

The U.S.'s strict annual ceiling of 140,000 employment-based green cards and great demand for high-skilled workers leaves many employment visa categories backlogged. The employment backlogs disproportionately affect Asian immigrant workers.

This is an excerpt from *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities*, a report published by Asian Americans Advancing Justice—AAJC and Asian Americans Advancing Justice—Los Angeles in June 2019. The report is available for download: <https://advancingjustice-aajc.org/inside-the-numbers-report-2019>

ISSUE BRIEF: IMMIGRANT WORKERS

The United States has a long history of using immigrant workers to meet its labor needs, including admitting immigrants with needed skills on both a permanent and temporary basis. Asian immigrants to the U.S. include professionals working in science, technology, engineering, and math; individuals who have gone on to become successful entrepreneurs and industry leaders; and individuals employed as caregivers and in other service industries. As noted in the discussion on immigration pathways in this report, the Immigration and Nationality Act (INA) includes a number of categories of employment-based visas.



Backlogs in Employment-Based Immigrant Visas

The U.S.'s strict annual ceiling of 140,000 employment-based (EB) green cards and great demand for high-skilled workers leaves many employment visa categories backlogged. Like the backlogs in family-based immigration, the employment-based visa backlogs disproportionately affect Asian immigrant workers. In almost all EB categories, immigrant workers from China and India face extensive backlogs. According to the January 2019 State Department Visa Bulletin, U.S. Citizenship and Immigration Services (USCIS) is processing EB-2 and EB-3 applications from India filed about 10 years ago, and EB-3 applications in the “other workers” category from China filed in July 2007. The Cato Institute has projected that at the current rate of visa issuances, workers with advanced degrees from India who apply for EB-2 visas could expect to face a wait time exceeding 150 years.¹⁰⁴

New technologies and economic growth have created demand for high-skilled labor well beyond the annual limits on employment-based green cards established in the Immigration Act of 1990. At the same time, only about 20% of full-time graduate students at U.S. universities in computer science and electrical engineering are U.S. citizens or green card holders.¹⁰⁵ Rigid limits on employment-based visas jeopardize not only the careers of immigrant workers but also the development of key U.S. companies and industries and the overall American economy.

Nonimmigrant Visas

U.S. immigration law contains numerous temporary visas that allow foreign nationals to work for a limited duration in the U.S. Many immigrants who are sponsored for employment-based visas first come to the U.S. on such temporary nonimmigrant visas.¹⁰⁶ Sometimes referred to as an “alphabet soup” of visas, this section highlights some of the more common visas that Asian nationals use to temporarily live and work in the U.S.

F-1 Visas and Optional Practical Training

The F-1 visa allows students from foreign countries to enter the U.S. to study at an academic institution or in a language training program. The number of foreign students enrolled at U.S. colleges and universities through F-1 visas has grown dramatically in recent years. There were nearly 364,000 such students in 2016, more than double the number in 2008. Students from China, India, and South Korea accounted for more than half (54%) of all new foreign students pursuing U.S. higher-education degrees in 2016. The U.S. is the “country of choice” for international students, hosting about 1.1 million of the 4.6 million enrolled worldwide in 2017.¹⁰⁷

The Optional Practical Training (OPT) program allows full-time F-1 students to remain in the U.S. on a temporary basis to gain practical work experience after they graduate. College graduates from India and China accounted for nearly 70% of OPT approvals in 2017.

The Optional Practical Training (OPT) program, part of the F-1 visa program, allows full-time F-1 students to remain in the U.S. on a temporary basis to gain practical work experience after they graduate. Although short in duration and subject to many limitations, OPT provides a gateway for students to gain work experience and in some cases enables them to transition to a temporary work visa or employment-based green card. In 2017, college graduates from India and China accounted for nearly 70% of OPT approvals. That same year, the Trump administration tightened the regulations that govern the OPT program, and growth in the program has slowed. The number of enrollees grew by only 8% in 2017, down from 34% growth the prior year.¹⁰⁸

J-1 Visas

Established in 1961 to facilitate educational and cultural exchange with other countries, the J-1 Exchange Visitor Program now is primarily used as a temporary-worker program. J-1 participants are sponsored by public and private entities designated by the U.S. Department of State. Participants fit into one of 15 different categories, ranging from professors and research assistants to students, au pairs, and camp counselors. The spouses and children of J-1 visa holders are eligible to come to the U.S. through the J-2 visa.¹⁰⁹

