

116TH CONGRESS
2D SESSION

S. _____

To temporarily suspend the diversity visa program, to designate residents of the Hong Kong Special Administrative Region as Priority 2 refugees of special humanitarian concern, to provide special visas to highly-qualified residents of Hong Kong, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. COTTON introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To temporarily suspend the diversity visa program, to designate residents of the Hong Kong Special Administrative Region as Priority 2 refugees of special humanitarian concern, to provide special visas to highly-qualified residents of Hong Kong, 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 “Hong Kong Refugee
5 Protection Act”.

1 **SEC. 2. TEMPORARY SUSPENSION OF DIVERSITY VISA PRO-**
2 **GRAM.**

3 Notwithstanding sections 201(e) and 203(c) of the
4 Immigration and Nationality Act (8 U.S.C. 1151(e) and
5 1153(c)), the worldwide level of diversity immigrants for
6 each of the fiscal years 2021 through 2025 shall be zero.

7 **SEC. 3. DESIGNATION OF CERTAIN RESIDENTS OF HONG**
8 **KONG AS PRIORITY 2 REFUGEES.**

9 (a) IN GENERAL.—The Secretary of State, in con-
10 sultation with the Secretary of Homeland Security, shall
11 designate, as Priority 2 refugees of special humanitarian
12 concern, the following categories of aliens:

13 (1) Individuals who are residents of the Hong
14 Kong Special Administrative Region who suffered
15 persecution, or have a well-founded fear of persecu-
16 tion, on account of their peaceful expression of polit-
17 ical opinions or peaceful participation in political ac-
18 tivities or associations.

19 (2) Individuals who have been formally charged,
20 detained, or convicted on account of their peaceful
21 actions as described in section 206(b)(2) the United
22 States-Hong Kong Policy Act of 1992 (22 U.S.C.
23 5726).

24 (3) The spouses, children, and parents (as such
25 terms are defined in subsections (a) and (b) of sec-
26 tion 101 of the Immigration and Nationality Act (8

1 U.S.C. 1101)) of individuals described in paragraph
2 (1) or (2), except such parents who are citizens of
3 a country other than the People's Republic of China.

4 (b) PROCESSING OF HONG KONG REFUGEES.—The
5 processing of individuals described in subsection (a) for
6 classification as refugees may occur in Hong Kong or in
7 a third country.

8 (c) ELIGIBILITY FOR ADMISSION AS REFUGEES.—An
9 alien may not be denied the opportunity to apply for ad-
10 mission as a refugee under this section primarily because
11 such alien—

12 (1) qualifies as an immediate relative of a cit-
13 izen of the United States; or

14 (2) is eligible for admission to the United
15 States under any other immigrant classification.

16 (d) FACILITATION OF ADMISSIONS.—An applicant
17 for admission to the United States from the Hong Kong
18 Special Administrative Region may not be denied pri-
19 marily on the basis of a politically motivated arrest, deten-
20 tion, or other adverse government action taken against
21 such applicant as a result of the participation by such ap-
22 plicant in protest activities.

23 (e) AUTHORIZATION OF ADDITIONAL REFUGEE AD-
24 MISSIONS.—If the number of refugees admitted under sec-
25 tion 207 of the Immigration and Nationality Act (8 U.S.C.

1 1157) in a fiscal year is equal to the number of refugees
2 authorized to be admitted under such section, as amended
3 by section 6, 25,000 additional aliens described in sub-
4 section (a) may be provided refugee status under this sec-
5 tion.

6 (f) REPORTING REQUIREMENTS.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of the enactment of this Act, and
9 every 90 days thereafter, the Secretary of State and
10 the Secretary of Homeland Security shall submit a
11 report on the matters described in paragraph (2)
12 to—

13 (A) the Committee on the Judiciary of the
14 Senate;

15 (B) the Committee on Foreign Relations of
16 the Senate;

17 (C) the Committee on the Judiciary of the
18 House of Representatives; and

19 (D) the Committee on Foreign Affairs of
20 the House of Representatives.

