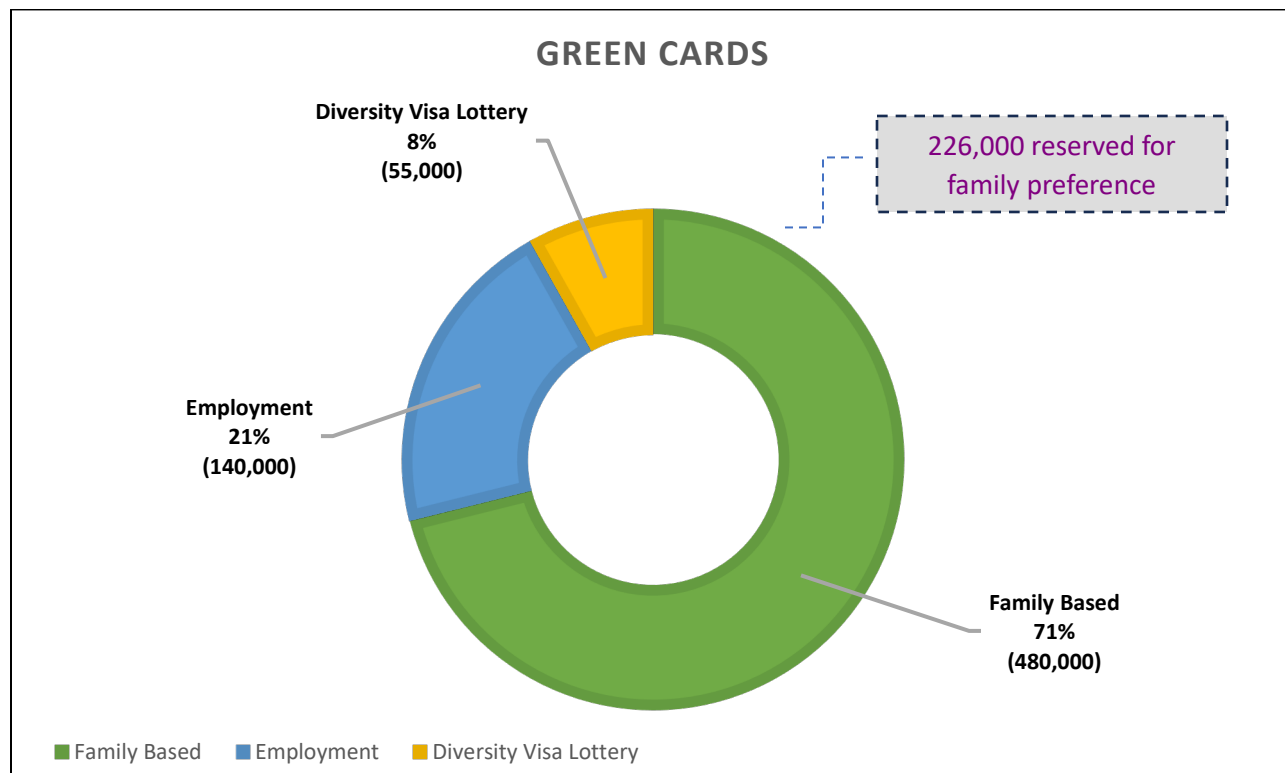


Why Is My Green Card Taking So Long To Process?

Nalini Mahadevan, JD MBA, Principal Attorney

Every year, by statute, there are 675,000 green cards available for processing by U.S. Citizenship and Immigration Services (USCIS) and the Department of State (DOS), of which 480,000 visas are reserved for family-based green cards, 140,000 for employment, and 55,000 for Diversity Visa lottery winners.



When family-based categories do not utilize all the green cards designated in a year, the unused green cards are allocated to employment-based categories. USCIS generally adjudicates more employment-based visas and DOS more family-based visas. DOS sets the yearly and monthly green card quotas for each preference category. The fiscal year runs from October 1 to September 30 of the following year.

