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# U.S. Employment-Based Immigration Policy

Updated July 21, 2022

**Congressional Research Service**
https://crsreports.congress.gov
R47164

**CRS REPORT**
Prepared for Members and
Committees of Congress

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SUMMARY

R47164

July 21, 2022

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# U.S. Employment-Based Immigration Policy

Each year, the United States grants lawful permanent resident (LPR) status, or green cards, to about 140,000 foreign workers and their family members. These employment-based (EB) immigrants are part of a broader permanent immigration system established by federal law—the Immigration and Nationality Act (INA)—that grants LPR status to roughly 1 million foreign nationals annually. Employment-based immigrants acquire LPR status through one of five preference categories: three hierarchical categories based on qualifications and needed skills (EB1, EB2, and EB3); a miscellany special immigrant category (EB4); and an immigrant investor category (EB5). Each category is numerically limited and has its own eligibility requirements. The INA further limits each immigrant-sending country to no more than 7% of all employment-based LPRs granted each year.

The process to acquire a green card depends on where prospective employment-based immigrants reside. Foreign nationals residing overseas petition for an immigrant visa as new arrivals. Those residing in the United States apply to adjust status from a nonimmigrant (temporary) status to LPR status. Most prospective EB immigrants require U.S. employers to sponsor them for LPR status regardless of where they reside. The Department of State (DOS) tracks and allocates all green cards.

A sizable proportion of EB immigrants work in the science, technology, engineering, and mathematics (STEM), health care, and financial sectors. Indian, Chinese, Korean, and Filipino nationals accounted for 38% of all EB immigrants in FY2019.

Most prospective EB immigrants adjust status while residing in the United States and are already embedded in the U.S. labor market, often working for their sponsoring employers. Because the demand for EB green cards far outweighs the annual statutory allotment, a sizeable employment-based queue has emerged. This queue of foreign workers and their accompanying family members—who have approved EB petitions and are waiting for an immigrant visa number—totaled about 870,000 in September 2021. The EB queue exists largely because U.S. employers sponsor roughly twice as many nonimmigrants (and their family members) for LPR status as there are statutorily available slots. New prospective immigrants from major immigrant-sending countries like India and China can anticipate a years-long or decades-long wait, depending on employment-based visa category, to acquire a green card.

In recent years, U.S. employers have hired more nonimmigrant workers, particularly those with science and technological skills. In addition, foreign students have assumed a prominent role at many U.S. universities, as have foreign-born workers in technical sectors of the U.S. labor market. Certain nonimmigrant visas bridge the otherwise separate nonimmigrant and immigrant systems, because the INA grants their recipients dual intent that allows them to work temporarily in the United States and seek LPR status as nonimmigrants. Prominent dual intent visa categories include the H-1B specialty worker and L intra-company transferee visas.

The last major legislative change to the permanent employment-based system occurred with the Immigration Act of 1990, which established the current preference category system and its numerical limits. Since 1990, the U.S. gross domestic product (GDP) has doubled and technology has expanded throughout the U.S. economy. Some consider statutory immigration limits insufficient for current U.S. labor market needs. Opponents of increasing immigration levels cite concerns over employment competition and limited evidence of tight labor markets.

Some have proposed policies to address the employment-based queue, including eliminating the 7% per-country ceiling and increasing the total number of employment-based immigrants admitted. Some support increasing the annual limit on employment-based immigrants to accommodate current labor market needs. Others argue that Congress should alter the criteria by which the United States admits all permanent immigrants, putting greater emphasis on labor market contribution. Some have proposed points-based systems that reward attributes associated with positive economic and labor market outcomes. Others propose decentralizing immigrant selection through place-based systems that allow states and jurisdictions to sponsor foreign workers based on local labor needs. Others have proposed regularly adjusting immigrant levels based on national needs.

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# Introduction

Each year, the United States grants lawful permanent resident (LPR) status, or *green cards*, to 140,000 *employment-based (EB) immigrants* and their family members.[1] LPRs can live and work permanently in the United States and can become U.S. citizens through the naturalization process.[2] This pathway is part of a broader permanent immigration system established by federal law—as part of the Immigration and Nationality Act (INA)—that limits annual worldwide permanent immigration to 675,000 persons.[3] Exemptions from this limit and the granting of LPR status to qualified refugees, asylees, and others results in roughly 1 million foreign nationals receiving green cards each year.

Employment-based immigrants acquire LPR status through one of five *preference categories*: three hierarchical categories based on qualifications and needed skills (*EB1*, *EB2*, and *EB3*); a hodgepodge *special immigrant* category (*EB4*); and an immigrant investor category (*EB5*). Each category is numerically limited and has its own eligibility requirements.[4]

The current 140,000 annual EB immigrant limit was established in 1990. Since then, U.S. gross domestic product (GDP) has more than doubled and technological innovation has expanded throughout all sectors of the U.S. and global economy, fueling growing demand for skilled workers. U.S. employers have increasingly sought workers with scientific and technological skills, and foreign-born workers have assumed a prominent role in the U.S. labor market. As part of this trend, U.S. employers have increasingly relied on *nonimmigrant* (temporary) workers.[5] Foreign-born graduate students, who sometimes work in the United States following graduation, typically outnumber native-born graduate students in technical disciplines at many U.S. universities.[6]

The immigrant and nonimmigrant workforces are linked because U.S. employers can sponsor certain nonimmigrant workers, foreign students, and other foreign nationals for employment-based green cards. Because current demand for employment-based green cards far exceeds the INA's annual allocation, a sizable waiting line or *EB queue* has emerged (see the "The Employment-Based Queue" section below).[7] The queue comprises prospective employment-based immigrants and their accompanying family members who have been approved for a green card but because of statutory numerical limits might wait years or even decades to receive one.

While most employment-based immigrants have college degrees, the INA allows up to 10,000 workers in high-demand occupations to acquire LPR status within the EB3 preference category

[1] INA §201(d), 8 U.S.C. §1151(d). The exact number granted each year deviates from this limit for reasons explained in sections to follow. In this report, the terms *immigrant*, *LPR*, and *green card holder* are used interchangeably.

[2] For more information, see CRS Report R43366, *U.S. Naturalization Policy*.

[3] INA §201, 8 U.S.C. §1151. The INA was enacted as Act of June 27, 1952, Ch. 477, and has been since amended.

[4] INA §203(b); 8 U.S.C. §1153(b).

[5] *Nonimmigrants* are foreign nationals admitted to the United States for a specific purpose and a limited period. They include tourists, students, diplomats, agricultural workers, and exchange visitors. Nonimmigrant workers are discussed in the "Nonimmigrants in the Employment-Based System" section below. See also CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[6] See, for example, National Foundation for American Policy, *The Importance of International Students to American Science and Engineering*, October 2017.

[7] In this report, *queue* refers to persons who are waiting to advance in the process of obtaining LPR status because of the numerical limits and per-country ceiling specified in the INA. In contrast, *backlog* refers to persons waiting due to administrative processing. Backlogs expand or contract depending on how agencies utilize their personnel.

without holding a college degree.[8] Some immigration policy observers consider this relatively limited allocation inadequate to meet the much greater demand for such workers, and they cite the lack of legal immigration options more broadly for fostering the sizable unauthorized worker population in the United States.[9]

There has long been congressional interest in revising the permanent employment-based immigration system while not disadvantaging native-born workers. Some legislative proposals have been limited to adjusting specific annual numeric limits for employment-based immigrants. Others would involve broader reforms to the permanent immigration system by, for example, increasing the number of employment-based immigrants while reducing limits or eliminating categories for other immigrant types. Other proposals involve changing how immigrant workers are selected.

This report begins by explaining the permanent employment-based immigration system, its numerical limits, and its processes. It next describes key employment-based immigration trends, including a brief review of relevant economic and demographic trends. The report then discusses several categories of nonimmigrant (temporary) workers that are intertwined with the permanent immigration system. It continues with a review of policy proposals for revising employment-based immigration, including the key findings of a 1997 congressional commission on immigration reform. The report then discusses key elements of prominent immigration reform bills introduced since 2000 that pertain to employment-based immigration. It ends with concluding observations.

# The Employment-Based Immigration System

Employment-based immigration occurs within a broader system of permanent immigration that embodies four major principles: reunifying families, admitting individuals with needed skills, providing humanitarian assistance, and diversifying immigrant flows by country of origin.[10] These principles are reflected in the INA, which authorizes corresponding pathways for acquiring LPR status according to each principle. Family reunification occurs primarily through *family-sponsored immigration*.[11] Admitting individuals with needed skills occurs primarily through *employment-based immigration*. Humanitarian assistance occurs primarily through the *refugee and asylum programs*.[12] Origin-country diversity occurs most directly through the *diversity immigrant visa*.[13]

The INA places numerical limits on the annual number of green cards that may be issued under each of the five EB preference categories. In addition, a per-country ceiling (described in the "The Per-Country Ceiling" section below) limits green card issuance by country of origin. Statutory provisions (described below) allow the numeric limits and per-country ceiling to be breached for immigrant categories and origin countries if certain conditions are met.

[8] INA §203(b)(3)(B), 8 U.S.C. §1153(b)(3)(B).

[9] See, for example, American Immigration Council, *Why Don't Immigrants Apply for Citizenship? There is No Line for Many Undocumented Immigrants*, Fact Sheet, October 7, 2021.

[10] For a more complete discussion of permanent legal immigration, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[11] For more information, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[12] For more information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*; and CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[13] For more information, see CRS Report R45973, *The Diversity Immigrant Visa Program*. Immigrant diversity is also addressed through the 7% per-country ceiling discussed below.

## Preference Categories and Numerical Limits

**Table 1** presents the eligibility requirements and annual numerical limits for each of the five employment-based preference categories. The EB1, EB2, and EB3 categories are each limited to 40,040, sum to 120,120, and account for 86% of the 140,000 total EB green cards available annually. These three categories are often the focus of congressional attention on employment-based immigration (see "Other Recent Reform Proposals" section below).

**Table 1. Employment-Based Immigration Preference System**

(Total Worldwide Level of **140,000**)

| Category | INA Eligibility Criteria | Annual Numerical Limit |
|---|---|---|
| ***1st preference (EB1):*** *"Priority workers"* | Priority workers: persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers | 28.6% of worldwide limit (**40,040**) plus unused 4th and 5th preference |
| ***2nd preference (EB2):*** *"Members of the professions holding advanced degrees or aliens of exceptional ability"* | Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, arts, or business | 28.6% of worldwide limit (**40,040**) plus unused 1st preference |
| ***3rd preference (EB3):*** *"Skilled workers, professionals, and other workers"* | Skilled shortage occupations workers with at least two years training or experience; professionals with baccalaureate degrees; and "unskilled" shortage workers | 28.6% of worldwide limit (**40,040**) plus unused 1st and 2nd preference; "other workers" limited to 10,000 |
| ***4th preference (EB4):*** *"Certain special immigrants"* | *Special immigrants*, including ministers of religion, religious workers, certain employees of the U.S. government abroad, special immigrant juveniles, and others | 7.1% of worldwide limit (**9,940**); religious workers limited to 5,000 and broadcasters limited to 100 |
| ***5th preference (EB5):*** *"Employment creation"* | Immigrant investors who invest at least $1.8 million ($900,000 in rural areas or areas of high unemployment) in a new commercial enterprise that creates at least 10 new jobs | 7.1% of worldwide limit (**9,940**); 3,000 *minimum* reserved for investors in rural or high unemployment areas |

**Source:** CRS summary of INA §203(b); 8 U.S.C. §1153(b).

**Note:** See 8 C.F.R. §204.5 for the eligibility criteria for each EB category.

The EB4 and EB5 categories are each limited to 9,940, sum to 19,880, and account for the remaining 14% of the employment-based annual limit. The EB4 special immigrant category includes foreign nationals in various occupations, as well as persons admitted primarily on humanitarian grounds.[14] The EB5 immigrant investor category technically falls within the employment-based immigration system, but represents a separate immigration-related program that incentivizes foreign financial investment and job creation.[15] Most of this report focuses on the EB1, EB2, and EB3 preference categories.

The number of foreign nationals receiving employment-based green cards has also long been affected by two statutes that provided humanitarian immigration relief for certain individuals facing political oppression: the Nicaraguan and Central American Relief Act (NACARA)[16] and the

[14] For background on the EB4 category, see "Legislative History of the Special Immigrant Category" in CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[15] For more information on the EB5 category, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

[16] P.L. 105-100, Title II, as amended by §1(e) of P.L. 105-13. NACARA was enacted on November 19, 1997, and interim

Chinese Student Protection Act (CSPA).[17] To grant foreign nationals LPR status under these two statutes without exceeding INA limits, both laws provided eligible individuals with LPR status in the initial years following enactment, and then "repaid" those additional LPR numbers using annual offsets against other LPR pathways. Almost all of the immigrant visa numbers used under NACARA have been fully offset,[18] and all of those used under the CSPA have been fully offset.[19]

## The Per-Country Ceiling

The INA further specifies a *per-country ceiling*, or cap, which limits the number of immigrants from any single country for all five employment-based preference categories combined to 7% of the annual limit.[20] The per-country level is not a *quota* for individual countries, as each country in the world could not receive 7% of the overall limit. Rather, according to the Department of State (DOS), "the country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries," and is not "a quota to which any particular country is entitled."[21]

## Exceptions to Numerical Limits and the Per-Country Ceiling

The INA contains several provisions to distribute unused employment-based visa numbers. First, unused visa numbers for each employment-based category *roll down* to the next preference category. Thus, unused EB1 visa numbers roll down for use in the EB2 category, and unused EB2 visa numbers roll down for use in the EB3 category. Unused visa numbers in the EB4 and EB5 categories *roll up* to the EB1 category.[22]

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regulations implementing the law went into effect on June 21, 1999. NACARA provides immigration benefits and relief from deportation to certain Nicaraguans, Cubans, Salvadorans, Guatemalans, nationals of former Soviet bloc countries, and their dependents who arrived in the United States seeking asylum.

[17] P.L. 102-404.

[18] Between FY1998 and FY2020, 261,665 persons have received LPR status under NACARA: 71,436 under Section 202 of the act (Salvadorians, Guatemalans and former Soviet bloc country nationals) and 190,229 under Section 203 (Nicaraguans and Cubans). See DHS, *Yearbook of Immigration Statistics*, multiple years, Table 7. NACARA reduces by 5,000 the number of immigrant visa numbers that can be allocated annually both for the EB3 *other worker* preference category (from 10,000 to 5,000) and for the diversity immigrant visa (from 55,000 to 50,000). For FY2022 this reduction for both annual limits will be limited to 150 visas. U.S. Department of State, *Visa Bulletin For November 2021*.

[19] CSPA required that the annual per-country limit for China be reduced by 1,000 until such accumulated allotment equaled the number of aliens (54,396, CSPA Total) acquiring LPR status under the act. Consequently, each year, 300 immigrant visas were deducted from the EB3 and 700 from the EB5 employment-based preference categories for China to account for Chinese students receiving LPR status under the CSPA, largely between FY1993 and FY1996. The CPSA total was also offset by the number of family-sponsored and employment based immigrant visas that were not allocated to China (mainland, not including Taiwan) compared to its annual upper limit of 25,600 as noted above. See DOS, Visa Office, "Report of the Visa Office 2007," *Offset in the Per-Country Numerical Level for China -Mainland Born Immigrant Visas (Per Section 2(d) of Pub. L. 102 -404)*; and DOS, Visa Office, *Annual Numerical Limits for Fiscal Year 2020*. In FY2021, these two offsets fully recaptured all LPRs granted under the CSPA.

[20] INA §202(a)(2); 8 U.S.C. §1152. The 7% per-country ceiling also applies separately to family-sponsored preference immigrants. For example, if the annual numerical limits for family-sponsored preference and employment-based immigrants in a given year were 226,000 and 140,000, respectively, the total number of such immigrants from any single country would be initially limited to 25,620, which is equal to (7% x 226,000) + (7% x 140,000). This report uses *per-country ceiling* in the singular form, but technically two ceilings exist: one for foreign states and the other for *dependent foreign states*. For the latter—which encompasses any colony, component, or dependent area of a foreign state, such as the Azores and Madeira Islands of Portugal and Macau of the People's Republic of China—the per-country ceiling is 2%.

[21] DOS Bureau of Consular Affairs, *Operation of the Immigrant Numerical Control Process*, undated, p. 3.

[22] INA §203(b)(1); 8 U.S.C. §1153(b)(1). Unused EB3 and EB4 visa numbers do not roll down.

Second, the INA increases the employment-based annual limit by the number of family-sponsored visa numbers that remain unused at the end of the prior fiscal year.[23] As a result, annual limits for both employment-based and family-sponsored immigrants can vary. In FY2020, for example, 122,000 family-sponsored immigrant visa numbers were not used because of circumstances associated with the COVID-19 pandemic.[24] These unused visa numbers *fell across* to employment-based immigrants, increasing the FY2021 annual limit from 140,000 to 262,000.[25]

Third, if total available visa numbers for all five preference categories exceed the number of applicants in any fiscal year quarter, the per-country ceiling does not apply for the remainder of that quarter's available visa numbers.[26] This allows nationals from *oversubscribed* countries like India and China to receive more than the 7% maximum limit that they would otherwise be entitled to (2,802 or 7% x 40,000) if nationals from other countries used all their available visa numbers. As a result of all three of these provisions, for example, the number of Indian nationals receiving LPR status through the EB1 category was 10,967 in FY2018, 9,008 in FY2019, and 17,014 in FY2020.[27]

## Employment-Based Immigration Processing

To acquire LPR status, employers and prospective immigrants must complete a multi-step process involving several federal agencies. The Department of Labor (DOL), Employment and Training Administration adjudicates applications for any required labor certifications that serve as a preliminary screening (discussed in more detail below). The Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) adjudicates all EB immigrant petitions, as well as adjustment of status applications for prospective immigrants who reside in the United States.[28] The Department of State's (DOS's) Bureau of Consular Affairs adjudicates immigrant visa applications for prospective immigrants who reside abroad.[29] DOS is also responsible for the allocation, enumeration, and assignment of all numerically limited visa numbers (see the "Immigrant Numerical Control " section below).[30]

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[23] INA §201(d)(2)(C); 8 U.S.C. §1151(d)(2)(C).

[24] For more information, see CRS Insight IN11362, *COVID-19-Related Suspension of Immigrant Entry*.

[25] DOS, *Annual Numerical Limits, FY-2021*, undated. Fall across provisions work differently for family-sponsored preference immigrants. Because of a statutory quirk in the INA, unused employment-based visa numbers that fall across for use by family-sponsored preference immigrants are effectively lost. For more information, see *Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers*, Congressional Distribution Memorandum, September 8, 2021, available to congressional staff upon request.

[26] This flexibility resulted from provisions in the American Competitiveness in the Twenty-First Century Act of 2000 (P.L. 106-313). The act enables the per-country ceiling for employment-based immigrants to be surpassed for oversubscribed individual countries (e.g., India, China) as long as unused visa numbers are available within the 140,000 annual worldwide limit for employment-based preference immigrants in the fiscal year. INA §202(a)(5)(A); 8 U.S.C. §1152(a)(5)(A).

[27] DOS, Bureau of Consular Affairs, *Report of the Visa Office*, 2018, 2019, and 2020, Table V.

[28] *Applications* to USCIS for immigration benefits are submitted directly by the individuals seeking them. *Petitions* to USCIS are submitted by sponsoring parties on behalf of individuals seeking immigration benefits.

[29] Visas are required for prospective immigrants who reside overseas, but not for those residing in the United States who are seeking to adjust status from a nonimmigrant status. Visas allow foreign nationals to travel to a U.S. land, air, or sea port of entry and request permission from a Customs and Border Protection (CBP) inspector to enter the United States. Having a visa does not guarantee U.S. entry but it shows that a consular officer at a U.S. embassy or consulate abroad has determined that the visa bearer is eligible to seek U.S. entry for the specific purpose indicated by the specific visa. For background information on visa issuances, see archived CRS Report R43589, *Immigration: Visa Security Policies*. Prospective employment-based immigrants who present themselves at a U.S. port of entry and are admitted to the United States from overseas receive LPR status upon arrival.

