

# NATIONAL FOUNDATION FOR AMERICAN POLICY

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### EMPLOYMENT-BASED GREEN CARD PROJECTIONS POINT TO DECADE-LONG WAITS

#### EXECUTIVE SUMMARY

Data released recently by U.S. Citizenship and Immigration Services paint a future of continued long waits for green cards for employment-based immigrants, particularly those from India. This NFAP analysis estimates a wait of 12 years or more for Indians filing today for employment-based immigrant visas, and similar waits for those who have started the process recently. For Indian professionals sponsored today in the 3<sup>rd</sup> preference the wait time could be as long as 20 years, although such long potential waits would likely encourage individuals over time to abandon their applications or discourage filings in the first place.

In the past, scientists, engineers and others from India have represented half of the skilled professionals that U.S. companies have sponsored for employment. If wait times of this magnitude persist, companies and foreign-born professionals say this will cause many skilled people to leave the country and seek better long-term opportunities elsewhere. Given the pace of technological change and the relatively short window of opportunity to build careers, expecting skilled professionals to remain in holding patterns for 12 to 20 years is unrealistic. It can be difficult for waiting professionals to change employers or even to take a new position with an existing company because such actions could affect a pending green card application.

Skilled individuals born in India whose U.S. employers file for them today, or who have filed recently, are unlikely to receive employment-based green cards before the year 2022 or, in some cases, potentially even 2029. To put this in perspective, children today in kindergarten may graduate from college by the time Indians who file new applications for an employment-based immigrant visa would receive a green card. The analysis in this paper relies on government data, independent analysis and consultation with government officials. The estimates in the study were formulated by examining recent use of H-1B visas, analyzing cut-off dates in the State Department Visa Bulletin and tabulating data on annual green card use by skilled immigrants.

One conclusion of the research is that without action by Congress to raise or exempt individuals from these quotas and eliminate the per country limit for employer-sponsored immigrants America is likely to continue losing talented individuals unable or unwilling to endure such extraordinarily long waits to become lawful permanent residents. Congress has not raised the statutory level for employment-based green card quotas since 1990. Although legislative support exists for providing more green cards for skilled immigrants, any attempt to liberalize employment-based green card quotas has been tied to efforts to pass comprehensive immigration reform legislation, efforts that failed in 2006 and 2007 and were not attempted in 2008 or 2009.

*Employment-Based Green Card Projections Point to Decade-Long Waits***BACKGROUND**

To remain in the United States on a permanent basis, a skilled professional generally must receive lawful permanent residence, more commonly known as obtaining one's green card. Temporary visas such as H-1B or L-1 entitle an individual to stay only for limited periods of time. Such individuals cannot be certain of staying long-term in the United States or becoming citizens due to their temporary immigration status unless they successfully apply for and are granted a green card. The analysis in this paper focuses on green cards, not temporary visas.

Under U.S. law, no more than 140,000 employment-based green cards are issued in a fiscal year. Today, it is this low quota, not bureaucratic delays, that lead to multi-year waits for skilled immigrants, although there were earlier years when inadequate processing prevented the full 140,000 quota from being utilized. To a degree, those unused immigrant visas from prior years have an impact on the current backlog.

Another factor is the per country limit on employment-based immigrants. As the GAO explains: "There are also annual numerical limitations on the number of visas that can be allocated per country under each of the preference categories. Thus, even if the annual limit for a preference category has not been exceeded, visas may not be available to immigrants from countries with high rates of immigration to the United States, such as China and India, because of the per country limits."<sup>1</sup>

Under Section 202(a) of the Immigration and Nationality Act, relating to per country levels for family-sponsored and employment-based immigrants, the law states: "[T]he total number of immigrant visas made available to natives of any single foreign state . . . may not exceed 7 percent . . . of the total number of such visas made available under such subsections in that fiscal year."<sup>2</sup> With an annual quota of 140,000 this would generally limit employment-based immigrants from one country to approximately 10,000 a year. There is a provision in the law to allow nationals of a country to pierce this ceiling if additional employment-based visas are available. For example, the availability of additional numbers in the first and second preference in some years has allowed individuals from India and China to exceed the per country limit up to the availability of visas in those preference categories. However, in general, the per country limits work to force individuals from large population countries to wait years longer than people from smaller countries.<sup>3</sup>

The five categories for employment-based immigration are:

- "First Preference (EB-1 priority workers): aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.
- "Second Preference (EB-2 workers with advanced degrees or exceptional ability): aliens who are members of the professions holding advanced degrees or their equivalent and aliens who because of

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their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States.