Every country is allotted 7% of the 675,000 visas available every year. In 2023, each country's allocation of green cards was 29,616, and the dependent's annual visa limit was 2%, or 8,462. In other words, if the number of applicants for a green card from each country is more than 38,078, including the principal applicant and their dependents, a queue is created for the remaining green

cards, just like the driver's license office. You take a number and wait for your turn in line. Your number is the priority date allocated to you on the date you file your application.

Every foreign-born citizen is counted against their country of birth. U.S. Citizens and their immediate family do not have to wait in line for a visa. The green cards are first allocated to U.S. Citizens' immediate relatives, and then the balance of the green cards are allocated to family preference categories. In 2023, there were 226,000 (minimum number of visas required by law) family preference-based visas and 197,091 employment-based green cards available. The extra 57,091 green cards unused in the family-based categories were allocated to employment-based categories. Every year, U.S. citizens use over 250,000 green cards for their immediate relatives (spouses, children under 21, and parents). For other family categories, the law keeps 226,000 of the 480,000 green cards reserved for the family preference categories every year.

The number of green cards available for distribution each year was set by law in 1990.¹ Specifically, there are only 140,000 employment-based green cards available per year, and less than half are awarded to the principal worker; the rest go to workers' spouses and minor children."² Each applicant, spouse, and foreign-born children requires separate green cards. Hence, a family of four requires 4 green cards.

"This country-based cap is not adjusted based on population or individual countries' demand. Because of this, some nationals only have year-long waits for an employment-based green card, while others, like those from India, must wait for over 80 years —half of which go to the spouses and minor children of the workers. This limit was last updated in 1990. Since India-born immigrants make up about half of all the employer-sponsored immigrants, a massive backlog of about 800,000 (in 2021) applicants from India has developed".³

The employment-based green card backlog surpassed 1.2 million applicants last year and is still growing rapidly.⁴ According to a report by the Congressional Research Service⁵, the backlog is

¹ The Immigration Act of 1990 provided a family-based immigration visa, created five distinct employment based visas, categorized by occupation, and a diversity visa program that created a lottery to admit immigrants from "low admittance" countries or countries whose citizenry was underrepresented in the U.S.

² Niskanen Center. STOP THE INCINERATOR. The high cost of green card slots going unused and the benefits of recapturing them Jeremy L. Neufeld Niskanen Center Lindsay Milliken Federation of American Scientists Doug Rand Federation of American Scientists June 2021

³ Testimony of David J. Bier Immigration Research Fellow The Cato Institute Before The House Judiciary Committee Subcommittee on Immigration and Border Security April 28, 2021 RE: "Why Don't They Just Get in Line?" Barriers to Legal Immigration

⁴ David J. Bier, "Backlog for Skilled Immigrants Tops 1 Million: Over 200,000 Indians Could Die of Old Age While Awaiting Green Cards," Cato Institute, March 30, 2020. 16. David J. Bier, "Employment- Based Green Card Backlog Hits 1.2 Million in 2020," Cato Institute, November 20, 2020.

⁵ <https://crsreports.congress.gov/product/pdf/R/R46291>. Given current trends, the analysis projects that by FY2030, the EB1 backlog would grow from an estimated 119,732 individuals to an estimated 268,246 individuals; the EB2 backlog would grow from 627,448 to 1,471,360 individuals; and the EB3 backlog, from 168,317 to 456,190 individuals. The total backlog for all three categories would increase from an estimated 915,497 individuals currently to an estimated 2,195,795 individuals by FY2030.

projected to double by fiscal year 2030 because two petitions are added to the queue for every new green card made available. The backlogs are concentrated mainly in the EB-2 and EB-3 categories and are the worst for Indian nationals. It is estimated that without any reforms, nearly 200,000 Indians will die while still waiting in line. In 2023, employment preference category 1 (EB-1) was also backlogged. USCIS has approved the petitions for green card, but applicants are waiting because no green card numbers are available. The applicants have satisfied all of the necessary conditions prior to filing a green card application.⁶ In addition, USCIS also has numerous unadjudicated I-130 petitions in its pipeline, so the backlogs are even higher.

Under the Immigration Act of 1990, unused green cards from the family preferences fall to the employment preferences. However, the reverse is not true. Unused employment visas do not go to family preferences. The result is that unused employment-based green cards are destroyed. Unused employment-based green cards are not carried forward to the following fiscal year.

