

116TH CONGRESS
2D SESSION

H. R. 7428

To reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2020

Mr. MALINOWSKI (for himself, Mr. KINZINGER, Mr. PHILLIPS, Mr. CURTIS, Mr. LOWENTHAL, and Mr. MCGOVERN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992, 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 People’s
5 Freedom and Choice Act”.

6 **SEC. 2. DEFINITIONS.**

7 For the purposes of this Act:

1 (1) JOINT DECLARATION.—The “Joint Declara-
2 tion of the Government of the United Kingdom of
3 Great Britain and Northern Ireland and the Govern-
4 ment of the People’s Republic of China on the Ques-
5 tion of Hong Kong” signed on December 19, 1984,
6 and entered into force on May 27, 1985, will be
7 called the “Sino-British Joint Declaration”.

8 (2) PRIORITY HONG KONG RESIDENT.—Priority
9 Hong Kong residents will be defined as lawful resi-
10 dents of Hong Kong and lawful permanent residents
11 of Hong Kong who hold no right to citizenship or
12 residency in any country or jurisdiction other than
13 the People’s Republic of China (referred to in this
14 Act as “PRC”), Hong Kong, or Macau as of the
15 date of enactment of this Act and who have resided
16 in Hong Kong for the last 10 years, or the imme-
17 diate family member of such person.

18 (3) APPROPRIATE CONGRESSIONAL COMMIT-
19 TEES.—The appropriate congressional committees
20 are defined as—

21 (A) the Committee on Foreign Affairs and
22 the Committee on the Judiciary of the House of
23 Representatives; and

1 (B) the Committee on Foreign Relations
2 and the Committee of the Judiciary of the Sen-
3 ate.

4 **SEC. 3. FINDINGS.**

5 Congress finds the following:

6 (1) The National People’s Congress (referred to
7 in this Act as “NPC”) of the PRC has committed
8 to pass national security legislation which, if en-
9 acted, would—

10 (A) contravene the will of the people of
11 Hong Kong whose constitution, the Basic Law,
12 provides in Article 23 that the Legislative
13 Council of Hong Kong shall enact legislation re-
14 lated to national security;

15 (B) violate the PRC’s commitments under
16 international law, as defined by the Joint Dec-
17 laration of the Government of the United King-
18 dom of Great Britain and Northern Ireland and
19 the Government of the PRC on the Question of
20 Hong Kong (referred to in this Act as “Joint
21 Declaration”), an international treaty signed on
22 December 19, 1984, and entered into force on
23 May 27, 1985; and

24 (C) cause severe and irreparable damage to
25 the “one country, two systems” principle and

1 further erode global confidence in the PRC's
2 commitment to international law.

3 (2) The United States has a long and proud
4 history as a destination for refugees and asylees flee-
5 ing persecution based on race, religion, nationality,
6 political opinion, or membership in a particular so-
7 cial group.

8 (3) The United States also shares deep social,
9 cultural, and economic ties with the people of Hong
10 Kong, including a shared commitment to democracy,
11 to the rule of law, and to the protection of human
12 rights.

13 (4) The United States has sheltered, protected,
14 and welcomed as American citizens individuals who
15 have fled oppression of authoritarian regimes, in-
16 cluding citizens from the PRC following the violent
17 June 4, 1989, crackdown in Tiananmen Square,
18 deepening ties between the people of the United
19 States and those individuals, regardless of nation-
20 ality, seeking to contribute to a free, open society
21 founded on respect for the rule of law.

22 (5) The United States has reaped enormous
23 economic, cultural, and strategic benefit from wel-
24 coming successive generations of scientists, doctors,
25 entrepreneurs, artists, intellectuals, and other free-

1 dom-loving people fleeing Fascism, Communism, vio-
2 lent Islamist extremism, and other repressive
3 ideologies, including in the case of Nazi Germany,
4 the Soviet Union and Soviet-controlled Central Eu-
5 rope, Cuba, Vietnam, and Iran.

6 (6) Offering prospective refuge to those who
7 have contributed the most to Hong Kong’s success
8 would signal to the Chinese Communist Party that
9 repression in Hong Kong would result in losing its
10 immense wealth and talent to the United States.

