Institute for Youth in Policy

5214F Diamond Heights Blvd #3055
San Francisco, CA 94109
+1 (715) 469-6884
fellowship@yipinstitute.org
www.yipinstitute.org/fellowship/

Fellowship Capstone | Policy Brief

The United States' Employment-Based Immigration System: An Analysis of H-1B Worker Backlogs, Policy Shortcomings, and Reform Pathways

Adhithiya Narayanan Balamurugan

I. Executive summary

The U.S. employment-based immigration system traps over 1.8 million skilled workers and their families in legal limbo due to outdated quotas and per-country limitations that have remained unchanged for thirty-five years. The Immigration Act of 1990 established a ceiling of 140,000 employment-based green cards annually combined with a rigid seven-percent per-country cap that allocates the same number of visas to India (population of 1.4 billion) as to Iceland (population of 400,000). These provisions have generated wait times as extreme as 195 years for Indian nationals in the EB-2 category, with over 400,000 projected to die before obtaining permanent residency.

This backlog, along with its induced dependence on temporary work visas, creates three cascading harms. First, employer-specific sponsorship combined with high switching costs—$5,000+ in fees and multi-year delays—concentrates labor-market power among employers and suppresses H-1B wages by 12.2% through constrained mobility. Second, it traps H-4 dependent spouses, over 90% of whom hold bachelor's degrees, in years-long employment prohibition, artificially removing skilled labor from the workforce. Third, it forces many children to age out at 21, creating deportation risks for those who are American in every meaningful sense except paperwork.

Four complementary reforms can collectively address this crisis. First, phasing out the seven-percent per-country cap would gradually transition visa allocation from nationality-based limits to a demand-driven system, allowing applicants from high-demand countries to advance in the backlog without causing abrupt increases in wait times for those from low-demand countries. Second, increasing the annual employment-based visa ceiling would alleviate the overall shortage that persists regardless of allocation methods. Third, dependent exemption would exclude spouses and minor children from counting toward the annual cap, ensuring that all 140,000 visas are allocated to independently qualified principal workers rather than divided among family members. Fourth, visa recapture would reclaim approximately 339,000 unused visas from prior years, delivering immediate backlog relief under existing statutory authority while longer-term structural reforms advance through Congress.

These reforms would close the widening gap between America's need for skilled talent and its statutory capacity to receive it.

II. Historical Context

A. The Immigration Act of 1990

The Immigration Act of 1990 represented the first comprehensive restructuring of legal immigration pathways since the 1965 amendments that abolished national-origin quotas (Chishti and Yale-Loehr 2016). The 1990 legislation established five employment-based (EB) preference categories (EB-1 through EB-5), designed to attract distinct classes of economic migrants: individuals with extraordinary ability (EB-1), professionals with advanced degrees (EB-2), skilled workers (EB-3), special immigrants (EB-4), and immigrant investors (EB-5) (Chishti and Yale-Loehr 2016). The statutory framework increased total EB visas available from 54,000 to 140,000 annually (Donovan, Kandel, and Wilson 2025), a 159% expansion.

The H-1B visa program, created under the same legislation, was designed as a temporary mechanism for U.S. employers to fill skill shortages by hiring international talent. It also allowed employers to sponsor these temporary workers for permanent residency through employment-based categories, provided they could demonstrate that no qualified U.S. worker or permanent resident was available for the position (Donovan, Kandel, and Wilson 2025). The program established an annual cap of 65,000 H-1B visas, which Congress later increased to 85,000 through the American Competitiveness in the Twenty-First Century Act of 2000, with 20,000 visas specifically reserved for graduates of U.S. master's degree programs (S. Rept. 106-260 2025).

While creating the H-1B program, policymakers tried to balance competing objectives: maximizing economic contribution through skill-based selection while maintaining source-country diversity. The seven-percent per-country limitation emerged as a compromise, replicating diversity principles from family-based immigration visa allocation frameworks (Fact Sheet: Family-Based Immigration n.d.). This constraint allocated approximately 9,800 of the 140,000 total employment-based visas annually to any single nation (Donovan, Kandel, and Wilson 2025), regardless of population size or demand levels, revealing limited attention to potential demand asymmetries by source country.

The 140,000 annual ceiling for EB green cards (Donovan, Kandel, and Wilson 2025) constrains effective capacity and worsens the backlog. Because spouses and minor children count against this limit, only about 67,000 principal applicants receive permanent residency each year, with the remainder consumed by derivative beneficiaries (Nowrasteh 2025). These family members enter the United States on H-4 dependent visas, a nonimmigrant classification for spouses and unmarried children under 21 of H-1B workers. H-4 status is derivative, dependent on the principal H-1B holder maintaining lawful status (H-4: Family of the H-1B 2021).

This imbalance between the inflow of temporary workers and the limited number of green cards creates a structural bottleneck: while the United States issues up to 85,000 new H-1B approvals annually (S. Rept. 106-260 2025), only around 70,000 principal applicants obtain permanent residency every year (Nowrasteh 2025). As a

result, many H-1B workers remain in temporary status for years, sometimes decades, contrary to the program's intended short-term purpose. Their H-4 dependent family members remain similarly trapped in temporary status, subject to employment restrictions and aging-out risks that compound over prolonged waiting periods.

