

## Green Cards

### Facts At-a-Glance

**Employment-based (EB) green cards are provided to foreign nationals who are seeking permanent residence and are sponsored by employers to work in the United States. EB green card holders are well-educated job creators who must pass strict labor market tests in order to be eligible for admission.**

- Reform of the permanent EB visa (“green card”) process is urgently needed to enable American employers to hire and retain the talent necessary to remain globally competitive.
- The tremendous backlogs in processing of EB green card applications that continues to plague the system is forcing thousands of highly trained and sought-after professionals to remain in legal and professional limbo for years.
- Many foreign workers seeking EB green cards are already in the United States, having graduated from U.S. universities. They are forced to apply for H-1B visas while they wait for permanent residency – which hampers the ability of U.S. employers to hire them because in recent years H-1B quotas are exhausted before the fiscal year even begins.
- EB green card applicants are put at a significant professional disadvantage when stuck in a holding pattern for up to six years on an H-1B or L-1 visa. Without a green card they are unable to seek promotions, move to a new city or change jobs.
- Many of these valued employees become frustrated with the inefficiencies in the immigration system, and America loses this valuable talent when they give up and either move home or seek employment in more welcoming countries that are direct economic competitors of the United States.

**The annual EB green card cap of 140,000 is allocated equally among all countries and covers five worker preferences.**

- The EB-1 preference is for “priority workers” and is allocated 40,000 visas per year. These are workers of “extraordinary ability” in science, the arts, education, business or athletics as well as “outstanding professors and researchers” or “multinational executives and managers.”

- The EB-2 preference is for “advanced degree and exceptional ability professionals” and is allocated 40,000 visas per year as well as any unused EB-1 visas. These workers have an advanced degree and/or exceptional ability in the sciences, arts or business.
- The EB-3 preference is for “skilled, professional and other workers” and is allocated 40,000 visas per year as well as any unused EB-2 visas. These are skilled, professional and other (unskilled) workers, the latter of which is limited to 5,000 visas per year.
- The EB-4 preference is for “special immigrants, religious workers” and is allocated 10,000 visas per year. Special immigrants include ministers, religious workers, former government U.S. workers and others.
- The EB-5 preference is for “immigrant investors” and is allocated 10,000 visas per year. These are immigrants who invest between \$500,000 to \$3 million in a job-creating enterprise in the United States. Each investor must employ at least 10 U.S. workers.

**Unreasonable caps, insufficient allotments and extreme administrative delays turn talent away and discourage valuable professionals from applying for a visa through the U.S. EB green card system, while holding tens of thousands of highly educated applicants in legal and professional limbo for years.**

- Unlike the H-1B quota, spouses and children count against the EB green card quota, taking over half the visas available annually. This leaves fewer green cards for highly educated workers.
  - Of the 60,240 EB-1 visas used in FY 2005, 59 percent were used by dependents. Of the 4,491 EB-1 visas issued abroad in FY 2005, 59 percent were issued to dependents.
  - Of the 41,109 EB-2 visas used in FY 2005, 53 percent were used by dependents. Of the 1,488 EB-2 visas issued abroad in FY 2005, 56 percent were issued to dependents.
  - Of the 109,713 EB-3 visas used in FY 2005, 48 percent were used by dependents. Of the 19,357 EB-3 visas issued abroad in FY 2005, 62 percent were issued to dependents.
- In addition, individual countries are subject to annual ceilings under the EB green card quota. For professionals born in high-demand countries, such as India and China, the wait can span up to an additional six years beyond the normal adjudication process of two to three years, even if the overall visa limit is not reached.

**The Department of State (DOS) regulates the flow of EB green cards to ensure that the annual statutory limit is not exceeded.**

- When DOS believes that the overall cap or per country cap will be reached, it cuts off applications by imposing a “cut-off” date and will only accept green card applications with a “priority date” (or place in the queue) before the cut-off date.
- For example, in FY 2007, the cut-off date in the EB-3 category for those foreign nationals born in India is May 8, 2001. Assume a U.S. employer hired an Indian professional after graduation in July 2001, and immediately began the green card process. Even if the professional has an approved labor certification and immigrant petition, it will still be several more years before he can finish the green card process.
- As of October 1, 2005, DOS had to set the clock backwards and “ration” available green cards, forcing thousands to wait at times close to six years for a green card.

**EB green card backlogs have happened before, and Congress acted to provide relief; however, increased demand for these highly educated foreign professionals has made relief elusive at best.**

- The green card backlogs are in fact so bad that, for instance, over the last year, the employment-based third (EB-3) category’s cut off date (an applicant’s place in line to wait for a green card) for foreign nationals from India has only advanced one week, from May 1, 2001, to May 8, 2001.
- The current annual allotments of EB green cards were set in 1990 to address similar backlogs that existed in the late 1980s.
- Before Congress acted, the backlog reached one and one-half to three years or more, depending on nationality, a short wait compared to the up to six-year waits today.
- While the 1990 quotas were sufficient for years, in the late 1990s, backlogs and cut-off dates emerged for professionals from certain countries due to the “per country” quotas.
- Additionally, when Congress increased the H-1B quotas in the late 1990s for the high-tech boom, it failed to also increase the EB green card quota. This piecemeal approach has only enhanced the permanent EB green card backlogs. Increases to the H-1B cap must be accompanied by increases to the EB green card cap moving forward.
- Congress must modernize the EB green card system to meet the workforce demands of the 21<sup>st</sup> century.