

# THE TIMES OF INDIA

## **Bill: Payment of a super-fee will enable Indians caught in decades-long backlog to get a green card**

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MUMBAI: The US House Judiciary Committee (which has jurisdiction over immigration) has released its portion of the reconciliation bill (Bill). The term – reconciliation says it all. While the bill does not seek to eliminate country-caps for green cards, nor increase the annual quota of H-1B cap visas, there is lots on offer.

The Indian diaspora, which is caught in a decades-long employment green card backlog can on payment of a supplemental fee (it is been commonly referred to as a super-fee) cut through the queue and obtain their permanent visas. Similarly, the family-based green card backlog can also be tackled. Legal dreamers (children of H-1Bs who have aged out or will age out – turn 21) get a chance at obtaining permanent residency and citizenship.

Cyrus D. Mehta, founder of a New York immigration based law firm told TOI, “This is a terrific bill, and while it does not have everything, it would allow Indians in the employment green card backlogs to seek a waiver of the numerical limitations by paying a super fee of \$5000 at the time they file their final adjustment of status applications and get green cards.”

Annually the US sets aside only 1.40 lakh green cards for employment-based applicants and there is a 7% per country cap. Given the heavy influx of Indians in the US – majority of them holding an H-1B visa, this restrictive policy poses challenges.

TOI has often quoted a study done by David J Bier, Immigration Policy Analyst at Cato Institute, a Washington headquartered think-tank, who pointed out that the employment-based green card backlog (EB2 and EB3 skilled category) for those from India had reached 7.41 lakh in April 2020, with an expected wait time of 84 years.

In the context of this bill, Bier has tweeted, “Employment-based applicants can adjust if they have waited two years from their priority date...This is almost like abolishing the employment-based caps for adjustment applicants who can pay \$ 5000. Awesome!”

Mehta adds, “Many Indians in the backlogs may also qualify under the essential worker provision which is more generous as it does not need an employer to sponsor them or for them to pay the super fee of \$5000.” However, it appears that a fee of \$ 1500 would be payable. The list

of essential workers is quite exhaustive and covers workers from the information technology industry, health care, food and agriculture, transport to name a few instances.

Bier tweets out that essential workers qualify based on 'consistent' income in an essential job between January 31, 2020 up to August 24, 2021. "I don't get the purpose of this cut off. What's consistent? Department of Homeland Security (DHS) will tell us," he adds.

For the family: Family immigrants, who are trying to adjust their status (to that of a green card) and who have a priority date of more than two years can pay a super-fee of \$ 2,500 and obtain waiver from the green card cap. But, typically family members being sponsored are overseas and do not go through an adjustment of status, but consular process.

The bill seeks to ensure that visa numbers are not unused. "It provides for the recapture of family and employment visas that went unused between fiscal years 1992 and 2021 and will also automatically recapture unused numbers after that date," states Greg Siskind, immigration attorney. This is an important provision given that as many as 100k employment based green cards are at risk of going wasted, if USCIS is unable to process these numbers by September end. While a hearing on this issue was held recently, the judicial order is still awaited.

"Recapturing of family based green cards, will help those waiting overseas in the family backlogs and who cannot file adjustment applications in the US," explains Mehta.

For those in queue in the EB-5 backlog (investment linked green card) and who have a priority date of at least two years old, can pay a super-fee of \$ 50,000 to apply for adjustment of status.

As US Citizenship and Immigration Services (USCIS) is entirely fund dependent – supplemental petition fees have also been provided for in the bill, which will increase costs. These range from \$ 800 for employment-based green card petitions to \$ 15,000 for EB-5. USCIS, which is facing a cash-crunch shall be appropriated \$2.8 billion to increase its capacity.

Mehta points out that, "The caveat is that the bill we see now is not the final bill, and will be subject to mark-ups on Monday in the House Judiciary Committee, and will need to be included in the Senate bill. Finally, the parliamentarians will determine whether the immigration provisions are revenue generating provisions or not, as they will be part of a budget reconciliation bill that does not need a filibuster proof majority in the Senate." However, by and large, the Indian diaspora is hopeful of a favourable outcome.