B. Shifts in Immigration Inflows

Three interconnected developments altered the operational context of employment-based immigration since 1990. First, the information technology sector expanded from 3.4% to approximately 7.1% of U.S. GDP within just two decades (Atkinson and Stewart 2013), creating sustained demand for software engineers, data scientists, and related technical specialists. Second, India and China dramatically expanded their STEM education systems: India increased its annual number of STEM bachelor's graduates from approximately 60,000 in 1990 (Karnik 2015) to over 2.5 million by 2020 (Oliss, McFaul, and Riddick 2023), while China went from around 149,000 in 1990 (Freeman and Huang 2015) to more than 3.5 million by 2020 (Oliss, McFaul, and Riddick 2023). Third, the H-1B visa program emerged as the principal pathway for skilled workers entering the United States, with Indian nationals accounting for about 73% of approved petitions and Chinese nationals representing roughly 12% by 2023 (Im, Cahn, and Mukherjee 2025).

These dynamics created exponential growth in employment-based green card demand, especially from Indian nationals, while statutory supply remained fixed. By 2025, the backlog exceeded 1.8 million, with Indian nationals representing approximately 1.2 million cases (Moodie 2025a). The per-country cap mechanism, intended to promote diversity, soon generated wait times exceeding 195 years for new EB-2 applicants from India (Bier 2023), with over 400,000 Indian immigrants expected to die before attaining permanent residency (Bier 2023). The stark population disparities between source countries—India's population of approximately 1.4 billion versus Iceland's 400,000 (Population - The World Factbook 2024)—rendered the equal-allocation principle increasingly untenable as demand patterns shifted toward larger nations with more extensive higher education systems.

C. Key Statutory and Administrative Adjustments

Several legislative and administrative interventions have attempted to address problems in the employment-based immigration system, though none have fundamentally altered the structural constraints that generate current backlogs.

In 2000, the American Competitiveness in the Twenty-First Century Act (AC21) represented Congress's first major response to growing employment-based immigration demand in the technology boom era (Donovan, Kandel, and Wilson 2025). The legislation made several critical modifications to the Immigration Act of 1990's framework:

1) H-1B Cap Increase: AC21 increased the H-1B annual cap from 65,000 to 195,000 for fiscal years 2001-2003, with an additional 20,000 visas reserved for foreign nationals holding U.S. master's degrees or higher (S. Rept. 106-260 2025). However, this increase was temporary, and the cap reverted to 85,000 (with the 20,000

advanced degree reservation) beginning in fiscal year 2004 (Donovan, Kandel, and Wilson 2025).

2) Visa Recapture: The Act authorized reissuance of unused employment-based visas from fiscal years 1999 and 2000 (Donovan, Kandel, and Wilson 2025), temporarily increasing available green cards and measurably reducing processing times in 2001-2003 before backlogs re-accumulated as recaptured visas were exhausted (Neufeld, Milliken, and Rand 2021).
3) Most significantly for current H-1B workers, AC21 introduced "job portability" provisions allowing H-1B workers with approved I-140 immigrant petitions (employer-sponsored green card applications demonstrating eligibility for permanent residence) and pending I-485 applications (adjustment of status applications to become lawful permanent residents) to change employers without restarting the green card process, provided the I-485 had been pending for at least 180 days and the new position was in a "same or similar" occupational classification (Donovan, Kandel, and Wilson 2025). This provision reduced the mobility constraints that characterize H-1B status, allowing visa holders who had reached the adjustment of status stage to transition employers more easily while maintaining their place in the green card queue.
4) AC21 permitted H-1B extensions beyond the standard six-year maximum through two pathways. Workers with approved I-140 petitions could extend in three-year increments indefinitely, allowing them to remain on H-1B while waiting for visa availability. Alternatively, workers whose PERM labor certification or I-140 petition had been pending for at least 365 days could extend in one-year increments until their I-140 was approved, at which point they became eligible for three-year increments (Donovan, Kandel, and Wilson 2025). This provision converted H-1B from a temporary visa into an indefinitely renewable status for workers caught in green card backlogs, fundamentally altering the program's nature.

While AC21 addressed the employment instability created by protracted processing times, subsequent legislation sought to mitigate the family-level consequences of those same delays. The 2002 Child Status Protection Act (CSPA) attempted to resolve the "aging out" problem, where children of immigrants lose derivative eligibility upon turning 21. CSPA introduced age-freeze mechanisms, where a child's age is "frozen" at the time the priority date becomes current (when a visa becomes available for the individual's category and country), rather than continuing to increase during queue waiting periods (Child Status Protection Act 2021).

However, CSPA's protections are limited in scope. The age freeze only applies when priority dates become current (Child Status Protection Act 2021), offering no protection during the often decade-plus waiting periods that precede final adjudication for immigrants in backlogged categories. For example, in the most extreme case, Indian families entering the EB-2 India today

face projected waits exceeding 195 years (Bier 2023). Under such conditions, children inevitably age out long before their parents' priority dates become current, forcing them to secure independent visa status or leave the country entirely, despite having spent their formative years in the United States. The Department of Homeland Security's 2025 decision to eliminate certain administrative protections for aging-out children further compounded these challenges, removing discretionary measures that had provided temporary relief in limited circumstances (Kreighbaum 2025).

Although the CSPA mitigated one aspect of the backlog's human cost, its limited reach revealed the system's broader failure to accommodate families trapped in years of waiting. More than a decade later, policymakers turned their attention to another affected group: the spouses of high-skilled workers on H-4 visas. Almost 90% held at least a bachelor's degree, yet were legally barred from employment (Zavodny n.d.). In response, the Obama Administration introduced H-4 Employment Authorization Documents (EADs) in 2015, granting work permits to spouses of H-1B workers with approved I-140 petitions and enabling limited economic independence amid prolonged green card delays (Kandel 2020).