- “Third Preference (EB-3 professionals, skilled workers, and other workers): aliens with at least two years of experience as skilled workers, professionals with a baccalaureate degree, and others with less than two years experience, such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.
- “Fourth Preference (EB-4 special workers such as those in a religious occupation or vocation).
- “Fifth Preference (EB-5 Employment Creation).”<sup>4</sup> This is also known as an immigrant investor visa.

The first preference is allocated 28.6 percent of the annual quota (plus any numbers not needed for the fourth and fifth preference). The second preference is given 28.6 percent of the annual quota, plus any numbers not required by the first preference. Similarly, the third preference is allocated 28.6 percent of the employment-based quota, plus if there any numbers not used by the first and second preference. The fourth and fifth preferences are allocated 7.1 percent of the quota.<sup>5</sup>

The process for employer-sponsored immigrants can be time-consuming and expensive. Legal fees for employers can now exceed \$13,000, according to the American Council on International Personnel.<sup>6</sup> Most employer-sponsored immigrants are in the second or third preference and generally require labor certification, which involves demonstrating to the U.S. Department of Labor there are no U.S. workers qualified and available for a position. This involves “testing” the labor market through advertising, job postings and other government-approved recruitment mechanisms. More people immigrate in the third preference category than in the first or second preference of the employment-based immigration system.<sup>7</sup>

After completing the first phase of the immigration process – labor certification – in the second stage an employer must file Form I-140, along with the approved labor certification, to U.S. Citizenship and Immigration Services. The I-140 is also referred to as a “petition.”<sup>8</sup> It is not guaranteed a petition will be approved but since immigration attorneys would normally advise clients not to commit the required time and expense for a questionable case most petitions submitted are approved.

The third phase of the process is generally filing an application for adjustment of status, also known as Form I-485.<sup>9</sup> Adjustment of status means the person can stay inside the country and transition from a temporary status, such as H-1B, to a permanent status, such as an employment-based immigrant. It is possible to file a petition and adjustment of status application at the same time (concurrently) but only in certain circumstances. One can file the two concurrently if a visa number is available for the applicant.<sup>10</sup>

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A visa number generally is “available” for an individual with a priority date earlier than the cut-off date listed in the State Department’s most recent Visa Bulletin.<sup>11</sup> (A priority date is usually triggered by the date a labor certification application or an immigrant petition is received by the federal government or a designated state agency.) For example, in the November 2009 Visa Bulletin the cut-off date for the third preference for China was June 1, 2002. That means if an employer began the green card process and had filed after June 1, 2002 for labor certification for an employee born in China, then adjustment of status could not be filed yet for that individual.

The reason adjustment of status is the typical path for potential employment-based immigrants is that the vast majority of such individuals are already working in the United States on a temporary visa, generally in H-1B or L status. This makes sense, since an employer cannot afford to wait 6 years or more for someone to start their first day of work, which often would be the case today to hire foreign nationals directly on green cards. For example, an employer might recruit an international student from a U.S. university and can file for him or her to be on OPT (Optional Practical Training) for 12 months, with the possibility of an extension for an additional 17 months.<sup>12</sup> At some point in that process, the individual could be hired on an H-1B visa, if one is available.<sup>13</sup> If the individual was educated outside the country or OPT is not appropriate or the best option for that person, the employer would generally attempt to hire them directly in H-1B status. (Today, since they have no appropriate temporary visa category, new foreign nurses generally must wait 6 years or more to begin working, shutting many out of the United States.)

H-1B status often lasts 6 years, with a renewal after the first three years. However, the law permits individuals to remain lawfully in H-1B status beyond 6 years if, for example, a valid petition is pending for an employment-based green card (although there are restrictions on this). However, although permitted to wait in the United States the immigration process places such people in a precarious situation. If a foreign national’s employer experiences layoffs or goes out of business, the individual may have to start the green card process over again. If he or she cannot find another employer in a timely manner the foreign national would be unable to remain legally in the United States.