21 (2) MATTERS TO BE INCLUDED.—Each report
22 required under paragraph (1) shall include—

23 (A) the total number of applications that
24 are pending at the end of the reporting period;

1 (B) the average wait-times for all appli-
2 cants who are currently pending—

3 (i) employment verification;

4 (ii) a prescreening interview with a re-
5 settlement support center;

6 (iii) an interview with U.S. Citizen-
7 ship and Immigration Services; and

8 (iv) the completion of security checks;
9 and

10 (C) the number of denials of applications
11 for refugee status, disaggregated by the reason
12 for each such denial.

13 (3) FORM.—Each report required under para-
14 graph (1) shall be submitted in unclassified form,
15 but may include a classified annex.

16 (4) PUBLIC REPORTS.—The Secretary of State
17 shall make each report submitted under this sub-
18 section available to the public on the internet website
19 of the Department of State.

20 (g) SATISFACTION OF OTHER REQUIREMENTS.—
21 Aliens granted status under this section as Priority 2 refu-
22 gees of special humanitarian concern under the refugee
23 resettlement priority system shall be considered to satisfy
24 the requirements under section 207 of the Immigration

1 and Nationality Act (8 U.S.C. 1157) for admission to the
2 United States.

3 **SEC. 4. WAIVER OF IMMIGRANT STATUS PRESUMPTION.**

4 (a) IN GENERAL.—The presumption under the first
5 sentence of section 214(b) (8 U.S.C. 1184(b)) that every
6 alien is an immigrant until the alien establishes that the
7 alien is entitled to nonimmigrant status shall not apply
8 to an alien described in subsection (b).

9 (b) ALIEN DESCRIBED.—

10 (1) IN GENERAL.—An alien described in this
11 paragraph is an alien who—

12 (A) on June 30, 2020, is a resident of the
13 Hong Kong Special Administrative Region;

14 (B) is seeking entry to the United States
15 to apply for asylum under section 208 of the
16 Immigration and Nationality Act (8 U.S.C.
17 1158); and

18 (C)(i) had a leadership role in civil society
19 organizations supportive of the protests in 2019
20 and 2020 relating to the Hong Kong extra-
21 dition bill and the encroachment on the auton-
22 omy of Hong Kong by the People's Republic of
23 China;

24 (ii) had an organizing role for such pro-
25 tests;

1 (iii) acted as a first aid responder for such
2 protests;

3 (iv) suffered harm while covering such pro-
4 tests as a journalist;

5 (v) provided paid or pro-bono legal services
6 to 1 or more individuals arrested for partici-
7 pating in such protests; or

8 (vi) during the period beginning on June
9 9, 2019, and ending on June 30, 2020, was for-
10 mally charged, detained, or convicted for his or
11 her participation in such protests.

12 (2) EXCLUSION.—An alien described in this
13 paragraph does not include any alien who is a citizen
14 of a country other than the People's Republic of
15 China.

16 **SEC. 5. REFUGEE AND ASYLUM DETERMINATIONS UNDER**
17 **THE IMMIGRATION AND NATIONALITY ACT.**

18 (a) PERSECUTION ON ACCOUNT OF POLITICAL OPIN-
19 ION.—

20 (1) IN GENERAL.—For purposes of refugee de-
21 terminations under this Act in accordance with sec-
22 tion 207 of the Immigration and Nationality Act (8
23 U.S.C. 1157), an individual whose citizenship, na-
24 tionality, or residency is revoked for having sub-
25 mitted to any United States Government agency a

1 nonfrivolous application for refugee status, asylum,
2 or any other immigration benefit under the immigra-
3 tion laws (as defined in section 101(a) of that Act
4 (8 U.S.C. 1101(a)) shall be considered to have suf-
5 fered persecution on account of political opinion.