[30] In this report, *visa numbers* refers to numerically limited immigrant slots for LPR status that the INA permits each year

Who initiates the EB immigration process depends on the EB preference category. While prospective EB1 employment-based immigrants can self-petition and do not require labor certification, most prospective EB2 and all prospective EB3 immigrants require U.S. employers to submit petitions on their behalf and obtain labor certification.[31] Employers of prospective EB2 and EB3 immigrants thus initiate the process by applying to DOL for permanent labor certification.[32] To grant it, DOL must determine that (1) there are insufficient able, willing, qualified, and available U.S. workers to perform the work in question; and (2) the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.[33]

Upon receiving labor certification from DOL (if applicable), the next step involves submitting an *Immigrant Petition for Alien Worker* (Form I-140) to USCIS.[34] Among prospective immigrants, the INA distinguishes between *principal immigrants* who meet the qualifications of the employment-based preference category, and *derivative immigrants* who qualify as the spouse or children of a principal immigrant. Derivative immigrants appear on the same petition as principal immigrants and are entitled to the same status and order of consideration as long as they are *accompanying* or *following to join* principal immigrants.[35]

Foreign nationals with approved petitions can only apply for an immigrant visa, or apply to adjust status, if an immigrant visa number is immediately available. When that occurs according to the INA numerical limits as determined by DOS, the prospective immigrant can conclude the process to acquire LPR status. If the prospective LPR resides abroad, the USCIS-approved petition is forwarded to the DOS Bureau of Consular Affairs in the alien's home country. The individual then submits an *Application for Immigrant Visa and Alien Registration* (DOS Form DS-260) at a DOS consulate that allows him or her to request admission at a U.S. port of entry.[36] Prospective immigrants residing in the United States submit an *Application to Register Permanent Residence or Adjust Status* (Form I-485). The INA refers to this as *adjustment of status* because the alien

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under its numerical, categorical, and per-country limits (e.g., 140,000 visa numbers available each year for employment-based immigrants). Visa numbers apply to both individuals who reside abroad and receive actual immigrant visas that allow them to travel to the United States and request admission at a U.S. port of entry as well as individuals residing in the United States who adjust to LPR (immigrant) status from a nonimmigrant status.

[31] Self-petitioning is available to persons of extraordinary ability within the EB1 category (INA §204(a)(1)(E), 8 U.S.C. §1154(a)(1)(E)); immigrants applying within the EB2 category as aliens of exceptional ability in the sciences, arts, or business and who are granted a national interest waiver (8 C.F.R. §204.5(k)(1)); most special immigrants within the EB4 category (INA §204(a)(1)(G), 8 U.S.C. §1154(a)(1)(G)); and EB5 investor immigrants within the EB5 category (INA §204(a)(1)(H); 8 U.S.C. §1154(a)(1)(H)). A national interest waiver allows foreign nationals to *self-petition* for employment-based LPR status without having to be sponsored by a U.S. employer and without obtaining a labor certification from DOL, because it is in the interest of the United States. The INA does not define which jobs qualify for the waiver, but it is typically granted to individuals "with exceptional ability and whose employment in the United States would greatly benefit the nation." For more information, see USCIS, "Employment-Based Immigration: Second Preference EB-2."

[32] For more information, see DOL, "Permanent Labor Certification."

[33] INA §212(a)(5); 8 U.S.C. §1182(a)(5).

[34] Employers of EB4 immigrants submit a *Petition for Amerasian Widow(er), or Special Immigrant* (Form I-360). Prospective EB5 immigrants submit an *Immigrant Petition by Alien Entrepreneur* (Form I-526).

[35] INA §203(d); 8 U.S.C. §1153(d). *Accompanying* refers to either being in the physical company of the principal immigrant or being issued an immigrant visa within six months of the principal immigrant's admission or adjustment of status. *Following to join* allows a derivative immigrant to acquire an immigrant visa and be admitted or adjust status more than six months after the principal immigrant does so, once the derivative immigrant establishes the required relationship to the principal immigrant. See DOS, Foreign Affairs Manual (FAM), 9 FAM 502.1-1(C)(2).

[36] LPR applicants residing abroad must be interviewed by DOS consular officers who verify the contents of their applications and check their medical, criminal, and financial records for any INA grounds of inadmissibility.

transitions from a temporary status (e.g., a student on an F-1 visa or a specialty occupation worker on an H-1B visa) to LPR status.[37]

## Immigrant Numerical Control and LPR Waiting Times

DOS's *immigrant numerical control system* ensures that eligible prospective immigrants receive LPR status according to the INA's numerical limits.[38] When USCIS approves an EB immigrant petition, the agency forwards it to DOS's National Visa Center (NVC), which assigns a *priority date*—the earlier date of either DOL's receipt of a labor certification application or USCIS's receipt of an immigrant petition—that represents the prospective immigrant's place in the employment-based queue.[39] Individuals must wait for their priority date to *become current*—indicating that a visa number is available—before applying for an immigrant visa or to adjust to LPR status. Priority dates are *current* when they are earlier than the *final action dates* (often referred to as *cutoff dates*) published in DOS's monthly *Visa Bulletin* (**Table 2**). If the *Visa Bulletin* indicates a category for a given country is current, applicants can apply for a visa or apply to adjust status regardless of their priority date.

Cutoff dates in the *Visa Bulletin* typically advance with time. However, visa number demand by prospective immigrants with different priority dates can fluctuate from month to month, affecting cutoff dates. Such fluctuations can cause cutoff date movement to slow or stop. In some cases, more people apply for a visa number in a particular category or origin country than there are visa numbers available for that month. DOS then may have to regress cutoff dates (*visa retrogression*) to maintain an orderly queue.[40]

**Table 2. Visa Bulletin *Final Action Dates* for EB Immigrants, April 2022**

| Category | China | El Salvador, Guatemala, Honduras | India | Mexico | Philippines | All Others |
|---|---|---|---|---|---|---|
| **EB1** (Priority) | Current | Current | Current | Current | Current | Current |
| **EB2** (Professional) | 3/1/19 | Current | 7/8/13 | Current | Current | Current |
| **EB3** (Skilled/other) | 3/22/18 and 6/1/12* | Current | 1/15/12 | Current | Current | Current |
| **EB4** (Special) | Current | 5/1/17 | Current | 4/1/20 | Current | Current |
| **EB5** (Investor) | Current | Current | Current | Current | Current | Current |

**Source:** DOS, Bureau of Consular Affairs, *Visa Bulletin for April 2022*, "Final Action Dates for Employment-Based Preference Cases," https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-april-2022.html.

**Notes:** * For some preference categories, the *Visa Bulletin* provides separate priority dates for each subcategory within that category. Because most priority dates are the same for all subcategories within a preference category, **Table 2** presents one priority date for the entire preference category. The exception is the 3d preference category

[37] USCIS's National Benefits Center conducts background investigations for I-485 applications, including collecting fingerprints, conducting background checks, and reviewing for possible fraud and grounds of inadmissibility. USCIS places applicants who pass these reviews into an interview queue and schedules them for in-person interviews.

[38] For more information on how DOS allocates numerically limited immigrant visa numbers, see DOS, *The Operation of the Immigrant Numerical Control System*, not dated.

[39] 8 C.F.R. §204.5(d). For more information, see USCIS, "Visa Availability and Priority Dates."

[40] For more information, see USCIS, *Visa Retrogression*, updated March 8, 2018.

for China, where the *Visa Bulletin* shows a priority date of March 22, 2018, for those applying as *professional and skilled* workers, and a priority date of June 1, 2012, for those applying as *other workers*.

Priority dates in the *Visa Bulletin* do not necessarily reflect accurate wait times for a visa number to become available. If greater or fewer foreign nationals apply for LPR status, waiting times can shift accordingly. For example, the *Visa Bulletin* for April 2022 indicates that Indian nationals who submitted EB2 petitions on or before July 8, 2013, could apply to adjust to LPR status or to receive an immigrant visa (**Table 2**). Some might interpret this to mean that Indian nationals petitioning as EB2 immigrants in April 2022 could expect to wait about nine years to acquire a green card, the same length of time as those who submitted their EB2 petitions in July 2013. However, if substantially more or substantially fewer Indian nationals applied for LPR status as EB immigrants between 2013 and 2022 compared to the number applying during the nine years prior to April 2022, wait times for LPR status could be longer or shorter, respectively.

# Employment-Based Immigration Trends

This section presents descriptive statistics that illuminate key facets of employment-based immigration. They include the number of EB green cards issued by preference category; the number of EB immigrants who acquired LPR status by obtaining an immigrant visa versus those who adjusted status; the top origin countries of EB immigrants; and the occupational distributions of immigrants from several top origin countries. Because of significant reductions in immigrant visa issuances caused by the COVID-19 pandemic, the most recent year presented is FY2019.

## Employment-Based Immigrants by Preference Category

In FY2019, employment-based immigrants and their family members numbered 139,458 and represented 13.5% of the 1,031,765 foreign nationals who received LPR status.[41] From FY2000 to FY2019, annual employment-based immigration fluctuated from a low of 81,727 in 2003 to a peak of 246,877 in 2005 (**Figure 1**).[42]

The FY2003 drop and FY2005 spike in the number of foreign nationals who became employment-based LPRs occurred because of issues related to the transfer of certain immigration functions from the legacy Immigration and Naturalization Service (INS) in the Department of Justice (DOJ) to the newly created USCIS in 2003.[43] In addition, the Real ID Act of 2005 provided for the *recapture* of 50,000 past unused employment-based visa numbers.[44]

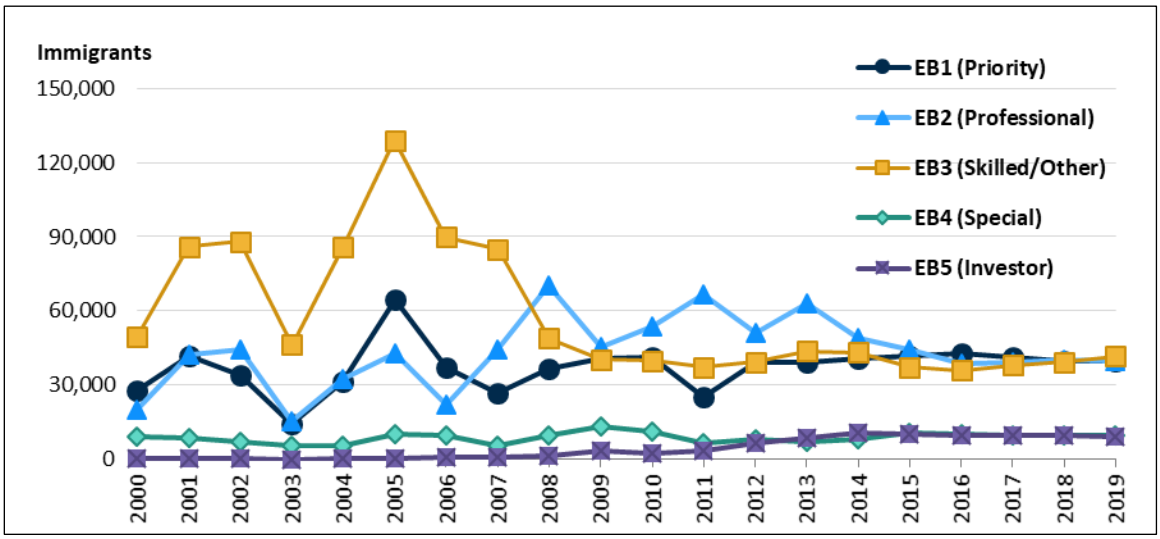
[41] U.S. Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics 2019*, Table 6.

[42] Ibid., multiple years. The sizable number of employment-based immigrant visa numbers used in FY2005 resulted from the first recapture of unused employment-based visas passed by Congress in 1999, the American Competitiveness in the 21st Century Act of 2000 (P.L. 106-313). For more information, see DOS, *Report of the Visa Office 2006*, Appendix D.

[43] Confirmed by USCIS briefing to CRS, October 31, 2018. Functions of the former INS were transferred to DHS with the enactment of the Homeland Security Act of 2002 (P.L. 107-296).

[44] The Real ID Act of 2005 is found in Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (P.L. 109-13). Section 502 contains the EB visa number recapture provisions. For more information on past immigrant visa recaptures as well as estimates of potentially recapturable visa numbers currently, see *Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers*, CRS Congressional Distribution Memorandum, September 8, 2021, available to congressional staff upon request.

**Figure 1. Number of EB Immigrants, by Preference Category**
(FY2000-FY2019)




**Source:** DHS, Office of Immigration Statistics, *Yearbook of Immigration Statistics*, Tables 4 and 6, multiple years.

More recently, such fluctuations have largely disappeared. The number of individuals acquiring LPR status through the EB1, EB2, and EB3 categories (as well as through the EB4 and EB5 categories) has equalized over time, corresponding closely to INA numerical limits (**Table 1**).[45] These trends indicate that relatively few employment-based visas in any category remained unused in the years immediately preceding the COVID-19 pandemic. Post-2019 employment-based immigration was influenced by unused family-sponsored immigrant visas.[46]

## New Arrivals Versus Adjustments of Status

Most foreign nationals who became employment-based immigrants in the past two decades were already living in the United States and adjusted to LPR status from some other nonimmigrant status (**Figure 2**).[47] In FY2019, for example, 79% of all employment-based LPRs had adjusted to that status from within the United States, while 21% acquired LPR status as new arrivals from abroad. EB5 immigrant investors were the exception; most have been admitted as new arrivals since 2006.[48]

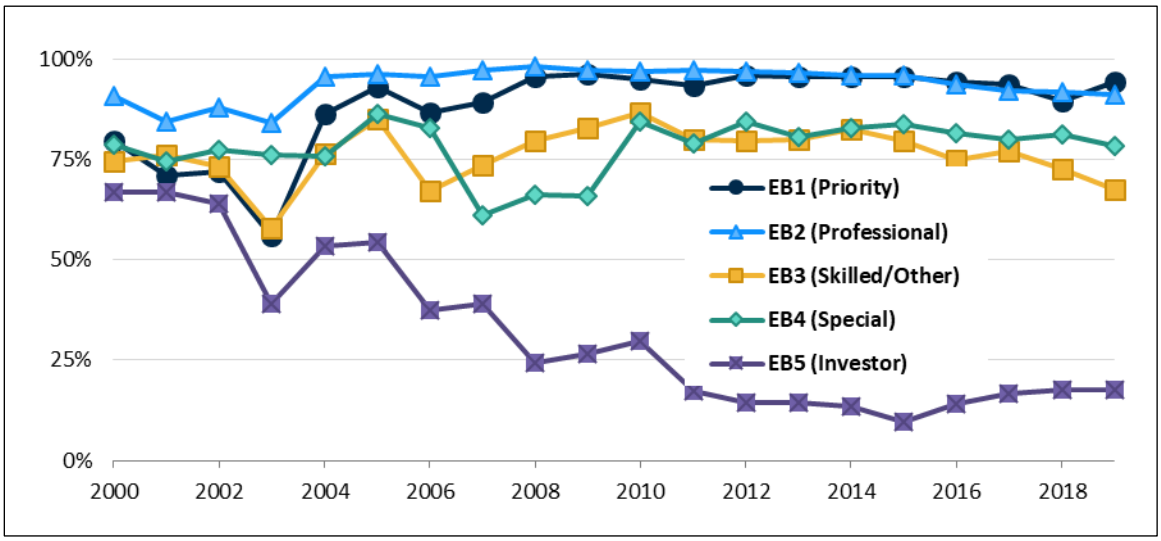
[45] In FY2011, to cite one example, 139,339 individuals received employment-based LPR status, a number that is close to the INA's statutory total limit of 140,000. However, these visas were distributed among 25,251 EB1, 66,831 EB2, and 37,216 EB3 category immigrants, as well as 6,701 EB4 and 3,340 EB5 category immigrants. Such figures indicate considerable use of "roll downs" and other provisions that permit unused visa numbers in one category to be utilized by another. By contrast, in FY2019, the 139,458 persons granted LPR status through the five employment-based preference categories closely matched their categorical numerical limits, as can be seen in **Figure 1**.

[46] As noted above, restrictions on permanent immigration were imposed in FY2020 in response to the COVID-19 pandemic, causing 122,000 family-sponsored visa numbers to remain unused. These numbers fell across to increase the FY2021 employment-based annual limit from 140,000 to 262,000. As of the end of FY2021, an estimated 62,000 employment visas remained unused because USCIS lacked sufficient personnel to adjudicate the additional petitions. See for example, Michelle Hackman, "Democrats Push Fix for Green-Card Logjam in Social-Spending Bill," *Wall Street Journal*, November 5, 2021.

[47] DHS does not publish data detailing what nonimmigrant categories status adjusters are leaving.

[48] U.S. Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics*, multiple years, Table 6. In FY2000, EB5 immigrants numbered 218 and grew to 3,688 in FY2009 and 9,085 in FY2019. As the program grew over this time, it was used increasingly by foreign nationals residing abroad. For more information, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

**Figure 2. Percentage of EB Immigrants Who Adjusted Status, by Preference Category**
(FY2000-FY2019)




**Source:** DHS, Office of Immigration Statistics, *Yearbook of Immigration Statistics*, Tables 4 and 6, multiple years.

## Employment-Based Immigrants by Country of Origin

**Table 3** lists the top 15 countries of origin for the most employment-based immigrants in FY1999, FY2009, and FY2019 and how those countries' rankings have changed these three points. The data reveal what could be characterized as two groups of origin countries. The first group consists of countries such as India, China, Canada, the Philippines, South Korea, the United Kingdom, and Mexico, which since FY1999 have consistently sent the most employment-based immigrants to the United States. Among these top-sending countries, the number of immigrants has fluctuated across the fiscal years presented, but their relative ranks have remained largely stable.

The second group consists of countries that have sent numerous but relatively fewer employment-based immigrants to the United States. Some in this group, such as Taiwan, Brazil, and Pakistan have consistently ranked within the top 15 EB immigrant-sending countries over the past two decades. Others in this group have seen their relative rank increase (e.g., Venezuela, Iran, France, Vietnam) or decrease (e.g., Poland, Japan) over the 20-year period.

These patterns have occurred over a period of time in which the total number of EB immigrants has fluctuated, from 56,813 in FY1999 (when demand for EB green cards regularly fell below the INA's annual limit of 140,000), to 144,034 in FY2009, to 139,458 in FY2019. Accordingly, the absolute number of EB immigrants from some countries may have increased but the country's relative rank between FY1999 and FY2009 in **Table 3** may have remained the same (e.g., Japan and Germany) or declined (e.g., Philippines and Russia).

The origin-country distribution of employment-based immigration, and the role of immigration policy in producing that distribution, has labor market implications, because EB immigrants from certain countries such as India and the Philippines tend to work in specific occupations and corresponding industrial sectors. This is discussed further in the next section.

**Table 3. EB Immigrants, by Top 15 Countries of Origin**

(Countries are ranked by number of EB immigrants in FY1999, FY2009, and FY2019)

| | FY1999 | | | FY2009 | | | FY2019 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Rank | Number | Percent | Rank | Number | Percent | Rank |
| India | **5,362** | **9%** | **1** | **20,264** | **14%** | **1** | **18,553** | **13%** | **1** |
| China | **5,282** | **9%** | **2** | **11,295** | **8%** | **3** | **17,154** | **12%** | **2** |
| Canada | **3,951** | **7%** | **3** | **6,927** | **5%** | **7** | **4,998** | **4%** | **7** |
| Philippines | **3,871** | **7%** | **4** | **8,516** | **6%** | **5** | **7,358** | **5%** | **4** |
| South Korea | **3,653** | **6%** | **5** | **14,147** | **10%** | **2** | **10,495** | **8%** | **3** |
| United Kingdom | **2,860** | **5%** | **6** | **7,044** | **5%** | **6** | **4,565** | **3%** | **8** |
| Mexico | **2,637** | **5%** | **7** | **8,660** | **6%** | **4** | **6,698** | **5%** | **5** |
| El Salvador | **2,053** | **4%** | **8** | 836 | 1% | 30 | 1,725 | 1% | 18 |
| Taiwan | **1,460** | **3%** | **9** | **2,519** | **2%** | **12** | **2,551** | **2%** | **10** |
| Brazil | **1,296** | **2%** | **10** | **3,292** | **2%** | **8** | **5,867** | **4%** | **6** |
| Pakistan | **1,293** | **2%** | **11** | **3,184** | **2%** | **9** | **2,266** | **2%** | **13** |
| Poland | **1,268** | **2%** | **12** | 1,351 | **1%** | 21 | 922 | **1%** | 35 |
| Japan | **1,154** | **2%** | **13** | **2,502** | **2%** | **13** | 1,607 | 1% | 21 |
| Russia | **910** | **2%** | **14** | 1,916 | 1% | 18 | **2,082** | **1%** | **14** |
| Germany | **834** | **1%** | **15** | **2,251** | **2%** | **15** | 1,727 | **1%** | 17 |
| Venezuela | 490 | 1% | 28 | 2,915 | **2%** | **10** | **2,871** | **2%** | **9** |
| Colombia | 568 | 1% | 22 | **2,850** | **2%** | **11** | 1,356 | 1% | 25 |
| Iraq | 107 | 0% | 67 | **2,347** | **2%** | **14** | 86 | 0% | 97 |
| Iran | 497 | 1% | 26 | 1,200 | 1% | 25 | **2,512** | **2%** | **11** |
| France | 557 | 1% | 23 | 2,061 | 1% | 16 | **2,364** | **2%** | **12** |
| Vietnam | 74 | 0% | 81 | D | 0% | NA | **1,804** | **1%** | **15** |
| All Other | 16,636 | 29% | | 37,957 | 26% | | 39,897 | 29% | |
| **Total** | **56,813** | **100%** | | **144,034** | **100%** | | **139,458** | **100%** | |

**Source:** DHS Office of Immigration Statistics, *Yearbook of Immigration Statistics*, Table 8 (FY1999) and Table 10 (FY2009, and FY2019).