A pending green card application also may mean an individual cannot be promoted or change jobs, since it could invalidate prior filings with the federal government. Moreover, people with pending green card applications are likely to be hesitant to change employers or to become entrepreneurs. Starting a new business requires security about one’s future and to invest time and capital in a new idea means knowing, at minimum, you will be permitted to stay in the country in which you hope to start the business.

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In September 2009, U.S. Citizenship and Immigration Services released a “Pending Employment-Based Form I-485 Report.”<sup>14</sup> The USCIS data provide partial insight into how long a foreign-born professional is likely to wait for a green card. However, it is not possible to make estimates by examining only the I-485 Report, since the USCIS data, in many ways, represent only the tip of the iceberg.

As noted earlier, only individuals who have a priority date prior to the cut-off date listed for that country and preference listed in the monthly State Department Visa Bulletin can file for adjustment of status (I-485). Moreover, according to USCIS, 15 percent of cases are filed outside the country and would never appear in the I-485 inventory of cases.<sup>15</sup>

In its report, USCIS states that pending I-485 cases total 233,816. With a 140,000 annual quota it may look like that total will be cleared quickly. That is not the case. Even if at some point the listing in the State Department Visa Bulletin allowed an individual to file for adjustment of status it is possible a visa is still not available because of demand in a category.

To illustrate, let’s compare the December 2009 Visa Bulletin to the May 2007 Visa Bulletin. In May 2007, the Visa Bulletin stated that the State Department/USCIS could process applications before May 8, 2001 for skilled workers and professionals from India (3<sup>rd</sup> preference). For December 2009, the Visa Bulletin declared the State Department/USCIS could process applications before May 1, 2001 for the same category and country. In other words, over the course of more than two years, rather than moving forward two years people waiting in line actually moved backwards. This is called retrogression, meaning the demand is so great relative to the annual quota that the line actually grew longer. (It is necessary for the State Department to adjust the cut-off date in the Visa Bulletin to prevent the number of immigrant visas issued from exceeding the annual limit.)

A similar “retrogression” can be seen when comparing other categories from those two bulletins. For December 2009, for China in the 3<sup>rd</sup> preference, visas were listed as available only for applicants with a priority date earlier than June 1, 2002. But in the May 2007 Visa Bulletin the date listed was August 1, 2002. In other words, while it looked like a skilled worker/professional from China had a 5 year wait in 2007, it now appears the same individual’s wait two years later is still at least another 5 years, since an individual’s place in line has not moved forward over this time period.

For those waiting for a green card, the process must appear to be like swimming against a strong current. In May 2007, immigrant numbers were available in the 3<sup>rd</sup> preference for those with a priority date before August 1, 2003

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from all countries except India, China, Mexico and the Philippines. For December 2009, the date for that category listed in the Visa Bulletin was June 1, 2002, moving backwards more than a year.

Simply put, given the fluctuations in visa availability, one should utilize the data from the USCIS I-485 with caution. Here are the highlights from the USCIS report:

- 233,816 employment-based I-485 cases are pending at USCIS, with 74,914 of those cases for individuals from countries other than China, India, Mexico or the Philippines.
- 111,296 of the 233,816 pending I-485 employment-based cases are for individuals born in India.
- 26,710 of the pending cases are for individuals born in China,
- 12,481 of the pending cases are from the Philippines, while 8,415 are for individuals from Mexico.

**NFAP ESTIMATES OF INDIAN EMPLOYMENT-BASED NUMBERS**

As noted earlier, the waiting line for immigrant visas has moved backwards over the past two years. Given that reality, it is challenging to estimate the wait times for employment-based immigrants in general. One can estimate a wait of at least 6 or 7 years for potential immigrants filing today in the 3<sup>rd</sup> preference for all countries except India, China, Mexico and the Philippines. This is based, in part, on the priority date moving backwards in that category and the June 1, 2002 date listed in the December 2009 Visa Bulletin.

One can project much longer waits for potential employment-based immigrants from India. USCIS lists in its report 111,296 individuals born in India in its I-485 employment-based inventory. The number of Indians who received employment-based immigrant visas averaged 23,816 a year between FY 2006 and FY 2008.<sup>16</sup> Even taking the conservative view that the priority dates as listed in the Visa Bulletin will progress monthly – something that has not happened in recent years – one can estimate it would take at least 4 and a half years to clear the current I-485 employment-based inventory USCIS lists for India.

