

## Lengthy processing times keep Indian green card seekers waiting

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Ramesh Donepudi, a pulmonologist and critical care doctor, has spent the past year and a half helping patients in COVID-19 intensive care units across the country. He's also spent it caught between immigration statuses, stuck in a clogged-up system along with thousands others who immigrated legally to the United States.

Donepudi is one of thousands of foreign citizens, mostly from India, mired in a years-long backlog for a green card created by strict per-country visa limits, which penalize applicants from countries with a high volume of immigrants in the U.S.

The federal government got a rare chance to chip away at that backlog, after coronavirus-related processing delays in 2020 led to additional 122,000 employment-based green cards this year. But U.S. Citizenship and Immigration Services, the Homeland Security agency that oversees requests for visas and other immigration benefits, couldn't process all of the applications in time.

A State Department official estimated 80,000 unused employment-based green card slots were lost when fiscal 2021 ended last Thursday, though USCIS said the final number could be lower.

The additional green cards, had they been processed in time, could have shortened the wait for Indian citizens like Donepudi, who has waited more than a decade for a green card through his wife's job — keeping his whole family in limbo.

Atreyi Chakrabarti, Donepudi's wife and also a doctor, described how she feared shifting to part-time hours when her children were younger, concerned the change would jeopardize the family's green card application. The couple put off visiting their ailing parents in India, fearful they wouldn't be allowed back into the U.S.

Now time is of the essence: Donepudi's work permit expires in two months due to processing delays, at which point he will lose his job and driver's license.

“Here I am at 48 years old with three professional degrees, and probably contributed \$1 million in taxes and what not,” he said in an interview. “Now I have to take public transportation to get to my work.”

### **Too late**

The expiration of unused green cards occurs through the State Department’s visa allocation system, where any family-based visas left over at the end of a fiscal year roll over into the employment category for the following year, while extra employment visas effectively expire.

During fiscal 2020, as the novel coronavirus spread across the globe, the State Department closed or limited services at its consulates and embassies abroad, stalling green card processing for Americans sponsoring their relatives abroad.

The government issued fewer family-based green cards than the legal minimum that year. The roughly 122,000 remaining unused ones turned into extra employment-based green cards, usually capped annually at 140,000, for fiscal 2021. This created an opportunity to make a significant dent in a backlog keeping Indian citizens like Donepudi languishing in line. However, USCIS couldn’t meet the moment.

A series of Trump administration policies, including additional interview and biometrics requirements, slowed down visa processing, affecting green card and work visa applicants alike.

USCIS, which is primarily funded by immigration application fees, also found itself in financial straits. It implemented a hiring freeze and nearly furloughed two-thirds of its staff. The onset of the pandemic also caused the agency to shut down certain in-person services.

By the time President Joe Biden's administration started reversing his predecessor’s policies, it was too late, lawyers and analysts said.

“Biden, in order to prevent this disaster, would have had to go far beyond reversing these policies. He would have had to speed up processing,” said David Bier, a research fellow at the Cato Institute. “He deserves blame for not doing that, or not doing it enough, but that’s asking a lot more of the government than you should typically expect.”

Matthew Bourke, a USCIS spokesperson, said agency leadership “recently committed to using all available policy and operational improvements to reduce both the number of pending cases and overall processing times.”

Newly confirmed USCIS director Ur Jaddou, the agency’s former top attorney under the Obama administration, has also pledged to make reducing backlogs a top priority.

USCIS is “reviewing all policies, operational procedures and options under the law that would allow for available green cards to either be issued before the end of the fiscal year or carried over into FY2022,” Bourke said.

## Legislative options

There may be a window for Congress to intervene. The House Judiciary Committee included provisions to “recapture” unused green cards from the past three decades in its portion of a sprawling \$3.5 trillion reconciliation package.

The Democrats’ plan would also allow foreign citizens to pay high fees to be exempted from visa quotas to prevent future backlogs.

However, the provisions have yet to be officially cleared by Senate Parliamentarian Elizabeth MacDonough, who has so far rejected two pitches by Democrats to include provisions legalizing undocumented immigrants in the reconciliation bill. Under Senate rules, measures passed through reconciliation, which allows a filibuster-proof majority, must have a budgetary impact.

Sen. Bob Menendez, D-N.J., a key player in immigration talks, also signaled he may be unwilling to move forward with a reconciliation bill that includes green card recapture — but no relief for the undocumented population.

“We’re not going to take care of business and not take care of the 11 million [undocumented immigrants] in some way,” he told reporters last week.

Interest exists on both sides of the aisle in legislation revising the green card system through regular order.

Sens. Thom Tillis, R-N.C., Susan Collins, R-Maine, and Rand Paul, R-Ky., proposed legislation on Sept. 23, a week before the fiscal year’s end, to preserve the expiring employment-based green cards.

Rep. Zoe Lofgren, D-Calif., who chairs the Judiciary Committee’s immigration panel, teamed up earlier this year with Rep. John Curtis, R-Utah, on a measure to phase out the per-country caps keeping Indians in backlogs in the first place. Similar legislation passed both the House and Senate last year, but the chambers did not resolve differences between the two version.

In a statement, Lofgren called on Congress and the Biden administration to “work together to prevent bureaucratic processing delays, decrease existing visa backlogs, and ensure that unused visas are recaptured and available for use.”

“It’s bad for the U.S. economy to let congressionally-authorized immigrant visas go to waste, especially when demand for these visas is so high,” she said.

Others have turned to the courts, but so far without success. Chakrabarti was one of nearly 200 Indian and Chinese citizens who sued USCIS in August over the unused numbers. A federal judge, however, ordered the suit broken into separate legal actions in courts across the country.

## Kicking the can?

Even if last year's expired green cards are recaptured, the agency could find itself in a similar position 12 months from now. The federal government again failed to process the minimum number of family based visas in fiscal 2021, leaving an extra 150,000 employment-based green cards available for fiscal 2022 — or 290,000 total, according to the State Department.

Without hiring more staff and further streamlining procedures, it will be “nearly impossible” for USCIS to process that many green card applications, said Shev Dalal-Dheini, government relations director at the American Immigration Lawyers Association.

“Unless Congress acts now, and not only recaptures those that are lost but fixes the statute to ensure that they don't go lost, that they're preserved going forward, we're going to be right back in the same situation next year,” Dalal-Dheini said.

In the meantime, many Indian citizens are losing hope. Chakrabarti received her green card in the mail in mid-September, but Donepudi and a teenage son have not yet gotten their final approvals on their own green cards, even though they were part of the same application.

“I can't even celebrate my green card. I don't have a heart to,” Chakrabarti said.