“Due to the way the visa coordination has worked between USCIS and DOS, it is estimated that nearly 940,000 employment green cards have been wasted. Congress has on its own initiative captured unused green cards in 2000 and 2005, but since that time, no action has been taken to recapture the green cards for issue, to alleviate the backlog”.⁷

Due to the COVID shutdowns, approximately 122,000 family preference green card slots went unused in F.Y. 2020.⁸ As a result, these slots are (were) theoretically available for employment-based applicants to use in F.Y. 2021. It would be highly unlikely for USCIS and the State Department to be able to complete processing an extra 122,000 green card applications. This means that a large quantity of green card numbers will in all likelihood fall back into the incinerator at the end of this fiscal year (September 30, 2021).⁹ By DOS estimates, there were 57,041 unused green cards at the end of the 2023 fiscal year.¹⁰ This prediction came true. At the end of fiscal year September 30, 2023, according to the Visa Bulletin, there were 57,041 green cards that went unused, unadjudicated and unallocated. In other words, they will be discarded by the system, unless adjudicated by September 30, 2023.

The backlog of green card applications awaiting a visa number can be solved in many ways. But why should this issue be addressed? Because that would increase the GDP of the U.S. and solve many problems – maintain U.S. technological supremacy and dominance, stimulate and provide a qualified pool of U.S. experienced and qualified job seekers, solve Medicare and Social Security

⁶ <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/build-back-better-act-green-card-recapture.aspx>.

⁷ Niskanen Center. STOP THE INCINERATOR. The high cost of green card slots going unused and the benefits of recapturing them Jeremy L. Neufeld Niskanen Center Lindsay Milliken Federation of American Scientists Doug Rand Federation of American Scientists June 2021

⁸ Id.

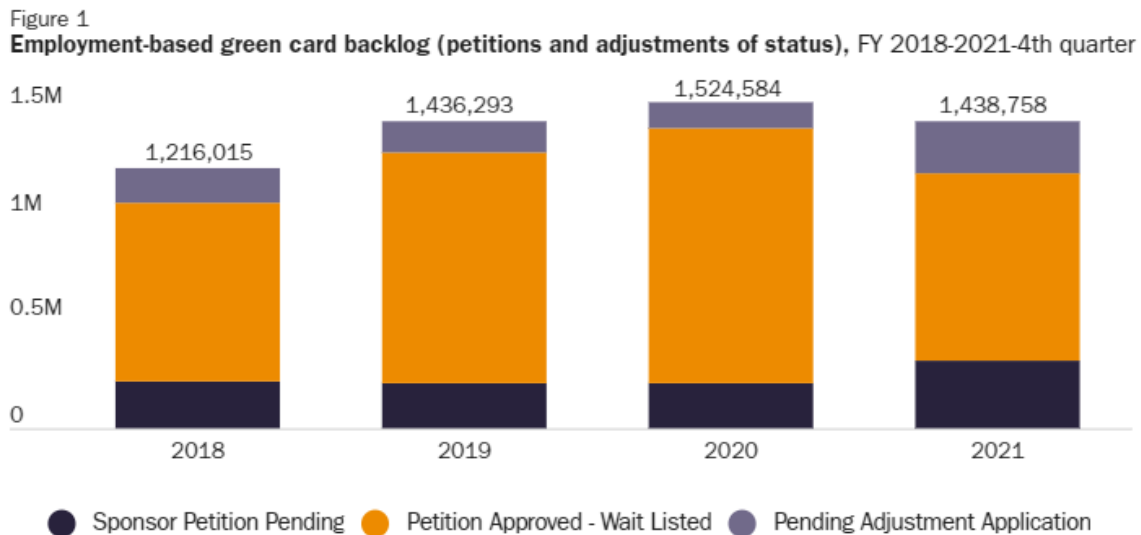
⁹ id

¹⁰ Visa Bulletin, September 2023, Worldwide Employment-Based preference limit:197,091

solvency issues, increase tax collection, increase local and state tax collections, stabilize the real estate market, insurance and banking.