**Notes:** All countries that ranked in the top-15 EB immigrant sending countries for either FY1999, FY2009, or FY2019 are shown in the table. **Bolded figures** indicate that the country falls within the top 15 ranked countries for that year. **D** indicates data withheld to limit disclosure (small numbers). **NA** indicates not applicable.

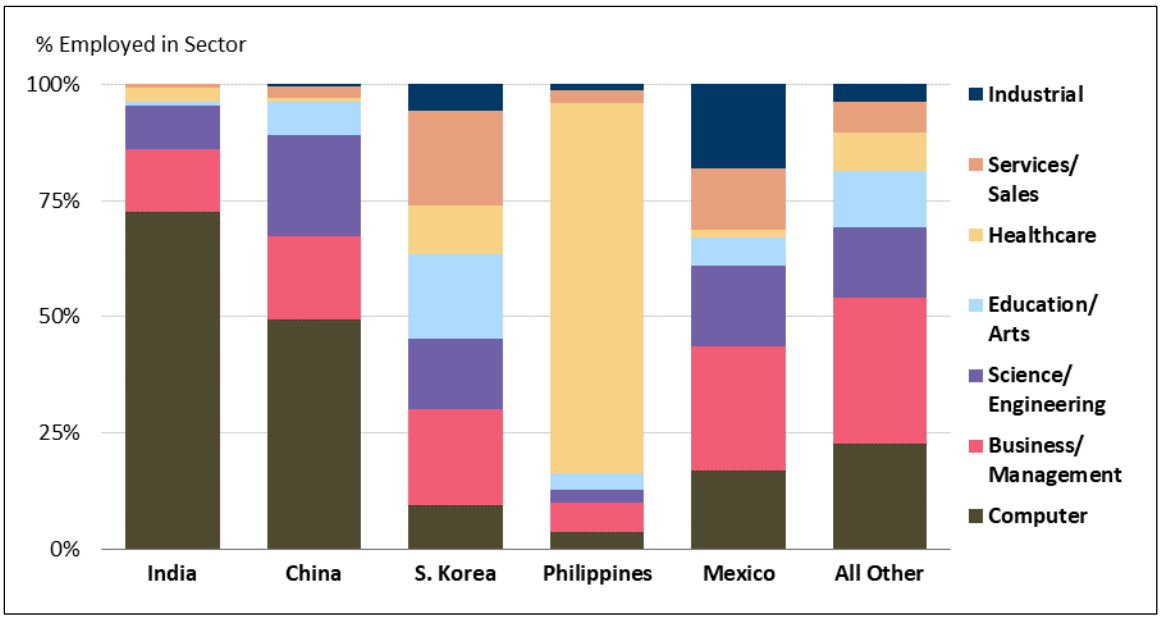
## Occupational Distribution

**Figure 3** displays the occupational distributions of employment-based immigrants (EB1, EB2, and EB3) from the top five major immigration origin countries and all other countries combined who acquired LPR status in FY2017, FY2018, or FY2019. Indian and Chinese nationals made up three-fifths of all EB1, EB2, and EB3 green card recipients over this period and worked largely in computer-related occupations. Filipino nationals were concentrated overwhelmingly in health care occupations, primarily nursing. In contrast, nationals from South Korea, Mexico, and all other countries had occupational distributions that were more evenly distributed across the broad

categories shown. The occupational distributions have particular relevance for discussions on revising the 7% per-country ceiling (see the "Revising or Eliminating the Per-Country Ceiling" section below).

**Figure 3. Occupations of EB Immigrants from Top Five Origin Countries**

(EB1, EB2, and EB3 immigrants, FY2017-FY2019)




**Source:** Unpublished FY2017, FY2018, and FY2019 microdata provided to CRS by USCIS, Office of Legislative Affairs, February 2020.

**Notes:** The USCIS dataset included 397,740 cases for EB1, EB2, and EB3 immigrants only, of which 336,918, or 84.7%, had useable Standard Occupation Classification (SOC) codes. The 15.3% of cases lacking occupation data displayed an origin country distribution similar to that shown in the figure. CRS grouped the data into the following broad categories: **Industrial**: farming, fishing, forestry, construction, extractive, installation and repair, production, and transportation occupations; **Services/Sales**: protective services, food services, building and maintenance, personal services, sales, office and administrative support occupations; **Health care**: health care practitioners, technical, and support occupations; **Education/Arts**: community, social service, legal, educational instruction, library, arts, entertainment, sports and media occupations; **Science/Engineering**: architecture, engineering, and science occupations; **Business/Management**: management, business and financial occupations; **Computer**: computer (96% of cases) and mathematical (4% of cases) occupations.

# Nonimmigrants in the Employment-Based System

Nonimmigrant (temporary) workers are a significant facet of the permanent employment-based immigration system. Nonimmigrant workers supplement the U.S. labor force to meet seasonal or unexpected labor demand, and address insufficient labor supply. Many nonimmigrant workers subsequently are sponsored for employment-based LPR status. As such, temporary visas for professional foreign workers, in particular, have become an important gateway for employment-based permanent immigration to the United States.

U.S. employers' sponsorship of an increasing number of nonimmigrant workers for LPR status, combined with static numerical limits and per country caps on immigrant visas, have contributed to a sizable queue of foreign nationals waiting to receive employment-based LPR status. The following sections discuss nonimmigrant workers generally, review three categories of skilled

nonimmigrant workers who comprise most new entrants to the EB pipeline, and conclude with an assessment of the role of these temporary skilled workers in the permanent immigration system.

## Overview of Nonimmigrant Workers

Nonimmigrants are foreign nationals admitted to the United States for a specific purpose and a limited period. They include, for example, tourists, students, diplomats, agricultural workers, and exchange visitors. Nonimmigrants are often referred to by the letter and number denoting their statutory provision, such as H-2A agricultural workers, F-1 students, or L-1 intracompany transferees. Over the past three decades, the number of nonimmigrant visas issued specifically for workers has trended upward, increasing from 159,778 in FY1989 to 964,628 in FY2019.[49]

To hire a temporary foreign worker, prospective employers must submit a petition to USCIS.[50] USCIS adjudicates the petition to determine whether the prospective employee possesses the required qualifications for the position and visa class and whether other statutory and regulatory requirements have been met. If the petition is approved by USCIS, a prospective employee outside the United States applies for a visa at a U.S. consulate. A DOS consular officer determines whether the prospective employee is admissible and eligible for the visa class for which he or she is applying. An approved visa gives the worker permission to travel to the United States and seek admission at a U.S. port of entry. If the prospective employee is already in the United States, he or she applies to USCIS for a change of status rather than applying for a visa abroad.

Most applicants for nonimmigrant visas are subject to the general presumption in INA Section 214(b)[51] that aliens seeking admission to the United States intend to settle permanently. As a result, most prospective nonimmigrants must demonstrate that they are not coming to reside permanently. However, there are two main nonimmigrant visas—H-1B and L—for which *dual intent* is allowed, meaning that the prospective nonimmigrant is permitted simultaneously to seek admission to the United States on a nonimmigrant visa and LPR status. Nonimmigrants seeking *H-1B specialty occupation* visas and *L-1 intracompany transferee* visas are exempt from the requirement to show that they are not coming to the United States to live permanently.[52]

As such, among the visa categories of nonimmigrant workers, the H-1B and L-1 visa categories effectively bridge the employment-based systems for nonimmigrants and immigrants. Many such nonimmigrants work for the same employers who sponsor them for LPR status. Together, H-1B and L-1 workers and their families account for the majority of nonimmigrant adjustments to LPR status under the EB1, EB2, and EB3 categories.[53] In addition, many foreign students on F-1 visas are able to obtain temporary employment authorization for work related to their degree through a program called *Optional Practical Training* (OPT). Some employers subsequently sponsor students on OPT for H-1B or LPR status.

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[49] Employment-related nonimmigrant visas include the CW, E, H, I, L, O, P, Q, R, and TN visas. (For information on these categories, see CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief*.) DOS, *Report of the Visa Office 2019*, Table XVI(A); and DOS *Nonimmigrant Visa Statistics*, "Nonimmigrant Visas by Individual Class of Admission, FY1987-1991," Detail Table.

[50] Prospective employers of H-1B specialty occupation workers are required to first file a labor condition application (LCA) with the Department of Labor attesting that the employer will comply with program requirements related to fair wages and working conditions. An approved LCA is then submitted with the petition to USCIS.

[51] INA §214(b), 8 U.S.C. §1184(b).

[52] For more information on the INA Section 214(b) presumption of immigrant intent and the concept of dual intent, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[53] CRS calculation based on data provided to CRS by USCIS, August 2020. Data cover fiscal years 2010 through 2019.

**Major Nonimmigrant Categories Contributing to the EB Pipeline**

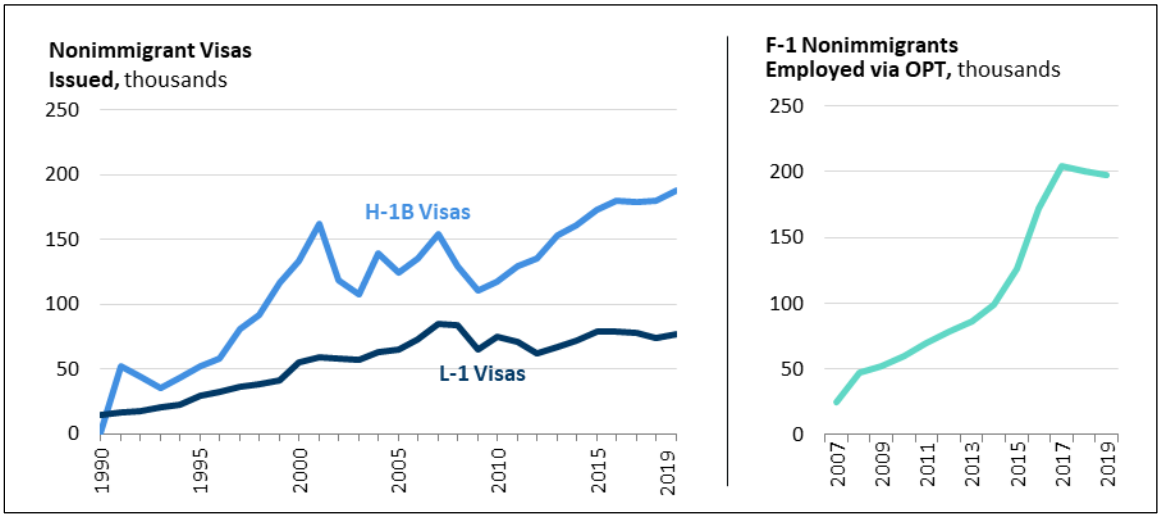
**H-1B visa**: for workers in *specialty occupations*, typically requiring at least a bachelor's degree; numerical limit of 65,000 per year plus 20,000 for those with U.S. advanced degrees; renewals do not count toward the annual limit nor do workers employed at certain educational and research institutions.

**L-1 visa**: for intra-company transferees who are executives and managers (L-1A), or have specialized knowledge relating to the organization's interests (L-1B) and are employed with an international firm. No numerical limits.

**F visa**: for full-time academic students; F visa holders may apply for work authorization during or after completing their degree through **Optional Practical Training** (**OPT**). OPT provides 12 months of work authorization for non-STEM (science, technology, engineering, mathematics) graduates and 36 months for STEM graduates. No numerical limits for F visas or OPT authorizations.

Since 1990, temporary worker visa issuance has increased substantially. H-1B visa issuances largely trended upward, more than tripling from 50,000 in FY1991 (the first year they were issued) to 188,123 in FY2019. Over the same period, L-1 visas almost quadrupled from 20,000 to 76,988.[54] In addition, the number of F-1 students authorized to work under OPT grew from less than 25,000 foreign students in CY2007 to over 204,000 in CY2017. In CY2021, 164,528 F-1 nonimmigrants were working under OPT (**Figure 4**).[55] These major nonimmigrant categories are discussed in greater detail below.

**Figure 4. Visas Issued for H-1B and L-1 Nonimmigrant Workers, FY1990-FY2019 and F-1 Nonimmigrants Employed via OPT, FY2007-FY2019**




**Source:** CRS presentation of data from U.S. Department of State, *Report of the Visa Office,* Table XVI (A) "Classes of Nonimmigrants Issued Visas," various fiscal years.

**Notes:** Data do not include foreign nationals changing to H-1B or L-1 status within the United States. Data for OPT are only available starting in FY2007.

[54] These data do not include foreign nationals changing to H-1B or L-1 status from within the United States, but rather cover only those who received a visa at a U.S. consulate abroad.

[55] U.S. Department of Homeland Security, Immigration and Customs Enforcement, "2007 to 2021 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances," https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2021.pdf.

## Specialty Occupation Workers: H-1B Visas

The H-1B visa for workers in *specialty occupations*[56] accounts for the largest share of visas issued to nonimmigrant workers. H-1B workers also make up the largest share of temporary workers who adjust to LPR status through the employment-based immigration system.[57] Although H-1B employees may work in a variety of fields, the majority have been hired to work in science, technology, engineering, and mathematics (STEM) occupations, with about two-thirds working in computer-related occupations.[58] Most H-1B visa holders originate from India and to a lesser extent China.[59] Prospective H-1B employers must attest that, among other things, they will pay the H-1B worker the greater of the actual wages paid to similar employees or the prevailing wages for that occupation in the area of intended employment.[60]

H-1B status is generally valid for up to three years and renewable for another three years. However, if an employer sponsors an H-1B nonimmigrant for an employment-based green card, the H-1B nonimmigrant is eligible to renew his or her status beyond the six-year limit if at least one year has passed since the filing of a labor certification with DOL or an EB immigrant petition with USCIS.[61] Given the lengthy waits for an employment-based green card, many H-1B workers, particularly those from India, spend decades in the United States as nonimmigrant workers before acquiring LPR status.[62] These H-1B workers function much like permanent employment-based immigrants but lack LPR status and the ability to change employers without losing their place in the EB queue.[63]

While the current statutory annual limit (or cap) of 65,000 H-1B visas per year is the same as when it was established in 1990, Congress has enacted policy changes expanding the H-1B program

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[56] INA §214(i)(1) defines specialty occupation as "an occupation that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Specialty occupation is similarly defined in regulation at 8 C.F.R. §214.2(h)(4)(i)(A)(1).

[57] USCIS has estimated that the population of H-1B workers in the United States was approximately 583,420 as of September 30, 2019. See USCIS, *H-1B Authorized-to-Work Population Estimate*, Office of Policy & Strategy, June 2020. Adjustment of status calculation based on data provided to CRS by USCIS. Data cover fiscal years 2000 through 2019.

[58] See, for example, U.S. Department of Homeland Security (DHS), USCIS, *Characteristics of Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress*, March 5, 2020. Annual reports from other recent years show similar occupational patterns.

[59] Workers born in India and China comprised 75% and 12%, respectively, of approved H-1B petitions in FY2020. See USCIS, *Characteristics of H-1B Specialty Occupation Workers*: *Fiscal Year 2020 Annual Report to Congress*, February 17, 2021.

[60] INA §212(n) (8 U.S.C. §1182(n)).

[61] Section 106 of the American Competitiveness in the Twenty-first Century Act of 2000 (P.L. 106-313) allows H-1B visa holders with pending EB1, EB2, or EB3 adjustment of status applications to extend their H-1B status in one-year increments while they wait for their labor certification or LPR applications to be processed. It also allows those with approved EB1, EB2, or EB3 petitions who are waiting because of the per-country limit to extend their H-1B status in three-year increments while they wait for a visa number to become available. The H-1B employer and the employer sponsoring the worker for LPR status need not be the same. See 8 C.F.R. §214.2(h)(13)(iii)(D)-(E). These provisions have allowed hundreds of thousands of H-1B workers to remain in the country for many years while awaiting LPR status. See for example, Testimony of Ronil Hira, Associate Professor of Public Policy, Howard University, U.S. Congress, Senate Judiciary Committee, *Immigration Reforms Needed to Protect Skilled American Workers*, 115th Cong., 1st sess., March 17, 2015.

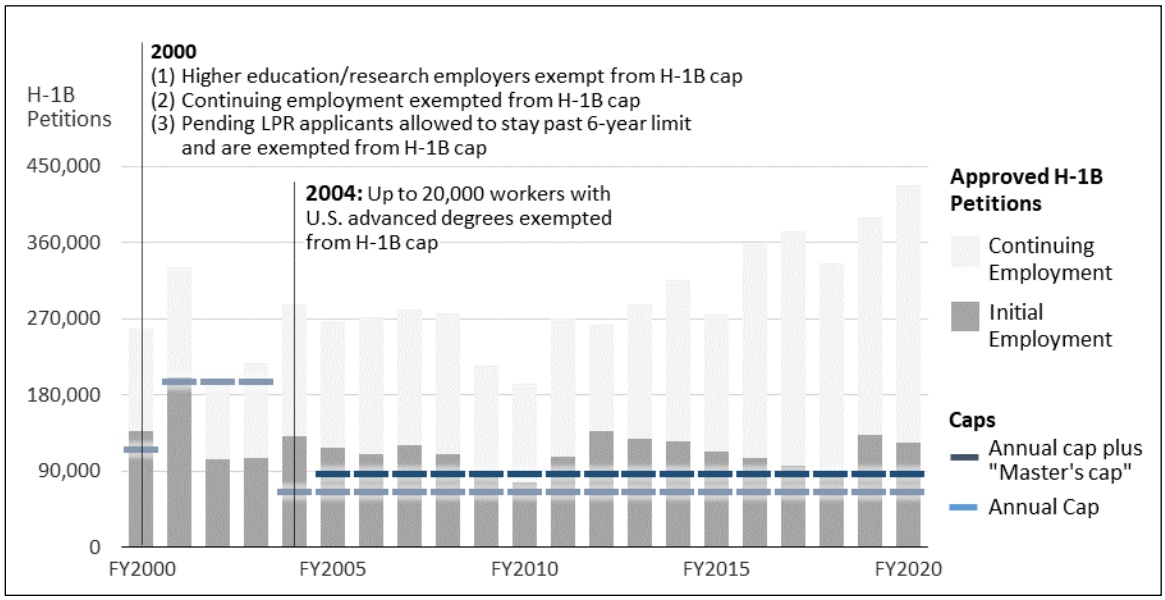
[62] For more information, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[63] When employment-based LPR status is based on employer sponsorship, a sponsored H-1B worker who changes employment before a visa number is available will lose the prior employer's sponsorship for LPR status and would need to restart the LPR sponsorship process with the new employer.

(**Figure 5**). Congress temporarily raised the limit for several years in the late 1990s and early 2000s, and has progressively exempted more H-1B workers from the limit.[64] Despite these exemptions, the number of employer petitions for new, cap-subject H-1B workers has routinely exceeded the limit—in some years during the first week or even on the first day that petitions are accepted.