6 (2) NATIONALS OF THE PEOPLE'S REPUBLIC OF
7 CHINA.—For purposes of refugee determinations
8 under this Act in accordance with section 207 of the
9 Immigration and Nationality Act (8 U.S.C. 1157), a
10 national of the People's Republic of China whose
11 residency in the Hong Kong Special Administrative
12 region, or any other area within the jurisdiction of
13 the People's Republic of China, as determined by the
14 Secretary of State, is revoked for having submitted
15 to any United States Government agency a nonfrivo-
16 lous application for refugee status, asylum, or any
17 other immigration benefit under the immigration
18 laws shall be considered to have suffered persecution
19 on account of political opinion.

20 (b) CHANGED CIRCUMSTANCES.—For purposes of
21 asylum determinations under this Act in accordance with
22 section 208 of the Immigration and Nationality Act (8
23 U.S.C. 1158), the revocation of the citizenship, nation-
24 ality, or residency of an individual for having submitted
25 to any United States Government agency a nonfrivolous

1 application for refugee status, asylum, or any other immi-
2 gration benefit under the immigration laws shall be con-
3 sidered to be a changed circumstance under subsection
4 (a)(2)(D) of that section.

5 **SEC. 6. ANNUAL ADMISSION OF REFUGEES.**

6 Section 207 of the Immigration and Nationality Act
7 (8 U.S.C. 1157) is amended—

8 (1) by striking subsections (a), (b), and (e);

9 (2) by redesignating subsections (c), (d), and
10 (f) as subsections (b), (c), and (d), respectively;

11 (3) by striking “Attorney General” each place
12 such term appears and inserting “Secretary of
13 Homeland Security”;

14 (4) in subsection (b), as redesignated, by strik-
15 ing “subsections (a) and (b)” and inserting “sub-
16 section (a)”;

17 (5) in subsection (c), as redesignated—

18 (A) in paragraph (1), by striking the para-
19 graph enumerator; and

20 (B) by striking paragraphs (2) and (3);
21 and

22 (6) by inserting before subsection (b), as red-
23 igned, the following:

24 “(a) MAXIMUM NUMBER OF ADMISSIONS.—

1 “(1) IN GENERAL.—The number of refugees
2 who may be admitted under this section in any fiscal
3 year may not exceed 50,000.

4 “(2) ASYLEES.—The President shall annually
5 enumerate the number of aliens who were granted
6 asylum in the previous fiscal year.”.

7 **SEC. 7. SPECIAL VISAS FOR HIGHLY-QUALIFIED RESIDENTS**
8 **OF HONG KONG.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, the Secretary of Homeland Security, in col-
11 laboration with the Secretary of State, shall establish a
12 pilot program through which up to 30,000 points-based
13 immigration visas shall be made available each fiscal year
14 during fiscal years 2021 through 2025 for eligible Hong
15 Kong residents based on the points system set forth in
16 subsection (b).

17 (b) IMMIGRATION POINTS SYSTEM FOR HONG KONG
18 RESIDENTS.—

19 (1) DEFINITIONS.—In this section:

20 (A) ELIGIBLE HONG KONG RESIDENT.—

21 The term “eligible Hong Kong resident” means
22 an individual who—

23 (i)(I) was a resident of the Hong
24 Kong Special Administrative Region on
25 June 30, 2018; or

1 (II) has been a resident of the Hong
2 Kong Special Administrative Region dur-
3 ing the entire 60-day period ending on the
4 date on which he or she applies for a visa
5 under this section;

6 (ii) is a citizen of the People's Repub-
7 lic of China; and

8 (iii) is not a citizen of any other coun-
9 try.

10 (B) ENGLISH LANGUAGE PROFICIENCY
11 TEST.—The term “English language proficiency
12 test” means—

13 (i) the International English Lan-
14 guage Testing System (IELTS), as admin-
15 istered by a partnership between the Brit-
16 ish Council, IDP Education, and Cam-
17 bridge English Language Assessment;

18 (ii) the Test of English as a Foreign
19 Language (TOEFL), as administered by
20 the Educational Testing Service; or

21 (iii) any other test to measure English
22 proficiency that has been approved by the
23 Director of U.S. Citizenship and Immigra-
24 tion Services for purposes of paragraph (5)
25 that meets the standards of English lan-

1 guage ability measurement and anti-fraud
2 integrity set by the IELTS or the TOEFL.