However, the USCIS I-485 report does not include many individuals at an earlier stage in the employment-based immigrant visa process. Crystal Williams, executive director of the American Immigration Lawyers Association, explains: “The cutoff date for Indians in the 3<sup>rd</sup> preference for employment indicates that everyone who started the process after May 1, 2001 cannot file an I-485 at this time. There are some who started after May 1, 2001 and filed when the cutoff date was more current, but for whom the priority date retrogressed (moved backwards). They would still be in the inventory. But there are many who started the process after that date who did not file 485s before the dates retrogressed.”<sup>17</sup>

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It is possible to estimate the number of Indians who have started the process for an employment-based immigrant visa but are not at the I-485 state and, therefore, fail to appear in the USCIS inventory. (The cut-off date listed in the December 2009 Visa Bulletin for Indians in the third preference is May 1, 2001.) From FY 2001 to 2009, approximately 508,000 Indians received initial employment on H-1B temporary visas.<sup>18</sup>

If one assumes half of the 508,000 Indians with new H-1Bs during this time period possessed employers who began the process for permanent residence on their behalf, then it would leave us with 254,000. Half is a reasonable estimate, since the stay rates for Indians 5 years after receiving a Ph.D. from a U.S. university are 85 percent and a majority of H-1B visa holders possess a master's degree or higher.<sup>19</sup> "Based on my experience and interaction with other H-1B visa holders, estimating half of Indian H-1Bs have been sponsored for a green card could even be conservative, since it's likely to be more than half," said Aman Kapoor, president of Immigration Voice. "Also, Indians get sponsored for green cards from L-1 and J-1 visas."<sup>20</sup>

Although this calculation would yield 254,000 "principals" from India who received an H-1B visa and at least began the process for an employment-based immigrant visa, that number does not include dependents (spouses and minor children). The State Department estimates that, on average, each principal has 1.1 dependents, adding another 279,400 individuals.<sup>21</sup> This would bring the estimated total to 533,400.

If one subtracts from 533,400 the 111,296 individuals born in India who were in the USCIS I-485 employment-based inventory, it would leave approximately 422,000. If one divides 422,000 by 23,816, which is the average number of Indians who received employment-based immigrant visas each year from 2006 to 2008, we find it could take an additional 16 to 17 years to clear the cases for Indians who do not even appear yet in the USCIS I-485 inventory.<sup>22</sup> That would be in addition to the conservative estimate of 4 and a half years to clear just the current cases for India in the USCIS I-485 inventory.

These figures forecast, at least on paper, a wait of as long as 20 years for an individual from India filing today for an employment-based immigrant visa in the 3<sup>rd</sup> preference. In one respect, the approximately 533,400 total could be low for the population of Indian professionals (and dependents) potentially waiting for employment-based green cards, since that total does not include anyone from India sponsored for an employment-based immigrant visa who has worked on a different temporary visa, such as an L-1 or J-1. On the other hand, the wait in the second preference for Indians would be less than in the third preference. If one wants to be even more conservative and estimate that such long waits will discourage individuals from filing or that perhaps fewer individuals have filed for employment-based immigrant visas than the estimates above, then one can reduce the projected wait by one-third. That would still yield a wait of 12 years or more for Indians filing today for employment-based immigrant visas, and similar waits for those who have started the process recently.

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Without Congressional action, skilled individuals born in India whose U.S. employers file for them today, or who have filed recently, are unlikely to receive employment-based green cards before the year 2022 or, in some cases, even 2029. To put this in perspective, children today in kindergarten may graduate from college by the time Indians who file new applications for an employment-based immigrant visa would receive a green card.

## **POTENTIAL CONGRESSIONAL ACTION**

There are at least four actions Congress can take that will significantly reduce wait times and provide substantial relief to employers and skilled immigrants.

