# Some 100,000 green cards at risk of going to waste in COVID-19 backlog

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The US government is at risk of wasting about 100,000 employment-based green cards this year as the federal agency in charge of their issuance faces historic application backlogs related to the Covid-19 pandemic.

The situation complicates what has already been a yearslong wait for many of the 1.2 million immigrants—most of them Indians working in the tech sector—who have been waiting in line to become permanent residents in the U.S. and are watching a prime opportunity to win a green card slip away.

U.S. Citizenship and Immigration Services, the agency primarily in charge of legal immigration, started off its fiscal year in October 2020 with 120,000 more green cards than the 140,000 it typically hands out, a prospect that promised to put a meaningful dent in the yearslong backlog.

But with less than two months left in the fiscal year, it is far from reaching that goal. Recent data on precisely how many employment-based green cards have been processed aren't available, but a State Department official, Charlie Oppenheim, said in a July question-and-answer forum on YouTube that he estimated the government would end September with about 100,000 green-card numbers still on the table. Any green cards that aren't rewarded by the end of September will expire.

USCIS, which has been plagued with money problems and reduced processing capacity since the start of the pandemic, has been approving green cards at a slower rate than normal. The average green-card application is taking about 10.5 months to complete, up two months from last year,

according to government data. In some extreme cases, green-card applications have been sitting for up to five years, the data show.

Because of limits on how many green cards can be issued to applicants based on their country of origin, Indian immigrants who don't get their green cards this year won't be first in line next year. They might have to wait up to half a decade before they can become permanent residents, lawyers said.

"It's dehumanizing, because you're somehow less than an equally qualified person who happens to be born in a different country," said Hildingur Mahanti, a software engineer in Manhattan who moved to the U.S. in 2000 for his undergraduate degree and whose employer first sponsored him for a green card in 2010. Mr. Mahanti's number came up this year, along with tens of thousands of other Indian immigrants, but he hasn't been approved yet.

A separate group of green-card applicants filed a lawsuit Monday asking a federal district court in Maryland to preserve their places in line beyond the end of the fiscal year. Joe Sowers, a spokesman for USCIS, said in a statement that the agency can't comment on the situation because of the litigation.

The existing backlog was exacerbated last year with the closure of immigration offices around the country and U.S. consulates around the world that were forced to shut their doors at the start of the pandemic.

In addition, President Donald Trump in April 2020 placed a travel ban on green-card applicants abroad who were being sponsored by family members in the U.S.

As a result, the U.S. issued about 120,000 fewer family-based green cards last year than it would have in a typical year.

A quirk in immigration law dictates that when green cards in the family-based immigration category go unused, the numbers switch over to the employment-based category the following year, resulting in this year's bumper crop.

Leon Fresco, an immigration attorney who served as a top immigration official in the Obama administration, said that when Congress created this system, it never anticipated a situation such as Covid-19 that would make the government unable to handle the overflow green cards.

Green-card applicants, employers and other immigration advocates say the government should have been able to anticipate the current situation a year ago, when family-based green cards weren't being issued at normal rates, and taken steps before now to try to fix it. The government could have put more staff toward visa processing, the advocates say, or begun accepting green-card applications before the start of the fiscal year to process more in time.

"It's a scandal that, knowing there would be this much spillover, that they let this happen," said David Bier, a research fellow in immigration at the Cato Institute, a libertarian-leaning Washington think tank.

The Federation of American Scientists, in a report titled "Stop the Incinerator," co-published with the Niskanen Center, a libertarian think tank, proposed that the Biden administration should use its authority to assign each remaining green-card slot to an applicant in line, ensuring that number is reserved even if the application isn't completed until next year.

Government officials involved in the policy discussions said the administration doesn't believe it has the unilateral authority to do that, and is instead putting its effort toward getting as many green cards processed by the end of September as possible. Some officials hope the lawsuit filed this week succeeds in having a judge rule that the unused green cards can carry into the next fiscal year.

Democrats in Congress are planning to make as many as six million immigrants who are in the country illegally eligible for green cards through their $3.5 trillion budget package, which they will attempt to pass through the Senate with a simple majority of votes in coming weeks.

"The only thing we hear they're interested in doing is for the undocumented, not for the people who actually follow the laws," said Mr. Mahanti, who volunteers as a chapter leader of Immigration Voice, a group of Indian immigrants that advocates for solutions to fix the long green-card backlog they face. He added that he supports creating a pathway to citizenship for those immigrants as well.

Democratic congressional aides say they are attempting to work up a proposal to make available unused green cards from previous years, though they aren't sure whether it would be attached to the reconciliation package or another must-pass bill.