

Indian work visa holders look to budget reconciliation as their ticket to permanent residency

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Hundreds of thousands of Indian professionals holding U.S. work visas are looking to the federal budget deadline next month as their "one ticket" to finally receiving a green card, the permanent residency card, after waiting in backlogged lines for decades.

Their hopes to secure green cards through an alternative avenue were dashed in July when the State Department announced that 100,000 would go unused this year.

In New Jersey, home to one of the nation's largest Indian communities, that's imposing some painful choices on longtime residents, including Jimi Parekh of Edison. Parekh and his wife are thinking of leaving the country after 10 years because their teenage son now risks losing his legal status under the system.

And Parekh will be 79 by the time he and his wife likely get the green cards they were approved for six years ago, he said.

"I'm not getting a green card in my lifetime," Parekh, a technical lead with a health insurance provider, said with matter-of-fact resignation.

The green card backlog has become a crisis for professional workers who have made a life in the U.S. on H-1B work visas, including thousands of immigrants who have settled with their families in the Garden State.

They're particularly vulnerable because federal law places birth country limits, also called country caps, on new green cards. These limits penalize Indian professionals because of their large numbers, said David Bier, an immigration researcher at the Cato Institute.

In the weeks since the State Department announcement in July, frantic holders of H-1B visas have called the offices of Illinois Democrat Dick Durbin, chair of the Senate Judiciary Committee, which oversees immigration law, as well as New York Democrat Chuck Schumer, the Senate majority leader.

They want the Democratic-controlled Congress to include H-1B visa holders who are in immigration limbo, because their green cards are delayed for decades, in the budget reconciliation bill lawmakers need to pass by the start of the Oct. 1 fiscal year.

"The budget reconciliation bill is the one chance for immigration reform for those in the backlog — the one ticket for green cards," said Bier, who criticizes the Biden administration for overseeing the wasting of the 100,000 green cards.

“This legislation will have the potential to issue millions of green cards. It would be a big disappointment if highly skilled professionals and temporary visas were left out of any path to citizenship.”

Parekh said he's been calling Durbin, Schumer and his local representative, Frank Pallone. He said he's been vetted and approved for a green card since 2014, three years after he arrived in the U.S. Yet he is unlikely to receive one in the foreseeable future.

So he was elated, he said, to learn last year that a green card was finally in sight.

This was because a tranche of thousands of unused green cards for relatives of current U.S. citizens became available in 2020 due to COVID delays and former President Donald Trump's immigration restrictions. This meant that Parekh and thousands of Indian tech workers had a more realistic timeline.

In October 2020, Parekh's employer filed papers to adjust his status from a non-immigrant to an immigrant visa, the last step toward permanent residence in the U.S.

But, it turns out, the excess green cards were not used.

The State Department announced in July that most of the excess slots would remain unused and thereby be wasted. A year after the pandemic began, U.S. Citizenship and Immigration Services, the federal agency that processes green cards, said on its website that its staff was still trying to keep up with demand.

Parekh was back in the queue. His dream of permanent residence in the United States would remain just that.

Indian tech workers face the longest wait times for green cards after Chinese workers: up to 80 years, with the likelihood that many thousands will die before they receive permanent residence, according to Bier.

Experts blame the green card backlog on restrictive government regulations, slow processing times, and a system that is overly reliant on paper instead of electronic documents — all further subject to the changing temper of immigration policy across administrations.

Bier said he expects the vast majority of workers in the H-1B green card backlog will be included in the bill, based on his read of the politics and of language in Biden's U.S. Citizenship Act of 2021, which proposes a comprehensive legalization program.

Lawmakers need to avoid excluding legal workers from the path to citizenship that they are creating, Bier said.

The reconciliation bill follows the budget resolution that was passed in August and would authorize permanent resident programs that backlogged Indian workers want to be part of.

Bier said he could see a new green card category being created for essential workers in any industry. That would include people on H-1B visas, going by text in the U.S. Citizenship Act.

“Assuming they [Senate Democrats] stick with the language that is the most partisan — this is not a bipartisan bill — why not use the language that is supported by the White House and by the vast majority of Democrats? Then they would have a whole new green card program available to

skilled professionals that would effectively get them out of the green card backlog and out of country caps,” Bier said.

“Country caps” are a polarizing issue among green card hopefuls from different countries. They place a 7% annual limit on the number of green cards issued to each country from the available pool; Indian visa holders, followed by Chinese, are most disadvantaged by this because their countries have the largest numbers of potential immigrants.

