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Green card backlog threatens to split immigrant families

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June 22nd, 2022

On a steamy evening in Leander, Texas, about 25 men, women, and children gathered in a home for a weekly Wednesday-night worship and prayer meeting. The group gathered in a circle on leather couches, wooden chairs, folding chairs, and the wood floor. After two songs and a Scripture reading, participants read church prayer requests aloud. Attendees Samraj Kumar Veeraraj and his wife Anitha Samraj Kumar shared their own prayer request: Anitha's mom was in the hospital in India for surgery. Anitha was worried about who would care for her. She can't travel because of the family's green card application.

The family of five has been waiting for eight years to submit an application. On July 1, they will finally be eligible to apply. Samraj Kumar joined the waitlist in November 2014. He expects to wait two to three more years before he actually gets the green card, an ID showing a person has permanent U.S. residency. Until then, no one in the family can leave the country. If they do, they could lose their turn and be put back on the waiting list—which could mean another decade of waiting.

They don't have that kind of time. Their oldest son, Jedidiah, attends Texas A&M University. When he turns 21, he will be on his own and won't be eligible for a green card as their dependent. He will have to go back to India or switch to a student visa to finish his undergraduate degree. "I'm just trusting God through it. It is very overwhelming," Anitha said.

The family knows many other Indians caught up in the U.S. green card backlog. About 1.4 million unfinished green card cases are keeping millions of migrants in legal limbo and threatening to split families apart. The logjam could further exacerbate the labor shortage, and immigration experts warn that legislative solutions are a long shot.

The United States issues about 140,000 employment-based green cards each year for five categories of workers, mostly highly skilled or highly educated applicants. But it approves many

more qualified applicants to join the backlog, which is concentrated in the categories for employer-sponsored immigrants with master's or bachelor's degrees.

Immigration rules limit immigrants from each country from receiving more than 7 percent of the employment-based green cards. Eighty-two percent of migrants stuck in the backlog are Indian. As a result, Indian migrants face waits of up to 90 years, and about 200,000 may die before ever receiving a green card. Pandemic delays and staffing shortages at embassies and consulates have also lengthened green card waits.

Roughly 90,000 young adults are caught in the middle. The children of work-visa recipients are not protected from deportation by the Deferred Action for Childhood Arrivals program created in 2012 by President Barack Obama. Like Jedidiah, many of the children of green card applicants may age out of eligibility as dependents. Many of these children have only attended school in the United States and are native English speakers. Anitha left Chennai, India, for a job in the United States in 2005. Samraj Kumar followed with 2-year-old Jedidiah in 2006. "It would be very, very hard for him to go back," he said.

Raj Katarnak, an infectious disease and critical care doctor in Milwaukee, Wis., came to the United States from New Delhi, India, in 2011 on a temporary H-1B visa for highly skilled technical workers. He is still waiting for his green card. His whole family is still in India. If he travels, he risks losing his place in line. "We are living in this fear and inability to go even if somebody dies in our family," he said.

Changing jobs can also put H1-B workers waiting for their green cards at risk, a predicament that hurts both workers and their employers since it makes it difficult for employers to promote employees to new positions. Many employers hire a worker on an H1-B temporary work visa, then quickly petition for the worker to receive permanent residence. Employees can only change jobs 180 days after they have filed their green card application. For workers waiting to apply who are stuck in the backlog, an employment change means their employer must file a new petition—and the whole process starts over again.

Companies like Amazon.com and Uber Technologies, desperate for permanent residency for highly skilled workers, are lobbying Congress to take action.

A group of technology companies signed a letter reminding the Biden administration of the labor shortage and urging action to protect children of green card applicants: "We write to you today extremely concerned about the uncertainty that plagues the family members of many employment-based nonimmigrant visa holders in the U.S. ... We urge you to address this issue to help these families to stay together in the U.S. and allow our economy to flourish to its fullest extent."

The large backlog has long-term implications for the worker shortage, said David Bier, the associate director of immigration studies at the Cato Institute. "Workers are not willing to put their lives on hold indefinitely and forgo promotions and go through this process and headaches forever," he said. If the United States does not reform the process, companies run the risk of losing workers to countries like Canada where getting a green card is much easier, he argued.

The nonprofit Immigration Voice represents skilled immigrants stuck in the green card backlog. Founder Aman Kapoor waited for his green card for 12 years. Kapoor argues green cards awarded for merit (employment-based green cards) should not be given based on country of birth. The 7-percent cap on employment-based green cards is unfair for populous countries like India and China, he said.

Last year, Rep. Zoe Lofgren, D-Calif., introduced the EAGLE Act— Equal Access to Green Cards for Legal Employment Act—in the House of Representatives. This bill phases out per-country caps for immigration visas and puts transition rules in place. Under the act, H-1B holders stuck in the backlog can receive employment authorization that's not attached to the visa and the freedom to change jobs. The bill would also prevent children from aging out by basing the child's age on when the parent petitioned for the green card.

But some lawmakers aren't satisfied. The EAGLE Act bill doesn't increase the total number of green cards, and others are worried it will disadvantage migrants from smaller countries since Indian and Chinese workers will quickly fill the cap.

"The only way to prevent anyone from being harmed is to get rid of the overall employment-based cap. ... And there's very little support for that," said Bier.

Similar concerns plagued a previous version of the bill. In 2020, both the House and Senate passed different versions of the bipartisan Fairness for High-Skilled Immigrants Act that would have removed the per-country cap on employment-based visas. "They are increasing the immigration from countries like India a marginal small amount at the expense of cutting back on immigration from other countries in a much more dramatic fashion—I don't think there's equity in that," said Sen. Dick Durbin, D-Ill., at the time.

The EAGLE Act has not been introduced in the Senate. A legislative solution appears distant. "It's an uphill battle," said Bier with the Cato Institute.

In the meantime, families like Samraj Kumar and Anitha's continue to wait.

Anitha stays up late to talk to her brother in India and check on her mom's condition because of the 10½ hour time difference. She hasn't seen her family in eight years. For Samraj Kumar, it's been more than 10. Their two younger daughters haven't met any of their family.

That's where the church has stepped in. "They don't have any other family apart from church," said Anitha, "The church has faithfully stepped up into that role as so many people [are] becoming grandparents, uncles, and aunts, and brothers and sisters."

Samraj Kumar added: "They have been faithfully praying for us."