First, Congress can exempt from the green card quotas immigrants with a master's degree or higher from a U.S. university in a science, technology, engineering or math field. This provision has been included in past legislation by Rep. Zoe Lofgren (D-CA). Congress could expand this measure to go beyond only degrees in those fields or to include individuals who received a Ph.D. in a technical field from abroad. Research has shown those who receive their degree abroad not only arrive in the United States with substantial human capital, garnered without any U.S. expense, but also may be among the finest in their fields. Examining a variety of indicators, research by Paula Stephen (Georgia State University) and Sharon G. Levin (University of Missouri-St. Louis) found, "Individuals making exceptional contributions to science and engineering in the U.S. are disproportionately drawn from the foreign born." In addition, the researchers concluded, "We also find evidence contributions to U.S. science and engineering are disproportionately drawn from the foreign-educated, both at the undergraduate and at the graduate level."<sup>23</sup>

Second, the new law could count only the principal employment-based immigrants, not their dependents, against the 140,000 annual employment-based quota. One reason for the large green card backlogs is that annual H-1B temporary visa quotas count only the principal recipient of an H-1B visa, whereas about half of the 140,000 quota for employment-based immigrant visas is utilized by the dependents (spouse and/or children) of the sponsored immigrant. In addition, Congress could raise the 140,000 annual quota to a much higher level.

Third, lawmakers could provide additional green card relief by including numbers previously allocated by Congress that were not utilized in prior years, such as due to agency processing delays.

Fourth, Congress could eliminate the per country limit on employment-based immigrants. This policy recommendation was included in a past bill by Rep. Lofgren and Rep. Bob Goodlatte (R-VA). Failing to eliminate the per country limit could result in skilled immigrants from India continuing to endure long waits even if other legislative changes are made.

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In practice, the per country limit under current law takes the employment-based immigration system away from a “first come, first serve” approach, to one that favors people from less populated countries (since countries with small populations will not reach the per country limits). Does the United States have an interest in favoring immigrants from countries with smaller populations? There is no reason to think we do. Under the current system, an employer could file for labor certification for three employees on the same day – one an engineer from Denmark, one from Syria, and the other an engineer from India. Because the per country limit would restrict the number of skilled immigrants from India in a year the engineers born in Denmark and Syria would receive their green cards potentially years before the engineer from India. This would be unfair and serve no policy purpose. If policymakers exist who wish to maintain the per country limit on employment-based immigrants because they “don’t want to see so many Indians or Chinese come to America,” then such policymakers should state these sentiments in a public forum.

Eliminating the per country limit for employment-based immigration would not prevent individuals born in other countries from gaining green cards. There is no per country limit for H-1B visas and skilled professionals from a variety of countries gain access to the visas on an annual basis. Approximately half of the annual H-1B quota has gone to professionals from Indians in recent years, with the remainder going to nationals of China, Canada, the United Kingdom and other countries.<sup>24</sup> The new policy would put in place a first come, first serve approach most people would find fair, not prevent individuals from different countries from gaining skill-based green cards.<sup>25</sup>

Congress can eliminate the per country limit for employment-based immigrants without changing the limit for family-based immigrants. The purpose of the per country limits for family-based categories seems different than for employment. In fact, it appears the only reason the per country limits exist for employment is they were carried over to the employment-based system with little thought about the difference between the categories. In the family categories the purpose is to prevent one or a few countries from crowding out individuals from other countries. In the employment-based categories, U.S. employers are hiring based on merit, without regard to race, religion or nationality. In fact, it is a moral and legal hallmark in America that hiring be accomplished without regard to such factors. Ironically, if U.S. companies decided among themselves to offer green cards to only a certain number of Indians or Chinese in a given year, then they would face both public and legal scorn. However, in essence, the U.S. government is mandating that type of a policy for U.S. companies.

Liberalizing rules for green cards is less controversial than other proposed immigration reforms. For example, the Semiconductor Industry Association and the Institute of Electrical and Electronics Engineers-USA (IEEE-USA) have both asked Congress to exempt “foreign professionals with advanced degrees in STEM (science,

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technology, engineering, and math) fields from U.S. universities” from the annual employment-based green card quota and to streamline the path from international student to permanent resident.<sup>26</sup>

## **DIRECT HIRES ON GREEN CARDS?**

One goal of legislators favoring green card liberalization is to allow employers to bypass H-1B or other temporary visas for employees that companies wish to sponsor permanently. However, so long as labor certification is required for green cards employers would have to figure that time into the equation to determine whether even if a green card is available the individual could be hired in a timely fashion. Waiting several months or a year to start a job can be unrealistic for both an employee and an employer, particularly in today's fast moving technology fields. Current policy that allows international students to receive Optional Practical Training for up to 27 months if such individuals qualify can help serve to bridge the time it takes to process green card applications.