**Figure 5. Approved Employer Petitions for H-1B Workers, FY2000-FY2020**

(With annual numerical limits and major policy changes)




**Source:** CRS presentation of numeric data from U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers,* FY2000-FY2020. Policy changes based on P.L. 105-277, P.L. 106-313, and P.L. 108-447.

**Notes**: "Approved H-1B Petitions" are based on data from Form I-129, Petition for a Nonimmigrant Worker. Not all approved petitions result in the issuance of a visa by Department of State because (1) some approved workers do not pursue a visa or are denied a visa and (2) individuals already in the United States who are changing to H-1B status are not issued visas by DOS.

The growing use of H-1B visas has generated public debate. Proponents contend that the H-1B visa allows American employers to fill gaps in the skilled labor market, largely benefiting the U.S. economy.[65] They also point to competition with other nations over emerging technologies, arguing that U.S. economic and national security depend on recruiting and retaining what are often called

[64] Congress temporarily increased the limit to 115,000 for FY1999-FY2000 and to 195,000 for FY2001–FY2003. Since FY2004, the limit has remained at 65,000. In 2000, Congress enacted P.L. 106-313 to exempt from the limit petitions filed for workers employed at institutions of higher education, nonprofit research organizations, and governmental research organizations. P.L. 106-313 also made H-1B workers who extend their stay exempt from the cap. In 2004, Congress passed P.L. 108-447 making exempt from the limit up to 20,000 petitions filed on behalf of aliens with a master's degree or higher from a U.S. institution of higher education (often referred to as the *master's cap*). As discussed in the prior section, since 2000, H-1B workers waiting at least a year for LPR status approval are exempt from the six-year limit on their approved length of stay in the United States; these workers may continue to renew their H-1B status until their LPR application is adjudicated, and they are not counted against the annual H-1B cap. These policy changes are illustrated in **Figure 5**.

[65] See, for example, Rachel Rosenthal and Noah Smith, "Do H-1B Workers Help or Hurt American Workers?," *Bloomberg*, August 24, 2020; and Stuart Anderson, *Setting the Record Straight on High-Skilled Immigration*, National Foundation for American Policy, August 2016.

the "best minds," including foreign nationals graduating from U.S. universities. Some argue that high demand for H-1B workers by U.S. employers underscores the need to increase the annual H-1B limit.

Critics emphasize its substantial use by overseas-based labor outsourcing firms that hire workers with ordinary skill levels.[66] They cite the lack of empirical evidence of labor shortages,[67] note the lack of any labor market test for hiring H-1B workers, and argue that the presence of such foreign workers negatively impacts wages and working conditions in the U.S. industrial sectors where they are employed.[68] They contend that many H-1B workers are subject to abuse and have been used to replace U.S. workers,[69] and favor policies that incentivize employers to hire U.S. workers.[70]

Arguments favoring or opposing the use of H-1B visas often treat H-1B workers as a homogenous group. In practice, individuals typically acquire H-1B status through two distinct selection systems that have differing objectives. Foreign nationals who acquire H-1B visas from abroad typically are hired directly by foreign outsourcing companies as information technology (IT) contract workers to help U.S. firms lower their labor costs.[71] In contrast, a sizable portion of foreign nationals in the United States acquire H-1B visas by changing from another temporary status, frequently F student visas.[72] While many work in IT-related fields, they are employed across a broader array of industrial sectors than H-1B visa holders from abroad.[73] Foreign students who acquire H-1B status thus have

[66] See for example, Nicole Torres, "The H-1B Visa Debate, Explained," *Harvard Business Review*, May 4, 2017; and Ron Hira, "Top 10 H-1B employers are all IT offshore outsourcing firms, costing U.S. workers tens of thousands of jobs," Working Economics Blog, Economic Policy Institute, August 22, 2016. One former top Indian government official dubbed the H-1B visa "the outsourcing visa." See Steve Lohr, "Parsing the Truths About Visas for Tech Workers," *New York Times*, April 15, 2007.

[67] See for example, Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, "Guestworkers in the High-Skill U.S. Labor Market: An Analysis of Supply, Employment, and Wage Trends," EPI Briefing Paper #359, Economic Policy Institute, April 24, 2013.

[68] See, for example, Ron Hira and Daniel Costa, *New Evidence of Widespread Wage Theft in the H-1B Visa Program*, Economic Policy Institute, December 9, 2021; David North, "A Tale of Two Exploitative Foreign Worker Programs," Center for Immigration Studies, October 31, 2018; and Alan B. Krueger, "The Rigged Labor Market," *Milken Institute Review*, April 28, 2017. The U.S. Government Accountability Office (GAO) has also recommended more controls to protect workers, prevent abuse. See, for example, GAO, *H-1B Visa Program: Reforms are Needed to Minimize the Risks and Costs of Current Program*, GAO-11-26, January 14, 2011.

[69] See, for example, CBS, "You're Fired," *60 Minutes*, March 19, 2017; Testimony of Ronil Hira, Associate Professor of Public Policy, Howard University, before U.S. Congress, Senate Subcommittee on Immigration and the National Interest, *The Impact of High-Skilled Immigration on U.S. Workers*, 115th Cong., 2nd sess., February 25, 2016; and Julia Preston, "Large Companies Game H-1B Visa Program, Costing the U.S. Jobs," *The New York Times*, November 10, 2015.

[70] See, for example, Alexia Fernández Campbell, "There's a Clear Way to Fix the H-1B Visa Program," *The Atlantic*, December 6, 2016; and Ron Hira and Bharath Gopalaswamy, *Reforming U.S.' High-Skilled Guestworker Program*, Atlantic Council, January 2019.

[71] Nicole Torres, "The H-1B Visa Debate, Explained," *Harvard Business Review*, May 4, 2017.

[72] In FY2020, 64% of approved H-1B petitions for initial employment were for nonimmigrants already in the United States. Of these, 77% were students and their families. USCIS, *Characteristics of H-1B Specialty Occupation Workers, FY2021 Annual Report to Congress*, p. 19.

[73] Evidence of differing occupational diversity within these two groups can be obtained directly from publicly available USCIS data on nonimmigrant petition (USCIS Form I-129) approvals for the first quarter of FY2019. The data indicate that of the 60,788 individuals who acquired H-1B status without adjusting from an F-1 student visa, 70% were employed in *computer related*, *computer system technical support*, *computer system user support*, and *system analysis and programming* occupations. For the 18,109 individuals acquiring H-1B status who did adjust from an F-1 student visa, the proportion was 55%. Figures computed by CRS. For data, see USCIS, *I-129 Approvals for FY 2019*, July 15, 2019, https://www.uscis.gov/records/electronic-reading-room?ddt_mon=&ddt_yr=&query=h-1b&items_per_page=10&options%5Bvalue%5D&page=1.

undergone two selection processes: the first by U.S. universities (often for graduate study) to acquire an F student visa, and the second by employers to acquire an H-1B visa.

## Intracompany Transferees: L-1 Visas

The L-1 visa for *intra-company transferees* allows U.S. employers to transfer employees from their affiliated offices overseas to their U.S. offices.[74] The INA distinguishes two L-1 categories: executives and managers (L-1A classification); and employees with *specialized knowledge* (L-1B classification). L-1A visa holders can work in the United States for up to seven years and are typically qualified to adjust to LPR status through the EB1 category, which does not require labor certification. In contrast, L-1B visa holders can work in the United States for up to five years, and those who adjust to LPR status typically do so through the EB2 and EB3 categories that do require labor certification. L-1 visas are not numerically limited. Issuances have increased from 14,342 in FY1990 to 76,988 in FY2019 (**Figure 4**), overall trending upward over the time period.

Some consider L-1 visas essential "to prevent retaliation against U.S. companies and workers transferring abroad, to make it easier for U.S. companies to expand abroad, and to encourage multinationals to invest in the United States without fear of being cut off from their key employees."[75] However, others assert that L-1 visa holders displace U.S. workers.[76] Some argue that the L-1 visa has become a substitute for the H-1B visa, noting that L-1B employees often have comparable skills and occupations to H-1B workers but do not have to pass through the INA's labor market protections for hiring H-1B workers.[77] Indeed, some argue that the standards to qualify for L-1B specialized knowledge are so vague that any worker can qualify.[78] These concerns have arisen particularly for outsourcing and information technology firms that employ L-1 workers as subcontractors within the United States.[79] A related concern is that the unchecked use of L-1 visas allows foreign managers and specialists to gain U.S. experience before transferring their operations and STEM and other high-skilled jobs overseas.[80]

## Optional Practical Training (OPT)

Roughly 700,000 foreign nationals attended U.S. colleges and universities as undergraduate or graduate students in 2021.[81] Most did so on an F-1 visa, which allows them to remain in the United

[74] The L-1 visa also allows foreign companies that lack an affiliated U.S. office to send employees to the United States with the purpose of establishing one. L-1 visa recipients must have been employed abroad by the firm for at least one year in the preceding three years. INA §101(a)(15)(L) (8 U.S.C. §1101(a)(15)(L)).

[75] David J. Bier, "The Facts About the L-1 Visa Program," Cato Institute, June 10, 2020.

[76] Ron Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute, October 14, 2010.

[77] Unlike the H-1B visa, the L-1 visa has no wage floor and does not require employers to attest that they will pay the prevailing wage for the occupation in the area of intended employment. See, for example, George Avelos, "Workers paid $1.21 an hour to install Fremont tech company's computers," *The Mercury News*, October 22, 2014. For more information, see U.S. Department of Labor, Wage and Hour Division, "H-1B Program," at https://www.dol.gov/agencies/whd/immigration/h1b.

[78] See Testimony of Ronil Hira, Associate Professor, Howard University, U.S. Congress, House Subcommittee on Immigration and Citizenship, *Oh Canada! How Outdated U.S. Immigration Policies Push Top Talent to Other Countries*, 117th Cong., 1st sess., June 24, 2021.

[79] Ibid.

[80] See, for example, Office of Inspector General, *Implementation of L-1 Visa Regulations*, Department of Homeland Security, OIG-13-107, August 2013; and Office of the Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, U.S. Department of Homeland Security, OIG-06-22, January 2006.

[81] Institute of International Education, "International Student Enrollment Trends." *Open Doors Report on International*

States for the duration of their study.[82] When F-1 nonimmigrants have completed their education, most return to their home countries, but some remain in the United States. Most of those who remain apply for work authorization through Optional Practical Training (OPT).[83]

OPT provides work authorization to foreign students and recent graduates seeking short-term employment directly related to their major areas of study. Generally, an F-1 student may work up to 12 months in OPT, which can be completed before and/or after graduation. Those who receive a degree in a STEM field[84] may apply for a two-year extension, known as STEM OPT, allowing them to work a total of 36 months.[85] In this way, OPT often serves as a bridge for students on F-1 visas to transition to H-1B status, which subsequently may lead to employment-based LPR status.[86]

The OPT program is not numerically limited, and its use increased from less than 25,000 foreign students in CY2007 to over 204,000 in CY2017. In CY2021, 164,528 F-1 nonimmigrants were working under OPT.[87] As OPT participation has increased—along with the length of time OPT participants may work in the United States—some observers have questioned the program's merits.

Supporters argue that OPT allows recent graduates with in-demand skills to remain in and contribute to the U.S. economy, and allows U.S. employers to screen workers for permanent employment. They cite the absence of evidence showing OPT workers take jobs from American students and college graduates.[88] In particular, they argue that the three years of work allowed under the STEM OPT extension—as opposed to the 12 months allowed under regular OPT—justifies a company's investment in training these new employees.

Opponents argue that what was initially intended to give students work experience in their field has become a large-scale temporary worker program without safeguards in place to protect U.S. workers and students. They contend that OPT effectively circumvents the numerical limitations and more lengthy application processes for H-1B or LPR status.[89] Opponents also note that the program

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*Educational Exchange*, 2021.

[82] 8 C.F.R. §214.2(f).

[83] Graduating students can also be sponsored directly by employers for employment-based green cards.

[84] DHS maintains a list of STEM degree programs that qualify for the STEM OPT extension, available at https://www.ice.gov/sites/default/files/documents/stem-list.pdf.

[85] The STEM OPT extension began in 2008 as a 17-month extension. DHS expanded it to 24 months in 2016 (for a total of 36 months in OPT). For more information, see DHS, "Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students," 81 *Federal Register* 13039-13122, March 11, 2016.

[86] In FY2020 and FY2021, 47% of H-1B petitions approved for initial employment were for individuals requesting a change from F-1 status to H-1B status. See USCIS, *Characteristics of H-1B Specialty Occupation Workers, FY2020 and FY2021 Annual Report[s] to Congress*. It is likely that many of these students changing to H-1B status (85% of whom had received Master's or higher degrees) were first hired by a U.S. employer through the OPT program (during which they maintain their F-1 status). In some cases, the employer previously may have attempted to hire the student as an H-1B worker but been denied due to numerical limits or other program restrictions.

[87] U.S. Department of Homeland Security, Immigration and Customs Enforcement, "2007 to 2021 Annual Growth in OPT, STEM OPT and CPT Authorizations and Employment Authorization Document (EAD) Issuances," https://www.ice.gov/doclib/sevis/pdf/data-ApprovedEmploymentAuthorizations2007-2021.pdf.

[88] See, for example, Stuart Anderson, "Setting the Record Straight on Optional Practical Training," *Forbes*, June 21, 2021.

[89] See, for example, Daniel Costa and Ron Hira, *The Department of Homeland Security's proposed STEM OPT extension fails to protect foreign students and American workers*, Economic Policy Institute, December 1, 2015; Karin Fischer, "How a Little-Known Program for Foreign Students Became Embroiled in a Hot-Button National Debate," *The Chronicle of Higher Education*, January 20, 2016; David North, *Now Is the Perfect Time to Downsize the OPT Program*, Center for Immigration Studies, May 26, 2020; and Elizabeth Redden, "Will Trump Opt to Restrict Foreign Student Work Program?," *Inside Higher Ed*, May 29, 2020.

incentivizes U.S. employers to hire recent foreign graduates over U.S. citizen graduates because employers are not required to pay Social Security and Medicare (FICA) taxes for F-1 students.[90]

### Assessing the Role of Nonimmigrant Workers

Skilled nonimmigrant workers may be well suited to meet the specific needs of individual employers (i.e., as opposed to general labor market needs). Unless they have dual intent, temporary workers are generally required to leave the United States when their period of stay expires, limiting their impact on the long-term labor market prospects of native workers. Therefore, some policymakers may consider increasing nonimmigrant worker limits a more effective and/or expedient way to meet U.S. labor market demands than by increasing permanent EB immigration.

Some argue that the growing use of temporary skilled workers signals not only increased labor demand for individuals with specific skills, but also labor market pressure resulting from the INA's annual statutory limit on permanent employment-based immigration.[91] Given the level of economic growth and technological innovation since 1990, when current employment-based immigration limits were established, employers seeking skilled workers from abroad appear to be increasingly relying upon the INA's nonimmigrant provisions, some of which were not intended for their current uses.[92] Additionally, a sizable portion of skilled nonimmigrant workers can renew their status indefinitely, which makes the temporary designation of their status artificial. Greater numbers of nonimmigrants working in the United States will likely increase the number seeking to stay in the country permanently, thereby contributing to the EB queue.

## Economic, Labor Market, and Demographic Trends[93]

Observers of employment-based immigration trends note that the size and composition of the U.S. economy has changed significantly since 1990 when the EB immigration limit of 140,000 was established. Gross domestic product (GDP) has more than doubled from $9.4 trillion in the first quarter of 1990 (Q1 1990) to $19.8 trillion in Q4 2021.[94]

Despite economic growth, some measures have pointed to a slowdown in productivity growth and economic dynamism—as measured by business start-up rates and gross worker flows, for

[90] See, for example, Daniel Costa and Ron Hira, *The Department of Homeland Security's proposed STEM OPT extension fails to protect foreign students and American workers*, Economic Policy Institute, December 1, 2015; and Matthew Bultman, "OPT Extension Is Hurting Us, Tech Workers Tell DC Circ.," *Law360*, February 4, 2016. For information on taxation rules for F and other nonimmigrants, see Internal Revenue Service (IRS), "U.S. Tax Guide for Aliens," Publication 519, March 4, 2020, pp. 42-43, https://www.irs.gov/pub/irs-pdf/p519.pdf. See also IRS, "Aliens Employed in the U.S. – Social Security Taxes," November 3, 2020, https://www.irs.gov/individuals/international-taxpayers/aliens-employed-in-the-us-social-security-taxes.

[91] See, for example, Daniel Costa, "Temporary Migrant Workers or Immigrants? The Question for U.S. Labor Migration," *The Russell Sage Foundation Journal of the Social Sciences*, vol. 6, no. 3 (November 2020); and Muzaffar Chishti and Jessica Bolter, *Despite Political Resistance, Use of Temporary Worker Visas Rises as U.S. Labor Market Tightens*, Migration Policy Institute, June 20, 2017.

[92] See, for example, Jeremy Neufeld, *Optional Practical Training (OPT) and International Students After Graduation*, Niskanen Center, March 2019; and Lazaro Zamora, *Are "Temporary Workers" Really Temporary? Turning Temporary Status into Green Cards*, Bipartisan Policy Center, May 2016.

[93] In this report section, permanent employment-based immigrants and temporary nonimmigrant workers are discussed broadly as one group.

[94] Figures are in 2012 dollars. Bureau of Economic Analysis (BEA), Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/GDPC1, September 21, 2021.

example—particularly since 2000.[95] Dynamic economies foster innovation and open channels to apply new ideas to production and the delivery of services, and create an environment in which new businesses open, successful firms thrive, and unproductive firms exit, thereby contributing to a more efficient, productive economy. Consequently, for some, evidence of declining dynamism raises concerns about future U.S. economic growth.[96]

Industry composition in the United States has also changed since 1990, affecting, among other things, the mix of skills needed to meet employer demand. For example, as a percentage of GDP, the value added of the computer systems design and related services subsector more than tripled between 1990 and 2020 (the most current year of annual data available), and the value added of the data processing, internet publishing, and other information services subsector quintupled.[97] Employers' demand for STEM skills have increased across several occupation groups since 1990,[98] and relatively high growth in STEM employment is expected to continue.[99]

Several studies identify positive contributions of foreign-born workers—particularly highly educated immigrants—to the U.S. economy.[100] Foreign workers have helped meet employers' demand for hard-to-find skills in STEM jobs, advanced new ideas and methods of production, and launched start-ups, boosting U.S. commerce and creating jobs. Given concerns around declining dynamism, and changes in U.S. industrial structure and skill demands, these contributions may be more sought-after today than when Congress revised the existing employment-based immigrant levels in 1990.

To some, the relatively large contribution of highly educated foreign workers to U.S. innovation and commerce may lend support to increasing annual numerical limits on foreign-born workers as a strategy to boost economic dynamism. By some estimates, for example, immigrants accounted for about a quarter of U.S. patent awards and entrepreneurship in recent years.[101] One study identifies economic impacts of immigration across several measures (e.g., job creation and destruction, patents per person, wages) at the local (county) level.[102]

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[95] Ryan A. Decker, John Haltiwanger, Ron S. Jarmin, and Javier Miranda, "Declining Dynamism, Allocative Efficiency, and the Productivity Slowdown," *American Economic Review, Papers and Proceedings*, vol. 107 (2017), pp. 322-326.

[96] See, for example, U.S. Congress, Senate Committee on Small Business and Entrepreneurship, *America Without Entrepreneurs: The Consequences of Dwindling Startup Activity*, 114th Cong., June 29, 2016.

[97] Value added is the difference between the value of final produced goods and the cost of materials or supplies used in producing them. BEA, *Value Added by Industry as a Percentage of Gross Domestic Product* (Annual Data, 1990 to 2020), https://apps.bea.gov/iTable/index_industry_gdpIndy.cfm. Data for 1990 are in BEA's *Historical 1947-1997 Data.*

[98] See, for example, David J. Deming and Kadeem Noray, "STEM Careers and the Changing Skill Requirements of Work," *National Bureau of Economic Research*, Working Paper 25065, June 2019. The estimated increase in STEM jobs depends on the occupational classification used in the analysis (i.e., which jobs are counted as STEM jobs).

