



## **For some tech workers seeking green cards, the wait just got a little shorter. But it still is measured in decades.**

Caitlin Dickson

September 30, 2020

In a rare piece of good news for (some) immigrants hoping to qualify for U.S. citizenship, the State Department has projected that in the fiscal year starting Oct. 1, more than 250,000 green cards, “an all-time high,” will be made available to certain categories of foreign nationals — primarily highly skilled tech-industry workers from India, most of them already in the U.S. on employment-based visas.

The bad news is that the wait to receive one of the precious documents certifying legal permanent residency — the final stop on the legal immigration path to citizenship — may still be as long as several decades, owing to a combination of outdated policies that have not caught up to the changing trends in immigration over the last 25 years.

Highly skilled Indian workers and their families make up three-quarters of the more than one million prospective immigrants in the United States who are currently stuck in what’s known as the employment-based green card backlog. They are in the U.S. legally, generally on H-1B visas issued to immigrants holding a job requiring specialized skills. But the visas must be renewed regularly and recertified by their employers. If they lose their jobs, they may no longer be eligible to stay in the country, and they are subject to various other restrictions. Their ability to travel to their home country is limited. While awaiting legal permanent resident status, their non-citizen family members are also forced to live in a sort-of limbo: spouses often struggle to obtain work permits of their own, while their children, many of whom have spent most of their lives in the United States, risk losing legal status if they turn 21 before their parent reaches the front of the line.

If a prospective immigrant dies while waiting for a green card — an increasingly realistic possibility for Indian workers caught in the ever-expanding backlog — their family members also lose their spot in line, which in some cases means they are no longer legally permitted to live in the United States.

Current U.S. law limits both the total number of green cards made available each year — a number that has stayed the same for 30 years — as well as the percentage of that annual allotment that can be claimed by nationals of a given country to no more than seven percent of the total number of employment and family-based green cards each year. That has resulted in disproportionately long wait times for otherwise eligible green card seekers from certain countries, notably India, which has become the leading source of employment-based immigration to the U.S. since the start of the tech boom in the mid-90s. The backlog is expected to double in less than a decade.

According to a policy brief published by David Bier, an immigration policy analyst at the Cato Institute in March, “recently backlogged Indian workers face an impossible wait of nine decades,” while more than 200,000 Indians with currently pending petitions could die of old age before they receive their green cards.

Highly skilled foreign workers who enter the U.S. on certain types of work visas can seek to become legal permanent residents by having their employers file a petition on their behalf. However, because U.S. employers file significantly more petitions for Indian workers than are allowed under the current per-country limits, the Cato Institute’s Bier found that “the government is approving nearly two petitions for employment-based immigrants for every green card it is issuing to them.”

The bonanza of green cards coming in Fiscal Year 2021 is an unintended consequence of the Trump administration’s crackdown on legal immigration by family members of permanent residents already in the U.S. — what Trump has described as “chain migration.” With fewer family green cards being issued, more will be available for employment-based applicants.

Experts generally agree that the only way to clear the employment-based green card backlog is for Congress to substantially raise (or eliminate) the annual green card ceiling. But a bill that passed the House last year attempts to offer a partial solution.

The Fairness for High-Skilled Immigrants Act would eliminate the per-country caps on employment-based green cards while increasing the limit for all family-sponsored immigrants from seven to 15 percent per country.

While the House of Representatives quickly passed its version of the bill with a large bipartisan majority last year, the Senate version has come up against a series of roadblocks, becoming the subject of heated debate that seems likely to continue into the next year. Since September of 2019, Sen. Mike Lee (R-Utah), the sponsor of the Senate bill (S. 386), has attempted to push the bill through expedited proceedings by calling for a unanimous consent vote on a number of occasions only to be thwarted each time by a hold on the bill placed by different senators.

Proponents of the legislation say it offers a simple solution to the insufferable waits unfairly imposed upon certain would-be immigrants simply because of their country of origin, and will result in more equitable treatment of all green card applicants.

Critics, however, argue that the bill fails to address the root cause of the backlog — which is the growing disparity between the number of employment-based green cards made available each year and the volume of qualified applicants.

According to an analysis of the bill by the Congressional Research Service, unless Congress substantially raises the annual limit on employment-based green cards, the backlog will continue to grow at the same pace regardless of whether the Senate passes the Fairness for High-Skilled Immigrants Act. Rather, the difference would be seen in which immigrants are most impacted by the backlog.

The analysis found that by eliminating the per-country caps, the bill would initially reduce wait times for green card seekers from India and, to a lesser extent China, “in the years following enactment but it would do so at the expense of nationals from all other countries, as well as of the enterprises in which the latter are employed.” While under the current policy, employment-

based green card applicants from countries other than India or China face relatively short wait times, under the proposed changes, the Congressional Research Service report found that within the next decade the “wait times would equalize among all nationals within each category,” with all prospective immigrants, regardless of country of origin, facing potential waits of between seven and 40 years.

The Cato Institute’s David Bier agrees that more visas would be the ideal solution, but is skeptical about whether it’s a realistic one.

“There’s obviously a better way to deal with the backlog than just redistributing green cards between nationalities,” he said. But “In lieu of fact that congress is not likely to increase the number of green cards, it’s incredibly unfair to Indian immigrants that they have to wait in decades long [lines] or even longer while the rest of the world gets ushered to the front of the line.”

Bier suggested that “part of the reason we haven’t seen movement on increasing green cards overall, is because of the fact that only one nationality is adversely affected by the way green cards are currently issued.”

“As long as it’s one nationality, [there’s] no incentive to fight for reform,” he said. “While there is a better way, this is the only viable way at the moment.”

Charles Kuck, an Atlanta-based immigration attorney and outspoken opponent of the bill, disagrees.

While Kuck said he doesn’t think it’s fair for Indians to have to wait 50 years or more for a green card, he also does not support reducing the wait time for Indians at the expense of everyone else.

Kuck acknowledges that, under the current administration, legislation that seeks to increase immigration in any way has little chance of being enacted. Still, he argues it is worth waiting to pass a bill that includes a much-needed increase in green cards, insisting that “ad hoc, one-off solutions don’t fix our immigration laws, they just make them worse.”

“This is an issue that’s screaming for attention, that’s screaming to be fixed, and we don’t want anyone left out in the cold,” Kuck said. “We want a solution that works for everybody, but not at the cost of somebody’s ability to immigrate to America.”