However, employment authorization for H-4 spouses remains contingent on the principal H-1B holder maintaining status and sustaining I-140 approval, creating precarious employment situations where spousal work authorization can terminate due to factors beyond the dependent's control. Moreover, for families early in the green card process, where employers have not yet initiated I-140 filing, spouses face continued employment prohibition (H-4 EAD FAQ 2024). Research has demonstrated that H-4 work authorization generates substantial economic value, with employment-authorized H-4 spouses contributing significantly to household income and labor force participation, yet access remains restricted to a subset of the H-4 population (Varas 2019).

In 2016, the year following H-4 reform, the Obama Administration addressed a related vulnerability that threatened both H-4 employment authorization and H-1B workers' own immigration progress: the instability of I-140 petition approvals. Prior to 2016, employers could withdraw I-140 petitions at any time, even years after approval, automatically revoking the petition and eliminating an H-1B worker's ability to extend their visa status beyond six years or retain priority dates. This withdrawal authority created substantial employer leverage over workers contemplating job changes, as switching employers risked forfeiting years of progress in the green card queue (How to Port or Retain an I-140 Priority Date 2023).

The 2016 final rule sought to reduce this employer control by preventing automatic revocation of I-140 petitions approved for 180 days or more based solely on employer withdrawal or business termination. Once "vested" at 180 days, approved I-140s remain valid for priority date retention, H-1B extensions beyond six years, and portability purposes even if the original sponsoring employer withdraws the petition or ceases operations. Critically, this reform expanded portability protections beyond AC21's original scope to cover workers unable to

file Form I-485 because their priority dates were not yet current, thereby including millions trapped in employment-based green card backlogs. For workers who had progressed to I-140 approval, the reform meaningfully enhanced job mobility and reduced vulnerability to employer coercion during their time in the backlog (How to Port or Retain an I-140 Priority Date 2023). More recent regulatory updates in 2024 have continued this trajectory, modernizing H-1B requirements to provide additional flexibility for F-1 students transitioning to H-1B status and streamlining certain processes, though these changes have not addressed the fundamental capacity constraints driving the backlog (Modernizing H-1B Requirements 2024).

III. Economic and Humanitarian Consequences

A. Labor Market Distortions

The employment-based backlog effectively creates quasi-monopsonistic labor market conditions by limiting H-1B workers' ability to change employers during prolonged green card processing. Economic theory predicts that when job switching entails significant costs, market power concentrates among employers, enabling them to exert disproportionate influence over wage determination. As employer concentration rises, inter-firm competition for labor declines, resulting in slower wage growth (Kim and Pei 2022).

For H-1B holders, their immigration status creates switching costs independent of skill portability or job search efficiency. First, green card sponsorship requires substantial administrative and financial investment by employers: PERM labor certification (19-25 months processing (PERM Processing Time 2025), $5,000+ in fees (Rozario 2025)) and I-140 immigrant petition (6-12 months processing (Moodie 2025b), $715+ in fees (Rozario 2025)). Workers who change employers before receiving approved I-140 petitions forfeit this cumulative investment, which serves as a deterrent to job changes.

Second, even workers with approved I-140 petitions who qualify for AC21 portability face significant procedural barriers when changing employers. When a worker changes employers under AC21 portability, they must demonstrate that the new position qualifies as "same or similar" occupational classification, a determination involving subjective USCIS judgment that creates risk of portability denial (Center for U.S. Immigration Services 2025).

Later, when the worker seeks to complete the green card process with the new employer, the new employer must file a new PERM labor certification and I-140 petition to reflect the new employment relationship (Center for U.S. Immigration Services 2025). While workers retain their original priority dates, they face USCIS review of the new position's occupational classification and potential delays in employer processing. Workers contemplating employer transitions must therefore weigh whether salary increases justify the procedural risks and potential delays that could extend their timeline to permanent residency.

Third, the aforementioned switching costs create substantial bargaining asymmetries in wage negotiations. Workers aware that changing

employers requires accepting these costs possess reduced credible threats to leave for competing offers. Employers aware of these constraints face diminished competitive pressure to match external wage offers or provide merit-based salary increases, as workers rationally calculate that foregone wage increases may be less costly than restarting immigration processes or taking portability risks.

Empirical evidence supports the theoretical expectation that employer market power constrains wage growth among H-1B workers. Administrative data from the H-1B visa program show that this labor market is about 40% more concentrated than the broader U.S. labor market, a gap that has widened steadily over the past decade. Within this environment, a shift from the 25th to the 75th percentile of employer concentration is associated with a 12.2% reduction in pay (Kim and Pei 2022). Importantly, these workers are still paid at or above official prevailing wage standards, as required by regulation (20 CFR § 655.731 2020). The effect instead arises from limited upward mobility: first-time H-1B applicants, whose visa status ties them to a single sponsoring employer, have a limited ability to secure raises or competing offers. As a result, employer concentration constrains career progression and wage growth over time.

B. Dependent Status and Family Stability

The derivative beneficiary framework creates secondary labor market and human capital development distortions affecting H-4 spouses and children of H-1B workers. H-4 dependent status is entirely derivative of the principal H-1B holder's status, with spouses historically prohibited from employment. The 2015 regulatory change granting limited H-4 employment authorization provided partial relief but left substantial populations unprotected: only spouses whose principal H-1B holders have received approved I-140 immigrant petitions qualify for work authorization, excluding families early in the green card process.

The economic consequences compound over time. For families that have not yet qualified for H-4 employment authorization, spouses face continued employment prohibition despite nearly 90% of them holding bachelor's degrees (Zavodny n.d.). This represents substantial human capital artificially removed from employment not due to lack of skills or labor market demand, but due to restrictions tied to a spouse's immigration processing stage over which the H-4 dependent has no control.