3 (C) ENGLISH LANGUAGE PROFICIENCY
4 TEST RANKING.—

5 (i) IN GENERAL.—Subject to clause
6 (ii), the term “English language pro-
7 ficiency test ranking” means the decile
8 rank of the applicant’s English language
9 proficiency test score, when compared with
10 all of the other people who took the same
11 test during the same period.

12 (ii) ADJUSTMENT.—The Commis-
13 sioner of U.S. Citizenship and Immigration
14 Services, in consultation with the Secretary
15 of Education, may adjust the decile rank
16 of an applicant’s English language pro-
17 ficiency test score if the number of people
18 taking such test is too small or unusually
19 skewed to make such decile rank incon-
20 sistent with the decile rank the applicant
21 would have received if he or she had taken
22 the IELTS or TOEFL.

23 (D) HIGH SCHOOL.—The term “high
24 school” has the meaning given such term in

1 section 8101 of the Elementary and Secondary
2 Education Act of 1965 (20 U.S.C. 7801).

3 (E) IELTS.—The term “IELTS” means
4 the International English Language Testing
5 System.

6 (F) INSTITUTION OF HIGHER EDU-
7 CATION.—The term “institution of higher edu-
8 cation” has the meaning given such term in
9 section 101 of the Higher Education Act of
10 1965 (20 U.S.C. 1001).

11 (G) PROFESSIONAL DEGREE.—The term
12 “professional degree” includes—

13 (i) Master’s of Business Administra-
14 tion;

15 (ii) Doctor of Jurisprudence; and

16 (iii) Doctor of Medicine.

17 (H) STEM.—The term “STEM” means
18 the academic discipline of science, technology,
19 engineering, or mathematics.

20 (I) TOEFL.—The term “TOEFL” means
21 the Test of English as a Foreign Language.

22 (2) IN GENERAL.—An eligible Hong Kong resi-
23 dent may submit an application for placement in the
24 eligible applicant pool under subsection (c) if the ap-

1 plicant has accrued a total of 30 points under this
2 subsection.

3 (3) AGE.—

4 (A) IN GENERAL.—An applicant may ac-
5 crue points for age under this paragraph based
6 on the age of the applicant on the date on
7 which the applicant submits an application
8 under subsection (c).

9 (B) AGES 0 THROUGH 17.—An alien who
10 has not reached 18 years of age may not sub-
11 mit an application under subsection (c).

12 (C) AGES 18 THROUGH 21.—An applicant
13 who is at least 18 years of age and younger
14 than 22 years of age shall accrue 6 points.

15 (D) AGES 22 THROUGH 25.—An applicant
16 who is at least 22 years of age and younger
17 than 26 years of age shall accrue 8 points.

18 (E) AGES 26 THROUGH 30.—An applicant
19 who is at least 26 years of age and younger
20 than 31 years of age shall accrue 10 points.

21 (F) AGES 31 THROUGH 35.—An applicant
22 who is at least 31 years of age and younger
23 than 36 years of age shall accrue 8 points.

1 (G) AGES 36 THROUGH 40.—An applicant
2 who is at least 36 years of age and younger
3 than 41 years of age shall accrue 6 points.

4 (H) AGES 41 THROUGH 45.—An applicant
5 who is at least 41 years of age and younger
6 than 46 years of age shall accrue 4 points.

7 (I) AGES 46 THROUGH 50.—An applicant
8 who is at least 46 years of age and younger
9 than 51 years of age shall accrue 2 points.

10 (J) AGE 51 AND OLDER.—An applicant
11 who is at least 51 years of age may submit an
12 application under subsection (c), but shall not
13 accrue any points on account of age.