11 (7) A mid-2020 Brookings report notes that
12 “Chinese officials see the United States’ continued
13 ability to attract and retain Chinese talent as a seri-
14 ous impediment to their technological ambitions”
15 and a 2009 report of “Issues in Science and Tech-
16 nology” notes that “competition for [science and
17 technology] brainpower . . . will become one of the
18 key defining features of the West’s interactions with
19 the PRC over the coming decades.”

20 (8) A major asymmetric advantage of the
21 United States in its long-term strategic competition
22 with the Communist Party of China is the ability of
23 people from every country in the world, irrespective
24 of their race, ethnicity or religion, to immigrate to
25 the United States and become American citizens.

1 **SEC. 4. STATEMENT OF POLICY.**

2 It is the policy of the United States—

3 (1) to continue to reaffirm the principles and
4 objectives set forth in the United States-Hong Kong
5 Policy Act of 1992 (Public Law 102–383), namely
6 that—

7 (A) the United States has “a strong inter-
8 est in the continued vitality, prosperity, and
9 stability of Hong Kong”;

10 (B) “support for democratization is a fun-
11 damental principle of United States foreign pol-
12 icy” and therefore “naturally applies to United
13 States policy toward Hong Kong”;

14 (C) “the human rights of the people of
15 Hong Kong are of great importance to the
16 United States and are directly relevant to
17 United States interests in Hong Kong and
18 serve as a basis for Hong Kong’s continued eco-
19 nomic prosperity”; and

20 (D) Hong Kong must remain sufficiently
21 autonomous from the PRC to “justify treat-
22 ment under a particular law of the United
23 States, or any provision thereof, different from
24 that accorded the People’s Republic of China”;

1 (2) to continue to support the high degree of
2 autonomy and fundamental rights and freedoms of
3 the people of Hong Kong, as enumerated by—

4 (A) the Joint Declaration;

5 (B) the International Covenant on Civil
6 and Political Rights, done at New York Decem-
7 ber 19, 1966; and

8 (C) the Universal Declaration of Human
9 Rights, done at Paris December 10, 1948;

10 (3) to continue to support the democratic aspi-
11 rations of the people of Hong Kong, including the
12 “ultimate aim” of the selection of the Chief Execu-
13 tive and all members of the Legislative Council by
14 universal suffrage, as articulated in the Basic Law
15 of the Hong Kong Special Administrative Region of
16 the PRC (referred to in this Act as the “Basic
17 Law”);

18 (4) to urge the Government of the PRC, despite
19 its recent actions, to uphold its commitments to
20 Hong Kong, including allowing the people of Hong
21 Kong to govern Hong Kong with a high degree of
22 autonomy and without undue interference, and en-
23 suring that Hong Kong voters freely enjoy the right
24 to elect the Chief Executive and all members of the

1 Hong Kong Legislative Council by universal suf-
2 frage;

3 (5) to support the establishment of a genuine
4 democratic option to freely and fairly nominate and
5 elect the Chief Executive of Hong Kong, and the es-
6 tablishment by 2020 of open and direct democratic
7 elections for all members of the Hong Kong Legisla-
8 tive Council;

9 (6) to support the robust exercise by residents
10 of Hong Kong of the rights to free speech, the press,
11 and other fundamental freedoms, as provided by the
12 Basic Law, the Joint Declaration, and the Inter-
13 national Covenant on Civil and Political Rights;

14 (7) to support freedom from arbitrary or unlaw-
15 ful arrest, detention, or imprisonment for all Hong
16 Kong residents, as provided by the Basic Law, the
17 Joint Declaration, and the International Covenant
18 on Civil and Political Rights;

19 (8) to draw international attention to any viola-
20 tions by the Government of the PRC of the funda-
21 mental rights of the people of Hong Kong, as pro-
22 vided by the International Covenant on Civil and Po-
23 litical Rights, and any encroachment upon the au-
24 tonomy guaranteed to Hong Kong by the Basic Law
25 and the Joint Declaration;

1 (9) to protect United States citizens and long-
2 term permanent residents living in Hong Kong, as
3 well as people visiting and transiting through Hong
4 Kong;

5 (10) to maintain the economic and cultural ties
6 that provide significant benefits to both the United
7 States and Hong Kong;

8 (11) to coordinate with allies, including the
9 United Kingdom, Australia, Canada, Japan, and the
10 Republic of Korea, to promote democracy and
11 human rights in Hong Kong; and

12 (12) in the case of the promulgation of new na-
13 tional security legislation in Hong Kong, to review
14 immigration, asylum, and residency regulations such
15 that those residents of Hong Kong fleeing persecu-
16 tion and seeking better opportunities will be wel-
17 comed in the United States.

