EAGLE Act 2022: Will US Congress Finally Address the Green Card Backlog?

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Path to US permanent residency, or the green card, is the longest for India-born because of the per country cap.

Amid tech layoffs in the United States (US) and the renewed focus on H1-B visa holders, who have 60 days to find a job or leave the country, US lawmakers are poised to vote on HR 3648, or the EAGLE Act, to phase out per country limits on employment-based green cards, a measure expected to benefit skilled Indian workers.

The Bill, if passed, will also bring several changes to the H1-B visa programme and lift annual caps on family-based green cards.

The House Rules committee met on 5 December to decide on the voting procedures for the 'bipartisan' Bill, finalising the rules for voting on 6 December, before it goes on the floor of the US House of Representatives later this week on 8 December. The Joe Biden-led White House has issued a statement supporting the EAGLE Act.

Why Is There a Need for the EAGLE Act?

Most of the high-skilled foreign workers in the US are H1-B visa holders. The programme allows them to live and work in the country for a maximum of six years. Within these six years, they must find an employer willing to file an employment-based green card (permanent residency permit) application on their behalf.

However, the green card (GC) process is infamously complex. For instance, two siblings, both Indian citizens, residing and working in the US on H1-B visas, armed with Indian and American advanced degrees, equally talented and qualified, have a completely different trajectory towards their US green cards – because one of them was born in India and the other in Europe, although to the same set of Indian parents.

The Europe-born sibling will likely receive a green card within the first year of applying. The Indian-born sibling will join a decades-long queue, with no certain end-date in sight.

Annual green card allotment limits are based on the country of birth of an applicant, not their nationality. The law says that a country can receive only up to 7 percent of green cards in a year.

This 'unfair' aspect – country caps – of the US immigration system is what highly qualified Indian H1-B visa holders, who have made the US their home, want the Biden government to address.

Indians Disproportionately Affected

As per Cato Institute, the US had about 1.4 million employment-based immigration cases winding their way through its permanent residence process in 2021. Nearly 82 percent of the employment-based backlog was for Indians.

David Bier computed in a 2022 Cato Institute publication that "about 215,000 petitions will expire as a result of the death of the immigrant before their green card arrives, and more than 99 percent of these deaths will be of Indians." Cato calculations are based on US Citizenship and Immigration Commission statistics.

The reason for the longer queue for those born in India because the US imports a far-higher number of skilled Indian professionals each year than the number of green cards it can offer.

Cato Institute says that for certain H1-B categories, "Indian applicants (those with a master's or bachelor's degree) filing this year face a wait of about 90 years." Citizens of other countries with fewer H1-B entrees are granted permanent residency within the first year.

With the largest share of H1-B visas granted to India-born high-tech professionals each year – on an average 75 percent of the allotted – the 7 percent country cap has created a massive green card processing backlog, hitting an all-time high of 1.2 million people in 2020. impacting Indian H1-B visa holders and their H-4 dependent families the hardest.

Neha Mahajan moved to the US from India over 16 years back on an H-4 visa tied to her husband's H1-B visa. Her family waited for over a decade for their green card, during which she co-founded SIIA (Skilled Immigrants In America), an organisation that advocates for fair immigration policies for H1-B families. She argues that the number of green cards allotted to a country should be proportionate to H1-B visas granted.

"7 percent caps for each country was supposed to be fair, but the ground reality is that it is not. There is more demand for Indian H1-B visa holders and fewer people come on H1-B from other countries. For example, Estonia versus India: the number of workers coming in is not comparable, and hence green card allotment should reflect that instead of making Indians wait in a backlogged queue while families from other countries pass us by."

Neha Mahajan

The Cost of Waiting

Uncertain waiting periods make workers vulnerable to being uprooted from the country if they face job losses.

Priya (name changed) was laid off this November by a tech company. Her H1-B visa allows her husband and son to live in the US legally on H-4 dependent visas. With a few more weeks left to find a job or return to India, the Indian American family has decided to move to Canada.

She says, "My husband will lose his job as his employment is linked to my visa. In December, it's hard to find jobs, people are not recruiting with the holidays in mind."

"Canada has been so nice to us. In just a little over a year I got my PR, based on my husband's PR – which also took relatively very little time, unlike the US process which takes forever," Priya added.

Having worked in the US for a decade on an H1-B visa, if Priya's green card had been as swiftly granted as it is to non-India born workers, she would be worrying about finding her next job without the added anxiety of getting uprooted from a country she has made her home.

Professionals on H1-B visas depend on their employment to be able to continue working in the US. Most workers fearful of losing jobs remain tethered to their employers for years, or even decades till the employer-sponsored green card comes through. They are unable to start any entrepreneurial ventures till then.

Aman Kapoor, the president of advocacy group Immigration Voice, says, "The idea of green card backlog is about control. Software companies get more people from India, because there is such a huge backlog. It is like a mushroom that keeps on increasing. Backlog begets more backlog."