14 (4) EDUCATION.—

15 (A) IN GENERAL.—An applicant may only
16 accrue points for educational attainment under
17 this subsection based on the highest degree ob-
18 tained by the applicant as of the date on which
19 the applicant submits an application under sub-
20 section (c).

21 (B) UNITED STATES OR FOREIGN HIGH
22 SCHOOL DEGREE.—An applicant whose highest
23 degree is a diploma from a high school in the
24 United States, or the foreign equivalent of such

1 a degree, as determined by the Secretary of
2 Education, shall accrue 1 point.

3 (C) FOREIGN BACHELOR'S DEGREE.—An
4 applicant who has received the foreign equiva-
5 lent of a bachelor's degree from an institution
6 of higher education, as determined by the Sec-
7 retary of Education, but has not received a de-
8 gree described in subparagraphs (E) through
9 (H), shall accrue 5 points.

10 (D) UNITED STATES BACHELOR'S DE-
11 GREE.—An applicant who has received a bach-
12 elor's degree from an institution of higher edu-
13 cation, but has not received a degree described
14 in subparagraphs (E) through (H), shall accrue
15 6 points.

16 (E) FOREIGN MASTER'S DEGREE IN
17 STEM.—An applicant whose highest degree is a
18 master's degree in STEM from a foreign college
19 or university, approved by the Secretary of
20 Education, shall accrue 7 points.

21 (F) UNITED STATES MASTER'S DEGREE IN
22 STEM.—An applicant whose highest degree is a
23 master's degree in STEM from an institution of
24 higher education shall accrue 8 points.

1 (G) FOREIGN PROFESSIONAL DEGREE OR
2 DOCTORATE DEGREE IN STEM.—An applicant
3 whose highest degree is a foreign professional
4 degree or a doctorate degree in STEM, ap-
5 proved by the Secretary of Education, shall ac-
6 crue 10 points.

7 (H) UNITED STATES PROFESSIONAL DE-
8 GREE OR DOCTORATE DEGREE IN STEM.—An
9 applicant whose highest degree is a United
10 States professional degree or a doctorate degree
11 in STEM from an institution of higher edu-
12 cation shall accrue 13 points.

13 (I) APPROVED FOREIGN EDUCATIONAL IN-
14 STITUTIONS AND DEGREES.—The Director of
15 U.S. Citizenship and Immigration Services, in
16 cooperation with the Secretary of Education,
17 shall maintain and regularly update a list of
18 foreign educational institutions and degrees
19 that meet accreditation standards equivalent to
20 those recognized by major United States ac-
21 crediting agencies and are approved for the
22 purpose of accruing points under this para-
23 graph.

24 (5) ENGLISH LANGUAGE PROFICIENCY.—

1 (A) IN GENERAL.—An applicant may ac-
2 crue points for English language proficiency in
3 accordance with this subsection based on the
4 highest English language assessment test rank-
5 ing of the applicant as of the date on which the
6 applicant submits an application under sub-
7 section (c).

8 (B) 1ST THROUGH 5TH DECILES.—An ap-
9 plicant whose English language proficiency test
10 score is lower than the 6th decile rank shall not
11 accrue any points under this paragraph.

12 (C) 6TH AND 7TH DECILES.—An applicant
13 whose English language proficiency test score is
14 in the 6th or 7th decile ranks shall accrue 6
15 points.

16 (D) 8TH DECILE.—An applicant whose
17 English language proficiency test score is in the
18 8th decile rank shall accrue 10 points.

19 (E) 9TH DECILE.—An applicant whose
20 English language proficiency test score is in the
21 9th decile rank shall accrue 11 points.

22 (F) 10TH DECILE.—An applicant whose
23 English language proficiency test score is in the
24 10th decile rank shall accrue 12 points.