[99] BLS projects that STEM employment will grow at rate of 10.5% between 2020 and 2030, whereas non-STEM employment is projected to grow by 7.5%. BLS, *Table 1.11 Employment in STEM occupations, 2020 and projected 2030*, https://www.bls.gov/emp/tables/stem-employment.htm.

[100] For a summary of the extensive literature on this topic, see National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, ed. Francine D. Blau and Christopher Mackie, National Academies Press, 2017.

[101] For a summary of studies on the contribution of immigrants to patents and startups, see Sari Pekkala Kerr and William R. Kerr, *Immigration Policy Levers for U.S. Innovation and Startups*, NBER Working Paper 27040, April 2020; and Gordon H. Hanson and Matthew J. Slaughter, *High-Skilled Immigration and the Rise of STEM Occupations in U.S. Employment*, NBER Working Paper 22623, September 2016.

[102] Konrad B. Burchardi et al., *Immigration, Innovation, and Growth*, NBER Working Paper No. 27075, May 2020, https://www.nber.org/papers/w27075 (hereinafter referred to as "Burchardi et al. 2020").

However, the relationship between immigration, innovation, and economic outcomes is complex.[103] For example, the same economic impacts study cited above found that local impacts were much stronger for highly educated immigrants; by contrast, it found that "an inflow of relatively uneducated migrants has almost no effect on local innovation." Further, the spillover effects of immigration on selected economic outcomes of neighboring communities dissipated over geographic distance, suggesting that effects may be concentrated in communities that attract highly educated immigrants.[104]

More broadly, immigration's impact on the U.S. economy has become increasingly significant in light of two fundamental U.S. demographic trends: declining birthrates and increasing mortality. During the past three decades, for example, the U.S. birthrate has declined, with the average number of births per thousand women aged 15 to 44 falling from 71 in 1990 to 56 in 2020.[105] Mortality, on the other hand, has increased because of aging *baby boomers*—the large post-World War II population cohort born between 1946 and 1964. Over the past decade, for example, the current population aged 55 and above has increased by 27%, or 20 times faster than the population under age 55 (1.3%).[106]

Both trends have significantly reduced the level of growth in the total U.S. population and civilian labor force. They have also contributed to foreign-born workers' accounting for a disproportionate share of such growth (**Table 4**). In 2020, the foreign born represented about one seventh (14%) of the total U.S. population and about one sixth (17%) of the total U.S. civilian labor force age 16 and above. Yet between 1990 and 2020, the foreign born accounted for 30% of the growth in total U.S. population growth and 57% of the growth in the total U.S. civilian labor force.

More recently, declining international migration to the United States has contributed to slowing U.S. population growth.[107] For example, between 2001 and 2015, net international migration ranged between about 750,000 and 1 million persons annually; it has since declined to 477,000 from 2019 to 2020; and 247,000 from 2020 to 2021.[108] Despite that decline, it still exceeded U.S. natural increase (births over deaths) in 2021 for the first time in U.S. history.[109]

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[103] Measuring this relationship is further complicated by methodological challenges, such as the difficulty of separating the contribution of immigrants to strong economic outcomes from the tendency of immigrants to locate in thriving areas.

[104] Burchardi et al. 2020.

[105] Brady E. Hamilton, Joyce A. Martin, and Michelle J.K. Osterman, *Births: Provisional Data for 2020*, Vital Statistics Rapid Release Report 012, National Center for Health Statistics, May 2021.

[106] William Frey, "What the 2020 census will reveal about America: Stagnating growth, an aging population, and youthful diversity," Brookings Institution, January 11, 2021.

[107] The Bureau attributes this recent decline to travel restrictions and the impact of COVID on international migration. See Jason Schachter, Pete Borsella, and Anthony Knapp, "New Population Estimates Show COVID-19 Pandemic Significantly Disrupted Migration Across Borders," U.S. Census Bureau, December 21, 2021.

[108] See Jason Schachter, Pete Borsella, and Anthony Knapp, "Net International Migration at Lowest Levels in Decades," U.S. Census Bureau, December 21, 2021. For international migration trends since 2001, see Luke Rogers, "U.S. Population Grew 0.1% in 2021, Slowest Rate Since Founding of the Nation," Figure 2, U.S. Census Bureau, December 21, 2021. The Census Bureau uses the term *international migration* to refer to the movement of people across a national border. It includes both *immigration* (migration to a country) and *emigration* (migration from a country), with *net international migration* being the combination of the two. See U.S. Census Bureau, "About Migration and Place of Birth," December 3, 2021.

[109] The Census Bureau estimated net natural increase at 148,043 compared to net international migration of 244,622. Deaths from the COVID pandemic amplified the trend of declining natural increase in recent decades. See U.S. Census Bureau, "New Vintage 2021 Population Estimates Available for the Nation, States and Puerto Rico," Press Release, December 21, 2021.

**Table 4. Native-Born and Foreign-Born Workers in the U.S. Labor Force, 1990 and 2020**

| | 1990 | 2020 | Change 1990-2020 | % Change 1990-2020 |
|---|---|---|---|---|
| Total Population | 248,709,873 | 331,449,281 | 82,739,408 | **33%** |
| Native-Born Population | 228,909,873 | 286,549,281 | 57,639,408 | **25%** |
| Foreign-Born Population | 19,800,000 | 44,900,000 | 25,100,000 | **127%** |
| **% Foreign Born of Total Population** | **8%** | **14%** | **30%** | |
| | | | | |
| Total Civilian Labor Force Age 16+ | 124,800,000 | 162,744,000 | 37,944,000 | **30%** |
| Native-Born Civilian Labor Force Age 16+ | 119,185,000 | 135,429,000 | 16,244,000 | **14%** |
| Foreign-Born Civilian Labor Force Age 16+ | 5,615,000 | 27,315,000 | 21,700,000 | **386%** |
| **% Foreign Born of Total Civilian Labor Force** | **4%** | **17%** | **57%** | |

**Sources:** Total Population, 1990 and 2020: U.S. Census Bureau, *Historical Population Change Data (1910-2020)*, April 2021; Native-Born Population, 1990 and 2020: derived by subtracting foreign-born population from total population; Foreign-Born Population, 1990: Susan J. Lapham, Patricia Montgomery and Debra Miner, *We, The American Foreign Born*, U.S. Census Bureau, September 1993; Foreign-Born Population, 2020: Jeanne Batalova, Mary Hanna and Christopher Levesque, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute, February 2021; Total Civilian Labor Force Age 16+, 1990: U.S. Census Bureau, *Statistical Abstract of the United States: 1992*, Table 609, 1992; Total Civilian Labor Force Age 16+, 2020: Bureau of Labor Statistics, *Civilian labor force, by age, sex, race and ethnicity*, Table 3.1, Employment Projections, September 2021; Native-Born Civilian Labor Force Age 16+, 1990 and 2020: derived by subtracting foreign-born civilian labor force age 16+ from total U.S. civilian labor force age 16+; Foreign-Born Civilian Labor Force Age 16+, 1990: Joseph R. Meisenheimer II, "How do immigrants fare in the U.S. Labor Market?," *Monthly Labor Review*, December 1992; Foreign-Born Civilian Labor Force Age 16+, 2020: Average of monthly counts from U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, https://www.bls.gov/webapps/legacy/cpsatab7.htm.

**Notes:** Foreign Born percentages shown in bold are column percentages. For example, the 30% figure refers to the change between 1990 and 2020. Labor force Includes employed and unemployed workers.

The result of these three trends—declining birthrates, increasing mortality, and recently declining net international migration—has been the slowest U.S. population growth (0.1% from 2020 to 2021) recorded since the country's founding.[110] Some observers have linked these trends to the need to increase immigration levels.[111] Others have questioned that assessment as well as the country's capacity to absorb immigrants.[112]

[110] See Luke Rogers, "U.S. Population Grew 0.1% in 2021, Slowest Rate Since Founding of the Nation," U.S. Census Bureau, December 21, 2021.

[111] See, for example, Ali Noorani and Danilo Zak, *Room to Grow: Setting Immigration Levels in a Changing America*, National Immigration Forum, February 2021.

[112] See, for example, Steven A. Camarota, "There Is No Evidence that Population Growth Drives per Capita Economic Growth in Developed Economies," Center for Immigration Studies, June 1, 2021; and Steven Camarota, "The Case Against Immigration," *Foreign Affairs*, March 31, 2017. For articles on Americans' views of immigration policy, see, for example, Jeffrey M. Jones, "Americans Remain Divided on Preferred Immigration Levels," Gallop, July 23, 2021; National Immigration Forum, "Polling Update: Americans Continue to Resist Negative Messages about Immigrants, but Partisan Differences Continue to Grow," September 18, 2020; and Claire Brockway and Carroll Doherty, "Growing share of Republicans say U.S. risks losing its identity if it is too open to foreigners," Pew Research Center, July 17, 2019.

# Policy Options Within the Current Framework

Legislative proposals to revise the employment-based immigration system vary widely in scope. Some proposals are limited to revising or eliminating the 7% per-country ceiling, thus altering *who* receives the current statutorily mandated number of EB green cards rather than *how many people* are able to receive them. Others would alter the current numerical limits for EB immigrants, either alone or combined with revisions to numerical limits on other permanent immigrant categories. Some would change the criteria by which immigrants are selected. Despite their distinct approaches and scopes, many proposals seek to address a situation that some consider emblematic of systemic dysfunction: the sizable and lengthy employment-based queue.

## The Employment-Based Queue

The queue of prospective EB immigrants waiting to receive green cards continues to be a significant immigration policy issue.[113] The queue currently numbers an estimated 870,000 prospective EB immigrants and their family members, most of whom reside lawfully in the United States and are seeking LPR status through the EB2 and EB3 categories.[114] Many individuals in the queue must wait years and in some cases decades to acquire a green card.[115] As sponsored employment-based immigrants with approved EB petitions, they have met the EB eligibility criteria and are employed in their fields. The long waiting times impose financial, and career and family hardships.[116] Some also contend that such extended wait times for LPR status not only prevent these individuals from contributing more to the U.S. economy, but also discourage other talented prospective students and immigrants from seeking education and employment in the United States.[117]

This queue exists because U.S. employers sponsor more foreign nationals and their family members for EB1, EB2, and EB3 employment-based green cards each year than can be issued under current INA annual limits. In addition, most H-1B visa recipients—a key nonimmigrant pathway to EB

[113] For more information, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[114] Ibid. This estimate is based solely on immigrant petitions that USCIS has processed and approved. It does not account for employment-based immigrant petitions or adjustment of status applications that USCIS has not yet fully processed. USCIS issues quarterly processing reports for all applications and petitions. See for example, USCIS, "Number of Service wide Forms By Quarter, From Status, and Processing Time, Fiscal Year 2022, Quarter 1."

[115] Some have suggested revising the employment-based system by statutorily limiting the amount of time a foreign national with an approved employment-based petition must wait to receive LPR status. See Stuart Anderson, "Chapter 2: Reducing Long Wait Times for Family-Sponsored and Employment-Based Immigrants," in Alex Nowrasteh and David J. Bier (eds.) *12 New Immigration Ideas for the 21st Century*, Cato Institute, 2020.

[116] Spouses of H-1B visa holders with approved LPR status who have been waiting in the EB queue at least a year can apply for work authorization, but other H-1B spouses are not allowed to work. Some families struggle to live on one income, particularly in expensive areas of the country where many H-1B are concentrated. Children of H-1B visa holders who are waiting with their parents in the EB queue run the risk of "aging out" of legal status when they reach age 21. While their H-1B-visa-possessing parents continue to reside legally, they become removable upon reaching age 21 unless they are able to obtain another status. Many such children consider the United States their home country. Some observers have characterized this population as *legal Dreamers*, corresponding to *Dreamers* who entered the United States at a young age with their parents but who lack lawful immigration status. For more information, see CRS Insight IN11844, *Legal Dreamers*.

[117] See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *'Why Don't They Just Get in Line?' Barriers to Legal Immigration*, Statement by Chairman Nadler, 117th Cong., 1st sess., April 28, 2021. For an earlier hearing with similar arguments, see U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Need for Green Cards for Highly Skilled Workers*, hearing, 110th Cong., 2nd sess., June 12, 2008.

sponsorship, as noted above—originate from India and China, the countries with the longest waiting times for EB LPR status.[118] As a result, the queue may not diminish substantially over time and could expand if current EB petitioning rates continue.[119]

**Table 5. Employment-Based Queue—Principal Immigrants Only**

(Number of approved principal immigrant petitions by origin country, September 2021)

| Country of Origin | EB1 (Priority) | EB2 (Profes-sional) | EB3 (Skilled) | EB3 (Other) | EB4 (Special) | EB5 (Investor) | Total |
|---|---|---|---|---|---|---|---|
| China | 79 | 23,648 | 6,542 | 863 | — | 15,794 | 46,926 |
| El Salvador | — | — | — | — | 9,921 | — | 9,921 |
| Guatemala | — | — | — | — | 13,359 | — | 13,359 |
| Honduras | — | — | — | — | 8,466 | — | 8,466 |
| India | 65 | 295,933 | 61,576 | 146 | — | — | 357,720 |
| Mexico | 3 | — | — | — | 1643 | — | 1,646 |
| Philippines | — | — | 132 | — | — | — | 132 |
| All Other | 102 | 3 | 100 | 2 | — | — | 207 |
| **Total** | 249 | 319,584 | 68,350 | 1,011 | 33,389 | 15,794 | 438,377 |

**Source:** USCIS, *Form I-140, I-360, I-525 Approved Employment-Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth As of September 2021*.

**Notes**: "—" indicates either no category value or values too small to meet disclosure standards.

The most recent publicly available USCIS data indicate that 438,377 foreign nationals possessed approved employment-based petitions and were waiting for an available EB visa number as of September 2021 (**Table 5**).[120] Indian nationals, with 357,720 approved petitions (82%), and Chinese nationals, with 46,926 approved petitions (11%), together account for 93% of the EB queue. By preference category, EB2 and EB3 petitioners represented 73% and 16% of the queue, respectively.

The numbers presented in **Table 5** represent *principal* immigrants, not *derivative* (family member) immigrants. Multiplying the number of principal immigrants by a "derivative multiplier" yields an estimated number of accompanying derivative immigrants (**Table 6**).[121] Summing principal and derivative immigrants yields the estimated total of foreign nationals approved for LPR status who are waiting in the EB queue to receive it.

[118] In FY2020, Indian and Chinese nationals made up 74.9% and 12.1%, respectively of all H-1B petition beneficiaries. See DHS, *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2020 Annual Report to Congress*.

[119] See CRS Report R46291, *The Employment-Based Immigration Backlog*. Congressional proposals to address the visa queue itself have taken a range of forms. For example, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) introduced in the 113th Congress would have eliminated much of the family-based and employment-based queues over seven years. In contrast, the RAISE Act (S. 1720) introduced in the 115th Congress would have invalidated almost all petitions held by persons waiting in the queue.

[120] USCIS, *Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth As of September 2021*.

[121] The derivative multiplier is the ratio of counts of primary and derivative immigrants who were granted LPR status, as recorded in Table 7 of the DHS *Yearbook of Immigration Statistics 2019*. For example, each approved EB1 petition represents an average of 2.52 persons seeking LPR status: one principal immigrant and 1.52 derivative immigrants. CRS used 2019 data rather than 2020 data, because the former did not include the distorting impact of COVID-19.

**Table 6. Employment-Based Queue—Principal and Derivative Immigrants**

(Number of approved principal immigrant petitions and estimated derivative immigrants, September 2021)

| | EB1 (Priority) | EB2 (Profess-ional) | EB3 (Skilled) | EB3 (Other) | EB4 (Special) | EB5 (Investor) | Total |
|---|---|---|---|---|---|---|---|
| Principal Immigrant Petitions | 249 | 319,584 | 68,350 | 1,011 | 33,389 | 15,794 | 438,377 |
| Derivative Immigrant Multiplier | 1.52 | 0.99 | 1.08 | 0.48 | 0.36 | 1.77 | N/A |
| Estimated Derivative Immigrants | 378 | 316,974 | 73,954 | 488 | 12,178 | 27,886 | 431,857 |
| Total Estimated Immigrants | 627 | 636,558 | 142,304 | 1,499 | 45,567 | 43,680 | 870,234 |

**Source:** Principal Immigrant Petitions: USCIS, *Form I-140, I-360, I-525 Approved Employment-Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth As of September 2021*. CRS computed the derivative immigrant multiplier using figures from the DHS *Yearbook of Immigration Statistics 2019*, Table 7. See text for an explanation of computations.

**Notes**: N/A indicates not applicable for the category. Numbers may not be exact because of rounding.

Recent legislative proposals have attempted to address the queue, either by revising or eliminating the per-country ceiling, or by increasing the number of employment-based green cards issued.

## Revising or Eliminating the Per-Country Ceiling

Legislative proposals to revise or eliminate the 7% per-country ceiling for employment-based immigration have repeatedly been introduced in Congress (see "Recent Comprehensive Reform Proposals" section below).[122] In general, opponents of the 7% per-country ceiling characterize it as unfair to Indian and Chinese nationals who dominate the EB queue. They argue that eliminating it would have no impact on annual statutory EB immigration limits, which some in Congress would oppose changing.[123] Opponents of the per-country ceiling further contend that making prospective immigrants who are in the United States and seeking to adjust to LPR status remain in nonimmigrant status for much of their working lives undermines the legitimacy of the employment-based pathway to LPR status.[124] They point out that most foreign nationals in the EB queue already reside and work in the United States on temporary visas. Because these foreign nationals rely on their employers to sponsor them for LPR status, they cannot change jobs to seek better pay, working conditions, or career advancement. Forced to either remain with their employers or sacrifice their pending petitions and their place in the EB queue, they remain vulnerable to potential exploitation. Some argue that these circumstances incentivize employers to recruit Indian and

[122] Among the earliest examples of a bill with this provision is the Securing America's Borders Act (S. 2454) in the 109th Congress (from 2005 to 2006) which would have increased the per-country ceiling from 7% to 10%.

[123] See, for example, David Bier, *Fairness for High Skilled Immigrants Act: Wait Times and Green Card Grants*, Cato Institute, September 30, 2019; and Pema Levy, "Indian Nationals Say the Green Card Backlog Is Unfair. Silicon Valley's Plan to Fix It Could Be Too," *Mother Jones*, November 20, 2019.

[124] See, for example, Stuart Anderson, *Waiting and More Waiting: America's Family and Employment-Based Immigration System*, National Foundation for American Policy, October 4, 2011.

Chinese nationals over nationals from other countries who face relatively short waits before receiving LPR status.[125]

Supporters of the 7% ceiling cite the provision's original purpose: to prevent monopolization of employment-based green cards by nationals from only a few countries. The ceiling, they maintain, currently allows prospective immigrants from almost all countries in the world to acquire LPR status relatively quickly. It thereby expands and diversifies the skilled worker pool from which U.S. employers may draw. Eliminating the ceiling would increase access to the annual number of EB green cards for Indian and Chinese nationals and reduce it in equal measure for prospective EB immigrants from all other countries.[126] Because Indian and Chinese EB immigrants have been concentrated in specific industries, particularly information technology, and because they are the most constrained by the per-country ceiling, supporters of maintaining the ceiling argue that it helps other industries and institutions access the limited annual pool of skilled immigrants.[127] Supporters of the 7% ceiling warn that removing it would substantially increase green card waiting times for prospective immigrants outside of India and China. That, in turn, could discourage future prospective immigrants from around the world from choosing the United States as their destination for study or work. Supporters of the 7% ceiling also argue that removing it would not address what they contend is the more fundamental issue of too few EB green cards available every year; doing so, they argue, would merely reallocate waiting times among those in the EB queue.[128] Some of these critiques have been addressed in recent proposed legislation (see "Selected Employment-Based Legislation in the 117th Congress (2021-present)").

Eliminating the per-country ceiling could create unintended outcomes. Shorter wait times for LPR status could alter the decision calculus for nationals from countries with currently long wait times and encourage more of them to seek employment-based green cards.[129] If so, the expected reduction in wait times for nationals from these countries might not last.

## Increasing Overall Employment-Based Immigration

Debates about the annual level of employment-based immigration, like debates over the per-country ceiling, often highlight the employment-based queue. Proponents of raising EB immigration levels argue that doing so would correct the imbalance between the number of people annually seeking LPR status through employment sponsorship and the number of green cards available to them each year.

