

Eliminating the Employment-Based (EB) Green Card Backlog: Vital to America's Economic Competitiveness

THE ISSUE: Reform of the permanent employment-based green card 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. Over half of all science, technology, engineering, and mathematics graduates of American universities are foreign born. We are also facing a severe shortage of registered nurses as the tidal wave of retiring baby boomers is upon us. At a time when our economy needs high-skilled workers more than ever, our current system 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 GREEN CARD SYSTEM WORKS: Each year, 140,000 EB 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 green card cap, accounting for over half the allotted number. However, because these green cards 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 green cards.

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 the U.S. Department of State (DOS), putting a cap on the number of EB green cards 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 (and many times since), 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.

SHORT-TERM RELIEF Congress must reform the EB green card system. These reforms should include:

- recapture of unused EB green cards from prior years
- exemption of spouses and children from EB green card quotas
- exemption for graduates from U.S. institutions in the fields of science, technology, engineering and math
- a market-based EB green card 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 will simply go elsewhere, resulting in devastating long-term consequences for the U.S. economy.

CURRENT LEGISLATION: There are currently two main pieces of legislation that attempt to reform the EB green card program. **The SKIL Bill** (S 1083/HR 1930) introduced by Senator Cornyn and Rep. Shadegg would:

- raise the cap from 140,000 to 290,000 green cards a year and allows unused green cards to fall forward annually, while recapturing unused green cards from previous fiscal years
- exempt from the EB cap professionals who have earned a U.S. master's or higher degree and those awarded a medical specialty certification based on post-doctoral U.S. training and experience
- exempt those who have earned a science, technology, engineering or math (STEM) master's or higher degree who have worked 3 years in the U.S.
- exempt those who will perform labor in shortage occupations designated by the Secretary of Labor
- exempt spouse and minor children of employment-based professionals

There is also **the STRIVE Act of 2007** (H.R. 1645), introduced by Rep. Gutierrez which proposes the most complete reform of our current immigration system. Regarding EB green cards, the STRIVE Act would:

- increase EB green cards from 140,000 to 290,000 per fiscal year
- exempt spouse and minor children of employment-based professionals
- allow unused employment-based immigrant green cards from previous fiscal years are recaptured and made available for employment-based immigrant green cards for future fiscal years
- make slight increases to the per-country limits for employment based green cards