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U.S. May Speed Green Cards for Some Countries, Make Others Wait

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A bill that would virtually wipe out a 150-year green card wait for Indian workers has a realistic chance of passage this fall.

H.R. 392, sponsored by Rep. Kevin Yoder (R-Kan.), would eliminate per-country caps on employment-based visas, one of the sources of the lengthy wait times. Its inclusion in a Department of Homeland Security funding bill means it could become part of an overall spending package that Congress is expected to pass.

The bill would clear the existing backlog in less than a decade, immigration analysts say. For businesses, particularly, in the tech industry, that could mean reduced turnover, as skilled workers aren't as likely to get fed up with the immigration process and leave the country.

But the measure also would introduce green card wait times for the rest of the world, because demand from Indian workers and their employers is so high. That demand is now kept in check by the per-country cap, which limits each country to 7 percent of all green cards available each year.

And it may become harder to nearly impossible to get a green card without first getting an H-1B skilled guestworker visa.

Representatives for Yoder didn't respond to Bloomberg Law's request for comment.

Backlog Gone Quickly

The bill "would very quickly reduce the backlog for Indians," eliminating it in the course of seven or eight years, said David Bier, an immigration policy analyst at the Cato Institute. Julia Gelatt, a senior policy analyst at the Migration Policy Institute, estimates the backlog would be gone in three or four years.

Right now, Indians with bachelor's degrees face a 17-year wait for an employment-based green card, while those with advanced degrees are looking at 151 years, Bier estimates. About 90 percent of the green card backlog is made up of Indian immigrants, he told Bloomberg Law. Immigrants from China, the Philippines, and Vietnam also face backlogs, although not to the same extent.

Because there are so many Indians waiting for green cards, passage of H.R. 392 means that green cards would go only to Indians for several years, said John Miano, a New Jersey attorney and fellow at the Center for Immigration Studies.

After a few years, green cards would be handed out according to the “natural distribution of people who are entering the line,” Bier said. The average wait time for all immigrants will level out to about seven years, he said.

The bill would include a three-year transition period that reserves green cards for immigrants from other countries, Gelatt said. “That would keep open some channels” for non-Indians to get green cards while the Indian backlog reduces, although “there would be some backlog that would build over that period” for immigrants from other countries, she said.

H-1B Pipeline

With everyone in the same line, skilled green card applicants almost certainly will have to get H-1B visas first, Miano said in an email to Bloomberg Law. The temporary visa is dominated by Indian nationals working in the tech industry.

Foreign nationals on H-1B visas can extend those visas indefinitely while they’re waiting for green cards to become available. Other temporary work visas don’t allow that kind of extension, and anyone applying for a green card who isn’t on a temporary visa must wait outside the U.S.

If there are green card wait times for the entire world, plus hundreds of thousands of H-1B holders entering the line, “people in occupations not H-1B eligible would no longer be able to get green cards at all,” Miano said.

That’s a concern for some industries, such as health care, facing worker shortages. The American Hospital Association recently came out against the bill because foreign nurses aren’t eligible for H-1B visas and must get green cards to work in the U.S.

The National Iranian American Council also opposes the measure, saying it would “exacerbate” the effects of the travel ban on Iranian immigrants. Many Iranians came to the U.S. on skilled worker visas, the council said in an open letter to corporate proponents of the bill.

‘Mismatch’

“There’s a mismatch” between the green card system and the H-1B program, Gelatt said. The H-1B visa was changed in 1990 to allow for “dual intent,” which means a person can use a temporary visa to come to the U.S. but also can apply to stay permanently.

A “sizeable number” of Indians who come to the U.S. on H-1B visas want to stay, and there aren’t enough green cards to accommodate them, she said. As long as the economy is strong, people still want to immigrate to the U.S., and businesses rely on foreign labor, “we will continue to have backlogs” for green cards, Gelatt said.

There are 140,000 total employment-based green cards available each year, and about 75,000 go to workers with bachelor’s or advanced degrees. With per-country caps in place, about 5,250 skilled Indian workers get green cards each year. Between 2007 and 2017, some 2.2 million initial and renewal H-1B petitions were filed on behalf of workers from India, according to U.S. Citizenship and Immigration Services data.

Instead of removing per-country caps, H-1B visas should be made temporary and not allow for dual intent, Miano said.

Economic Benefits

But Bier said H.R. 392 would offer economic benefits.

“As we’ve seen, Indians have pending wage offers that are much higher than immigrants from the rest of the world,” he said, pointing to recent research he conducted based on Labor Department data.

“You’re making these people wait so much longer,” while the market says they’re contributing more than others, Bier said.

A White House representative didn’t respond to Bloomberg Law’s request for comment.