Immigration attorney Greg Siskind is not sure green card relief alone will do the trick. “I don't see any time in the near future where we'll be able to bypass non-immigrant temporary visas, but a proposal to allow people to file adjustment applications when visa numbers are not available yet is a good start. That would allow EAD [Employment Authorization Documents] applications to be filed and work can start within 90 days typically. Perhaps USCIS could introduce premium processing for EAD cards and this could be even more useful.”<sup>27</sup>

## **CONCLUSION**

A worrisome aspect of current immigration policy is its impact on outstanding international students and other temporary visa holders who end up leaving the United States – and take their skills with them. A March 2009 report from Duke University and University of California, Berkeley, *Losing the World's Best and Brightest: America's New Immigrant Entrepreneurs, Part V*, surveyed more than 1,200 international students.<sup>28</sup> The research shows it is no longer a given that outstanding international students, researchers and professionals will want to stay and work in America or, equally important, believe they will be able to make their careers here.

According to the survey results, “The vast majority of foreign students, and 85 percent of Indians and Chinese and 72 percent of Europeans are concerned about obtaining work visas” in the United States.<sup>29</sup> This relates primarily to the problems in recent years, with the exception so far of FY 2010, in obtaining H-1B temporary visas, due to the supply being exhausted before or during a fiscal year. Generally speaking, an international student will be unable to work long-term in the United States without such a visa.

A relatively high proportion of students also expressed anxiety about being able to obtain a green card to remain permanently in the United States. Fifty-five percent of Chinese, 53 percent of Europeans and 38 percent of Indian

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students said they were concerned about being able to obtain permanent residence.<sup>30</sup> These percentages are perhaps surprising given green card sponsorship is further on the time horizon for most students. "It is only after working here for a while that students fall in love with America and decide to stay permanently," said Vivek Wadhwa, lead author of the study and Director of Research, Center for Entrepreneurship and Research Commercialization and Exec in Residence, Pratt School of Engineering, Duke University. "When they come here, the vast majority plan to go back home – that is what they tell their friends and relatives and they have emotional bonds to their home countries. This changes with time."<sup>31</sup>

The problem facing skilled foreign nationals, employers and the U.S. economy is current law does not match the aspirations of these individuals or allow the country to harness their abilities. One result is many outstanding foreign nationals see potentially brighter futures in their home countries, leaving America vulnerable to losing a pool of talent that has helped spur jobs, growth and innovation inside the United States. Today, highly educated professionals are faced with many options. If the United States wishes to encourage more of these professionals to choose a career in America, then it is important to provide a more open legal regime for skilled immigrants.

**END NOTES**

<sup>1</sup> *Immigration Benefits*, Government Accountability Office, November 2005 (GAO-06-20), p. 43.

<sup>2</sup> Section 202(a)(2) of the INA.

<sup>3</sup> Section 202(a)(3) of the INA.

<sup>4</sup> Descriptions of categories taken verbatim from “How Do I Apply for Immigrant Status Based on Employment?,” U.S. Citizenship and Immigration Services at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=0966194d3e88d010VgnVCM10000048f3d6a1RCRD>.

<sup>5</sup> Visa Bulletin, November 2009, U.S. Department of State.

<sup>6</sup> Information provided by American Council on International Personnel.

<sup>7</sup> Cases can fall into the third preference even if the sponsored immigrant has an advanced degree. If a job does not require a master's degree, it would be a 3rd preference case despite the applicant having a master's degree, notes attorney Greg Siskind.

<sup>8</sup> Its purpose is to show the foreign national is qualified for the job.

<sup>9</sup> As part of the process the foreign national undergoes medical, criminal and other background checks.

<sup>10</sup> John Mei, “Employment-Based Immigration: 3 Steps to Understanding the Process,” MySolutionSpot.com, July 11, 2008. USCIS also provides information on the process on its website. Applicants may choose to complete this third stage of processing at a consulate abroad, which is known as “consular processing.”

<sup>11</sup> Copies of any Visa Bulletin referred to in this paper can be found at:

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html).

<sup>12</sup> [http://www.dhs.gov/xnews/releases/pr\\_1207334008610.shtm](http://www.dhs.gov/xnews/releases/pr_1207334008610.shtm).

<sup>13</sup> In many years the supply of H-1B visas have been exhausted before the end of the fiscal year. It has been necessary in certain years to distribute H-1B visas by lottery due to more applications being received than the allotted quota before the start of a fiscal year.

