

# Immigration politics impacts the line for green cards

The Trump Administration has taken a strong stand against immigration and has exacerbated the contention of an already complex issue. Developments on a bipartisan bill highlight the difficult issues that demand more than a bumper sticker approach to a complicated issue. Senate Bill 386, known as the “Fairness for High-Skilled Immigrants Act of 2019,” came before the Senate for the second time on the “unanimous consent” docket. Under Senate rules, any single senator can veto the bill. House Bill 1044, with the same name and the same provisions, passed the House of Representatives by a vote of 365-65 in July.

These bills attempt to eliminate the problem of per country limitations on employment-based visas, suggesting a resort to issuing visas by earliest application date. The Immigration and Nationality Act allots 140,000 visas to be granted to employment-based immigrants each year. The visas are divided among five different visa classifications, which in turn are based upon different criteria including the nature of the job offer and the skill set of the applicant. In three of the categories, which account for 121,000 of the 140,000 visas, a long backlog has been created. The most recent data available from USCIS, more than a year old, reveals over 352,000 individuals who qualify for visas in these three categories. But the distribution across different countries is not even, and the problem is complicated by “per country limitations.” This provision restricts any one country to only seven percent of the total visas in each category. Thus, the backlog for all countries except India and China is measured in months, if there is a backlog at all. For India it may be as much as 20+ years, and for China, it is much shorter, as little as six to eight years. It is difficult to be certain because approved applicants often have accompanying families. USCIS approves only the principal applicant, yet final visas are also issued to the applicant’s spouse and children. Because family members are also counted against the 140,000, the backlog is both longer and more difficult to quantify.

The bipartisan bills blocked by Senator Durbin’s veto this week eliminate the per country limitations, but do not increase the number of visas. Thus, the backlog will be readjusted to permit immigrants from India and China at the same rate as everybody else. While this sounds fair, the re-adjustment means that for the next few years, only Indian applicants will be granted green cards because they have



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the oldest pending applications. Reliable estimates are not available, but some predict that several years will pass before anybody other than Indian applicants receive a green card.

After vetoing the “Fairness for High Skilled Immigrants” Act, Senator Durbin proposed a bill that will not only eliminate the per country limitations, but will count only the principal applicants against the 140,000 available visas each year. Family members will not be counted toward that amount. He makes this proposal because actually increasing the number of visas to meet the need for the high skilled immigrants is not viable in the current political environment. (This issue first became apparent at least 20 years ago, and has become increasingly more severe as the economy grows.)

The Indian community is understandably upset that they have been singled out for long waits. They also understand that Senator Durbin’s proposal will not receive serious consideration, ensuring that the current, unacceptable situation cannot be addressed, even with a bad solution.

While there is bipartisan support for a bad solution, there is no Republican support for a solution that actually solves the problem. This ensures the continued dysfunction of the current system, where applicants for immigrant visas are forced into waiting lines for years or decades for a green card.

***About the author:** Rob Cohen has extensive experience in all aspects of business and family immigration procedures. He has been listed in The Best Lawyers in America® in the areas of Immigration Law every year since 1997, and was named Best Lawyers® Immigration Law, “Lawyer of the Year,” 2015 for Columbus, Ohio. He can be reached at [rcohen@porterwright.com](mailto:rcohen@porterwright.com).*