

## **Eliminating the Employment-Based Visa Backlog: Vital to America's Economic Competitiveness**

**THE ISSUE:** Reform of the permanent employment-based visa program is urgently needed in order for U.S. employers to hire the foreign talent necessary for the American economy to remain vibrant and competitive. There simply are not enough Americans available to meet U.S. employer demands for high-skilled labor in this country. Over half of all science, technology, engineering, and mathematics graduates of American universities are foreign born. Our current system, however, forces most of these graduates to leave the U.S. and apply their valuable skills in other countries, a scenario that is beneficial to all but the U.S. Needless to say, foreign countries are not complaining, but are instead poised to take advantage in their increasingly successful attempts to surpass us. Simply put, if the problem isn't solved soon, the U.S. stands to rapidly lose not only the competitive economic edge generations of Americans have worked so hard to achieve, but also its global preeminence in science and technology—areas vital to our prosperity and national security.

**HOW THE EMPLOYMENT-BASED (EB) VISA SYSTEM WORKS:** Each year, 140,000 EB visas, or “green cards,” spread across five preference categories based on credentials, are allotted for foreign nationals seeking permanent residence and who are sponsored by their employers to work in this country. The spouses and children of these foreign nationals also count against the 140,000 visa cap, accounting for over half the allotted number. However, because these visas are distributed equally among all countries, with a quota set for each country, backlogs have resulted for individuals coming from high-demand countries, even when the overall cap has not been reached. Once the quota is met for nationals of a given country, only those who applied before a set cut-off date are able to get visas.

**EB RETROGRESSION AND THE UNAVAILABILITY OF GREEN CARDS:** The current problems with the EB system are attributable to two things: administrative delays in processing green card applications; and, as mentioned above, the statutory limits, regulated by DOS, putting a cap on the number of EB visas issued each year. When DOS believes that either the overall or per country cap is about to be reached, it imposes a “cut off” date, and only applications received before this date are processed. In October 2005, DOS moved this cut-off date backward, in an effort to ration available green cards. As a result, thousands of foreign professionals, many of whom have been in the U.S. legally for nearly a decade on student or work visas, have been forced to wait, essentially in a legal purgatory, up to seven years to get a green card and enjoy the rights and benefits of legal permanent residence. This means up to seven years spent waiting and worrying unnecessarily, with spouses unauthorized to work at all. Not surprisingly, these talented professionals often tire of waiting, and leave the U.S. entirely to put their knowledge and skills to use in other countries eager to compete with and surpass the U.S.

**AILA's POSITION:** Congress must reform the EB visa system. These reforms should include:

- recapture of unused EB visas from prior years
- exemption of spouses and children from EB visa quotas
- a market-based EB visa cap, responsive to the needs of U.S. employers

Without these reforms, we will continue to make it more and more difficult for talented foreign professionals to work in this country and fill the positions U.S. employers desperately need to fill. As a result, these talented professionals simply will go elsewhere, resulting in devastating long-term consequences for the U.S. economy.

**CURRENT LEGISLATION:** AILA currently supports two pieces of legislation that attempt to reform the EB visa program. The **TALENT Bill**, written by a coalition comprising AILA and over 200 corporations, universities, research institutions, and trade associations, would:

- revise the current employment-based preference categories and exempt an expanded EB-1 group from the EB cap
- exempt EB-2 from the labor certification requirement
- eliminate per-country quotas

More information on the main provisions of the TALENT Bill is posted on AILA's website: <http://www.aila.org/Content/default.aspx?docid=18564>. Senator Cornyn (R-TX) has indicated he will sponsor this bill and is now looking for co-sponsors in the Senate.

The second piece of EB-related legislation AILA supports is the **Secure America and Orderly Immigration Act** (S. 1033), sponsored by Senators McCain and Kennedy. This legislation would:

- exempt immediate relatives of U.S. citizens from visa quotas
- increase the number of EB visas to 290,000
- recapture unused visa numbers from prior years

Finally, in late February, Senate Judiciary Committee Chairman Specter (R-PA) introduced his own Comprehensive Immigration Reform bill. While this "Chairman's Mark" incorporated some of the favorable provisions mentioned above, other provisions in the bill remain problematic. As a result, of the major immigration reform proposals currently on the table in the Senate, only the Secure America and Orderly Immigration Act (S. 1033), sponsored by Senators McCain and Kennedy, and the TALENT bill, set to be sponsored by Senator Cornyn, meet AILA's criteria for realistic, comprehensive reform.