18 **SEC. 5. PROTECTION FOR HONG KONG RESIDENTS IN THE**

19 **UNITED STATES.**

20 (a) DESIGNATION.—

21 (1) IN GENERAL.—For purposes of section 244
22 of the Immigration and Nationality Act (8 U.S.C.
23 1254a), Hong Kong shall be treated as if it had
24 been designated under subsection (b)(1)(C) of that
25 section, subject to the provisions of this section.

1 (2) PERIOD OF DESIGNATION.—The initial pe-
2 riod of the designation referred to in paragraph (1)
3 shall be for the 18-month period beginning from
4 such time as the Standing Committee of the NPC of
5 the PRC promulgates national security legislation
6 with respect to Hong Kong that amends Article III
7 of Hong Kong’s Basic Law.

8 (b) ALIENS ELIGIBLE.—As a result of the designa-
9 tion made under subsection (a), an alien who is a resident
10 of Hong Kong is deemed to satisfy the requirements under
11 paragraph (1) of section 244(c) of the Immigration and
12 Nationality Act (8 U.S.C. 1254a(c)), subject to paragraph
13 (3) of such section, if the alien—

14 (1) has been continuously physically present in
15 the United States since the date of the enactment of
16 this Act;

17 (2) is admissible as an immigrant, except as
18 otherwise provided in paragraph (2)(A) of such sec-
19 tion, and is not ineligible for temporary protected
20 status under paragraph (2)(B) of such section; and

21 (3) registers for temporary protected status in
22 a manner established by the Secretary of Homeland
23 Security.

24 (c) CONSENT TO TRAVEL ABROAD.—

1 (1) IN GENERAL.—The Secretary of Homeland
2 Security shall give prior consent to travel abroad, in
3 accordance with section 244(f)(3) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1254a(f)(3)), to
5 an alien who is granted temporary protected status
6 pursuant to the designation made under subsection
7 (a) if the alien establishes to the satisfaction of the
8 Secretary of Homeland Security that emergency and
9 extenuating circumstances beyond the control of the
10 alien require the alien to depart for a brief, tem-
11 porary trip abroad.

12 (2) TREATMENT UPON RETURN.—An alien re-
13 turning to the United States in accordance with an
14 authorization described in paragraph (1) shall be
15 treated as any other returning alien provided tem-
16 porary protected status under section 244 of the Im-
17 migration and Nationality Act (8 U.S.C. 1254a).

18 (d) FEE.—

19 (1) IN GENERAL.—In addition to any other fee
20 authorized by law, the Secretary of Homeland Secu-
21 rity is authorized to charge and collect a fee of \$360
22 for each application for temporary protected status
23 under section 244 of the Immigration and Nation-
24 ality Act by a person who is only eligible for such
25 status by reason of subsection (a).

1 (2) WAIVER.—The Secretary of Homeland Se-
2 curity shall permit aliens to apply for a waiver of
3 any fees associated with filing an application re-
4 ferred to in paragraph (1).

5 **SEC. 6. DIFFERENTIAL TREATMENT OF HONG KONG RESI-**
6 **DENTS FOR IMMIGRATION PURPOSES.**

7 (a) IN GENERAL.—For not less than 5 years from
8 such time as the President suspends, in whole or in part,
9 special treatment of Hong Kong under United States law,
10 Hong Kong will continue to be considered a separate for-
11 eign state apart from the PRC as mandated in section
12 103 of Public Law 101–649 and thus Hong Kong will con-
13 tinue to be treated as a separate foreign state for purposes
14 of a numerical level established under section 1152 of title
15 8, United States Code.

