



# THE TIMES OF INDIA

## **Lawsuit filed to prevent 100k employment-based green cards from going waste**

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As many as a 100k plus employment-based green cards could go unutilised and wasted, if the US Citizenship and Immigration Services (USCIS) is unable to adjudicate the same by September 30 (which is the end of current fiscal year).

As the clock is ticking, a lawsuit has been filed to prevent such wastage from happening. Incidentally, this lawsuit is the first to be filed after the appointment of Ur Jaddou as the director of USCIS.

The stakes are high, for Indians and Chinese as the waiting period for an employment-based green card runs into several decades. The plaintiffs are 125 Indian and Chinese nationals who along with their dependents filed applications for permanent residency (aka green cards) before December 2020.

One of them is a front-line physician Dr C, an Indian citizen, who has been awaiting adjudication of her I-485 (application for adjustment to green card status) since October 2012 – a nearly nine-year wait. The plaintiffs have called upon the district court (Maryland) to order USCIS to immediately adjudicate their applications; and/or that the court order USCIS to reserve these additional visa numbers.

"Due to the pandemic, an unusually low number of family-based green cards were approved in fiscal year 2020 (year ended September 2020), causing unused family-based visas to 'roll over' into the employment-based category in fiscal year 2021," points out the lawsuit complaint.

This created a unique opportunity and obligation in the fiscal year 2021 (year ending September 2021) for USCIS to approve more employment-based green cards than usual, and thereby significantly reduce the decades-long wait for Indian and Chinese applicants and their employers.

At the beginning of the fiscal year, in October 2020, USCIS announced it would accept applications from thousands of Indian and Chinese nationals who had already been waiting years, some over a decade. Finally, their time had come. But their joy and relief quickly turned to

anxiety as it became clear that USCIS had no plan or intention to timely process these applications, which must be adjudicated before the end of the fiscal year, it adds.

The moot point is that if USCIS does not adjudicate the employment-based green card applications within the two months of August and September, these additional visa numbers that have rolled over from the unused family category will be wasted. "This will cause the already lengthy visa backlog to grow, and plaintiffs will have to wait years or decades more before they become eligible for residency again," points out the lawsuit complaint.

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.

Filing of the I-485 application is the last stage in the process of obtaining an employment-based green card. Since there are only a certain number of green cards available per category and there is a 7% per country cap, the wait for citizens of India and China for the application to be processed is the excruciatingly long.

Dr C and her spouse, also a physician, "feel cheated by the immigration system and the inhumane treatment rendered by the USCIS personnel". This is a sentiment that is widely echoed across the Indian diaspora in the US.

Some of these Indian plaintiffs' fear that their children will age out (turn 21) before the employment-based green card application is adjudicated. This leaves the children with no option but to transit to a student visa or deport to India. Bier in his study had stated that 1.36 lakh children from Indian families were caught in this EB2 and EB3 employment based green card category backlog, and 62% of such children would age out without getting a green card.

"Since, USCIS had ample warning of the increased number of applications for the fiscal 2021, and knew that these visas had to be adjudicated by the end of the fiscal year or be completely wasted, it is unreasonable that the agency made no plan to timely process these applications. The agency happily accepted the millions of dollars in legal fees for the I-485s, knowing full well that it did not have the resources or capacity to adjudicate the thousands of applications received by September end," explains the lawsuit complaint.

"If we are successful in reserving the 100K plus unused employment based 2021 numbers we can wipe out 75% of all EB backlogs within three years," states Charles Kuck, one of the immigration attorneys who is representing the plaintiffs. The other attorneys representing the plaintiffs are Greg Siskind and Jeff Joseph.