1 (6) EXTRAORDINARY ACHIEVEMENT.—An ap-
2 plicant may accrue, for extraordinary achievement
3 under this paragraph—

4 (A) 25 points if the applicant is a Nobel
5 Laureate or has received comparable recogni-
6 tion in a field of scientific or social scientific
7 study, as determined by the Director of U.S.
8 Citizenship and Immigration Services; and

9 (B) 15 points if the applicant, during the
10 8-year period immediately preceding the sub-
11 mission of an application under subsection (c),
12 earned an individual Olympic medal or placed
13 first in an international sporting event in which
14 the majority of the best athletes in an Olympic
15 sport were represented, as determined by the
16 Director of U.S. Citizenship and Immigration
17 Services.

18 (7) JOB OFFER.—

19 (A) IN GENERAL.—An applicant may ac-
20 crue, for highly compensated employment under
21 this paragraph—

22 (i) 5 points if the annual salary being
23 offered by the applicant's prospective em-
24 ployer is—

1 (I) at least 150 percent of the
2 median household income in the State
3 in which the applicant will be em-
4 ployed, as determined by the Sec-
5 retary of Labor; and

6 (II) less than 200 percent of
7 such median household income;

8 (ii) 8 points if the annual salary being
9 offered by the applicant's prospective em-
10 ployer is—

11 (I) at least 200 percent of the
12 median household income in the State
13 in which the applicant will be em-
14 ployed, as determined by the Sec-
15 retary of Labor; and

16 (II) less than 300 percent of
17 such median household income; and

18 (iii) 13 points if the annual salary
19 being offered by the applicant's prospective
20 employer is at least 300 percent of the me-
21 dian household income in the State in
22 which the applicant will be employed, as
23 determined by the Secretary of Labor.

21

1 (B) REQUIREMENT.—An applicant may
2 not be placed in the eligible applicant pool
3 under subsection (c) if—

4 (i) the applicant has not received a
5 degree higher than a bachelor's degree;
6 and

7 (ii) the applicant does not accrue any
8 points under subparagraph (A).

9 (8) INVESTMENT IN, AND ACTIVE MANAGEMENT
10 OF, NEW COMMERCIAL ENTERPRISE.—

11 (A) IN GENERAL.—An applicant may ac-
12 crue, for foreign investment under this sub-
13 section—

14 (i) 6 points if the applicant agrees—

15 (I) to invest the equivalent of
16 \$1,350,000 in foreign currency in a
17 new commercial enterprise in the
18 United States;

19 (II) to maintain such investment
20 for at least 3 years; and

21 (III) to play an active role in the
22 management of such commercial en-
23 terprise as the applicant's primary oc-
24 cupation; and

25 (ii) 12 points if the applicant agrees—

1 (I) to invest the equivalent of
2 \$1,800,000 in foreign currency in a
3 new commercial enterprise in the
4 United States;

5 (II) to maintain such investment
6 for at least 3 years; and

7 (III) to play an active role in the
8 management of such commercial en-
9 terprise as the applicant's primary oc-
10 cupation.

11 (B) FAILURE TO MAINTAIN INVEST-
12 MENT.—A points-based immigrant visa issued
13 under this section to an applicant who accrued
14 points under this paragraph shall be rescinded
15 if the applicant fails to comply with the require-
16 ments under paragraph (1) for a period in ex-
17 cess of 1 year.

18 (9) VALID OFFER OF ADMISSION UNDER FAM-
19 ILY PREFERENCE CATEGORY.—Any alien who was
20 granted admission to the United States under sec-
21 tion 203(a) of the Immigration and Nationality Act,
22 as in effect on the day before the date of enactment
23 of this Act, shall be entitled to 2 points if—

1 (A) the applicant was scheduled to receive
2 an immigrant visa under that preference cat-
3 egory; and

4 (B) the applicant did not receive an immi-
5 grant visa during the 1-year period beginning
6 on the date of the enactment of this Act.

7 (10) EFFECT OF SPOUSE ON ACCRUAL OF
8 POINTS.—

9 (A) IN GENERAL.—If an applicant has a
10 spouse who will be accompanying or following
11 to join the applicant in the United States, the
12 applicant will identify the points that the
13 spouse would accrue under each of paragraphs
14 (3) through (5) if he or she were applying for
15 a points-based immigrant visa.

