



## THE TIMES OF INDIA

# The wide sweeping reforms in the US Citizenship Act decoded

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The million-dollar question is whether the US Citizenship Act will become law? To pass in the Senate it needs 60 votes (which means at least ten Republican votes).

Speaker Nancy Pelosi has said, “I salute the president for putting forth the legislation that he did. There are others who want to do it piecemeal and that may be a good approach too. That's up to the Congress to decide, but we informed members of- this is the design. It is frozen, and it complies with the reconciliation....”

It does appear that a strategy to try and pass the immigration bill on a piecemeal basis is on the cards.

As it stands today, the bill (aka the US Citizenship Act) is one comprehensive piece of proposed legislation, that would change the immigration policy spectrum in the US.

There is an important ethos enshrined in the reform process. Cyrus Mehta, New York-based immigration attorney states: President Joe Biden’s US Citizenship Act is sweeping in its humanity and views immigrants as an asset to America rather than as threats either to security or American workers. It starts by abolishing all references to the term ‘alien’ and instead replaces it with ‘noncitizen’.

From the perspective of the Indian diaspora, the key features are highlighted below.

### **What does it mean for employees?**

Significant reforms are on the anvil to clear the employment-based green card backlog. Currently, the US sets aside only 1.40 lakh green cards for employment-based applicants and there is a 7% per country cap. Given the heavy influx of Indians in the US – majority of them holding an H-1B visa, this restrictive policy poses challenges.

According to a study done earlier by the CATO Institute, a Washington headquartered think-tank, the employment-based green card backlog from India (EB-2 and EB-3 skilled category) had reached 7.41 lakh in April 2020, with an expected wait time of 84 years.

### **The US Citizenship Act proposes to tackle this backlog by:**

- Removal of the per-country for employment-based green cards
- Raising the annual quota to 1.70 lakh from the existing 1.40 lakh

- It also adds to this ceiling, the number of unused employment-based immigration green cards from fiscal 1992 through 2020 (On the most conservative estimate upwards of 2.20 lakh green cards are expected to be recaptured)
- Reduction in backlogs would be achieved in part by exempting Ph.D. graduates working in the science, technology, engineering and mathematics (STEM) fields from the quota
- Exempts from quotas the beneficiaries of approved immigrant visa petitions waiting more than 10 years in the green card process.
- The residence requirement for citizenship is reduced to three years from five years
- There is a downside, as the provisions authorise the Secretary of Homeland Security in consultation with the Secretary of Labour, to temporarily reduce admissions of employment-based 2nd- and 3rd-preference immigrants (professionals with advance degrees, those with exceptional ability, skilled and professional workers without advance degrees, and other workers) during times of high unemployment in particular geographic areas or labour market sectors

However, when it comes to the issue of H-1B cap visas, no increase in the current annual limit of 85,000 has been proposed. Further, the Secretary of Homeland Security, in consultation with the Secretary of Labor, have been authorised to prioritize allotment of H-1B visas (or other non-immigrant visas) based on wages offered by employers.

### **What does it mean for families?**

Each year, a total of 226,000 family-based green cards are issued to applicants from different countries. However, there are sub-categories within this overall quota. For instance, if a green card holder (non-US citizen) is sponsoring his family, the annual quota is 114,200. It is estimated that nearly 2.20 lakh odd Indians are in queue for a family sponsored green card.

- Increase in per-country visa caps to 20% from 7%. However, the bill does not provide for removal of per country cap
- Exempts spouses and children of green-card holders from the annual green card quota—with nearly 60% of the green cards being allotted to such dependents, this will further free up the quota
- It also adds the number of unused family-sponsored immigrant visas from fiscal years 1992 through 2020 to the annual ceiling.
- Exempts from quotas the beneficiaries of approved immigrant visa petitions waiting more than 10 years in the green card process.
- The V visa has been expanded, it will enable family members such as siblings, married children of green-card holders, with approved family-sponsored applications to enter the US (with a V visa) and be with their families while they wait for availability of their green card. They will also get employment authorization
- Authorizes the spouse of a non-immigration visa holder to work in the US. In other words, the ‘Employment Authorization Documentation Rule’ which enabled certain category of spouses of H-1B holders to work, will now get stronger legal backing and the

primary visa holder need not be on track for a green card to ensure eligibility of the spouse to work

- Prevents the child from aging out of eligibility for a green card if the child was under age 21 at the time the parent filed the petition (or applied for labour certification).

Authorizes employment for children of a non-immigrant temporary worker (say H-1B visa holder)