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US bipartisan bill seeks to remove per-country employment based green-card cap: Aims to ease backlog but protect American workers

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MUMBAI: A bipartisan bill – ‘Equal Access to Greencards for Legal Employment’ aka the Eagle Act, has been introduced by US politicians. It seeks to remove the 7% per country-cap on employment-based green cards in a phased manner.

After the phase-in period of nine years, employment based green cards will be issued on a first-come first served basis. The lead sponsors of this bill in the House are Zoe Lofgren, a member of the Democratic party and Republican John Curtis. TOI spoke to a few immigration experts – according to them the fate of this bill is currently unclear.

Post enactment of the bill, during the first nine years, skilled legal immigrants will be allowed to file for adjustment of status to green cards, if they have got a labour certification and two years have passed since approval of Form I-140 (which is filed by the employer sponsoring the employment-based green card).

This provision will ease the existing backlogs, it will enable immigrants to change jobs rather than being tied down to the same employer for decades altogether and will also prevent children from ageing out.

Owing to the existence of a per country cap of 7%, those born in India and China are adversely affected. According to a study done by David J Bier, Immigration Policy Analyst at Cato Institute, a Washington headquartered think-tank, 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.

However, the bill does not seek to increase the total number of employment-based green cards – the annual limit is 140,000 nor does it seek to recapture unutilised numbers.

To protect American workers, several measures have been put in place. Employers that hire foreign workers will have to advertise the jobs to American workers on a searchable Department of Labour (DOL) website for at least 30 days. Those with more than 50% foreign workers will

not be able to sponsor any more foreign workers. Business visas (B visas) can no longer be used as work visas. In addition, DOL will be authorised to set a fee to regulate the H-1B worker program.

US Tech Workers, a not-for-profit that seeks to protect the interests of American workers, has tweeted that the Eagle Act would create a train wreck to the legal immigration system where India would monopolise all green cards and create a bigger backlog for other countries.

Immigration Voice, a not-for-profit that works towards alleviating the problems faced by legal high-skilled future Americans has set up a website providing information on the Eagle Act and dispelling various myths.

This website points out that there is a lengthy (decade-long) phase-in period before the system becomes purely first-come-first serve. During this phase-in period, provisions are there to prevent all employment-based green cards going to applicants from one country and after the phase-in period, employment-based green cards will go to immigrants in the order in which they applied (not all from any one country).

Aman Kapoor, the Co-Founder and President of Immigration Voice states that: “The EAGLE Act is a win-win for the American people. Every member of Congress now agrees that it is morally and legally indefensible to have a discriminatory per-country-based allocation system for employment-based green cards that bans talented Indian immigrants from receiving green cards during their lifetime if they apply today. This bill transitions the allocation of employment-based green cards to a first-come, first-served application while also safeguarding the concerns of foreign nationals from countries that were accustomed to special treatment and having no wait time at all to receive green cards due to discriminatory per-country limits.”

“ In addition to achieving an equal and more merit-based system, the bill ensures that in exchange for changing the green card system to become fair for all international applicants, American workers are prioritised for hiring by all US companies such that no foreign worker can be used to undercut an American worker for a US job. This bill benefits only one country in the world – The United States of America,” he sums up.