The employment prohibition generates immediate household income reduction by forcing families to rely on single-earner income during periods when dual-earner households would significantly improve economic stability. The barrier also prompts long-term human capital depreciation that persists even if work authorization eventually becomes available: work-related skills atrophy without use (Edin and Gustavsson 2004) and multi-year employment gaps create credential deterioration that employers view unfavorably (Kristal et al. 2022). H-4 spouses who obtain work authorization after years outside the labor force, therefore, face substantial re-entry challenges, experiencing career trajectory disruptions compared to counterfactual scenarios where continuous

employment had been permitted.

Beyond its impact on household earnings, the employment prohibition compounds intergenerational disadvantages. H-4 dependent children, despite often spending their formative years in the United States, remain excluded from numerous scholarships, federal financial aid, and educational programs reserved for citizens and permanent residents (Broder and Kmec 2025). These systemic exclusions limit access to enrichment opportunities that foster human capital development and economic mobility. In effect, the policy transmits the economic vulnerability imposed on parents to their children, constraining both immediate educational attainment and long-term socioeconomic advancement.

Most acutely, the "aging out" phenomenon magnifies these family-level costs, functioning as a mechanism of particular cruelty: children lose derivative beneficiary status upon reaching age 21 regardless of how long they have lived in the United States or how fully they have integrated into American society. As noted previously the Child Status Protection Act freezes beneficiary ages only after their priority date becomes current (Child Status Protection Act 2021), meaning the protection arrives too late for many children who age out during the often decade-plus waiting periods that precede it.

The result is a profound life disruption for individuals who spent their formative years in the United States. These "Documented Dreamers" attended American schools, built friendships and social networks in U.S. communities, participated in American institutions including sports teams and civic organizations, and achieved English language fluency (Paschero and McBrien 2021). Many have never truly lived in their countries of citizenship, knowing those nations only through childhood visits or stories shared by parents (Immigrant Stories n.d.).

Upon turning 21, however, these individuals typically face three options:

1) Obtain independent visa status, typically requiring either admission to university for F-1 student status (which carries international student tuition rates, ineligibility for most financial aid (Broder and Kmec 2025), and only temporary relief as F-1 expires upon degree completion (Student Visa 2019)) or successful H-1B lottery entry (which has low acceptance rates and requires employer sponsorship, essentially restarting the immigration cycle from the beginning but now at the end of the backlog queue (Malik and Saada 2025)).
2) Depart to countries they barely remember, attempting to establish careers and social ties in societies whose languages, customs, and professional networks they lack familiarity with.
3) Remain in the United States without legal status, risking eventual deportation and permanent bars on future legal entry (8 U.S. Code § 1182 2025).

Each outcome entails substantial personal and social disruption, illustrating how the system leaves individuals who were raised as Americans legally unprotected.

IV. Tried Policy

A. The Fairness for High-Skilled Immigrants Act (2019-2020)

The Fairness for High-Skilled Immigrants Act sought to eliminate the 7% per-country limitation for employment-based green cards while maintaining the 140,000 annual ceiling. The bill outlined a transition plan to gradually eliminate per-country caps: for the first three fiscal years after enactment, no country could receive over 25% of EB-2 or EB-3 visas, increasing to 85% thereafter as backlogs eased (Summary of Provisions of the Fairness for High-Skilled Immigrants Act 2020).

The bill also included provisions allowing certain H-4 spouses whose principal H-1B holders had I-140 petitions approved for at least two years to file for adjustment of status (I-485) and obtain associated benefits, even without current visa availability. While H-4 spouses already had access to work authorization under the 2015 rule, this provision would have granted them the additional benefits of I-485 pending status, including travel authorization through advanced parole and protection from the uncertainty of temporary H-4 status. Additionally, the legislation sought to strengthen CSPA provisions by preserving a child's age at the time of an early adjustment of status filing, thereby extending protection during the often years-long gap between I-140 approval and the priority date becoming current (Summary of Provisions of the Fairness for High-Skilled Immigrants Act 2020).

The House of Representatives passed the Act with overwhelming bipartisan support (365 votes in favor, 65 opposed) in July 2019 (H.R. 1044 2019). However, the bill stalled in the Senate amid disagreements over implementation details. Senator David Perdue initially objected to a unanimous consent vote over concerns about potential effects on healthcare worker immigration, prompting the inclusion of reserved visas for healthcare workers. Senator Dick Durbin later raised objections over insufficient safeguards for families and children at risk of aging out. Subsequent negotiations among Senators Lee, Durbin, and others produced a compromise that added transition periods, age-out protections, and early adjustment filing provisions. Although the Senate ultimately passed this modified version by unanimous consent in December 2020, the legislation failed to advance because differences between the House and Senate versions were not reconciled before the 116th Congressional session ended (Legislative History of the Fairness for High-Skilled Immigrants Act 2021).

B. The Equal Access to Green cards for Legal Employment (EAGLE) Act (2021-2022)

The Equal Access to Green cards for Legal Employment (EAGLE) Act of 2022 presented a refined approach incorporating lessons from the Fairness Act's legislative difficulties. The legislation proposed eliminating per-country caps over a nine-year transition period, during which a percentage of EB-2 and EB-3 visas would be reserved for applicants from countries other than the two with the largest backlogs: 30% in year 1, 25% in year 2, 20% in year 3, 15% in year 4, 10% in years 5-6, and 5% in years 7-9. Similar to the Fairness Act, during the transition, no single country could receive more than 25% of reserved visas or more than 85% of unreserved visas, gradually transitioning to a fully first-come, first-served allocation system by year nine (Text -

H.R.3648 2021).