In 2013, the J-1 program surpassed all other temporary work visa programs in recruiting international workers by authorizing approximately 300,000 admissions each year. In fiscal year (FY) 2017, there were a total of 523,864 J-1 admissions, with an additional 70,321 J-2 admissions.¹¹⁰

Under the “Alien Physician” program, foreign physicians can receive J-1 visas to participate in American graduate medical school programs or training at accredited American medical schools. The State Department reported a total of 2,832 new Alien Physician Exchange Visitors in 2017, with 496 from India, 255 from Pakistan, 92 from Saudi Arabia, 80 from Jordan, 47 from Nepal, and 27 from the Philippines.¹¹¹

H-2 Visas

The H-2 visa program was instituted in 1943 to bring foreign agricultural workers to the U.S. The H-2A category is for seasonal agricultural workers, and the H-2B category has been added for seasonal nonagricultural workers. The secretary of State and secretary of Homeland Security designate the countries approved to receive visas. As of January 2019, 84 countries are designated for the H-2A program and 81 for H-2B. This discussion focuses on the H-2B visa program. For 2019, nationals from only the following Asian and Pacific Islander countries are eligible to participate in the H-2B program: Brunei, Fiji, Japan, Kiribati, Madagascar, Mongolia, Nauru, Papua New Guinea, Samoa, Singapore, Solomon Islands, South Korea, Taiwan, Thailand, Timor-Leste, Tonga, Tuvalu, and Vanuatu.¹¹²

It is the employer who submits the immigration petition in both the H-2A and H-2B categories. For H-2B, a prospective employer must demonstrate that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work; that employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and its need for the prospective worker's services is temporary (one-time occurrence or seasonal), regardless of whether the underlying job can be described as temporary.¹¹³

Among the 95 Asian nationals that received H-2A visas in FY 2017, 64 were Filipino, 29 were Thai, and 2 were Nepalese. That same year, 992 H-2B visas were distributed among three Asian countries: the Philippines (767), Japan (223), and South Korea (2). While H-2A visas were not issued to any of the Pacific Island nations in FY 2017, Fiji received 31 H-2B visas.¹¹⁴

The H-2 temporary nonimmigrant visa programs are criticized for placing workers at risk of exploitation such as wage theft and labor trafficking.

The H-2 temporary nonimmigrant visa programs are criticized for placing workers at risk of exploitation such as wage theft and labor trafficking. Workers often pay high sums of money in illegal recruitment fees to get coveted U.S. jobs and are desperate to make money before returning home. Workers are tied to one employer, far from their home country, with their immigration status dependent on maintaining their job. Both this and the fact that they are often isolated and live in employer-provided housing results in high rates of labor law violations and little likelihood that workers will complain or take action to enforce their rights. The "Immigration Pathways" section of this report delves into the high rates of T visas provided to Filipino workers on temporary visas and the recent removal of the Philippines from the countries eligible for the H-2 program.

The H-1B Visa Program and Backlogs in Employment-Based Visas

The largest program for U.S. employers to temporarily hire foreign high-skilled workers is through the H-1B visa program. The H-1B visa allows employers to petition for foreign workers in occupations that require highly specialized knowledge and a bachelor's degree or higher in the specific specialty. Before sponsoring someone on an H-1B visa, employers must complete an application in which the employer attests that it will pay the required wages, provide working conditions that will not adversely affect U.S. workers, ensure that there is no strike or labor dispute, and provide notice that it intends to hire a nonimmigrant worker.¹¹⁵

The H-1B visa program is dominated by people who work in fields related to science, mathematics, engineering, and technology, but it is also a path for professors and other workers. Asian immigrants make up the majority of H-1B visa holders: from FY 2001 to 2015, workers from India (50.5%), China (9.7%), the Philippines (3%), and South Korea (2.8%) comprised the highest share of awarded individuals.¹¹⁶

FY 2017



Among the 179,049 H-1B visas that were issued in FY 2017, approximately 90% (161,491 visas) were issued to Asian nationals. The top five Asian countries include the following:

India 129,097	South Korea 1,939	Taiwan 1,261
China (mainland-born) 22,993	Philippines 1,328	

In FY 2017, only three H-1B visas were issued to Fiji, whereas the other Pacific Island nations received none.¹¹⁷

