

ABOVE THE LAW

Proposed New Immigration Measure Will Benefit The Economy

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The U.S. House of Representatives recently passed historic legislation, the Build Back Better Act, a sweeping and ambitious social spending measure that touches on practically every facet of life from education, labor, and child care to health, taxes, and the environment. It is not an immigration bill and in truth the immigration provisions contained in it do little to bring about woefully needed changes to our nation's archaic immigration laws, the foundation of which date back more than half a century. But while the bill doesn't provide a path to citizenship that many advocates had hoped for, it does include some important provisions that will have a significant impact on the lives of immigrants and their families.

One such provision is the recapturing of unused visa numbers or green cards. Until recently, this was a seldom-talked about area of immigration that I have advocated strongly for over the past decade. I have written extensively about it, spoken about it at length, and have been part of many advocacy efforts to see it come to pass. Why? Because as an immigration lawyer, I see up close how our failure to reclaim these visas affects the lives of not just the immigrants I work with every day but on the entire immigration ecosystem.

The Build Back Better Act seeks to recapture unused visa numbers for employment- and family-based visa applicants, allowing those caught in a merciless visa backlog to advance. It is estimated that there are more than 400,000 of these visa numbers available for recapture. The backlog, that endless delay, wreaks havoc on people's lives, not just the immigrants themselves, but on entire families that are forced to live apart because there are not enough visas available to them — when in actuality there really are.

There are heartbreaking stories of family members who have died waiting to be reunited with their loved ones.

For employers who sponsor these workers for employment-based visas, there is the significant hardship of cost and time they are forced to incur. The process is tedious, and there are delays at nearly every step of a many-step process, which typically takes about two years.

But everything comes to a screeching halt once you reach the final stage of the green card application because of the lack of visa numbers. There are many complicated considerations for both the employer and the employee while they wait for a number to become available. The employer is prevented, for example, from promoting the employee during this time because the green card application was for a specific position. The wait impedes how the business can best place its employees, and it impedes the growth of the individual immigrant employee.

For the immigrant, another great concern is that their own children will age out before getting a green card since only children under 21 are eligible to be included on any green card application, leaving the children in limbo.

According to the CATO Institute, the backlog of people waiting for a green card now exceeds 9 million — about 7.5 million for family-based visas and 1.6 million for employment-based ones.

The wait can be decades.

Each year, the U.S. reserves a maximum of 140,000 green cards for immigrants sponsored by employers and another 226,000 for family members of U.S. citizens and permanent residents. How long a person must wait for one of those to become available depends on several factors. One is the visa application category, i.e., whether it's a sibling, parent, child, or employer sponsoring the immigrant for a green card. Another is the immigrant's country of birth. For example, according to the latest visa bulletin, sibling applications for immigrants from almost all countries take between 15 to 20 years. An Indian citizen with professional skills will have to wait over eight years for an employment-based green card.

In years when visas go unissued, unused visa from the employment-based numbers are added to the following year's family-based numbers. And unused family-based visas are added to the employment-based numbers. There is a kind of crisscross effect on the redistribution of these unused visa numbers.

When the law was passed in 1990, it was not anticipated that the demand for employment-based visas would exceed supply. In the early 2000s, due to bureaucratic inefficiencies, some of the numbers were unused and not fully recaptured. Over time, those numbers increased. Add to that the various visa bans by the previous administration and the COVID-19 pandemic processing delays, and the unused numbers have grown in an unprecedented manner.

According to the Niskanen Center, there is a huge economic benefit to recapturing these unused visa numbers and putting them into the hands of hard-working immigrants. According to their report, the U.S. economy would benefit greatly, adding \$815 billion to the Gross Domestic Product (GDP) over 10 years. I see firsthand how hard-working and dedicated many immigrants are. They are teachers, scientists, doctors, engineers, architects, job creators, and entrepreneurs, working across all industries and making significant contributions to our economic bottom line. We would not have life-saving COVID-19 vaccines without the immigrants in our country nor could we operate our daily lives during the COVID-19 shutdown without our Zoom meetings — two of the countless examples of U.S. companies founded or run by immigrants.

We are going through an unprecedented time in history where we have not seen such labor shortages. All the immigration provisions of Build Back Better will help fulfill our desperate need for labor. And while the House has passed this bill, we now wait for Senate to do its part. I, for one, am hoping that senators will allow these provisions to stand.