16 (B) POINTS ADJUSTMENT.—For each of
17 the categories set forth in subsections (3)
18 through (5)—

19 (i) if the number of points that would
20 be accrued by the spouse is the same or
21 higher as the points accrued by the appli-
22 cant, the number of points shall not be ad-
23 justed;

24 (ii) if the number of points that would
25 be accrued by the spouse is lower than the

1 number of points accrued by the applicant,
2 the number of points accrued by the appli-
3 cant shall be adjusted so that it is equal to
4 the sum of—

5 (I) the number of points accrued
6 by the applicant under such category
7 multiplied by 70 percent; and

8 (II) the number of points accrued
9 by the spouse under such category
10 multiplied by 30 percent.

11 (c) APPLICATION PROCESS FOR HONG KONG RESI-
12 DENTS.—

13 (1) ELIGIBILITY SCREENING.—

14 (A) APPLICATION SUBMISSION.—Any eligi-
15 ble Hong Kong resident who believes that he or
16 she meets the points requirement set forth in
17 subsection (c) may submit an online application
18 to U.S. Citizenship and Immigration Services
19 for placement in the eligible applicant pool.

20 (B) APPLICATION ELEMENTS.—Each ap-
21 plication submitted under subparagraph (A)
22 shall include—

23 (i) the identification of the points for
24 which the applicant is eligible under sub-
25 section (b);

1 (ii) an attestation by the applicant,
2 under penalty of disqualification, that the
3 applicant has sufficient documentation to
4 verify the points claimed under clause (i);

5 (iii) the electronic submission of an
6 application fee in the amount of \$160; and

7 (iv) any other information required by
8 the Director of U.S. Citizenship and Immi-
9 gration Services, by regulation.

10 (C) ELIGIBLE APPLICANT POOL.—

11 (i) IN GENERAL.—Each application
12 that meets the points requirement set forth
13 in subsection (b) shall be placed in an eli-
14 gible applicant pool, which shall be sorted
15 by total points.

16 (ii) TIE-BREAKING FACTORS.—Appli-
17 cations with equal points will be sorted
18 based on the following tie-breaking factors:

19 (I) Applicants whose highest edu-
20 cational degree is a doctorate degree
21 (or equivalent foreign degree) shall be
22 ranked higher than applicants whose
23 highest educational degree is a profes-
24 sional degree or equivalent foreign de-
25 gree, who shall be ranked higher than

1 applicants whose highest educational
2 degree is a master's degree (or equiv-
3 alent foreign degree), who shall be
4 ranked higher than applicants whose
5 highest educational degree is a bach-
6 elor's degree (or equivalent foreign de-
7 gree), who shall be ranked higher
8 than applicants whose highest edu-
9 cational degree is a high school di-
10 ploma or equivalent foreign diploma,
11 who shall be ranked higher than appli-
12 cants without a high school diploma,
13 with United States degrees ranked
14 higher than their foreign counter-
15 parts.

16 (II) Applicants with equal points
17 and equal educational attainment
18 shall be ranked according to their re-
19 spective English language proficiency
20 test rankings.

21 (III) Applicants with equal
22 points, equal educational attainment,
23 and equal English language pro-
24 ficiency test rankings shall be ranked
25 according to their age, with applicants

1 who are nearest their 25th birthdays
2 being ranked higher.

3 (D) DURATION.—Applications shall remain
4 in the eligible applicant pool for 12 months. An
5 applicant who is not invited to apply for a
6 point-based immigrant visa during the 12-
7 month period in which the application remains
8 in the eligible applicant pool may reapply for
9 placement in the eligible applicant pool.