While the H-1B visa program is a temporary work program, the majority of H-1B workers are engaged in permanent employment and seek to permanently immigrate to the U.S. The H-1B visa lasts for three years and can be renewed for a total of up to six years, by which point the visa holder would typically be sponsored for an employment-based green card, most commonly EB-2 or EB-3. However, for many years there have been insufficient green cards available in comparison to the number of H-1B visa holders, compounding the resulting serious backlogs for employment-based immigrant visas.¹¹⁸

The number of H-1B visas granted exceeds the number of immigrant visas (green cards) available in the EB-2 and EB-3 categories. The current cap on H-1B visas is 65,000, plus an additional 20,000 visas for foreigners with a graduate degree from a U.S. university. Universities and colleges, nonprofits, and government research institutions are exempt from the cap. In 2002 and 2003, the cap was raised to 195,000 visas with no additional immigrant visas available for these workers to adjust status. Many aspiring immigrant workers are pushed by the limited availability of immigrant visas to apply instead for temporary nonimmigrant visas, which are not subject to the per-country caps. As a result, over half of H-1B visas in recent years have gone to Indian nationals, resulting in increased backlogs.¹¹⁹

Congress created a temporary fix for H-1B visa holders, in certain circumstances allowing them to continue to renew their H-1B visas indefinitely once their employer has sponsored them for a green card.¹²⁰ However, living many years in temporary status in the U.S. dependent on an employer for immigration status and paying taxes and contributing to the U.S. economy without the rights and privileges of other citizens or even lawful permanent residents poses a problem for our democracy.

H-4 Visas and Employment Authorization

The families of H-1B workers, their spouse and children under age 21 are eligible for H-4 visas. In 2017, 127,155 H-4 visas were issued to individuals from Asia. No H-4 visas were issued to individuals from the Pacific Islands.¹²¹

For many years, the H-4 visa did not make its holders eligible for work authorization. Recognizing the predicament of H-4 spouses, the vast majority of whom are women, the Obama administration created a program to provide work authorization in May 2015. The H-4 Employment Authorization Document (H-4 EAD) program allows H-4 spouses who have a pending application for lawful permanent residence to receive work authorization.¹²²

In the fall of 2018, the Trump administration announced plans to rescind the H-4 EAD program, impacting mostly Asian women and their families. Approximately 95% of H-4 visa holders who have secured work authorization are women, and the overwhelming majority are from India (93%) with a smaller but significant percentage from China (5%).¹²³ If implemented, the revocation of work authorization will have a negative impact on families' income, their children, and these women's well-being and sense of self-worth.

Policy Recommendations

We need an immigration system that upholds the dignity of all people. As a nation, we are stronger and at our best when we recognize and respect the contributions of all those who would call America home. Congress should focus on policy solutions that promote economic security and prosperity for all members of our society, immigrant and native-born alike.

While the H-1B visa program is a temporary work program, the majority of H-1B workers seek to permanently immigrate to the U.S. However, for many years there have been insufficient green cards available in comparison to the number of H-1B visa holders, compounding the resulting serious backlogs for employment-based immigrant visas.

The U.S. should not have immigration programs that seek to gain from the skills and labor of foreign nationals while treating them like second-class members of our society. Any visa program that invites workers and their families to the U.S. should offer meaningful pathways for workers and their families to become lawful permanent residents and full citizens. During any short-term temporary status, all family members of working age should be offered work authorization. Further, Congress should pass legislation to preserve work authorization for H-4 visa holders.

In addition, U.S. law must better protect vulnerable immigrant workers from abuse, including those whose immigration status is dependent on their employers as well as undocumented workers. These protections must include protection against retaliation, including reporting to immigration authorities. Investments in outreach, community education, and legal assistance are key to protecting immigrant workers from exploitation.

