED.—The term ''matter of vital national interest'' means an occupation where the employee will be working on a government contract related to matters, including—

(1) cybersecurity;

(2) energy; or

(3) the national defense.

(b) DETERMINATION UPDATE REQUIRED.—The Secretary of Homeland Security shall update a determination made pursuant to subsection (a) not less than every two years.

(c) REPORT REQUIRED.—

(1) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall report to Congress on

the countries and sectors of industry, respectively, that meet the determination made pursuant to subsections (a).

(2) REPORT UPDATE REQUIRED.—The Secretary of Homeland Security shall update the report under paragraph (1) after any change is made to a determination made pursuant to subsections (a) and shall update the report not less than every two years.

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