However, the EAGLE Act's architects recognized that per-country cap elimination addressed only one dimension of the structural crisis. Although the 2016 portability rule protected workers with I-140 approvals vested for 180 days (How to Port or Retain an I-140 Priority Date 2023), and the 2015 H-4 EAD rule extended work authorization to spouses of workers with approved I-140s (Kandel 2020), neither measure eliminated the fundamental constraint that I-485 applications cannot be approved until priority dates become current, leaving backlogged applicants waiting for permanent residency.

The EAGLE Act sought to address this gap by decoupling I-485 filing eligibility from visa availability. Under the proposed legislation, any foreign national whose I-140 petition had been approved for at least two years could file Form I-485 immediately, even if their priority date remained years from current. This filing would trigger access to critical interim benefits: work authorization through an I-485-based EAD, enabling unrestricted job changes without H-1B transfers, and advance parole permitting international travel and reentry without consular visa stamping. The Act's enhanced Child Status Protection provisions would freeze each child's age at the I-485 filing date, preventing aging out during decades-long waits (Gogol 2021). Although green cards themselves could not be issued until visa numbers became available, these interim authorizations would have substantially reduced employer leverage, provided earlier access to I-485-based work authorization and travel benefits, and protected children from losing derivative eligibility during extended backlogs.

The EAGLE Act advanced to the House floor in December 2022, with the Biden Administration issuing a Statement of Administration Policy expressing endorsement, declaring that the Administration "supports House passage of H.R. 3648" and its goal of reforming the per-country cap system while easing "the harsh effects of the immigrant visa backlog (Statement of Administration Policy 2022)."

However, the EAGLE Act's progress halted during the lame-duck session of the 117th Congress in December 2022, as legislators prioritized other items, including government funding before the continuing resolution expiration, the National Defense Authorization Act, and Senate confirmation of judicial nominees (Choate et al. 2022). Additionally, southwest border encounters reached roughly 2.2 million in fiscal year 2022, and discussions of enhanced border security frequently accompanied proposals for legal immigration reform (U.S. Border Patrol Encounters 2023). With a Republican caucus viewing border security action as a prerequisite to other aspects of immigration reform, the constrained legislative calendar left little floor time for additional bills (Levine 2022). Ultimately, the bill was postponed on December 14, 2022, and never received a recorded vote.

C. Structural Impediments to Reform

These legislative failures reflect three political dynamics that have systematically hindered reform.

First, zero-sum framing dominates policy discourse: per-country cap elimination is perceived as benefiting Indian and Chinese

nationals at the expense of other countries or subgroups. Legislative debates often portray the issue as a competition between immigrant groups rather than a structural problem affecting U.S. economic competitiveness, making coalition-building difficult (Levine 2022).

Second, employment-based immigration reforms become entangled with politically contentious border security and undocumented immigration debates despite addressing distinct policy domains. Legislative reluctance to act on immigration measures may stem from concerns that supporting immigration expansion in any form creates political vulnerability with constituents who view immigration primarily through the lens of border security (Levine 2022).

Third, limited constituency pressure reduces legislative urgency: affected H-1B workers and their families lack voting rights (Who Can and Can't Vote 2020), leaving them unable to mobilize electoral pressure. This prevents the formation of multi-year legislative campaigns necessary to overcome the inertia and opposition that doomed both the Fairness Act and EAGLE Act.

V. Reform Options

A. Per-Country Cap Elimination

Eliminating or raising the 7% per-country limitation would reallocate existing visa numbers based on demand rather than source country, addressing wait time disparities without expanding total admissions. Under current demand patterns, an overwhelming majority of EB-2 and EB-3 categories would initially flow to Indian and Chinese nationals, with redistribution stabilizing over the course of years as backlogs clear and demand patterns adjust.

This reallocation creates tradeoffs between economic efficiency and diversity. From an efficiency perspective, allocating visas based on labor market demand rather than arbitrary country quotas improves skill matching and reduces deadweight losses from artificial constraints. The concentration of H-1B petitions among Indian and Chinese nationals reflects the substantially larger populations and STEM education systems in these countries (Oliss, McFaul, and Riddick 2023), which create deeper talent pools in the technical fields that U.S. employers demonstratively value. Per-country caps therefore impose inefficient restrictions that prevent optimal labor allocation by arbitrarily limiting access to the largest available talent pools regardless of individual qualifications.

While the efficiency case for eliminating per-country caps is strong, the policy's implementation would carry consequences to diversity. Practically, per-country cap elimination without total expansion redistributes processing times, creating "winners" (current backlog workers who receive faster processing) and "losers" (applicants from low-demand countries experiencing extended waits). The EAGLE Act's nine-year transition framework, with its phased roll-out, offers a laudable model for balancing efficiency with diversity; future employment-based immigration reforms should build on these principles, combining demand-driven allocations with thoughtful transition mechanisms.

B. Quota Expansion

Increasing the 140,000 annual employment-based cap addresses both per-country disparities and absolute capacity constraints. While the Penn Wharton Budget Model (PWBM) has not directly analyzed expansion of the overall employment-based visa cap, its research on removing statutory limits for high-skilled STEM immigrants provides relevant insights into the economic effects of expanding employment-based admissions (Arnon et al. 2024).

PWBM specifically examined exempting immigrants with advanced STEM degrees from numerical limitations. Under this exemption scenario, PWBM estimated that removing barriers for STEM degree holders would reduce government deficits by $129 billion over the 2025-2034 period and $634 billion over 2035-2044, driven primarily by higher tax revenues from high-earning immigrants and minimal increases in federal benefit spending (Arnon et al. 2024).