While some support increasing employment-based immigration, research provides mixed guidance on an appropriate employment-based immigration level. The assertion that immigration has generally benefited the U.S. national economy is not widely disputed. Concerns arise, however, over how increased immigration might affect particular worker groups. More specifically, there is

[125] See, for example, Maria L. Ontiveros, "H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers," *Berkeley Journal of Employment & Labor Law*, vol. 38 (2017), pp. 2-46.

[126] For a quantitative analysis of this process, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[127] See, for example, Jessica Vaughan, "Scrapping the Per-Country Cap Helps the Companies that Shun U.S. Tech Workers," Center for Immigration Studies, November 9, 2018; and Chris Musillo, "The Fairness for High-Skilled Immigrants Act Will Decimate Nurse Immigration," *ILW Immigration Daily*, March 12, 2019. The EAGLE Act introduced in the 117th Congress, discussed below, includes a reserve allotment for nurses within the EB3 category.

[128] See, for example, Ira Kurzban, "Congress is About to End Immigration of Skilled Workers in the U.S.," *Medium*, September 23, 2019.

[129] See, for example, Karin Fischer, "Latitudes: House Rejects Plan to Award Green Cards to International STEM Graduates," *The Chronicle of Higher Education*, July 13, 2022.

some uncertainty around whether immigrants fill positions left open by U.S. workers or compete with U.S. workers for similar jobs. Research on the impact of immigrant labor on the employment and wages of native (or resident) workers has produced mixed results, depending on the empirical methods, data sources, study timeframe, and which workers are examined.[130]

In theory, immigration may have relatively neutral impacts on incumbent workers' employment and wages if incoming foreign-born workers fill vacancies that cannot be filled by native-born workers. If immigration responds to increasing labor demand in certain industries or occupations, negative wage effects may be negligible. However, under some conditions, if immigrants compete with and can substitute for native-born workers, immigration may put downward pressure on wages and employment of native-born workers. On the other hand, some research indicates that immigration can improve productivity and employment if firms respond to increased labor supply by investing in technology that expands capacity, or if immigrant and native-born workers specialize in different occupations and native-born workers can upgrade their jobs.[131]

Some argue that, from a national interest perspective, current U.S. immigration limits may discourage skilled foreign workers from seeking graduate degrees and starting their careers in the United States.[132] According to this view, prospective immigrants who face the prospect of waiting for decades to obtain LPR status may choose to immigrate elsewhere to attend college, work, or start businesses. Some scholarship highlights the role of U.S. colleges and universities in attracting and training foreign students who contribute to U.S. innovation and supply needed skills to U.S. workplaces.[133] Some empirical research suggests that green card waiting times affect how many foreign STEM graduates remain in the United States to work.[134] U.S. firms seeking highly educated foreign workers or those with specific skill sets may face competitive disadvantages against firms in countries that provide permanent legal residence more quickly.[135]

Research on how temporary status affects economic decisions indicates that workers' incentives to invest in professional skills as well as host-country specific skills (e.g., mastering English) depend on how long foreign workers expect to remain in host countries.[136] Nonimmigrant workers who

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[130] See National Academies of Sciences, Engineering, and Medicine, The Economic and Fiscal Consequences of Immigration, ed. Francine D. Blau and Christopher Mackie (Washington, DC: The National Academies Press, 2016). Research cited distinguishes between impacts of temporary and permanent immigrant workers. For a discussion of foundational research on the impacts of immigration on host country labor markets, see George Borjas, "The Economic Analysis of Immigration," in Handbook of Labor Economics, eds. Orley Ashenfelter and David Card, vol. 3A (North Holland, 1999), pp. 1697-1760.

[131] Ibid.

[132] See, for example, Parija Kavilanz, "Immigrant doctors in rural America are sick of waiting for green cards," *CNN Money*, June 13, 2018; Stuart Anderson, "Will Congress Ever Solve The Long Wait For Green Cards?" *Forbes*, May 21, 2018; and The White House, *Modernizing and Streamlining Our Immigration System for the 21st Century*, July 2015.

[133] See, for example, Gordon H. Hanson and Matthew J. Slaughter, *High-Skilled Immigration and the Rise of STEM Occupations in U.S. Employment*, NBER Working Paper 22623, September 2016.

[134] See, for example, Shulamit Kahn and Megan MacGarvie, "The Impact of Permanent Residency Delays for STEM PhDs: Who Leaves and Why," *Research Policy*, vol. 49 (2020), pp. 1-22; Michael Roach and John Skrentny, "Why foreign STEM PhDs are unlikely to work for US technology startups," *Proceedings of the National Academy of Sciences of the United States of America*, vol. 116 (2019), pp. 16805-16810; and Pooja Khosla, "The Impact of Permanent Residency Delays for STEM PhDs: Who Leaves and Why," *Economic Analysis and Policy*, vol. 57 (2018), pp. 33-43.

[135] See, for example, Testimony of Stuart Anderson, Executive Director, National Foundation for American Policy, U.S. Congress, House Subcommittee on Immigration and Citizenship, *Oh Canada! How Outdated U.S. Immigration Policies Push Top Talent to Other Countries*, 117th Cong., 1st sess., June 24, 2021.

[136] Christian Dustmann and Joseph-Simon Görlach, "The Economics of Temporary Migrations," *Journal of Economic Literature*, vol. 54 (2016), pp. 98-136.

remain tethered to their sponsoring employers for extended periods, or whose mobility is otherwise curtailed, can have limited productivity gains.[137]

Legislative proposals to increase EB immigration have often included raising the current annual worldwide limit of 140,000 and/or excluding derivative immigrants (family members) from the annual limit (see the "Reform Proposals" section below). Other proposals would increase the employment-based proportion of total immigrants, sometimes by reducing immigration in equal measure from other LPR pathways. Immigrant pathways repeatedly targeted for reduction or elimination include the diversity immigrant visa, and the first, third, and fourth family-sponsored preference categories.[138]

## Maintaining or Reducing Employment-Based Immigration

Some question the arguments favoring the expansion of employment-based immigration and support maintaining current levels. Questioners posit that increasing the number of foreign workers in the U.S. labor market would negatively impact employment opportunities, worker training efforts, wages, and working conditions for native-born workers, particularly less-educated and disadvantaged groups as well as recent immigrants.[139] They have long contended (current COVID-era conditions excepted) that empirical studies have produced little evidence of tight labor markets, such as increasing real incomes and declining unemployment rates.[140]

Others argue that in certain industrial sectors that rely heavily on foreign workers, such as information technology, some U.S. employers have economic incentives to hire or outsource jobs to lower paid foreign workers and firms that sponsor them rather than hire or retrain native workers.[141] They question the utility of increasing employment-based immigration in light of research showing

[137] This occurs when a more economically productive match could be made between the nonimmigrant worker and a different employer, but visa restrictions limit the worker's ability to accept a new offer. Sari Pekkala Kerr and William R. Kerr, *Immigration Policy Levers for US Innovation and Startups*, NBER Working Paper No. 27040, April 2020.

[138] These preference categories, respectively, correspond to adult unmarried children of U.S. citizens (1st), adult married children of U.S. citizens (3rd), and siblings of U.S. citizens (4th). For more information about these immigrant pathways, see CRS Report R45973, *The Diversity Immigrant Visa Program* and CRS Report R43145, *U.S. Family-Based Immigration Policy*. Some have questioned these proposals by citing research indicating that family-based immigration provides social and economic benefits not captured in immigration statistics. See, for example, Kerry Abrams, "What Makes the Family Special," *The University of Chicago Law Review*, vol. 80 (2013), pp. 7-28; and Guillermina Jasso and Mark R. Rosenzweig, "Do Immigrants Screened for Skills Do Better than Family Reunification Immigrants?," *International Migration Review*, vol. 29, no. 1 (Spring 1995), pp. 85-111.

[139] See, for example, George J. Borjas, "Yes, Immigration Hurts American Workers," *Politico Magazine*, September/October 2016; and National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, ed. Francine D. Blau and Christopher Mackie, National Academies Press, 2017, p. 189.

[140] For a summary of this argument, see Heidi Shierholz, "U.S. labor shortage? Unlikely. Here's why," Economic Policy Institute, May 4, 2021. Other studies find mixed evidence. See for example, Yi Xue and Richard C. Larson, "STEM crisis or STEM surplus? Yes and yes," *Monthly Labor Review*, BLS, May 2015. This extensive review finds that the STEM labor market is heterogeneous, with no shortage of STEM labor in academic settings, and high demand for STEM workers in some private settings.

[141] See, for example, Ron Hira and Daniel Costa, "The H-1B visa program remains the "outsourcing visa"," Economic Policy Institute, March 31, 2021; Kirk Doran, Alexander Gleber, and Adam Isen, "The Effects of High-Skilled Immigration Policy on Firms: Evidence from Visa Lotteries," National Bureau of Economic Research, July 2020; John Bound, Gaurav Khanna, and Nicolas Morales, "Understanding the Economic Impact of the H-1B Program on the U.S.," National Bureau of Economic Research, February 2017; and Testimony of Ronil Hira, Associate Professor of Public Policy, Howard University, U.S. Congress, Senate Subcommittee on Immigration and the National Interest, *The Impact of High-Skilled Immigration on U.S. Workers*, 115th Cong., 2nd sess., February 25, 2016.

that labor market competition in such fields has discouraged native-born workers from pursuing careers in these occupations.[142]

A broader argument for not increasing employment-based immigration is that it also fosters what some refer to as "chain migration," a label applied to the family-based INA provisions allowing U.S. citizens and LPRs to sponsor certain family members for green cards.[143] While employment-based immigrants are selected for their skills and ability to advance the interests of their U.S. employers, any family members they sponsor subsequently through the INA's family-based provisions may not possess comparable labor market skills.[144]

## Adjusting Employment-Based Immigration as Needed

Some have criticized the current employment-based immigration system for its lack of responsiveness to economic conditions. One proposed solution would include automatic adjustments to annual immigration levels based on current economic indicators.[145] An example of this approach can be found in a comprehensive immigration reform bill introduced in the 113th Congress (S. 744, discussed in the "Reform Proposals" section below). The bill contained provisions that would have allowed the number of newly created *merit-based immigrants* to fluctuate based on the national unemployment rate and the prior year's demand for such immigrant visas.[146]

Another proposal would adjust immigration levels based on recommendations from Congress or an independent entity.[147] An example of this approach can be found in the Jordan Commission report (also discussed below) which recommended that Congress regularly reevaluate annual admission

[142] See, for example, Tyler Ransom and John V. Winters, "Do Foreigners Crowd Natives out of STEM Degrees and Occupations? Evidence from the US Immigration Act of 1990," *ILR Review*, vol. 74 (2021), pp. 321-351; M. Demirci, "International students and labor market outcomes of US natives," *SSRN*, 3371469, 2019; Massimo Anelli, Kevin Shih, and Kevin Williams, "Foreign Peer Effects and STEM Major Choice," CESifo Working Paper Series No. 6466, 2017; and George J. Borjas, "Do Foreign Students Crowd Out Native Students from Graduate Programs?" Working Paper 10349, *NBER*, 2004.

[143] These categories include spouses, minor and adult children, parents, and siblings for U.S. citizens; and spouses and minor and adult unmarried children for LPRs. See CRS Report R43145, *U.S. Family-Based Immigration Policy*. Recent estimates of the number of additional immigrants who arrive in the United States as the result of granting one person a green card range from about 3.5 to 6.5. See Marta Tienda, "Multiplying Diversity: Family Unification and the Regional Origins of Late-Age US Immigrants," *International Migration Review*, vol. 51 (2017), pp. 727-756; and Jessica Vaughan, *Immigration Multipliers: Trends in Chain Migration*, Center for Immigration Studies, September 2017.

[144] Few studies have compared the skills of employment-based immigrants with family members they sponsor. Data limitations hinder such analyses; neither USCIS nor DOS publish statistics on the education levels or occupations of family-based immigrants broken out by sponsoring LPR category. Other studies indicate that educated immigrants are likely to have similarly educated spouses. See, for example, Kira Olsen-Medina and Jeanne Batalova, "College-Educated Immigrants in the United States," Migration Policy Institute, September 16, 2020.

[145] See, for example, Daniel Griswold, "Chapter 1: Automatic Adjustment of the H-1B Visas and Employment-Based Green Card Caps," in Alex Nowrasteh and David J. Bier (eds.) *12 New Immigration Ideas for the 21st Century*, Cato Institute, 2020.

[146] S. 744, Section 2301. For more information, see archived CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[147] See, for example, Joanna Howe, "Does Australia Need an Expert Commission to Assist with Managing Its Labour Migration Program?" *Australian Journal of Labour Law*, vol. 27(2014), pp. 1-25; and Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum and Madeleine Sumption, *Harnessing the Advantages of Immigration for a 21st-Century Economy: A Standing Commission on Labor Markets, Economic Competitiveness, and Migration*, Migration Policy Institute, May 2009.

numbers and categories to ensure immigration policies met the nation's economic needs and immigrant absorptive capacity.[148]

Some in Congress and elsewhere are skeptical that an independent entity charged with evaluating current economic conditions could replace political negotiation and function as well as employers whose hiring decisions, according to some, is the best mechanism for meeting labor market requirements.[149] Canada, for example, has introduced a point system with mechanisms allowing officials to adjust immigration targets to meet the country's economic demands. Challenges with this system include public disengagement (because the topic of economic immigration is no longer controlled through legislation), and difficulties assessing applicants' full range of skills and talents beyond those measured by the program's eligibility criteria.[150]

## Automatic LPR Status for STEM Workers

STEM fields of study are considered essential for addressing complex technical and economic challenges.[151] The United States has long been a desirable destination for international students, and many such students pursue degrees in STEM fields.[152] In 2016, for example, foreign nationals comprised 71% of full-time graduate students in electrical engineering and 77% of those in computer science.[153] Foreign students are attracted to U.S. institutions of higher education for their quality of education and research as well as the prestige conferred by a U.S. degree. American colleges and universities, in turn, strive to attract top international students, who often fulfill critical roles in higher education by teaching and assisting with research. Foreign students, who typically do not qualify for many forms of college financial aid, are more likely than U.S. students to pay full tuition, thereby providing U.S. institutions with a key source of financial support.[154]

Because foreign students who complete graduate education in STEM and other fields in the United States have few options to apply for LPR status, many return to their home countries.[155] Some argue that the United States should try to retain STEM-trained foreign students after graduation by offering more options for foreign students to obtain LPR status, citing the potential benefits to the

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[148] See U.S. Commission on Immigration Reform, *Becoming an American – Immigration and Immigrant Policy*, Washington, DC, 1997, p. 62.

[149] For more on the challenges of immigration commissions, see Philip L. Martin and Eugen Stark, "Editorial: Expert commissions and migration policy making," *Migration Letters*, vol. 11 (2014), pp. 1-10; and Philip Martin and Martin Ruhs, "Labor Shortages and U.S. Immigration Reform: Promises and Perils of an Independent Commission," *International Migration Review*, vol. 45 (2011), pp. 174-187.

[150] For more information, see Daniel Hiebert, *The Canadian Express Entry System for Selecting Economic Immigrants: Progress and Persistent Challenges*, Migration Policy Institute, April 2019.

[151] See, for example, Executive Office of the President of the United States, Office of Science and Technology Policy, *Progress Report on the Implementation of the Federal STEM Education Strategic Plan*, December 2020.

[152] Of the 1,075,496 foreign students enrolled in U.S. institutions of higher learning, 52% were studying STEM disciplines in the 2019/2020 academic year. Of the 123,508 international scholars (defined as scholars on nonimmigrant visas engaged in temporary academic activities and not enrolled as U.S. students) in the United States in the same academic year, 77.5% specialized in STEM disciplines. Institute of International Education, *Open Doors Report on International Educational Exchange 2020*.

[153] See, for example, Stuart Anderson, *Setting the Record Straight on High-Skilled Immigration*, National Foundation for American Policy, August 2016.

[154] See CRS In Focus IF11347, *Foreign STEM Students in the United States*. Foreign students made up 12% of the total student population in 2015 but contributed nearly 30% of total tuition revenue at public universities in that year. See Education Data Initiative, "College Enrollment & Student Demographic Statistics," August 7, 2021.

[155] For more information, see Xueying Han and Richard P. Appelbaum, *Will They Stay or Will They Go: International STEM Students Are Up for Grabs*, Ewing Marion Kauffman Foundation, July 2016.

U.S. economy and the investments in their education made by U.S. institutions.[156] Others argue that giving foreign students with STEM training greater access to the U.S. labor market would displace domestic students entering the labor force and may discourage U.S. students from going into certain in-demand fields.[157]

## Other Options for Revising the Current Employment-Based System

Some argue that the current employment-based immigration system fails to procure the "best and brightest" workers from around the world.[158] They often cite the disproportionate number of EB immigrants employed in conventional IT occupations that require no more than a bachelor's degree.[159] One approach to revising the current EB system involves increasing immigrant selectivity. This could take several forms; one of these would be making the eligibility criteria more selective for the employment-based categories, as well as for dual-intent nonimmigrant visas like the H-1B.

Others point out that the INA imposes the same annual numerical limit of 40,040 individuals on the EB1 preference category—*persons with extraordinary ability*, *outstanding professors and researchers*, and *multinational executives*—as it does on the EB3 preference category—*skilled shortage workers with at least two years training or experience*. Some have proposed redistributing the number of green cards within the EB1, EB2, and EB3 categories to favor only the most skilled subcategories of immigrants.[160]

# Policy Options Beyond the Current Framework

Members of Congress have occasionally introduced legislation proposing large, systemic changes to the employment-based immigration system.[161] Recent prominent proposals include incorporating *points-based systems* that would admit immigrants based on their possession of certain advantageous characteristics and instituting *place-based* immigration programs that would allow states and/or localities to petition for immigrants based on local labor market needs.

## Points-Based Systems

Some describe the current U.S. employment-based immigration system as *demand-driven* because private employers select immigrant workers. Although the INA's five EB preference categories

[156] See, for example, Ryan Heath, "Why Silicon Valley could become tomorrow's Detroit," *Politico*, December 18, 2020.

[157] See, for example, Letter from Bill Hagerty, United States Senator, to Bernie Sanders, United States Senator, October 22, 2021, J. M. Rieger, "For years, Bernie Sanders warned that increased immigration would lower the wages of U.S. workers. Now he barely mentions it.," *Washington Post*, March 16, 2020.

[158] See, for example, Norman Matloff, "Are foreign students the 'best and brightest?" Briefing Paper 356, Economic Policy Institute, February 28, 2013.

[159] Testimony of Ronil Hira, Associate Professor, Howard University, U.S. Congress, House Subcommittee on Immigration and Citizenship, *Oh Canada! How Outdated U.S. Immigration Policies Push Top Talent to Other Countries*, 117th Cong., 1st sess., June 24, 2021.

[160] See Testimony of Mark Krikorian, Executive Director, Center for Immigration Studies, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Need for Green Cards for Highly Skilled Workers*, 110th Cong., 2nd sess., June 12, 2008.

[161] For an overview of some immigration selection options, see Demetrios G. Papademetriou, Meghan Benton, and Kate Hooper, *Equipping Immigrant Selection Systems for a Changing World of Work (Transatlantic Council Statement)*, Migration Policy Institute, July 2019.

mandate specific employment-related characteristics of prospective immigrants, and although DHS and DOS must screen prospective immigrants for inadmissibility, employers decide which immigrants to sponsor for LPR status.

In contrast, *points-based systems* grant LPR status to immigrants based upon attributes associated with labor market benefits that extend beyond the needs of any specific sponsoring employer.[162] Points-based systems typically assign scores to each attribute. Applicants who receive a minimum total score (sometimes called a *pass mark*) or higher are then admitted as immigrants, subject to whatever annual numerical limits may be established. Point systems may also rate prospective immigrants on attributes associated with other desirable outcomes, such as English proficiency, social integration (e.g., having a U.S. citizen relative), having a job offer from a U.S. employer, or direct economic benefit (e.g., investment in a new commercial enterprise). Points-based systems can also incorporate tiers with separate scoring schemes to attract distinct immigrant subgroups (e.g., those in shortage occupations, STEM graduates, relatives of U.S. citizens, etc.). Some points-based systems allow scores to be adjusted to respond to changes in labor demand or other conditions (e.g., by changing the scores of different attributes). This feature converts a points-based system into a *hybrid system* that maintains immigrant selection criteria while incorporating the flexibility provided to employers of a demand-driven system.[163]

Points-based system proposals have been introduced in recent Congresses. Some would have augmented existing systems of selecting immigrants (e.g., through family relationships, or on diversity criteria). For example, S. 744 from the 113th Congress (discussed in the "Recent Comprehensive Reform Proposals" section below) would have established two points-based systems that would have also maintained some existing mechanisms for selecting immigrants. Other proposed points-based systems, such as the RAISE Act (S. 1720 from the 115th Congress (also discussed below)), would have entirely replaced the current employment-based system.

