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USCIS Estimates H-1B Visa Numbers But Ignores Green Card Problem

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For the first time, U.S. Citizenship and Immigration Services (USCIS) has released an official government estimate of the number of H-1B visa holders working in the United States. However, the H-1B estimate is inflated by hundreds of thousands of individuals waiting years for green cards due to the low annual quota and per-country limits on employment-based immigrants, which is not mentioned in the USCIS report.

“A detailed analysis of current data has concluded that as of [September 30, 2019], the H-1B authorized-to-work population is approximately 583,420,” according to the new [USCIS report](#). “All aliens included in this number are nonimmigrants who have received authorization from USCIS and the Department of State (if applicable) to work in an H-1B specialty occupation.”

The USCIS report identified foreign nationals with approved I-129 petitions for an H-1B who “have not adjusted to lawful permanent resident (LPR) status, changed to another nonimmigrant status, or been denied a visa to the United States by a U.S. consulate if the beneficiary requested consular processing abroad when the I-129 petition was approved.” Before making those adjustments, USCIS identified 619,327 “total authorized unique beneficiaries.” (See Table 1.)

As noted in the report, the figure of 583,420 overstates the number of individuals working in H-1B status as of September 30, 2019. The USCIS analysis does not subtract “aliens who held a valid H-1B visa/status but have abandoned their visa/status (leaving the United States permanently or did not attempt to enter the United States if they are the beneficiary of an approved I-129 petition for new employment). Nor does it remove from the final estimate aliens with a valid H-1B visa or H-1B nonimmigrant status who were denied entry by Customs and Border Protection (CBP) at the ports of entry.”

Most important, the USCIS report fails to explain or even mention that the estimated 583,420 H-1B visa holders in the country would likely drop to fewer than 300,000 if individuals in H-1B status waiting in immigrant backlogs received employment-based green cards promptly, rather than wait years or potentially decades.

There are more than 350,000 Indian professionals (as of November 2019) with approved I-140 petitions (and another 357,000 dependents) waiting in the employment-based immigrant backlog, along with about 38,000 Chinese and 5,000 Filipino professionals.

An Indian-born university professor, who asked that his name not be used, has lived in America for almost 23 years and earned a bachelor's degree, master's degree and a Ph.D. in mathematics in the United States. He is a full professor at a college in the Midwest and teaches mathematics to American students. He has been working in H-1B status and has waited almost 11 years so far without yet receiving an employment-based green card. "The idea of being uprooted because of new policies, regulations and executive orders is something that keeps people like me up at night," he told me.

Why are people waiting so many years for employment-based green cards? Per-country limits and low annual limits (140,000 annual employment-based green cards, about half of which go to dependents) combine to create long wait times for immigrants, with waits for Indians the longest. What are per-country limits? "The INA [Immigration & Nationality Act] also specifies per-country limits equal to 7% of the combined total number of visas allotted to family and employment-based preferences," according to the U.S. Department of Homeland Security. "In 2017, these limits amounted to 25,620 immigrants from any single country."

A National Foundation for American Policy analysis found, "An Indian in the employment-based second preference could wait until the year 2138 for a green card, which is farther out than the setting for most science fiction novels."

"Per-country limits force Indians to bear nearly the entire burden of a broken system with more recent immigrants facing lifetime waits for green cards," according to a report by David Bier of the Cato Institute. He notes Indians currently in H-1B status "could die in line even if they stay in line as long as possible."

Individuals respond to bad government policies, and perhaps the worst policy proposal for American competitiveness is a provision in Donald Trump's June 22, 2020, presidential proclamation that suggested a plan that, if pursued and implemented, would drive hundreds of thousands of long-time H-1B visa holders out of the United States. The plan would be to force foreign nationals waiting years for employment-based green cards to go through the "labor certification" process again – the first stage in the process for many high-skilled immigrants – in the hopes many would not succeed after the administration changes the rules to make passing less likely. (See here for an analysis of this potential plan.)

While USCIS presents an interesting analysis on the number of H-1B visa holders currently working in the United States, the agency overlooked the real story about the broken employment-based immigration system. Analysts would agree that of more significant concern than the number of foreign-born scientists and engineers working in H-1B status is whether the Trump administration will force highly talented people and their families out of the United States.