



## **Advocates frustrated with administration as green cards poised to expire**

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The clock is running out on more than 100,000 employment-based green cards that the Biden administration could — but likely won't — issue before the end of the fiscal year.

The green cards, or permanent residency permits, are available for the administration to dole out to eligible immigrants but will expire on Sept. 30.

President Biden's pro-immigrant rhetoric has contrasted with former President Trump's restrictionist stance. But thus far, the administration has shown no signs that it will expend political capital to assign the expiring green cards, frustrating immigration advocates.

"It's a question of willingness. Are you going to be willing to take the risk on someone trying to stop you in court or not? And obviously they're not willing to risk litigation on behalf of this population," said David Bier, an immigration researcher at the Cato Institute.

Nearly 90 percent of the immigrants who would be eligible for the expiring tranche of green cards are Indian nationals currently on temporary work visas. They face decades-long wait times to receive permanent residency.

Those wait times are essentially baked into the immigration system, as country caps established in statute have combined with high demand for green cards from Indian nationals, many of whom are already in the United States under work visas such as the H-1B.

Advocates are growing increasingly frustrated with the slow pace of adjudication and want United States Citizenship and Immigration Services (USCIS) — the agency that grants visas, permanent residency permits and naturalizations — to fast-track applications, making use of green cards that were left unclaimed because of the pandemic and Trump administration policies.

"There's two reasons there's far more green cards available this year for employment-based immigrants than in prior years, because so few family-based green cards were used last year, and any unused family-based green cards get added to the employment-based limit for the following year," said Bier.

"The second reason is that the government did almost nothing to increase the speed of adjudications in order to meet the increased demand," he added.

Under Biden, USCIS has made a series of changes to speed up and simplify green card applications, particularly for foreign nationals who seek to change their status from a work visa.

In practical terms, one of the most significant changes has been extending the validity of a medical examination from two to four years, a measure that especially helps Indian nationals stuck in the green card queue who must resubmit their visa and green card applications yearly.

USCIS also has new leadership under Ur Jaddou, who was confirmed by the Senate as director in early August.

Jaddou, in contrast to her predecessors under the Trump administration, has specific USCIS experience: She was the agency's chief counsel in the Obama administration and worked as a pro-immigrant advocate during the Trump years.

Still, USCIS is primarily fee-funded, and it's still recovering from a drop in receipts caused by fewer applications submitted during the pandemic, which, in turn, caused a hiring freeze that further slowed visa and green card processing.

The slowdowns have opened USCIS and other Biden immigration officials to criticism from defenders of various immigrant groups as frustration grows over visas and green cards that advocates say could be released.

"We have several cases that have continued against the Biden administration regarding unused visas," said Marisa Limón Garza, deputy director of Hope Border Institute.

Limón said that the Biden administration has continued Trump-era litigation and has been slow to issue visas under the Diversity Visa Program.

The Diversity Visa Program grants immigration benefits to citizens of countries that have historically low levels of immigration to the United States.

The Trump administration tried to draw down the program, which in large part benefits migrants from majority-Muslim and majority-Black countries. The move was broadly criticized by Democrats and immigrant advocates.

Limón said advocates won a court victory against the administration to issue more than 9,000 additional visas, including 921 for Afghan citizens, but the administration has yet to issue the documents.

"There is no reason why this administration who, number one, has promoted that they will take the steps that are necessary to make sure that our Afghan allies and refugees and asylum-seekers are evacuated from Afghanistan and, two, that they promote the diversity visa program should continue to stand in the way of a court order that would finally allow for some relief," said Limón.

Still, the challenges that led to USCIS's slowdown have not subsided, and other agencies play a role in the immigration system as well.

For visa applications where the foreign national is abroad, the State Department has to interview applicants at consulates, many of which are still subject to pandemic closures and restrictions.

Congress has also played with the idea of recovering some of the green cards and returning them to the family-based system where they originated before going unused. Such a measure would preserve the absolute number of green cards but do little for the Indian nationals seeking adjustment of status.

USCIS under Biden and now Jaddou has increased the clip at which it issues green cards, but advocates say it will need to take more drastic action to waste fewer permits this fiscal year and to assign all available permits next year, when a similar glut is expected.

"You'd be talking about an astronomical increase in the rate of adjudications, so much faster is nice, but ultimately it's going to take drastic action, not slightly smoothing out the bureaucratic hurdles," said Bier.