The U.S. Citizenship Act proposes reforming immigration wholesale but has little support among Indian workers because it does not eliminate country caps. Another proposed bill, the EAGLE Act, addresses highly skilled legal immigration and phases out the country cap, but is opposed by immigrants from other countries, who say it would delay their green cards.

The Indian visa holders who are asking for consideration in the budget reconciliation bill say they are alarmed that messaging from the administration leaves them out. A recent tweet by the Senate Judiciary Committee mentioned many undocumented immigrant categories but left out legal workers.

The government's decision not to use its additional green card slots prompted a lawsuit by 125 Indian and Chinese doctors, engineers and other professionals this month. Charles Kuck, an attorney for the plaintiffs, said visa workers waiting for green cards don't appear to be a priority for Democrats in Congress, who are focused on undocumented immigrants.

“Economically and socially there is no reason for the government not to fix this. But the Democrats are simply not focused on employment-based immigration,” he said, adding, “I would love to be surprised.”

Many Indian work visa holders bristle at an immigration reform debate that they say continually focuses on the plight of undocumented workers but leaves out legal residents like them.

“We are the lowest-hanging fruit in immigration reform,” said advocate and Tennessee resident Payal Raj. Her family has been waiting for a green card for five years — not nearly as long as many others.

“We’ve been vetted for citizenship tens of times,” she said. “But we don’t have a path to citizenship.”

The fading odds of permanent residence in the U.S. is a cloud hanging over the lives of visa holders. Career advancement, pay raises, spouses’ professions and their foreign-born children’s futures are tied to immigration statuses that remain temporary until a green card arrives.

“I do not know whether to tell her to become part of the community here or not. Will she even stay in the same school?” Raj asked about her daughter, who attends elementary school in the U.S. She and her husband are considering leaving for other countries.

“We’re nearly in our 40s. We have our careers to think about,” she said.

A California-based analyst, who works for a \$20 billion hedge fund in New York City and asked that only his initials, S.A., be published, said he has two degrees from Stanford University, and has paid millions in taxes to the government during his time in the U.S.

Yet he says he's been stuck in the green card backlog since 2012. He plans to move this winter to Vancouver in Canada, where he has permanent residence status.

"If I were from any other country, I would be a citizen today," he said.

News that the U.S. won't use its green card slots this year also dashed Parekh's high-school-age son's plans to apply to colleges in the U.S. Parekh and his wife plan to return to India and send their son to college in Canada.

Foreign-born children of visa holders who wish to get permanent residency status have American childhoods but end up having to self-deport or become undocumented at 21, when they age out of the legal status derived from their parents. Those who remain in the U.S. to attend college must switch to a student visa at 21 and pay high international fees.

"It sucks. I've been here from first grade," said Parekh's son Samarth, a junior at John P. Stevens High School in Edison. "My friends and I made plans to hang out, to meet in college. I feel as if I'm part of America — I have all positive and happy memories here except for this one moment when I might have to go abroad."

Advocate Dip Patel said he would expect the reconciliation bill to include provisions for youth like Samarth, because these "documented Dreamers" were included in legislation introduced in March to legalize undocumented youth.

A spokesperson for Sen. Bob Menendez, a New Jersey Democrat and sponsor of the U.S. Citizenship Act, said in a statement that he cannot publicly discuss the bill while negotiations are underway and that he is committed to getting as much as possible of his immigration reform into the final reconciliation package. California Democrat Rep. Zoe Lofgren sponsored the EAGLE Act and said in a public statement that she is encouraging the inclusion of per-country cap relief in any upcoming budget reconciliation legislation.

And this week, three congressional representatives called on fellow Democrats to address relief for highly-skilled immigrants stuck in the queue.

Still, the likelihood of wasted green cards being channeled into employment-based slots is low, said Bier. House Democrats already voted to allow unused family-based green cards to remain in the family system going into 2022.

The reconciliation bill needs a 51-vote margin to pass the Senate, where Democrats hold a bare majority: 50 seats plus Vice President Kamala Harris' tie-breaker.

S.A, the analyst, said he sees "little difference" between Trump's anti-immigrant rhetoric and Biden's promises of reform. "They knew for months that there would be a green card spillover," he said. "Why blame a bureaucratic nightmare or the pandemic? This is the US government — it is the strongest in the world."