Proponents of points-based systems contend that the systems select immigrants based on their contribution to the nation's economic and labor market needs, which outweighs specific benefits to individual employers or benefits of reunifying immigrants with U.S.-based relatives.[164] Proponents assert that such systems possess clearly defined and transparent selection criteria, and they point to their current use in Australia, Canada, Great Britain, and New Zealand, among other countries.[165] In

[162] Points-based systems are sometimes referred to as *merit-based* immigration. This broad label also describes the current U.S. employment-based system to some extent, because its eligibility criteria emphasize labor market attributes such as educational attainment, work experience, and professional recognition (**Table 1**).

[163] For examples of some proposed points-based system, see Stephen Yale Loehr and Mackenzie Eason, *Recruiting for the Future: A Realistic Road to a Points-Tested Visa Program in the United States*, Cornell Law School, July 2020; and Douglas Holtz-Eakin and Jacqueline Varas, *Building a Pro-Growth Legal Immigration System*, American Action Forum, May 2019. For an alternative example of a points-based system, see Justin Gest, "Chapter 8: Immigration Moneyball," in in Alex Nowrasteh and David J. Bier (eds.) *12 New Immigration Ideas for the 21st Century*, Cato Institute, 2020.

[164] For two recent perspectives on points-based systems, see David J. Bier, "What Factors Should an Immigration Points System Include," Cato Institute, May 23, 2019; and Muzaffar Chishti and Jessica Bolter, "'Merit-Based' Immigration: Trump Proposal Would Dramatically Revamp Immigrant Selection Criteria, But with Modest Effects on Numbers," Migration Policy Institute, May 30, 2019. See also U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *An Examination of Point Systems as a Method for Selecting Immigrants*, hearing, 110th Cong., 1st sess., May 1, 2007; and U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *Employment-Based Permanent Immigration: Examining the Value of a Skills Based Point System*, hearing, 109th Cong., 2nd sess., September 14, 2006.

[165] For more information on the points-based systems of these and other countries, see Library of Congress, Law Library, *Points-Based and Family Immigration*: *Australia • Austria • Canada • Japan• South Korea New Zealand • United Kingdom*, File 2020-018552, January 2020.

these countries, points-based systems supplement, rather than replace, other systems for selecting immigrants, such as those based on family relationships.

Opponents of points-based systems contend that specific judgements of individual employers rather a single arrangement overseen by a government entity best determine labor market needs.[166] They cite relatively high unemployment rates among immigrants admitted under a points-based system in other countries as evidence to support demand-based systems or to use demand-based criteria (e.g., a job offer) for selecting immigrants.[167] They contend that limiting EB immigrant selection to points-based systems could harm industrial sectors not involved in technical production or innovation that produce critical goods and services (e.g., agriculture, food processing, construction) or that involve lower-skilled occupations.[168] Some warn that, absent an annual limit, the number of aspiring immigrants worldwide who could meet the criteria of proposed points-based systems would overwhelm the U.S. labor market. Some point to recent modifications of points-based systems as evidence that they may not work as intended.[169]

Other observers suggest that points-based systems may not work in the United States.[170] They note that countries where point-based systems currently operate, such as Canada and Australia, possess parliamentary systems of government that allow relatively quick changes to immigration policy in response to economic and labor market needs. They contend that unless the points-based system were to incorporate mechanisms that automatically adjusted admissions, Congress would need to pass legislation every time there was a need to change the number or types of immigrants admitted.

## Place-Based Immigration Programs

The current employment-based immigration system operates largely at the federal level, with decisions about who and how many immigrate determined for the entire nation. Some have proposed *place-based* systems that would decentralize that process for a portion of foreign-born workers. Such arrangements would assign admitted foreign nationals to live and work in specified locations such as a state, metropolitan area, or county. With the federal government maintaining its vetting and enforcement roles, these systems would allow states or municipalities to establish how many foreign nationals to accept, the criteria for their selection, and the duration of their stay.[171]

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[166] The Jordan Commission (discussed below), for example, rejected the use of points-based systems, arguing for the superiority of "the judgement of American families and employers within a framework that protects U.S. workers from unfair competition." See U.S. Commission on Immigration Reform, *Legal Immigration Report to Congress, Legal Immigration: Setting Priorities*, Washington, DC, 1995, p. 5.

[167] Demetrios G. Papademetriou and Kate Hooper, *Competing Approaches to Selecting Economic Immigrants: Points-Based vs. Demand-Driven Systems*, Transatlantic Council on Migration, Migration Policy Institute, 2019, p. 9.

[168] For a discussion of which sectors are expected to grow and contract in the coming decade, see Kevin Dubina et al., "Projections overview and highlights, 2019–29," *Monthly Labor Review*, BLS, September 2020.

[169] "What's the Point?," *The Economist*, July 7, 2016.

[170] Stuart Anderson, *The Impact of a Point-Based Immigration System on Agriculture and Other Business Sectors*, National Foundation for American Policy and National Immigration Forum, August 2017.

[171] For two placed-based approaches, see David J. Bier, "Chapter 5: State-Sponsored Visas," and Jack Graham and Rebekah Smith, "Chapter 6: The Community Visa: A Local Solution to America's Immigration Deadlock," in Alex Nowrasteh and David J. Bier (eds.) *12 New Immigration Ideas for the 21st Century*, Cato Institute, 2020. While the United States does not currently operate place-based admissions programs, states are involved in two U.S. immigration programs: the EB5 investor visa—that provides LPR status to foreign nationals who create jobs and invest in targeted areas—and the "Conrad 30" J visa waiver program—that allows foreign physicians who receive U.S. medical training to remain in the United States if they work in medically underserved areas. See CRS Report R44475, *EB-5 Immigrant Investor Visa* and CRS Report R47159, *Temporary Professional Foreign Workers: Background, Trends, and Policy Issues*.

Like the current employment-based system, place-based approaches are *demand driven*. However, instead of employers, state or local governments would petition for foreign workers based on the industrial and occupational needs in their areas. Some place-based proposals would admit foreign workers permanently, while others would provide temporary admission convertible to permanent status if applicants met certain residence, investment, or employment criteria. Most proposed place-based systems would supplement the federal immigration system, not replace it.[172]

Place-based proposals have been introduced in recent Congresses. S. 1040 in the 115th Congress and the identical H.R. 5174 in the 116th Congress would have created a new nonimmigrant visa category to admit foreign nationals to a state "to perform services, provide capital investment, direct the operations of an enterprise, or otherwise contribute to the economic development agenda of the state in a manner determined by the State." Under this plan, states would have opted into the system by creating a program—approved by their state legislatures and DHS—regulating participants' residence and employment and allowing changes of employers within the state or (under an interstate compact) within a group of states.[173]

Place-based visa programs currently supplement federal immigration systems in Canada and Australia. Canada's Provincial Nominee Program (PNP) allows provinces and territories to set criteria and nominate qualified foreign nationals who are then admitted to settle permanently in that province or territory.[174] Begun in 1998, the PNP accounted for a quarter of Canada's economic immigration by 2015 and has dispersed economic immigrants outside their historic concentrations in Ontario, British Colombia, and Quebec.[175] Australia began regional migration measures in 1995 to encourage immigrants to settle outside of Sydney, Melbourne, and Brisbane.[176] In 2015, state-based visas made up 19% of skilled immigration to Australia.[177]

In the United States, some proponents of place-based approaches tout them as a means of re-invigorating places experiencing population loss and economic decline.[178] One such proposal—dubbed the *Heartland Visa*—focuses on the Rust Belt and other parts of the United States undergoing above-average population aging and/or prime working-age population loss.[179]

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[172] See, for example, Michele Waslin, *Immigration at the State Level: An Examination of Proposed State-Based Visa Programs in the U.S.*, Bipartisan Policy Center, May 2020; and Brandon Fuller and Sean Rust, *State-based Visas: A Federalist Approach to Reforming U.S. Immigration Policy*, Cato Institute, April 23, 2014.

[173] The bills would have required that states keep DHS informed of participants' employment and addresses and any failures to comply with the program. Participants initially would have been admitted for renewable terms of up to three years. Participating states would have been allocated at least 5,000 nonimmigrant visas per year, with the maximum allocation based on state population, national GDP growth, and the state's program compliance. While participants could have applied for permanent status if they qualified under existing mechanisms, these bills would not have created a pathway to permanent status.

[174] Government of Canada, "How the Provincial Nominee Program (PNP) works," https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/provincial-nominees/works.html.

[175] While PNP participants are free to move to another province as soon as they arrive, the latest government evaluation of the program found high retention rates in the provinces of initial settlement. See Immigration, Refugees, and Citizenship Canada, *Evaluation of the Provincial Nominee Program*, November 2017.

[176] M. Chand and R.L. Tung, "Skilled immigration to fill talent gaps: A comparison of the immigration policies of the United States, Canada, and Australia," *Journal of International Business Policy*, vol. 2 (2019), pp. 333–355; and Australian Government, Department of Home Affairs, "Designated Regional Areas," March 2020.

[177] Ibid.

[178] Rick Su, "Immigration as Urban Policy." *Fordham Urban Law Journal*, vol. 38 (2010), pp. 363–391; Matt Bevilacqua, "A Few Americans Who Want to See Place-Based Immigration," *NextCity*, March 25, 2013; Steve Tobocman, *Revitalizing Detroit: Is There a Role for Immigration?*, Migration Policy Institute, August 2014; and Great Lakes Metro Chamber Coalition, *Supporting Place-Based Immigration in the Great Lakes Region*, August 2019.

[179] Adam Ozimek, Kenan Fikri, and John Lettieri, *From Managing Decline to Building the Future: Could a Heartland*

Supporters contend that many potential immigrants would agree to live in specified locations in exchange for the opportunity to work in the United States and that many places would benefit from immigrants' dispersion away from traditional urban destinations.[180]

Opponents of place-based approaches argue that admitting more foreign workers could depress wages for U.S. workers, and that places struggling with population loss and economic decline should focus on raising wages, improving benefits, and increasing training to keep or attract workers.[181] Opponents also argue that a place-based approach would be susceptible to corruption, citing scandals associated with the EB5 investor visa, an immigration program with a regional component.[182] Some argue that place-based approaches increase the risk for abuse of foreign workers, particularly if some type of indemnity agreement (e.g., a bond) is involved, essentially making the workers "indentured servants."[183] Opponents also question whether and how states could force visa recipients to remain in specific locations. If many such workers moved to more economically vibrant parts of the country, the purported benefits of a place-based approach would diminish.[184]

# Reform Proposals

Major reforms or proposed reforms to the employment-based immigration system in past decades have usually occurred within a comprehensive immigration reform (CIR) framework. CIR is a label that typically refers to omnibus legislation encompassing major immigration policy areas such as border security, immigration enforcement, employment eligibility verification, and legal temporary and permanent immigration, among others. CIR proposals also have included provisions to legalize some or all of the millions of unauthorized aliens currently residing in the United States. The following section summarizes a prominent CIR framework and several relatively recent CIR proposals.

## The Jordan Commission

To facilitate reforming the U.S. immigration system, Congress has sometimes convened federal commissions to evaluate major proposed reforms.[185] The most recent was the U.S. Commission on

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*Visa Help Struggling Regions*, Economic Innovation Group, April 2019.

[180] See Testimony of John Lettieri, President and Chief Executive Officer Economic Innovation Group, U.S. Congress, House Committee on Small Business, Subcommittee on Economic Growth, Tax, and Capital Access, *Small Business Economy: Opportunity Zones*, hearing, 116th Cong., 1st sess., October 17, 2019; and Brandon Fuller and Sean Rust, *State-based Visas: A Federalist Approach to Reforming U.S. Immigration Policy*, Cato Institute, April 23, 2014.

[181] Dan Cadman, *State-Based Visas: Unwise, Unworkable, and Constitutionally Dubious*, Center for Immigration Studies, May 9, 2017; David D. Haynes, "Are foreign workers the answer to Wisconsin losing people in their prime working years? Laboring for labor," *Milwaukee Journal Sentinel*, May 26, 2019.

[182] Dan Cadman, *State-Based Visas: Unwise, Unworkable, and Constitutionally Dubious*, Center for Immigration Studies, May 9, 2017. For information on the EB5 investor visa, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

[183] Dan Cadman, *State-Based Visas: Unwise, Unworkable, and Constitutionally Dubious*, Center for Immigration Studies, May 9, 2017.

[184] Ibid.

[185] In 1907, Congress and President Roosevelt established the United States Immigration Commission headed by Senator William Dillingham which, in 1911, released the 41-volume *Reports of the Immigration Commission* (https://libguides.lib.msu.edu/c.php?g=96158&p=625946). Policy organizations have also issued extensive recommendations for revising U.S. immigration policy. See, for example, Doris Meissner et al., *Immigration and America's Future: A New Chapter*, Migration Policy Institute, September 2006; Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy*, Council on Foreign Relations, Independent Task Force Report No. 63, New

Immigration Reform established by the Immigration Act of 1990 and chaired for several years by former Representative Barbara Jordan (hence, the Jordan Commission).[186] The Jordan Commission relied heavily on the findings of its predecessor, the U.S. Select Commission on Immigration and Refugee Policy (the Hesburgh Commission), which recommended extensive changes to the entire immigration system.[187] In the same year (1997) that the Jordan Commission concluded, the National Research Council (NRC) of the National Academy of Sciences published a landmark empirical study of immigration's impact on the nation.[188]

The Jordan Commission considered all forms of permanent immigration.[189] Regarding employment-based immigration, it recommended reducing the annual numerical limit from 140,000 to 100,000 and eliminating the existing 10,000 allocation to other (lesser skilled) immigrants within the third preference category. The commission based this recommendation on the findings of the 1997 NRC report showing that less educated immigrants were likely to compete for jobs with less educated American workers and more established immigrants. Less educated immigrants were also found to be likely to consume more in public services than their lifetime tax contributions. The reasoning for emphasizing higher-skilled employment-based immigration also stemmed from an anticipated *beneficial multiplier effect*, whereby immigrants with relatively high levels of education submit petitions for their similarly educated spouses and children.[190] The commission also recommended that the "lengthy, costly, and ineffectual labor certification system" be replaced by one relying on "market forces" (e.g., using industry-standard recruitment procedures, paying prevailing wages, complying with labor standards).[191] Congress did not enact key employment-based recommendations of the Jordan Commission, but they have appeared in subsequent legislative proposals, including those of recent Congresses discussed below.[192]

York, NY, 2009; and David Inserra, *Legal Immigration and the U.S. Economy: How Congress should Reform the System*, The Heritage Foundation, January 30, 2018.

[186] Barbara Jordan served in the U.S. House of Representatives from 1973 to 1979. See U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, Washington, DC, 1997 (hereinafter referred to as the "Jordan Report").

[187] U.S. Select Commission on Immigration and Refugee Policy, *Final Report: U.S. Immigration Policy and the National Interest*, Washington, DC, March 1, 1981. Theodore Hesburgh served as President of the University of Notre Dame from 1952 to 1987 and Chair of the U.S. Commission on Civil Rights from 1969 to 1972. Recommendations of the Hesburgh Commission undergirded the seminal Immigration Reform and Control Act of 1986 (IRCA). See Muzaffar Chishti, Doris Meissner, Claire Bergeron, "At Its 25th Anniversary, IRCA's Legacy Lives On," Migration Policy Institute, November 16, 2011.

[188] National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, ed. James P. Smith and Barry Edmonston (Washington, DC: National Academy Press, 1997).

[189] Jordan Report, pp. 67-69.

[190] See, for example, Kira Olsen-Medina and Jeanne Batalova, *College Educated Immigrants in the United States*, Migration Policy Institute, September 16, 2020, Figure 4.

[191] Jordan Report, p. 69. Some have criticized the labor certification process for being ineffectual and susceptible to fraud. See David North, "DoL IG's Report Is a Devastating Critique of Foreign Worker Programs," Center for Immigration Studies, November 23, 2020; and U.S. Department of Labor, Office of Inspector General, *Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs*, November 13, 2020.

[192] Some who support more restrictive immigration policies have cited key findings from the Jordan Report. Others have disputed this characterization. For two different perspectives, see David North, "Revisiting the Jordan Commission Report," Center for Immigration Studies, February 11, 2013; and Susan Martin, "Trump's Misuse of Barbara Jordan's Legacy on Immigration," Center for Migration Studies, February 5, 2018.

## Recent Comprehensive Reform Proposals

During the past two decades, certain major comprehensive immigration reform bills introduced in Congress would have substantially restructured employment-based immigration. In the 109th Congress, the Comprehensive Immigration Reform Act of 2006 (S. 2611) passed the Senate but was not considered in the House.[193] In the 110th Congress, a CIR bill (S. 1639) was considered in the Senate but failed to get cloture.[194] In the 113th Congress, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) passed the Senate but was not considered in the House. The employment-based provisions of these three proposals are discussed below.

### S. 2611 from the 109th Congress (2006)

S. 2611 was the first major CIR bill of the 109th and 110th Congresses that included provisions revising permanent immigration. Among other provisions, S. 2611 would have increased employment-based immigration in several ways: by increasing the annual numerical limit from 140,000 to 450,000 for ten years (FY2007-FY2016) and reducing it to 290,000 thereafter; by excluding derivative family members from the employment-based limit; and by recapturing unused family-based visa numbers from FY2001-FY2005. An amendment passed in the Senate would have capped total employment-based immigration from all these provisions at 650,000 annually between FY2007-FY2016.

S. 2611 would have also reallocated visa numbers among employment-based immigrant categories: from 28.6% to 15% for EB1 and EB2; from 28.6% to 65% for EB3; from 7.1% to unlimited for EB4; and from 7.1% to 5% for EB5. The bill would have exempted from numerical limits for ten years employment-based immigrants working in DOL-designated shortage occupations,[195] as well as their spouses and children.[196]

### S. 1639 from the 110th Congress (2007)

S. 1639 from the 110th Congress, like S. 2611 from the 109th Congress, contained provisions that would have affected all major facets of immigration policy including permanent employment-based immigration.[197] The bill would have overhauled employment-based immigration by replacing the first three preference categories with a multi-tiered points-based system based on employment

[193] The 109th Congress also considered the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) which was passed by the House but not considered by the Senate. H.R. 4437 was largely oriented toward immigration enforcement. It did not contain provisions altering employment- or family-based immigration levels, but would have eliminated the diversity immigrant visa. Lawmakers failed to form a conference committee, and House-passed H.R. 4437 and Senate-passed S. 2611 expired with the end of the 109th Congress.

[194] The title of S. 1639 was "A bill to provide for comprehensive immigration reform and for other purposes." Several of these bills emerged from prior bills introduced in Congress. For example, S. 2611 was a compromise bill that was introduced after the Senate failed to invoke cloture on its predecessor, S. 2454, the Securing America's Borders Act. For historical background on these bills, see archived CRS Report R42980, *Brief History of Comprehensive Immigration Reform Efforts in the 109th and 110th Congresses to Inform Policy Discussions in the 113th Congress*.

[195] Such shortage occupations are commonly referred to as Schedule A because of the subsection of the code, 8 U.S.C. §1182(a)(5)(A), from which DOL's authority derives. Schedule A currently lists nurses and physical therapists, as well as some persons deemed of exceptional ability in the sciences or arts. See 20 C.F.R. §656.5(a).

[196] In addition, aliens who had worked in the United States for three years and had earned an advanced degree in a STEM field would have been exempt from numerical limits, as would have certain widows and orphans who met specified risk factors. The bill would have also reduced the annual number of diversity immigrant visas from 55,000 to 18,333.