16 (b) REGULATIONS.—In order to facilitate the future
17 verification of Hong Kong residency status of visa appli-
18 cants from the PRC, the Secretary of State shall—

19 (1) issue regulations within 365 days of enact-
20 ment establishing a process for Hong Kong residents
21 to register their status with embassies of the United
22 States and the Department of State globally for pur-
23 poses of adjudicating an individual’s claim to Hong
24 Kong residency as part of a future visa application

1 for entry to the United States, including through
2 such means as—

3 (A) recording of biometric data;

4 (B) official registration and scanning of
5 birth certificates, residency cards, and other
6 documentation establishing long-term residency;
7 and

8 (C) collection of other personal informa-
9 tion, data, and records deemed appropriate by
10 the Secretary;

11 (2) issue guidance within 180 days of enact-
12 ment outlining actions to enhance the ability of the
13 Department of State to efficiently share information
14 with the United Kingdom and other allies for pur-
15 poses of rapidly adjudicating residency of Hong
16 Kong applicants for admission to the United States;
17 and

18 (3) provide within 180 days of enactment a
19 briefing to the House Committees on Foreign Af-
20 fairs and Judiciary and the Senate Committees on
21 Foreign Relations and Judiciary on plans to imple-
22 ment the requirements pursuant to paragraphs (1)
23 and (2).

1 **SEC. 7. ADMISSION FOR CERTAIN HIGHLY SKILLED HONG**
2 **KONG RESIDENTS.**

3 (a) IN GENERAL.—Subject to subsection (c), the Sec-
4 retary of Homeland Security, or, notwithstanding any
5 other provision of law, the Secretary of State in consulta-
6 tion with the Secretary of Homeland Security, may pro-
7 vide an alien described in subsection (b) with the status
8 of a special immigrant under section 101(a)(27) of the Im-
9 migration and Nationality Act (8 U.S.C. 1101(a)(27)), if
10 the alien—

11 (1) or an agent acting on behalf of the alien,
12 submits a petition for classification under section
13 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

14 (2) is otherwise eligible to receive an immigrant
15 visa;

16 (3) is otherwise admissible to the United States
17 for permanent residence (excluding the grounds for
18 inadmissibility specified in section 212(a)(4) of such
19 Act (8 U.S.C. 1182(a)(4)); and

20 (4) cleared a background check and appropriate
21 screening, as determined by the Secretary of Home-
22 land Security.

23 (b) ALIENS DESCRIBED.—

24 (1) PRINCIPAL ALIENS.—An alien is described
25 in this subsection if the alien is a citizen of the PRC
26 and was born in or has been a resident or perma-

1 nent resident of Hong Kong for at least 10 years as
2 of the date of enactment of this Act, and—

3 (A) has received a graduate diploma from
4 an accredited institution;

5 (B) has completed undergraduate or grad-
6 uate education in the United States; or

7 (C) is the sole or majority owner of a com-
8 pany with more than 50 direct employees or
9 greater than \$5 million in assets.

10 (2) SPOUSES AND CHILDREN.—An alien is de-
11 scribed in this subsection if the alien is the spouse
12 or child of a principal alien described in paragraph
13 (1).

14 (c) NUMERICAL LIMITATIONS.—

15 (1) IN GENERAL.—The total number of prin-
16 cipal aliens who may be provided special immigrant
17 status under this section may not exceed 50,000 per
18 year for each of the 5 fiscal years beginning after
19 the date of the enactment of this Act. The Secretary
20 may, in consultation with the Secretary of State,
21 prioritize holders of diplomas in STEM fields, in-
22 cluding the physical and life sciences, computer
23 science, engineering, technology, math, and medi-
24 cine.

1 (2) EXCLUSION FROM NUMERICAL LIMITA-
2 TIONS.—Aliens provided immigrant status under
3 this section shall not be counted against any numer-
4 ical limitation under section 201, 202, 203, or 207
5 of the Immigration and Nationality Act (8 U.S.C.
6 1151, 1152, 1153, and 1157).