Although this analysis focuses on compositional shifts rather than aggregate expansion of the 140,000 cap, the fiscal mechanisms at work would necessarily apply to broader increases in employment-based admissions. Critically, cap expansion would concentrate admissions in STEM and skilled occupational categories because 70% of H-1B workers work in STEM occupations (The H-1B Temporary Visa Program's Impact on Diversity in STEM 2020). Consequently, similar deficit reductions and revenue gains PWBM identified would materialize under a broader employment-based cap expansion.

Concerns that expanding high-skilled immigration might disadvantage native-born workers are often presented, but lack empirical support. An event study exploring random variation in firms' access to H-1B workers through the 2007 visa lottery found no net displacement of U.S. college-educated workers; instead, lottery-winning firms expanded total employment and demonstrated greater firm survival rates and employment growth over subsequent years. These findings indicate that access to high-skilled immigrant talent enables firms to scale operations and remain viable rather than simply redistributing work from citizens to immigrants (Mahajan et al. 2025).

Moreover, city-level analysis shows that this firm-level expansion translates into real wage gains for native workers: a one percentage point increase in the foreign STEM share of a city's total employment correlates with approximately 7-8 percentage points higher wage growth for native college-educated workers and 3-4 percentage points higher wage growth for native non-college-educated workers. These findings suggest that foreign STEM workers enhance local economic productivity rather than displacing domestic talent, with particularly pronounced benefits on the wage growth of college-educated natives (Peri, Shih, and Sparber 2015).

C. Dependent Exemption

Under current law, approximately 67,000 principal applicants receive employment-based green cards annually, with the remaining 73,000 visa numbers consumed by derivative beneficiaries. Exempting dependents from

numerical limitations would reallocate these 73,000 visas to additional principal workers, effectively doubling principal worker admissions to approximately 140,000 annually (Nowrasteh 2025).

The current system effectively "wastes" visa capacity in the sense that it applies numerical restrictions to individuals whose admission is predetermined by the principal's approval rather than subject to independent gatekeeping. Whether a principal applicant has zero dependents or three dependents, family unity principles dictate that an approved principal's family members receive derivative status (Employment-Based Immigrant Visas 2019). Yet under current law, a principal with three dependents consumes four visa numbers while a principal without dependents consumes only one, despite both principals offering similar economic contributions and having satisfied identical qualification standards.

Dependent exemption would maximize economic contribution per unit of administrative capacity by ensuring that all 140,000 employment-based visa numbers are allocated to principal workers.

D. Visa Recapture

Recovering unused visa allocations from prior fiscal years offers immediate relief without changing statutory caps or per-country limitations. Approximately 339,000 employment-based visas have gone unused due to administrative coordination failures, representing around 2.4 years of total statutory capacity lost (Neufeld, Milliken, and Rand 2021). Visa recapture legislation would authorize the reissuance of these unused visas, providing immediate capacity expansion without requiring controversial increases to future annual caps (Moriarty 2025).

However, while visa recapture offers rapid backlog relief, its impacts are inherently temporary. Without concurrent reforms, backlogs would simply reaccumulate once the recaptured visas are used, as occurred after the American Competitiveness in the Twenty-First Century Act's short-term recapture provisions (Neufeld, Milliken, and Rand 2021). Therefore, recapture functions best as an immediate relief measure that complements structural reforms rather than a standalone solution. Uniquely, however, political opposition to this solution is minimal as it stems from recapture's characteristic of delivering existing statutory authorizations rather than expanding future admissions, making it a viable near-term intervention while broader legislative debates proceed (Moriarty 2025).

VI. Conclusion

The employment-based green card backlog represents a structural misalignment between immigration policy frameworks designed for 1990 economic conditions and 2025 labor market realities, with particularly severe impacts on H-1B workers from populous nations like India and China. This forces workers into permanent impermanence characterized by restricted workforce mobility, employment precarity for spouses, and family separation through dependent aging-out—all while these immigrants remain voiceless in the political process.

The human cost of this paralysis compounds annually. Every year, thousands more H-1B

workers enter backlogs measured not in years but in generations, their temporary visas renewed indefinitely while permanent residence remains perpetually deferred. Every year, thousands more H-4 spouses exit the labor force despite having advanced degrees and years of professional experience, cutting household incomes in half, and permanently disrupting career trajectories over years of forced unemployment. Every year, hundreds more children age out, deporting young adults who have deeper roots in American society than in their country of birth.

Reform cannot recover the lost years. But it can prevent the next generation from losing theirs.

Acknowledgment

The Institute for Youth in Policy wishes to acknowledge Taylor Beljon-Regen, Alexis Kagan, Lilly Kurtz, Asher Cohen, Paul Kramer. and other contributors for developing and maintaining the Fellowship Program within the Institute.

References

[1] "8 U.S. Code § 1182 - Inadmissible Aliens." 2025. LII / Legal Information Institute. 2025. https://www.law.cornell.edu/uscode/text/8/1182#a_9_B..

[2] "20 CFR § 655.731 - What Is the First LCA Requirement, Regarding Wages?" 2020. LII / Legal Information Institute. 2020. https://www.law.cornell.edu/cfr/text/20/655.731.

[3] Arnon, Alex, Vidisha Chowdhury, Duncan Haystead, Brendan Novak, Youran Wu, and Mariko Paulson. 2024. "Budgetary Effects of Granting Green Cards to Immigrants with Advanced STEM Degrees." Penn Wharton Budget Model. January 18, 2024. https://budgetmodel.wharton.upenn.edu/issues/2024/1/18/budgetary-effects-of-stem-green-cards.

[4] Atkinson, Robert, and Luke Stewart. 2013. "Just the FACTS the Economic Benefits of Information and Communications Technology." https://www2.itif.org/2013-tech-economy-memo.pdf.

