Explained | The U.S. presidential advisory panel's proposal to recapture unused green cards

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The story so far: A U.S. presidential advisory commission's recent recommendation to "recapture" over two lakh unused green cards to tackle the issue of backlog is expected to benefit thousands of Indian Americans waiting for permanent residency to stay and work in America.

In line with legislative proposals introduced in the U.S. Congress in the past two years to address backlogs, a sub-committee of the President's Advisory Commission on Asian Americans, Native Hawaiian and Pacific Islanders (PACAANHPI) recommended that all unused green cards in the family and employment categories since 1992 be recaptured. While the suggestion has been made to the White House, this doesn't translate into immediate action as that would require a Congressional nod.

What is the significance of a green card?

Immigrants to the U.S. are issued a document informally called the green card that allows them to live and work permanently in America with greater mobility and benefits. Officially known as the Permanent Resident Card, a green card comes with several benefits, including a pathway to citizenship and subsequently security benefits and protection. The US Citizenship and Immigration Services (USCIS) provide an outline of eligibility criteria and other specific requirements for applicants under a host of categories, including those applying through family and employment.

What is the backlog issue?

Every year, the U.S. issues about 1,40,000 employment-based and 2,26,000 family-sponsored green cards to immigrants. However, there is a country-based quota system which is not adjusted based on population or a country's demand. As per the current immigration system, there is a 7% per country quota on the annual allotment of the green card in these categories, which comes to around 25,600 visas. This means that even with an approved petition, people from countries with particularly high volumes of green card applications, like India and China, often have to wait for years to get a green card if the cap is filled. Over the years, the gap has widened due to increasing demand, leading to massive backlogs for legal immigrants.

More than 20 million applications are stuck in backlogs in 2022, according to David J. Bier, an immigration policy analyst at thinktank Cato Institute. Over the past two decades, the number of people on the waiting list for family-sponsored green cards has grown by over 100%, according to the Congressional Research Service.

As of 2020, approximately 4.2 million people were waiting for family-sponsored green cards with an average wait time of six years. Skilled Indian workers on H-1B work visas are the most affected. From 2018 to 2019, the share of green cards awarded to Indians fell from 13% to 10% even as their share of petitions increased from 50% to 53%.

Employment-based backlog to double by 2030, Indians will have to wait for decades for Green Card: CRS

The employment-based backlog for skilled Indians reached 7.19 lakh in September 2021. Cato Institute estimated in a study that the waiting period for such Indians could run into nine decades if they all continue to wait in the queue. The study further estimated that more than two lakh Indians in the backlog are likely to die of old age before receiving green cards in the absence of policy intervention.

In a policy brief in April this year, Mr. Biers termed the situation "dire" as he called for reforms in the immigration system. "This backlog is separating U.S. citizens from their families and keeping open jobs unfilled across the country. Although the pandemic and the Trump administration exacerbated these problems, inefficiencies have plagued the U.S. system for decades. Given the current situation, the time for broad, ambitious reform has come," he wrote.

U.S. eases norms on eligibility criteria for Indians awaiting Green Card

Meanwhile, several thousands of green cards have gone unused over the years due to bureaucratic delays and the COVID pandemic. To address the backlog issue, a US President's advisory commission earlier this month approved the recommendation to recapture recapturing more than 2,30,000 unused green cards for family and employment categories since 1992.

What is recapturing?

It is a strategy that will allocate the total number of unused green cards since 1992 to applicants waiting in the backlog without increasing the per-country quota. "This strategy has the advantage of addressing the existing green card backlog through a mechanism that received bipartisan support in Congress in 2000 and 2005. This strategy also avoids a contentious fight over increasing immigration levels since it reallocates unused green cards to meet levels set by previous Congresses," says Arturo Castellanos-Canales of the National Immigration Forum. The U.S. Congress has "recaptured" certain lost green cards twice in the past, in 2000 and 2005, but over two lakh remain unused.

How will recapture solve the backlog issue?

In his set of recommendations before the panel, Indian-American entrepreneur Ajay Bhutoria, a member of the advisory commission, proposed that the Department of Homeland Security and the Department of State recapture unused green cards for family and employment categories

from 1992 through 2025. This includes the recapture of more than 2,30,000 unused employment-based green cards from 1992 to 2022 and processing a portion of these every fiscal year in addition to the annual limit of 1,40,000 for the employment-based category.

He also suggested a new policy to ensure that all green cards, per the annual limit, remain available for eligible immigrants even if the agencies cannot process the relevant paperwork in that fiscal year.

Emphasising the negative impact of under-utilised green cards on people and the US economy, Mr. Bhutoria said, "By recapturing these unused green cards, billions of dollars could be added to the economy, the backlog for families waiting for Green cards could be reduced, and unnecessary bureaucratic limitations on legal immigration could be mitigated."

In a June 2021 report, the Niskanen Center also claimed that if the U.S. government recaptures over a lakh unused employment-based green cards, it would add $216 billion to GDP over 10 years, and $815 billion over the same period if it recaptures more than nine lakh unused employment-based and family-preference green cards.