



Anticipated Changes to Employment-Based Green Card Processing

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U.S. employers and foreign workers could soon face significant additional burdens and years-long delays in the employment-based green card process. Last month, the U.S. House of Representatives passed the Fairness for High-Skilled Immigrants Act of 2019 (H.R. 1044), which seeks to eliminate the per-country limit on employment-based immigrant visas (i.e., “green cards”). The legislation proposes instead to treat all foreign nationals equally, regardless of country of birth. If enacted, the proposed changes could take effect as soon as September 30, 2019, with a three-year transitional period to offset the immediate impact to the U.S. immigration system and labor market.

Current U.S. federal immigration law places a numerical cap on the total number of employment-based green cards issued each year. Of this annual quota, nationals of any single country can receive no more than seven (7) percent of the total number of available employment-based green cards. Critics argue this policy is disadvantageous for nationals of heavily populated countries that have a higher number of applicants for U.S. permanent residence. Under the present law, nationals of China and India face green card waitlists that can be decades long because the demand from these countries far exceeds the available number of immigrant visas. The Fairness for High-Skilled Immigrants Act of 2019 attempts to dramatically change the distribution of green cards by eliminating the seven (7) percent per-country cap on all employment-based immigrant visas.

If passed into law, H.R. 1044 will subject employment-based green card applicants from all countries to a single waitlist for each employment-based immigrant visa category. By eliminating the seven (7) percent per-country limit on employment-based immigrant visas, foreign nationals from countries with the longest green card waitlists—mainly, India and China—would see an immediate decrease in green card wait times. However, because H.R. 1044 will not increase the total number of immigrant visas available annually, the bill would redistribute the excess demand for employment-based green cards by creating an immediate backlog for foreign nationals from all countries other than India or China. This is because thousands of citizens from India and China who are currently “in queue” for a green card would be processed ahead of any new green card applicants for years to come. According to a recent report published by the CATO Institute, employment-based immigrant visa applicants from countries other than India and China could be forced to wait between six and seven years to receive a green card if the bill becomes law.

The Fairness for High-Skilled Immigrants Act of 2019 is expected to increase costs, burdens and uncertainty for U.S. employers that rely on foreign workers to supplement labor shortages in the American workforce. Employers that previously have not experienced substantial delays in the employment-based green card process should prepare for increased wait times. If enacted, the bill will force such employers to wait several years for a large number of sponsored employees to receive green cards—a disincentive that could radically reduce the number of employer-sponsored green card petitions altogether. U.S. employers should also expect the bill to increase labor supply from India and China and decrease labor supply from other countries. According to Section 2(e)(4) of the legislation, foreign workers who have received approved I-140 immigrant visa petitions prior to the bill being enacted will not lose their “place in line” for a green card.

Although a companion bill (S. 386) to H.R. 1044 has been introduced in the Senate, its passage remains uncertain. At this time, it’s clear that reallocating employment-based green cards will have a significant impact on the supply of foreign labor to U.S. employers.

Akerman will continue to closely monitor developments as they occur.