<sup>14</sup> A copy of the report can be found on the USCIS website at:

<http://www.uscis.gov/USCIS/New%20Structure/3rd%20Level%20%28Left%20Nav%20Children%29/Green%20Card%20-%203rd%20Level/Pending%20Form%20I485%20Reports.pdf>.

<sup>15</sup> “Questions and Answers: Pending Employment-Based Form I-485 Inventory,” U.S. Citizenship and Immigration Services, September 23, 2009.

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<sup>16</sup> 2008 Yearbook of Immigration Statistics, Office of Immigration Statistics, Department of Homeland Security, Table 10 and prior year statistical yearbooks.

<sup>17</sup> Interview with NFAP. There was a short period of time when all employment-based categories were made current (without a cut-off date), which encouraged individuals to file for adjustment of status.

<sup>18</sup> The number of Indians who received initial employment on an H-1B visa for FY 2001 through FY 2008 is detailed in reports by USCIS and the Department of Homeland Security. It is possible to estimate the number of Indians who received an H-1B for initial employment for FY 2009 based on recent usage. For FY 2001 through FY 2008 see the report *Characteristics of Specialty Occupation Workers (H-1B)*, Office of Immigration Statistics, Department of Homeland Security and U.S. Citizenship and Immigration Services for those years.

<sup>19</sup> Michael Finn, Finn, Michael G., 2007. *Stay Rates of Foreign Doctorate Recipients From U.S. Universities, 2005*. Oak Ridge, TN: Oak Ridge Institute for Science and Education, 2007, Table 7. <http://orise.ornl.gov/sep/files/stayrate07.pdf>; *Characteristics of Specialty Occupation Workers (H-1B): Fiscal Year 2008*, U.S. Citizenship and Immigration Services, 2009. Approximately 56 percent of H-1B recipients for initial employment possessed a master's degree or higher in FY 2008, according to the FY 2008 report from USCIS.

<sup>20</sup> Interview with NFAP.

<sup>21</sup> For example, in FY 2008, in the second preference of employment-based immigration there were 34,535 principals and 35,123 dependents. Table 7 of the *2008 Yearbook of Immigration Statistics*, Office of Immigration Statistics, 2009.

<sup>22</sup> Table 10 of the 2006, 2007 and 2008 *Yearbook of Immigration Statistics*.

<sup>23</sup> Paula E. Stephan and Sharon G. Levin, "Exceptional Contributions to U.S. Science by the Foreign-Born and Foreign-Educated," *Population Research and Policy Review*, 2001, 20: p. 59, 75.

<sup>24</sup> For FY 2001 through FY 2008 see the report *Characteristics of Specialty Occupation Workers (H-1B)*, Office of Immigration Statistics, Department of Homeland Security and U.S. Citizenship and Immigration Services for those years. For FY 2005 and earlier, Indians received 49 percent or fewer of the H-1Bs issued for initial employment. For FY 2006 to FY 2008, the proportion has been between 54 and 56 percent.

<sup>25</sup> It is difficult to predict the precise impact on the distribution of employment-based green cards in the initial years after eliminating the per country limit, since it is likely such a change in the law would be accompanied by other legislative changes. For example, if the skilled immigrant backlogs were eliminated entirely, then the country distribution of green cards for employment-based immigration would likely be similar to that which we've seen for H-1B visas.

<sup>26</sup> [http://www.sia-online.org/galleries/default-file/SIA-IEEE-USA\\_Letters.pdf](http://www.sia-online.org/galleries/default-file/SIA-IEEE-USA_Letters.pdf).

<sup>27</sup> Interview with NFAP. EADs would also allow spouses to work, whereas now spouses of H-1B visa holders generally are not authorized to work in the United States.

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*Employment-Based Green Card Projections Point to Decade-Long Waits*

<sup>28</sup> Vivek Wadhwa, AnnaLee Saxenian, Richard Freeman, and Alex Salkever, *Losing the World's Best and Brightest: America's New Immigrant Entrepreneurs*, Part V, Duke University, U.C.-Berkeley, and Ewing Marion Kauffman Foundation, March 2009. The research is available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1362012](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1362012).

<sup>29</sup> Ibid., p. 3.

<sup>30</sup> Ibid., p. 3.

<sup>31</sup> Interview with NFAP.

**ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY**

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at [www.nfap.com](http://www.nfap.com).