There are two ways to alleviate this backlog. The first is by recapturing green cards. The second is by issuing employment authorization to the first 3 employment preferences when their Form I-140, Immigration petition for alien workers, is filed and approved by USCIS. H-4 visa spouses are eligible for employment authorization once Form I-140 is approved for their H1B visa spouse. Why not delink the employment authorization for the H1B holder from their green card filing? Issue the employment authorization to the H1B holder once their Form I-140 is approved.

From 2018 to 2021¹¹, the number of Employment-based green card backlogs (petitions and adjustments of status), were as follows:



Note: Wait-listed includes some pending visa applications at consulates abroad.
 Sources: U.S. Citizenship and Immigration Services (USCIS), "Count of Approved Petitions," April 2018, November 2019, April 2020, September 2021; USCIS, "Number of Service-wide Forms," 2021, 2020, 2019, 2018; and for estimation of dependent spouses and children, see Department of Homeland Security (DHS), *Yearbook of Immigration Statistics* (Washington: DHS, 2019), Table 7.

A recent report (2021) by the Niskanen Center indicates that if the federal government recaptures 231,000 unused employment-based green cards, the policy would add \$216 billion to GDP over ten years. If it recaptures 940,000 unused employment-based and family-preference green cards, the policy would add \$815 billion to GDP over ten years.¹²

Of the million plus green cards awaiting adjudication from 2018, for one reason or the other, it is clear that "the cumulative effect of green cards going unused year after year is a permanent drag on the U.S. economy. The labor force is left consistently smaller than Congress intended.

¹¹ [https://www.cato.org/blog/14-million-skilled-immigrants-employment-based-green-card-backlogs-2021#:~:text=As%20of%20September%202021%2C%20there,\(i.e.%20legal%20permanent%20residence\).](https://www.cato.org/blog/14-million-skilled-immigrants-employment-based-green-card-backlogs-2021#:~:text=As%20of%20September%202021%2C%20there,(i.e.%20legal%20permanent%20residence).)

¹² <https://immigrationforum.org/article/fact-sheet-unused-green-card-recapture/>

Employers leave important positions vacant and suffer costly delays while they wait for green cards to become available. Others avoid the expensive and uncertain process of sponsoring green cards altogether, at the cost of depriving their companies of much-needed talent. Many talented migrants seek opportunities outside the U.S. instead of waiting in the backlogs, both employment-based and family preference. In short, the U.S. economy is constantly being deprived of the talents of a great many people who would otherwise be here. Recapturing unused green cards would reverse some of the damage with a one-off, temporary increase in legal immigration flows.”¹³

Since recapturing green cards requires Congressional action, MLO Law, LLC advocates permitting filing form I-765, Employment Authorization to allow H1B workers to await their priority dates. The benefits are many.

Under existing regulations, the EADs can be issued without Congressional action. DACA H4, F1, asylees, refugees, TPS, and other categories are permitted to file EADs. Some categories are eligible for 5 year EADs.

Permit EADS for H1B visa holders, and their dependents once their H1-B visa holder's I-140 is approved. This will open up job portability for the principal visa holder, allow children to work summer jobs, obtain driver's licenses, and a social security number. Most of these children currently stay home, do not drive nor are they eligible for summer jobs. Of course, the economic and technological contributions are enormous.

At MLO Law, LLC, we are committed to our clients awaiting their green card approvals, who have been waiting patiently for many years while spending thousands of dollars to stay in status and legal to work. It is the humane thing to do.

To this end, we are collecting signatures from our clients, both companies and individuals, to sign a letter to the Missouri U.S. Senators and Congresspersons to lobby them to advocate for a change in the law and support legislation and regulations to alleviate the backlog. Without this step, we as a country are just shooting ourselves in the foot.

Action needed:

Email mlolaw@mlolaw.us with your NAME, PHONE NUMBER, COMPANY NAME, and POSITION. We will send you 3 draft letters addressed to our Senators and Congressperson to draw their attention to the enormous gap in talent that cannot be used due to inaction.

Thank you for reading this white paper. We hope it was informative.

¹³ <https://www.niskanencenter.org/statement-for-the-record-of-the-niskanen-center/>

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