10 (2) VISA PETITION.—

11 (A) INVITATION.—Every 6 months, the Di-
12 rector of U.S. Citizenship and Immigration
13 Services shall invite the highest ranked appli-
14 cants in the eligible applicant pool, in a number
15 that is expected to yield 50 percent of the
16 point-based immigrant visas authorized under
17 this section for the fiscal year, including
18 spouses and dependent children accompanying
19 or following to join the principle alien, to file a
20 petition for a points-based immigrant visa.

21 (B) PETITION ELEMENTS.—Subject to
22 subparagraph (C), the Director of U.S. Citizen-
23 ship and Immigration Services shall award a
24 points-based immigrant visa to any applicant
25 invited to file a petition under subparagraph

1 (A) who, not later than 90 days after receiving
2 such invitation, files a petition with the Direc-
3 tor that includes—

4 (i) valid documentation proving that
5 the applicant is entitled to all of the points
6 claimed in the application submitted pur-
7 suant to paragraph (1);

8 (ii) an attestation from the prospec-
9 tive employer, if applicable—

10 (I) of the annual salary being of-
11 fered to the applicant; and

12 (II) that the job being offered to
13 the applicant is a new or vacant posi-
14 tion that does not displace a United
15 States worker;

16 (iii)(I) proof that the applicant's
17 United States employer has secured health
18 insurance that meet all applicable regula-
19 tions; or

20 (II) evidence that the applicant has
21 posted a bond to be used to purchase the
22 health insurance described in subclause (I);
23 and

24 (iv) a fee in the amount of \$345.

1 (C) DISPOSITION OF PETITIONS EXCEED-
2 ING THE ANNUAL NUMERICAL LIMITATION.—If
3 the Director receives a petition that complies
4 with the requirements under subparagraph (B)
5 after the numerical limitation set forth in sub-
6 section has been reached for the applicable fis-
7 cal year, the Director shall—

8 (i) issue a points-based immigrant
9 visa to the petitioner;

10 (ii) delay the admission into the
11 United States of the petitioner and his or
12 her spouse and children, if applicable, until
13 the first day of the following fiscal year;
14 and

15 (iii) reduce the number of points-
16 based immigrant visas that may be issued
17 during the following fiscal year accord-
18 ingly.

19 (3) VISAS FOR SPOUSES AND CHILDREN.—

20 (A) SPOUSE.—The legal spouse of an ap-
21 plicant under this subsection who is accom-
22 panying or following to join the applicant in the
23 United States shall be issued a points-based im-
24 migrant visa under this section upon the ap-

1 proval of the spouse's petition under paragraph
2 (2).

3 (B) MINOR CHILDREN.—Any children of
4 an applicant under this subsection who have not
5 reached 18 years of age as of the date on which
6 a petition is filed under paragraph (2) and are
7 accompanying or following to join the applicant
8 in the United States shall be issued a points-
9 based immigrant visa under this section upon
10 the approval of the parent's petition under
11 paragraph (2).

12 (C) DEPENDENT ADULT CHILDREN.—Any
13 adult child of an applicant under this sub-
14 section who is unable to care for himself or her-
15 self may be admitted into the United States, on
16 a temporary basis, until he or she is capable to
17 care for himself or herself, but may not be au-
18 thorized to work in the United States or to re-
19 ceive any other benefits of permanent residence.

20 (4) INFLATION ADJUSTMENTS.—The Director
21 shall adjust the amount of the fees required under
22 paragraphs (1)(B)(iii) and (2)(B)(iv) every 2 years
23 based on the percentage change in the Consumer
24 Price Index during the most recent 2-year period for
25 which data is available.

1 (5) INELIGIBILITY FOR PUBLIC BENEFITS.—An
2 alien who has been issued a points-based immigrant
3 visa under this section, and every member of the
4 household of such alien, shall not be eligible for any
5 Federal means-tested public benefit (as defined and
6 implemented in section 403 of the Personal Respon-
7 sibility and Work Opportunity Reconciliation Act of
8 1996 (8 U.S.C. 1613)) during the 5-year period be-
9 ginning on the date on which such visa was issued.