



Is Indians' Green Card backlog limbo about to end?

There are many slips between the cup and the lips, caution immigration advocates.

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All eyes are on the White House with the Senate passing a bill that could shorten Indian nationals decades long wait for Green Cards with the elimination of 7% country caps for employment-based immigrant visas.

Immigrant advocates wondered whether President Donald Trump given his tough stance on immigration would sign the "Fairness for High-Skilled Immigrants Act, or S.386, passed by the Senate Wednesday with unanimous consent.

So far the White House hasn't given any indication about whether Trump will sign the bill or veto it.

But before the bill lands on the President's desk, lawmakers have to reconcile quite a number of differences between S.386 and the companion **House bill H.R. 1044 that was passed in July 2019.**

Once the differences are reconciled, the new reconciled bill will need to be passed again in both the House and Senate separately. Only then it would land on Trump's desk.

Again the whole exercise has to be completed before the term of the lame duck Congress ends on Jan. 3, 2021. Otherwise it's back to square one.

The Senate passage of S.386 came with unanimous consent after its key Republican sponsor Mike Lee of Utah reached a new deal with Democratic Senator Dick Durbin who had been blocking it.

The deal places some restrictions on the Green cards specifically for H-1B workers and their families.

- For years 1 to 9 after the bill is enacted, the H-1B visa holders can only get a maximum of 70% green cards.
- Year 10 onward, no more than 50% of the Green Cards can go to H-1B visa holders & their dependents.
- This criterion does not apply to those from the medical profession or those who have obtained national interest waivers.

- In addition, the bill bars 50:50 companies (those with 50 employees and more in the US or with 50 per cent of staff on H-1B work visas) from bringing in more employees on H-1B into the US.

Apart from that the bill increases the per-country cap on family-based immigrant visas from the current 7 percent of the total number of such visas available in a particular year to 15 percent. It also has provisions to:

- Eliminate the present 7 percent cap for employment-based immigrant visas.
- Remove an offset that reduced the number of visas for individuals from China.
- Establish transition rules for employment-based visas from fiscal year 2020 to 2022, by reserving a percentage of EB-2 and EB-3 visas for individuals not from the two countries with the largest number of recipients of such visas. EB-2 visas are used by workers with advanced degrees or exceptional ability, while EB-3 are for skilled and other workers. (The two countries with the largest recipients of such visas are India and China.)
- Of the unreserved visas, not more than 85 percent will be allotted to immigrants from any single country.

The bill's supporters celebrated the victory on social media.

“Where there’s a will, there’s a way! #S386 finally passes the senate!! Congratulations everyone! We did it!!!” Skilled Immigrants in America, a nonprofit group that advocate “fairness for Americans-in-waiting.”

The organization also thanked Senators Lee, Durbin, Rick Scott, Tim Cotton, and Vice President-elect Kamala Harris.

However, some immigration experts have tried to temper the expectation, especially because of major differences between the Senate and House bills.

“Happy that S. 386 has finally passed in the Senate and we’re a step closer to ending nationality discrimination in the visa allocation system,” Memphis, Tennessee-based immigration lawyer Greg Suskind tweeted.

“Given the late stage here, I would suggest people temper their expectations,” he wrote in a following tweet.

“Not at all clear what the House thinks about this and how much room there is to tweak if there are changes demanded,” Suskind wrote. “Also, we have a President likely to veto anything that is not 100% to his liking.”

A recent study by Washington based think tank CATO Institute noted that the employment based green card backlog from India (EB-2 and EB-3 skilled category) had reached 741,000 in April 2020, with an estimated wait time of 84 years.

Immigration Voice, a US based not for profit, welcomed the passage of S. 386 saying it creates a fair and equitable, ‘first come, first serve’ system for receiving employment-based green cards.

This puts an end to the discriminatory quota system that has left over one million Indian high-skilled workers in the US with decades-long line while individuals from other countries face no wait time at all to receive a green card, it said.

“People are finally understanding that no matter what else is wrong with our immigration system, we can all agree that discrimination should never be a basis for deciding who is given access to permanent residency in the US,” said Aman Kapoor, the co-founder and president of Immigration Voice.

Immigration Voice also pointed out that the Senate bill has improved upon the earlier House bill by adding more enforcement provisions to protect American workers and encourage their hiring.

After the bill was introduced in Senate in Feb 2019, the total co-sponsors for the Bill grew from 14 to 34. But on July 9, 2019, Republican Senator Chuck Grassley included many H1B program and Labor condition application(LCA) related provisions as amendments to the original bill.

Among other things these required Department of Labor (DOL) to setup a “Searchable Internet website” to post the H1B positions that are available to be viewed by public for free.

It also set new H-1B employer application requirements such as the employer or anyone hiring on behalf of employer to not advertise the position saying that it is available only to H-1B holders and there will be priority for H1B applicants.

If the employer already has H-1B workers, they need to submit the IRS W-2 forms related to H-1B workers to the DOL Secretary.

The LCA should also have the prevailing wage determining methodology information.

Several other measures were set out for H-1B employers investigation and enforcement.