NOTES

- ¹⁰⁴ U.S. State Department, Bureau of Consular Affairs, "Visa Bulletin, January 2019"; David Bier, "150-Year Wait for Indian Immigrants with Advanced Degrees," *Cato Institute* (June 8, 2018).
- ¹⁰⁵ National Foundation for American Policy, "The Importance of International Students to American Science and Engineering," *NFAP Policy Brief* (October 2017).
- ¹⁰⁶ Nonimmigrants are defined as "foreign nationals admitted temporarily to the United States within classes of admission that are defined in section 101(a)(15) of the Immigration and Nationality Act (INA)." Department of Homeland Security website, "Nonimmigrant Classes of Admission" (December 28, 2017).
- ¹⁰⁷ U.S. Citizenship and Immigration Services website, "Students and Employment"; Neil G. Ruiz and John Gramlich, "Four Ways Highly Educated Immigrants Take to Study and Work in the U.S.," *Pew Research Center* (February 1, 2019); Jie Zong and Jeanne Batalova, "International Students in the United States," *Migration Policy Institute* (May 9, 2018).
- ¹⁰⁸ U.S. Citizenship and Immigration Services website, "Optional Practical Training (OPT) for F-1 Students" (July 9, 2018); Ruiz and Gramlich, "Four Ways Highly Educated Immigrants Take to Study and Work in the U.S."
- ¹⁰⁹ The International Labor Recruitment Working Group *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse* (February 2013); U.S. Citizenship and Immigration Services website, "Exchange Visitors," (November 8, 2018); U.S. Department of State, Bureau of Educational and Cultural Affairs, "J-1 Visa Fact Sheet" (2018).
- ¹¹⁰ International Labor Recruitment Working Group, *The American Dream Up for Sale*; Department of Homeland Security, "Table 25, Nonimmigrant Admissions by Class of Admission: Fiscal Years 2015 to 2017," *2017 Yearbook of Immigration Statistics* (November 6, 2018).
- ¹¹¹ U.S. Department of State, Bureau of Educational and Cultural Affairs website, "Exchange Visitor Program, Physician Program"; U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange Designation, Flyer: "Alien Physician Category."
- ¹¹² International Labor Recruitment Working Group, *The American Dream Up for Sale*; U.S. Citizenship and Immigration Services website, "H-2A Temporary Agricultural Workers" (January 24, 2019); U.S. Citizenship and Immigration Services website, "H-2B Temporary Non-Agricultural Workers" (March 12, 2019); Department of Homeland Security, "Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H-2A and H-2B Nonimmigrant Worker Programs."
- ¹¹³ USCIS website, "H-2B Temporary Non-Agricultural Workers."
- ¹¹⁴ U.S. Department of State, "FY 2017 Nonimmigrant Visas Issued."
- ¹¹⁵ U.S. Department of State, "FY 2017 Nonimmigrant Visas Issued"; Neil Ruiz, "Seven Facts about H-1B Visas," *Pew Research Center* (April 27, 2017); U.S. Citizenship and Immigration Services, "H-1B Fiscal Year (FY) 2019 Cap Season" (January 30, 2019); United States Department of Labor, Office of Foreign Labor Certification, "OFLC Frequently Asked Questions and Answers" (February 17, 2011).
- ¹¹⁶ USCIS, "H-1B Fiscal Year (FY) 2019 Cap Season"; Ruiz, "Seven Facts about H-1B Visas."
- ¹¹⁷ The number of H-1B1 visas, a variant of the H-1B visa that pertains to Chile and Singapore, is not captured in the number of H-1B visas issued. Established by respective free trade agreements between the U.S. and each country, the H-1B1 program is limited to 1,400 Chilean nationals and 5,400 Singaporean nationals per fiscal year. In FY 2017, only a fraction of the H-1B1 visas available were issued. U.S. Department of State, "FY 2017 Nonimmigrant Visas Issued."
- ¹¹⁸ U.S. Citizenship and Immigration Services website, "H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models" (March 19, 2019).
- ¹¹⁹ U.S. Citizenship and Immigration Services website, "H-1B Fiscal Year (FY) 2020 Cap Season" (March 29, 2019); U.S. Department of Justice, "Changes to the H-1B Program" (November 21, 2000); Neil G. Ruiz, "Key Facts about the U.S. H-1B Visa Program," *Pew Research Center* (April 27, 2017).
- ¹²⁰ Department of Homeland Security, "Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers," *Federal Register* Vol. 81, No. 223 (November 18, 2016).
- ¹²¹ U.S. Department of State, "FY 2017 Nonimmigrant Visas Issued."
- ¹²² USCIS website, "H-1B Specialty Occupations"; U.S. Citizenship and Immigration Services website, "FAQs: Employment Authorization for Certain H-4 Dependent Spouses" (February 2, 2017).
- ¹²³ Department of Homeland Security, "Fall 2018 Agency Statements of Regulatory Priorities"; Asian Americans Advancing Justice—AAJC, National Asian Pacific American Women's Forum, Immigrant Legal Resource Center, and South Asian Americans Leading Together, "Oppose the Rescission of the H-4 Work Authorization Rule That Will Harm Over 100,000 Asian Immigrant Women" (December 2018).