[5] Bier, David. 2023. "1.8 Million in Employment-Based Green Card Backlog." Cato.org. 2023. https://www.cato.org/blog/18-million-employment-based-green-card-backlog.

[6] Broder, Tanya, and Ignacia Kmec. 2025. "Higher Education for Immigrant Students." NILC. September 8, 2025. https://www.nilc.org/resources/toolkit-higher-education-for-immigrant-students.

[7] "Center for U.S. Immigration Services, LLC." 2025. Center for U.S. Immigration Services - Tampa FL Immigration Attorney. May 27, 2025. https://www.cfuis.com/what-to-know-about

-perm-i-140-after-job-change-premium-processing-uscis-site-visits/.

[8] "Child Status Protection Act (CSPA)." 2021. LII / Legal Information Institute. 2021. https://www.law.cornell.edu/wex/child_status_protection_act_(cspa).

[9] Chishti, Muzaffar, and Stephen Yale-Loehr. 2016. "The Immigration Act of 1990: Unfinished Business a Quarter-Century Later." Migrationpolicy.org. July 6, 2016. https://www.migrationpolicy.org/research/immigration-act-1990-still-unfinished-business-quarter-century-later.

[10] Choate, Nicholas, Sarah Donovan, John Drzewicki, Josh Finestone, Samuel Olchyk, and Ilisa Paul. 2022. "Congress Set for Busy Lame Duck Session; to Take up Expansive Set of Issues, Including Defense, Healthcare, Tax, and More | Insights | Venable LLP." Venable.com. 2022. https://www.venable.com/insights/publications/2022/11/congress-set-for-busy-lame-duck-session.

[11] Donovan, Sarah, William Kandel, and Jill Wilson. 2025. "U.S. Employment-Based Immigration Policy." Congress.gov. 2025. https://www.congress.gov/crs-product/R47164.

[12] Edin, Per-Anders, and Magnus Gustavsson. 2004. "Time out of Work and Skill Depreciation," October. https://www.econstor.eu/bitstream/10419/82741/1/wp2004-014.pdf.

[13] "Employment-Based Immigrant Visas." 2019. State.gov. 2019. https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html.

[14] "Fact Sheet: Family-Based Immigration." n.d. Accessed October 26, 2025. https://forumtogether.org/wp-content/uploads/2018/01/Family-Migration-Factsheet_Final.pdf.

[15] Freeman, Richard, and Wei Huang. 2015. "NBER WORKING PAPER SERIES CHINA'S 'GREAT LEAP FORWARD' in SCIENCE and ENGINEERING." https://www.nber.org/system/files/working_papers/w21081/w21081.pdf.

[16] Gogol, Frank. 2021. "Complete Guide to the EAGLE Act." Stilt. June 22, 2021. https://stilt.com/immigrants/eagle-act/.

[17] "H-4 EAD Frequently Asked Questions (FAQ)." 2024. Adhikari Law PLLC. March 30, 2024. https://www.adhikarilaw.com/work-visa/em

ployment-authorization-document-ead/h-4-ead-frequently-asked-questions-faq/.

[18] "H-4: Family of the H-1B - Academic Personnel & Faculty." 2021. Academic Personnel & Faculty. November 5, 2021. https://ap.washington.edu/ahr/visas/admin-resources/h1b/h4-family/.

[19] "H.R. 1044: Fairness for High-Skilled Immigrants Act of 2019." 2019. Aila.org. 2019. https://www.aila.org/house-bill-fairness-for-high-skilled-immigrants.

[20] "How to Port or Retain an I-140 Priority Date?" 2023. Reddy Neumann Brown PC. October 23, 2023. https://www.rnlawgroup.com/how-to-port-or-retain-an-i-140-priority-date/.

[21] Im, Carolyne, Alexandra Cahn, and Sahana Mukherjee. 2025. "What We Know about the U.S. H-1B Visa Program." Pew Research Center. March 4, 2025. https://www.pewresearch.org/short-reads/2025/03/04/what-we-know-about-the-us-h-1b-visa-program/.

[22] "Immigrant Stories - Immigrant Defense Project." n.d. Immigrant Defense Project. https://www.immigrantdefenseproject.org/immigrant-stories/.

[23] Kandel, William. 2020. "The Employment-Based Immigration Backlog." https://sgp.fas.org/crs/homesec/R46291.pdf.

[24] Karnik, Madhura. 2015. "India's Engineering Boom, 1995 to the Present." Quartz. April 22, 2015. https://qz.com/india/388557/indias-engineering-boom-1995-ongoing.

[25] Kim, Seohee, and Alison Pei. 2022. "Monopsony in the High-Skilled Migrant Labor Market - Evidence from H-1B Petition Data." *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4010152.

[26] Kreighbaum, Andrew. 2025. "DHS Drops Age-out Protections for Kids of Green Card Seekers (1)." @BLaw. August 8, 2025. https://news.bloomberglaw.com/daily-labor-report/dhs-drops-age-out-protections-for-kids-of-green-card-applicants.

[27] Kristal, Ariella, Leonie Nicks, Jamie Gloor, and Oliver Hauser. 2022. "Reducing Discrimination against Job Seekers with and without Employment Gaps | Gender Action Portal." Harvard.edu. November 2, 2022. https://gap.hks.harvard.edu/reducing-discrimination-against-job-seekers-and-without-employment-gaps.

[28] Levine, Marianne. 2022. "Immigration

Reform Withers as Democrats Descend into Border Infighting." POLITICO. May 1, 2022. https://www.politico.com/news/2022/05/01/democrats-immigration-reform-infighting-00029087.

