



How Other Countries Benefit From America's Dysfunctional Immigration System

Fiona Harrigan

June 26, 2023

America is the top destination for international students, the place most would-be migrants say they'd go if they had the chance, and home to more immigrant inventors, foreign-born Nobel laureates, and high-skilled migrants than any other country.

Here are some other notable numbers: Over 99 percent of people who want to immigrate to the U.S. have no legal option, Indians stuck in line for certain employment-based green cards have faced projected waits of more than 150 years, and the U.S. government let 400,000 visas go to waste in 2021 alone—including one-quarter of all employment-based green cards.

In so many areas of its immigration policy, the U.S. is failing to attract and retain talented foreigners. Most international students say they want to stay in the U.S. after graduation, but very few are able to do so. Many high-skilled professionals look elsewhere when they realize how difficult it is to immigrate to the U.S. permanently. As Nicolas Rollason, head of business immigration for the London-based law firm Kingsley Napley, told *The Hechinger Report* this month, "We are a beneficiary of the failures of the U.S. system."

"We are losing talented immigrants, directly affecting our economy," says attorney Tahmina Watson, an expert on high-skilled and business immigration. "Many [international students] will be compelled to leave the U.S. because their visas are expiring. And why would they want to stay when their futures are uncertain in the U.S.?"

As the *Hechinger Report* article explains, other countries are capitalizing on that uncertainty:

The U.K. last year added a "high potential individual" visa, offering a two-year stay to new graduates of 40 universities outside the country ranked as the best in the world—21 of them in the United States....

Nearly 40,000 foreign-born graduates of U.S. universities were recruited to Canada from 2017 to 2021, according to an analysis by the Niskanen Center, a Washington think tank that advocates for immigration reform. Australian recruiters are also fanning out across the United States, attending job fairs and visiting university campuses.

And fewer international students are choosing to study in the U.S. in the first place. In 2020, new international student enrollments dropped by 72 percent compared to 2019. COVID-related border closures were the main driver of that decline, but U.S.-specific issues such as the Trump administration's throttling of the immigration system also contributed. As of late 2022, international student enrollment was still shy of pre-pandemic levels. Chinese students make up the largest share of international students in the U.S., but their numbers have declined even as other nationalities' have rebounded.

"International students and immigrant entrepreneurs can infuse much needed knowledge and skills, especially in STEM fields, into U.S. communities," says Aaron Kochenderfer, an attorney at the law firm Fakhoury Global Immigration. "Tech leaders across the country have said that the U.S. has a shortage of tech talent. International students account for over half of the graduate students studying STEM subjects in U.S. universities."

One reason the United States is losing international students is how difficult it is for them to work here after graduating. The U.S. has no dedicated postgraduate work visa. (Meanwhile, countries such as Canada and Australia have streamlined the steps from graduation to employment to permanent residency.) Graduates in the U.S. may complete Optional Practical Training, but this doesn't lead to permanent residency either. It lasts just 12 months, with a two-year extension available to STEM degree recipients.

From there, many international students try their luck with H-1B visas, which are reserved for skilled workers. But demand for H-1Bs far outpaces supply, and the annual cap of 85,000 visas hasn't changed in over 15 years. It can take ages for an H-1B holder to adjust to a green card. ("The government is currently processing green card applications of H-1B workers from India whose employers applied for them in 2011 or 2012," writes the Cato Institute's David J. Bier.). And if a worker is unemployed for over 60 days, he must self-deport. On top of all that, H-1Bs can't start their own businesses.

Kochenderfer notes that many international students may want to start businesses in their fields of study but lack a clear option. "Immigrant entrepreneurs can utilize the U.S. International Entrepreneur Rule...program," he says, but "its benefits are only...available for existing startups." Such startups need to clear high prerequisites to qualify, and even then the program "does not provide a way to obtain permanent residency."

This is why it's important for the U.S. to establish a startup visa, says Kochenderfer. "The U.S. can attract more immigrant entrepreneurs if they have an easier way to ultimately receive a green card and eventual citizenship," he argues. Over a dozen countries offer a startup visa. Though American politicians have introduced this idea on multiple occasions (and repeatedly tried to include it in must-pass legislation), Congress has never managed to get the job done.

"International entrepreneurs are moving to Canada and other countries that value talented revenue generators and job creators," says Watson, who has written a book on startup visas. "In other words, we are losing our global competitiveness due to Congress' inaction on immigration reform."

It should come as no surprise that American employers are unwilling to navigate such complex processes to hire foreigners. In March, Envoy Global, an immigration services provider, reported that 82 percent of the employers it surveyed "had to let go of foreign employees in the past year due to difficulties securing or extending an employment-based visa in the U.S." Roughly an equal share transferred foreign workers to an office abroad for similar reasons. Due to U.S. immigration restrictions, a whopping 93 percent of businesses surveyed were considering nearshoring or offshoring, Envoy found.

The U.S. will need to get out of its own way if it wants to keep attracting students, entrepreneurs, and other talented workers from abroad. Otherwise, they'll simply look for more welcoming pastures.