7 (d) PROTECTION OF ALIENS.—The Secretary of
8 State, in consultation with the heads of other relevant
9 Federal agencies, shall make a reasonable effort to provide
10 an alien described in this section who is applying for a
11 special immigrant visa with protection or the immediate
12 removal from the PRC if possible, of such alien if the Sec-
13 retary determines after consultation that such alien is in
14 imminent danger.

15 (e) ELIGIBILITY FOR ADMISSION UNDER OTHER
16 CLASSIFICATION.—No alien shall be denied the oppor-
17 tunity to apply for admission under this section solely be-
18 cause such alien qualifies as an immediate relative or is
19 eligible for any other immigrant classification.

20 (f) TIMELINE FOR PROCESSING APPLICATIONS.—

21 (1) IN GENERAL.—The Secretary of State and
22 the Secretary of Homeland Security shall ensure
23 that all steps under the control of the United States
24 Government incidental to the approval of such appli-
25 cations, including required screenings and back-

1 ground checks, are completed not later than 2 years
2 after the date on which an eligible applicant submits
3 an application under subsection (a).

4 (2) EXCEPTION.—Notwithstanding paragraph
5 (1), the relevant Federal agencies may take addi-
6 tional time to process applications described in para-
7 graph (1) if satisfaction of national security con-
8 cerns requires such additional time, provided that
9 the Secretary of Homeland Security, or the designee
10 of the Secretary, has determined that the applicant
11 meets the requirements for status as a special immi-
12 grant under this section and has so notified the ap-
13 plicant.

14 **SEC. 8. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT**
15 **STATUS OF CERTAIN NATIONALS OF THE**
16 **PRC.**

17 (a) IN GENERAL.—Subject to subsection (c)(1),
18 whenever an alien described in subsection (b) applies for
19 adjustment of status under section 245 of the Immigra-
20 tion and Nationality Act during the application period (as
21 defined in subsection (e)) the following rules shall apply
22 with respect to such adjustment:

23 (1) The alien shall be deemed to have had a pe-
24 tition approved under section 204(a) of such Act for

1 classification under section 203(b)(3)(A)(i) of such
2 Act.

3 (2) The application shall be considered without
4 regard to whether an immigrant visa number is im-
5 mediately available at the time the application is
6 filed.

7 (3) In determining the alien's admissibility as
8 an immigrant, and the alien's eligibility for an immi-
9 grant visa—

10 (A) paragraphs (5) and (7)(A) of section
11 212(a) and section 212(e) of such Act shall not
12 apply; and

13 (B) the Attorney General may waive any
14 other provision of section 212(a) (other than
15 paragraph (2)(C) and subparagraph (A), (B),
16 (C), or (E) of paragraph (3)) of such Act with
17 respect to such adjustment for humanitarian
18 purposes, for purposes of assuring family unity,
19 or if otherwise in the public interest.

20 (4) The numerical level of section 202(a)(2) of
21 such Act shall not apply.

22 (5) Section 245(c) of such Act shall not apply.

23 (b) ALIENS COVERED.—For purposes of this section,
24 an alien described in this subsection is an alien who—

1 (1) faces a fear of persecution on account of his
2 or her political opinion by the PRC of the govern-
3 ment or other authorities in the Hong Kong Special
4 Administrative Region;

5 (2) was born in or has been a resident or per-
6 manent resident of Hong Kong for at least 10 years;

7 (3) has initiated permanent residence in the
8 United States (other than brief, casual, and innocent
9 absences) during the period beginning June 1, 2019,
10 and ending on the date that is 5 years from the date
11 of enactment of this Act; and

12 (4) was not physically present in the PRC for
13 longer than 90 days after the date of establishment
14 of such permanent residence.

15 (c) CONDITION; DISSEMINATION OF INFORMATION.—

16 (1) NOT APPLICABLE IF SAFE RETURN PER-
17 MITTED.—Subsection (a) shall not apply to any alien
18 if the Secretary of State has determined and cer-
19 tified to Congress, before the first day of the appli-
20 cation period, that conditions in the PRC permit
21 aliens described in subsection (b)(1) to return to
22 that foreign state in safety.