[29] Mahajan, Parag, Nicolas Morales, Kevin Shih, Mingyu Chen, and Agostina Brinatti. 2025. "The Impact of Immigration on Firms and Workers: Insights from the H-1b Lottery," March. https://doi.org/10.2139/ssrn.4790785.

[30] Malik, Shilpa, and Sabrina Saada. 2025. "H1B Lottery Results: The Definitive Guide on 2024-2025 Lottery Chances." VisaNation Law Group. October 21, 2025. https://www.immi-usa.com/h1b-lottery-results-chances-odds/.

[31] "Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers." 2024. Federal Register. December 18, 2024. https://www.federalregister.gov/documents/2024/12/18/2024-29354/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements.

[32] Moodie, Alison. 2025a. "1 Million Indians Stuck in Employment Green Card Backlog." Boundless.com. 2025. https://www.boundless.com/blog/1-million-indians-stuck-green-card-backlog.

[33] ———. 2025b. "USCIS Processing Times for Common Immigration Documents." Boundless.com. 2025. https://www.boundless.com/immigration-resources/uscis-processing-times.

[34] Moriarty, Andrew. 2025. "Green Card Recapture and Reform Would Reduce Immigration Backlogs." FWD.us. January 30, 2025. https://www.fwd.us/news/green-card-recapture/.

[35] Neufeld, Jeremy, Lindsay Milliken, and Doug Rand. 2021. "STOP the INCINERATOR the High Cost of Green Card Slots Going Unused and the Benefits of Recapturing Them." https://www.niskanencenter.org/wp-content/uploads/2021/06/5Niskananpaper-5.pdf.

[36] Nowrasteh, Alex. 2025. "Only 48 Percent of Employment-Based Green Cards Went to Workers in 2023: Here's How to Fix That." Cato.org. 2025. https://www.cato.org/blog/only-48-percent-employment-based-green-cards-went-workers-2023-heres-how-fix.

[37] Oliss, Brendan, Cole McFaul, and Jaret Riddick. 2023. "The Global Distribution of STEM Graduates: Which Countries Lead the Way?" Center for Security and Emerging Technology. November 27, 2023. https://cset.georgetown.edu/article/the-global-distribution-of-stem-graduates-which-countries-lead-the-way.

[38] Paschero, Sofia, and Jody McBrien. 2021. "National Identity and Integration Challenges of Deferred Action for Childhood Arrivals (DACA) Recipients." *Societies* 11 (1): 24. https://doi.org/10.3390/soc11010024.

[39] Peri, Giovanni, Kevin Shih, and Chad Sparber. 2015. "STEM Workers, H-1B Visas, and Productivity in US Cities," July.

[40] "PERM Processing Time - What Should You Expect? | Jeelani Law Firm, PLC." 2025. Jeelani Law Firm, PLC. July 10, 2025. https://www.jeelani-law.com/perm-processing-time/.

[41] "Population - the World Factbook." 2024. Www.cia.gov. 2024. https://www.cia.gov/the-world-factbook/field/population/country-comparison/.

[42] Rozario, Charmaine. 2025. "Perm Labor Certification Flat Attorney Fee." Herman Legal Group. April 4, 2025. https://www.lawfirm4immigrants.com/perm-labor-certification-flat-attorney-fee/.

[43] "S. Rept. 106-260 - AMERICAN COMPETITIVENESS in the TWENTY-FIRST CENTURY ACT." 2025. Congress.gov. 2025. https://www.congress.gov/committee-report/106th-congress/senate-report/260/1.

[44] "Statement of Administration Policy: H.R. 3648 - Equal Access to Green Cards for Legal Employment (EAGLE) Act of 2022 | the American Presidency Project." 2022. Ucsb.edu. 2022. https://www.presidency.ucsb.edu/documents/statement-administration-policy-hr-3648-equal-access-green-cards-for-legal-employment.

[45] "Student Visa." 2019. State.gov. 2019. https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html.

[46] "Summary of Provisions of the Fairness for High-Skilled Immigrants Act (HR 1044/S. 386) as Passed by the House and Senate ." 2020. December 14, 2020. https://www.aila.org/files/o-files/view-file/EDB1F982-FBB3-451E-BAF5-159C864E444A.

[47] "Text - H.R.3648 - 117th Congress

(2021-2022): EAGLE Act of 2022." 2021. Congress.gov. 2021. https://www.congress.gov/bill/117th-congress/house-bill/3648/text.

[48] "The H-1B Temporary Visa Program's Impact on Diversity in STEM." 2020. Department for Professional Employees, AFL-CIO. March 30, 2020. https://www.dpeaflcio.org/factsheets/the-h-1b-temporary-visa-programs-impact-on-diversity-in-stem.

[49] "U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet." 2023. https://tracreports.org/tracker/dynadata/2023_05/R47556.pdf.

[50] "Legislative History of the Fairness for High-Skilled Immigrants Act of 2019." 2021. Aila.org. 2021. https://www.aila.org/files/o-files/view-file/889951F0-C897-406B-AAAB-D279EA0733BA.

[51] Varas, Jacqueline. 2019. "The Economic Value of Work Permits for H-4 Visa Holders - AAF." AAF. September 4, 2019. https://www.americanactionforum.org/research/the-economic-value-work-permits-for-h-4-visa-holders/.

[52] "Who Can and Can't Vote in U.S. Elections | USAGov." 2020. USA.Gov. May 7, 2020. https://www.usa.gov/who-can-vote.

[53] Zavodny, Madeline. n.d. "H - 4 VISA HOLDERS: AN UNDERUTILIZED SOURCE of SKILLED WORKERS ." Accessed October 26, 2025. https://nfap.com/wp-content/uploads/2022/11/H-4-Visa-Holders.NFAP-Policy-Brief.2022-2.pdf.