[197] For more background information, see archived CRS Report R42980, *Brief History of Comprehensive Immigration Reform Efforts in the 109th and 110th Congresses to Inform Policy Discussions in the 113th Congress*.

characteristics (occupation, employer endorsement, work experience), age, educational attainment, English proficiency, U.S. civics knowledge, and family relationships with U.S. citizens. U.S. employer sponsorship would not have been required, but points would have been awarded for a U.S. job offer. The bill would have eliminated the labor certification process required for EB2 and EB3 immigrants; the EB4 and EB5 categories would have remained unchanged.

### S. 744 from the 113th Congress (2013)

S. 744, a comprehensive immigration bill from the 113th Congress, would have substantially revised legal permanent immigration provisions.[198] It would have expanded the number of employment-based immigrants admitted each year by exempting from numerical limits:

- persons qualifying for the EB1 category;
- persons who earned a doctorate from a U.S. institution of higher education or the foreign equivalent;
- physicians who met foreign residence requirements under INA Section 212(e);[199]
- persons who earned a graduate degree in a STEM field from a U.S. institution within five years of petitioning for LPR status and who have a U.S. offer of employment in the related field; and
- derivative beneficiaries of employment-based immigrants.

S. 744 would have also substantially altered the EB preference categories. It would have expanded the EB1 category to include advanced professional degree holders with a U.S. job offer,[200] physicians accepted to a U.S. residency or fellowship program, and prospective employees of national security facilities. Under S. 744, the revised EB2 category would continue to consist of advanced degree holders, but its visa allotment would increase from 28.6% to 40% of the 140,000 total EB limit. The bill would have exempted from this new EB2 numerical limit foreign nationals with an advanced degree in a STEM field if they had a job offer and met other requirements. The bill would also have exempted their petitioning employers from obtaining labor certification required under INA Section 212(a)(5). S. 744 would have increased the EB3 category limit from 28.6% to 40% of the worldwide level and would have repealed the limit of 10,000 on "unskilled" workers within that 40%. It would have increased both the EB4 and EB5 category limits from 7.1% to 10%.

Also relevant to employment-based immigration, S. 744 would have established two major systems that it referred to as *merit-based*. The first would have provided for the admission of 120,000 to 250,000 LPRs annually, depending on the previous year's visa demand and average unemployment rate. During the first three years following enactment, visas would have been made available to

[198] For more information, see archived CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[199] INA Section 212(e) applies to J (exchange visitor) visa holders who either are sponsored by the U.S. government or a foreign government; entered the United States to obtain graduate medical education or training; or are nationals of a country that has deemed their fields of specialized knowledge or skill necessary to the development of the country. It requires that such J visa holders reside in their home countries for at least two years following their U.S. departure before they can be eligible to apply for LPR status or an H or L visa. For more information, see https://travel.state.gov/content/travel/en/us-visas/study/exchange.html.

[200] The requirement for a U.S. job offer could be waived. Under INA Section 203(b)(2)(B) certain foreign nationals with advanced degrees or exceptional ability may apply for LPR status without an employer sponsor or the PERM labor certification process if such employment is determined to be in the national interest. For more information, see USCIS, "Employment-Based Immigration: Second Preference EB-2."

foreign nationals who met existing criteria for the EB3 category. After the first three years, half of these visas would have been allocated based on characteristics such as educational attainment, job skills, and employment in certain fields, and the other half to workers in high-demand occupations that required less formal preparation. For both sets of workers, the points-based system would have prioritized younger working ages, English proficiency, U.S. familial relationships, origin country diversity, and civic engagement, among other characteristics.

The second system would have emphasized family-based and employment-based immigrant backlog reduction. Among other provisions, it would have eliminated the existing employment-based backlog by providing immigrant visas over seven years—according to immigrant petition filing date—to prospective immigrants waiting for at least five years in the queue. S. 744 would have also eliminated the per-country ceiling for employment-based immigrants and recaptured unused immigrant visas from past years.[201]

## Other Recent Reform Proposals

The legislation discussed below include bills that would have made or would make substantial changes to employment-based immigration policy. Some include provisions affecting other parts of the immigration system, but none are considered comprehensive immigration reform proposals such as the bills discussed in the previous section above. This section does not review all related legislation introduced in the past three Congresses. Bills presented below are intended to highlight the range of employment-based-related proposals. Few of the bills discussed below were acted upon.

### Selected Employment-Based Legislation in the 115th Congress (2017-2019)

In the 115th Congress, The Reforming American Immigration for a Strong Economy Act (RAISE Act, S. 1720) and The Securing America's Future Act (SAFE Act, H.R. 4760) were two of the bills introduced that would have substantially revised the employment-based system. S. 1720 would have replaced the existing employment-based immigration system with a points-based system that emphasized age, education, English proficiency, extraordinary achievement, a job offer, and an intention to invest in a new U.S. commercial enterprise.[202] Congress did not act on the bill. H.R. 4760 would have expanded employment-based immigration by eliminating the diversity immigrant visa and allocating its 55,000 annual limit equally among the EB1, EB2, and EB3 categories.[203] The SAFE Act failed to pass the House by a vote of 193-231.

[201] For more information on the number of potentially recapturable visa numbers, see CRS Congressional Distribution Memorandum, *Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers*, September 8, 2021, available upon request to congressional clients.

[202] For a comparison of S. 1720 with S. 744, see CRS Congressional Distribution Memorandum, *The RAISE Act of the 115th Congress: Comparison with Current Law and with Provisions of S. 744 of the 113th Congress, with Appendix*, November 30, 2017, available upon request to congressional clients.

[203] For a comparison of H.R. 4760 with S. 1720 and other prominent immigration reform bills and proposals, see CRS Congressional Distribution Memorandum, *Summary comparison of the Graham-Durbin immigration framework with the White House immigration proposal, S. 744 from the 113th Congress and six immigration-related bills from the 115th Congress*, February 2, 2018, available upon request to congressional clients.

## Selected Employment-Based Legislation in the 116th Congress (2019-2021)

Three prominent employment-based immigration proposals were introduced during the 116th Congress. All would have eliminated the 7% per-country ceiling, and two of the three would have increased permanent immigration levels.

In July 2019, the House passed the Fairness for High Skilled Immigrants Act (H.R. 1044).[204] The bill would have eliminated the 7% per-country ceiling on employment-based immigration over a three-year period (extended to a nine-year period in the Senate bill version) and maintained the current level of employment-based immigration.[205] The Senate considered its version of the bill (S. 386) and passed a substitute amendment (S.Amdt. 906). The House and Senate bills were not reconciled in conference before the end of the 116th Congress.

The Resolving Extended Limbo for Immigrant Employees and Families Act (RELIEF Act, S. 2603) also would have eliminated the 7% per-country ceiling for employment-based immigration. Unlike H.R. 1044, it would have also expanded EB immigrant numbers in two significant ways. S. 2603 would have eliminated the visa queue for both employment-based and family-based immigrants by issuing additional immigrant visas over five years. Congress did not act on the bill.

The Startup Act (S. 328), would have eliminated the 7% per-country ceiling for employment-based immigration. The bill also would have increased the number of employment-based immigrants by providing conditional LPR status to up to 50,000 student visa holders who had acquired advanced degrees in STEM fields. As long as they were "actively engaged" in their fields for five years, DHS would have automatically granted such individuals full LPR status.[206] The bill also would have provided conditional LPR status for up to 75,000 entrepreneurs. To acquire this conditional status, the entrepreneurs would have been required to (1) invest at least $100,000 in at least one new business, (2) employ at least two full-time employees unrelated to the entrepreneur in the first year, and (3) employ at least five such employees in each of the following three years. If such conditions were met after four years, DHS would have adjusted the conditional status of such individuals to full LPR status. Congress did not act on the bill.

## Selected Employment-Based Legislation in the 117th Congress (2021-present)

As of the date of this report, employment-based immigration proposals that have been introduced during the 117th Congress include those that contain provisions that would recapture unused immigrant visa numbers, eliminate the 7% per country ceiling, and increase the annual employment-based immigration limit.

Several bills would recapture unused immigrant visas. For example, the Preserving Employment Visas Act (H.R. 5498/S. 2828) would recapture employment-based visa numbers for FY2020 and FY2021 that were unused due to USCIS processing delays. The Healthcare Workforce Resilience

[204] The Fairness for High-Skilled Immigrants Act was first introduced in the 112th Congress. In July 2019, H.R. 1044 passed in the House by a vote of 365-65. In September 2019, Senator Mike Lee proposed a substitute amendment to a similar bill introduced in the Senate (S. 386) that would have modified the House-passed version, but it did not pass a unanimous consent vote. It has been reintroduced repeatedly, most recently as the EAGLE Act (H.R. 3648) in the 117th Congress. For more information on the bill version introduced in the 116th Congress, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[205] For more information on this proposal and related debates, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[206] *Actively engaged* is defined in the bill as employed in a STEM occupation or teaching a college-level STEM course. Such individuals seeking work in a STEM field would be granted conditional LPR status for up to one year following the expiration of their student (F) visa, and persons actively engaged in their STEM field would be granted conditional LPR status indefinitely.

Act (H.R. 2255/S. 1024) would recapture 40,000 unused employment-based visa numbers from FY1992-FY2020 for medical professionals. The Build Back Better Act (H.R. 5376), as passed by the House on November 18, 2021, would have recaptured all employment-based and family-sponsored preference immigrant visa numbers that remained unused from FY1992 to FY2021. It also would have prevented future unused employment-based visa numbers from being effectively lost after falling across to the family-based system, as described in the "Employment-Based Immigration Processing" section above.

Like the Fairness for High Skilled Immigrants Act from earlier Congresses, the Equal Access to Green cards for Legal Employment (EAGLE) Act of 2022 (H.R. 3648) would eliminate the 7% per-country ceiling for EB immigrants over a nine-year transition period. The bill would also allow a prospective immigrant in the EB queue and residing in the United States, whose immigrant petition had been approved at least two years prior to enactment, to file to adjust status even if an EB immigrant visa number were not immediately available. The act of filing to adjust status does not provide LPR status; a prospective immigrant would still have to wait until an immigrant visa number became available before actually adjusting to LPR status. However, filing an adjustment of status application provides prospective immigrants with some of the significant benefits that they would otherwise receive with LPR status while they wait for an immigrant visa number to become available. These benefits include the ability to remain in the United States without a valid nonimmigrant status, eligibility for advance parole,[207] and eligibility for an *employment authorization document* (EAD).[208] The bill would thus address several major restrictions for foreign nationals waiting in the queue (regardless of origin country) that detractors of the 7% ceiling have argued are burdensome, including the inability to change employers or to travel abroad. On April 6, 2022, the EAGLE Act was ordered to be reported by the House Judiciary Committee.[209]

The Backlog Elimination, Legal Immigration, and Employment Visa Enhancement Act (BELIEVE Act, S. 970) would also eliminate the 7% per-country ceiling for EB immigrants.[210] In addition, it would double the allotment for each employment-based preference category, except the EB4 category, thereby increasing the total annual EB limit from 140,000 to 270,000. It would exempt derivative family members from the limit, which, combined with the first increase to the total annual EB limit, would effectively quadruple annual EB immigration. In addition, it would exempt *Schedule A* nurses and physical therapists from the employment-based limit.[211] The bill would also exempt from numerical limits children of nonimmigrant workers with E, H, and L visas if such children had resided in the United States for at least a decade and were college graduates. For the children and spouses of the same nonimmigrants, the bill would grant work authorization. Finally,

[207] Advance parole allows a foreign national in the United States to travel abroad without having to obtain a visa in order to return to the United States. Advance parole, however, does not ensure U.S. entry upon arrival. Entry is granted at the discretion of the inspecting immigration officer at the port of entry. For more information, see CRS Report R46570, *Immigration Parole*.

[208] The EAD, or work permit, could be used with any U.S. employer and is not limited to the original employer. This eligibility also applies to the spouse and children of a principal immigrant who files to adjust status. For more information, see USCIS "Employment Authorization Document."

[209] The EAGLE Act also contains set aside provisions that would reserve 8,800 EB3 visa numbers for immigrants working in Schedule A occupations (see footnote 211) and their accompanying family members. It would also reserve 5.75% of EB2 and EB3 visa numbers not otherwise reserved for backlogged immigrants residing abroad who are not from India and China.

[210] The BELIEVE Act was also introduced in the 116th Congress as S. 2091.

[211] Professions are included in the DOL's Schedule A (Group 1) list of shortage occupations when DOL determines that labor demand is sufficiently high that hiring non-U.S. workers would not adversely affect wages. 20 C.F.R. §656.5(a).

the bill would permit foreign nationals residing in the United States with approved immigrant petitions to file to adjust status, providing them with the benefits described above for H.R. 3648.

# Concluding Observations

Congress last substantially revised the employment-based immigration system in 1990. Since then, roughly twice as many prospective immigrants have been seeking EB green cards each year as are statutorily allotted. While the most highly skilled EB1 immigrants have relatively short waiting times to receive a green card, EB2 and EB3 skilled workers—particularly those from India and China—can wait decades. An estimated 870,000 prospective EB immigrants were waiting in the EB queue in September 2021. This figure is lower than in prior years.[212] The COVID-19 pandemic interrupted what were otherwise consistent trends. Assuming employment-based immigration levels revert to pre-COVID levels, the queue can be expected to increase again. Firms and employers have been responding to the lengthy queue of prospective employment-based immigrants by increasingly relying on the major nonimmigrant categories that permit U.S. employment.

Some immigration observers continue to argue for increased employment-based immigration, with or without reductions in other types of permanent immigration.[213] To support this argument, they cite the increased size of the U.S. economy since 1990, recent demographic trends highlighting the critical role of the foreign born for U.S. population and labor force growth, consistent high demand for technologically trained workers, the lengthy employment-based immigrant queue, and the expanding use of nonimmigrant workers.

Opponents of expanding employment-based immigration emphasize the need to protect employment opportunities for U.S. workers of all skill levels, particularly during economic downturns. Some Members of Congress have repeatedly indicated their willingness to consider such reforms only when combined with improvements in Southwest border security and control of unauthorized immigration.

Much of the legislative debate on employment-based immigration centers on college-educated workers. However, projected U.S. labor market growth highlights jobs that require relatively little formal education.[214] Current immigration laws include few avenues for such workers to immigrate permanently or temporarily.[215] This is particularly relevant for industrial sectors that have difficulty recruiting native-born workers under current wages and working conditions, such as agriculture, meat processing, food services, health care, and childcare. While automation and technology has reduced labor demand for some jobs, others continue to be characterized by relatively high proportions of foreign-born workers.[216] Some argue that U.S. employers' inability to fill positions

[212] As of April 20, 2020, for example, USCIS reported 592,322 approved pending petitions for prospective principal EB immigrants, which, when combined with 598,480 estimated prospective derivative immigrants, yields a total estimated backlog of 1,190,802. This represents the largest EB backlog reported by USCIS since it began publishing such statistics in 2018. See USCIS, *Forms I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth as of April 20, 2020*.

[213] See, for example, Dan Berger et al., *Unleashing international entrepreneurs to help the U.S. economy recover from the pandemic*, Brookings Institution, May 20, 2021.

[214] For example, among the 30 occupations with the highest projected growth between 2020 and 2030, three occupations (home health care and personal aides; restaurant cooks; and bartenders) had the highest employment levels in 2020, representing 52% of all employed workers among those 30 categories. See BLS, "Employment Projections, Fastest growing occupations," https://www.bls.gov/emp/tables/fastest-growing-occupations.htm, September 8, 2021.

[215] For more information, see U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *Why Don't They Just Get in Line?' Barriers to Legal Immigration*, 117th Cong., 2nd sess., April 28, 2021.

[216] For a discussion of immigrants' future prospects in the U.S. labor market, see Julia Gelatt, Jeanne Batalova, and Randy

requiring less formal education through immigration pathways has fostered a sizable unauthorized workforce.[217]

Others refute these arguments, pointing to high unemployment rates among less advantaged native-born workers—particularly racial and ethnic minorities and rural-based workers.[218] They consider tight labor markets and limited access to foreign workers essential for addressing labor market discrimination and benefiting the most disadvantaged U.S. workers. They also point out that who actually benefits from immigration depends on both the selection criteria and labor market impacts of such immigrants. They support maintaining current limits on lower-skilled permanent immigrants and more strictly enforcing laws and policies intended to prevent native-worker displacement.[219]

More fundamentally, some question the extent to which the employment-based system fulfills its objective of attracting "the best and the brightest" to the United States. They contend that the pronounced use of H-1B and other nonimmigrant visas by foreign-based outsourcing firms demonstrates that part of the current employment-based immigration system (permanent and temporary) may not be serving the national interest as intended by Congress. At a broader level, some observers have drawn a distinction between two broad conceptual frameworks for admitting foreign workers: an *assimilation* model and a *guest* model.[220] Under the former, immigrant workers who are admissible and eligible for LPR status acquire it relatively promptly, are encouraged to naturalize, and become integrated as civic participants.[221] Under the latter, seen in countries with restricted citizenship, temporary workers have a narrow or nonexistent path to citizenship in the host country. Within the U.S. immigration system, these two models might be analogous to the experience, respectively, of family-based immediate relatives who face no statutory limit-based waiting times, versus prospective employment-based immigrants who reside and work in the United States and who may wait for decades in the backlog with limited employment mobility and other restrictions.

Against this backdrop of competing arguments and concerns, policymakers have introduced legislative proposals to revise employment-based immigration in a variety of ways. Proposals have ranged from making relatively limited changes to the current system to overhauling substantial portions of immigration policy. Among the former, bills such as the EAGLE Act would eliminate

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Capps, *Navigating the Future of Work: The Role of Immigrant-Origin Workers in the Changing U.S. Economy*, Migration Policy Institute, October 2020.

[217] The agricultural sector represents one example where legislative proposals have been repeatedly introduced in Congress to grant LPR status to workers beyond current INA limits. Reasons include a sizable unauthorized workforce and concerns over maintaining a relatively stable and secure domestically produced food supply. Most recently, the Farm Workforce Modernization Act of 2021 (H.R. 1603) would allow temporary agricultural workers to apply for LPR status after an extended period of agricultural employment.

[218] See, for example, Rachel Rosenthal, "Biden is Caught Between Big Tech and Black Voters," *Bloomberg*, May 29, 2022.

[219] See, for example, Mark Krikorian and Roy Beck, "Immigration's Impact on Black Americans: A 200-Year Chronology," *Parsing Immigration Policy*, Episode 31, December 2, 2021.

[220] For a more thorough and nuanced treatment of these frameworks, see Susan K. Brown and Frank D. Bean, "Assimilation Models, Old and New: Explaining a Long-Term Process," Migration Policy Institute, October 1, 2006; and Slobodan Djanjić, "Some Essentials of a Workable Guest-Worker Program," *International Economic Review*, vol. 54 (2013), pp. 739-766.

[221] One form of integration for U.S. immigrants involves converting educational and occupational attainment acquired in foreign countries to licensing and certification credentials in the United States. Such practices can effectively serve as an alternative to skilled worker migration by elevating the occupation levels of immigrants already residing in the United States. For more information, see Jeanne Batalova and Michael Fix, *Leaving Money on the Table: The Persistence of Brain Waste among College-Educated Immigrants*, Migration Policy Institute, June 2021.

the per-country ceiling on individual countries—thereby reallocating who receives employment-based green cards—but would maintain the number of employment-based immigrants receiving LPR status each year. Some proposals not discussed above would increase immigration only for targeted populations whose qualifications are broadly considered beneficial to the United States.[222]

Proposals with a broader scope would increase employment-based immigration by raising the annual limit or excluding accompanying family members from it. Other proposals would eliminate existing immigrant categories and reallocate their annual limits to employment-based immigration.[223] While the former approach would increase employment-based immigration in isolation, the latter approach would do so while reducing annual limits for, or eliminating, other immigrant categories.

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## Acknowledgments

Sarah Caldwell, CRS Senior Research Librarian, provided research assistance for this report.

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[222] Examples include the Let Immigrants Kickstart Employment or LIKE Act (H.R. 4681) from the 117th Congress, which would grant LPR status to certain immigrant entrepreneurs in the United States; and the National Security Innovation Pathway Act (H.R. 7256) from the 116th Congress, which would have granted LPR status to scientists and technical experts whose work served national security interests.

[223] See, for example, Douglas Holtz-Eakin and Jacqueline Varas, *Building a Pro-Growth Legal Immigration System*, American Action Forum, May 2019.