23 (2) DISSEMINATION OF INFORMATION.—If the
24 President has not made the certification described in
25 paragraph (1) by the first day of the application pe-

1 riod, the Secretary of Homeland Security shall, sub-
2 ject to the availability of appropriations, immediately
3 broadly disseminate to aliens described in subsection
4 (b) information respecting the benefits available
5 under this section. To the extent practicable, the
6 Secretary shall provide notice of these benefits to the
7 last known mailing address of each such alien.

8 (d) **EXCLUSION FROM NUMERICAL LIMITATIONS.**—
9 Aliens provided immigrant visas under this section shall
10 not be counted against any numerical limitation under sec-
11 tions 201, 202, or 203 of the Immigration and Nationality
12 Act (8 U.S.C. 1151, 1152, or 1153).

13 **SEC. 9. REPORTING REQUIREMENTS.**

14 (a) **IN GENERAL.**—On an annual basis, the Secretary
15 of State, in consultation with the Secretary of Homeland
16 Security and other Federal agencies, as appropriate, shall
17 submit a report to the appropriate congressional commit-
18 tees on—

19 (1) the number of Hong Kong SAR residents
20 who have applied for admittance, been admitted, and
21 been provided permanent residence in the United
22 States during the preceding fiscal year, disaggregat-
23 ed by visa type or residence status, including ref-
24 ugee, temporary protected status, special immigrant

1 visa, and legal permanent residence status provided
2 for under this Act;

3 (2) the number of denials or rejections of appli-
4 cants, including a description of the basis for denial
5 and disaggregated by the basis for denial and by
6 visa type or residency status during the previous fis-
7 cal year;

8 (3) the number of Hong Kong SAR residents
9 that have applied for political asylum by fiscal year,
10 including number of rejections, and disaggregated by
11 basis for denial during the previous fiscal year; and

12 (4) other matters deemed relevant by the Sec-
13 retary on efforts to protect and facilitate the reset-
14 tlement of refugees and victims of political persecu-
15 tion in Hong Kong.

16 (b) FORM.—Each report under subsection (a) shall
17 be submitted in unclassified form and published on a text-
18 searchable, publicly available website of the Department
19 of State.

20 **SEC. 10. STRATEGY FOR INTERNATIONAL COOPERATION**
21 **ON HONG KONG.**

22 (a) IN GENERAL.—It is the policy of the United
23 States—

24 (1) to support the people of Hong Kong by pro-
25 viding temporary relief, refugee status, and appro-

1 appropriate immigration incentives to Hong Kong resi-
2 dents of the Hong Kong Special Administrative Re-
3 gion of the PRC in the event that the PRC enacts
4 legislation that renders certain Hong Kong persons
5 at risk of persecution due to their political beliefs;
6 and

7 (2) to encourage like-minded nations to make
8 similar accommodations for Hong Kong people flee-
9 ing oppression by the Government of the PRC.

10 (b) PLAN.—The Secretary of State, in consultation
11 with the heads of other Federal agencies, as appropriate,
12 shall develop a plan to engage with other nations, includ-
13 ing the United Kingdom, on cooperative efforts to—

14 (1) provide refugee and asylee protections for
15 victims of, and individuals with a fear of, political
16 persecution in Hong Kong, either by Hong Kong au-
17 thorities or other authorities acting on behalf of the
18 PRC;

19 (2) enhance protocols to facilitate the relocation
20 of refugees and displaced persons from Hong Kong;
21 and

22 (3) expedite sharing of information, as appro-
23 priate, related to individual visa or travel document
24 rejections of applicants from the Hong Kong SAR
25 for reasons of—

1 (A) national security concerns;

2 (B) fraudulent or corrupt practices related
3 to immigration or victim protection, including
4 refugee and asylee protections; and

5 (C) fraud and corruption.

6 (c) REPORT.—Within 90 days of enactment of this
7 Act, the Secretary of State or his or her designee shall
8 submit a report on such plan described in paragraphs (1)
9 through (3) of subsection (b) to the appropriate congres-
10 sional committees.

11 **SEC. 11. SUNSET.**

12 This Act shall sunset on the date that is 5 years after
13 the date of enactment of this Act.

○