



IDEAS  
ACTION  
RESULTS

# Reforming Employment-Based Immigration

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CHARTING A PATH FORWARD

## Introduction

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Comprehensive immigration reform has been “on the table” in Congress for two decades, with the last substantial reform to the legal immigration system passed in 1990 under then-President George H.W. Bush. Yet majorities of both parties [view](#) the current system as broken and support legalization for long-term undocumented residents, including Dreamers, and securing the southern border.<sup>1</sup>

However, [polling](#) by the Bipartisan Policy Center and Morning Consult in April and May 2021 offered a potential path forward for legislation by focusing on updating legal immigration, and economic-based immigration in particular.<sup>2</sup> The polls found that Democrats, independents,

**IMMIGRATION  
PROJECT**

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and Republicans were more likely to compromise on “providing visas for immigrants supporting U.S. economy by filling positions where companies cannot find U.S. workers,” than either border security or legalization.<sup>3</sup> This policy was also generally ranked in the middle in salience, meaning that it is neither the most nor least important to either party, providing an opening for policymakers to finally create movement on reform.

With this in mind, over several months in 2021 and 2022, BPC convened separate groups of diverse stakeholders, representing employers, labor union perspectives, and immigrant rights advocates, to discuss possible reforms to the United States’ lesser-skilled and high-skilled legal immigration systems. The groups considered what the legal immigration system might look like if designed from the ground up, instead of thinking about tweaks to the existing system. What follows is an overview of the conclusions we have drawn from these meetings that might provide a framework for future legal immigration reform discussions in Congress.

## **KEY TAKEAWAYS:**

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### **System fixes**

- Increasing overall clarity, transparency, and predictability of the immigration system
- Building more temporary to permanent pathways and dual intent pathways
- Streamlining immigration processes and increasing online accessibility
- Forming an Independent Permanent Commission on the Labor Market

### **Fixes to labor certifications and the visa regime**

- Ensuring complementarity (immigrants should fill needed “holes” in the U.S. workforce)
- Guaranteeing protection of U.S. workers
- Reimagining the labor certification process

### **Ensuring workers’ rights**

- Increasing portability to ensure workers are not “locked in” to undesirable employment situations
- Keeping workers and their families together
- Protecting workers’ rights and increasing employer accountability
- Rewarding students and workers who have built equity in the U.S.

# Areas of Agreement and Consensus

## A Note on Methodology

BPC reached out to dozens of stakeholders from groups that have been involved in the immigration reform space and immigrant advocacy over the last decade. Attempts were made to ensure diverse perspectives as well as political leanings were included. The working groups were conducted under Chatham House rules, so takeaways from the conversations included in this report represent the perspectives of BPC staff and not necessarily any specific group participant. While we have indicated the general tenor and content of the discussions, we also do not attribute any positions to any specific participants. Nevertheless, the wide ranging scope of the discussions and the areas of general agreement represent broad principles that can form the core of future legislation on improving the legal immigration system for foreign workers.

## Systemic Need for Clarity, Transparency, and Predictability

Both working groups agreed that the confusing nature of the legal immigration system was harmful to workers and employers. A systemic lack of clarity and transparency leads to instability and insecurity, with both workers and employers unable to make long-term plans. Members agreed that a well-functioning legal immigration system should clearly show what its policy intentions are, and what the governmental goals of the system are. It must define how the legal immigration system fits into the national interest, considering competitiveness, innovation, workforce needs, the protection of U.S. workers, and the desires of immigrants for employment and growth, while balancing these different interests. Consensus was that the legal immigration process should be as free from political influence as possible, and be data-driven, while still maintaining the ability for individual employers to demonstrate specific needs in hiring.

For lesser-skilled employers, the complexity of hiring and navigating the visa process for foreign workers often leads to reliance on third-party recruiters, who have more experience and capacity to manage the confusing immigration process. This can sometimes harm workers, as some recruiters may be exploitative or dishonest, and may not fully or accurately inform potential workers of job demands and their rights. For high-skilled employers, the uncertainty of the system sometimes makes it difficult to retain talent, as it is unclear whether workers will be able to stay in the country long term. This makes planning workflow difficult.

## Clear Pathways from Temporary to Permanent Status

Both the lesser-skilled and high-skilled working groups agreed that clearer pathways from temporary to permanent status were needed. Group members in the high-skilled working group underscored that this was a particular issue for international students who need an “on ramp” from temporary to permanent status as many are driven to other countries post-graduation when they are unable to find a path to stay. Group members concurred that building a clear pathway for these students would allow the U.S. to continue attracting and retaining top talent, which is essential to maintaining competitiveness in the modern economy. The need for more pathways for all workers from temporary to permanent status was also agreed upon. Both groups noted that the numerical caps on temporary and permanent visas do not match and create long backlogs and uncertainty for all.

Participants also agreed that worker choice is imperative in this scenario—each individual worker must be able to decide if they would like to reside permanently in the U.S. If they prefer not to, they should have the option to remain temporarily and continue working temporarily in the U.S. Many workers, especially in the lesser-skilled system, rely on jobs in the U.S. to send money home to their families and do not necessarily want to make a permanent move, instead preferring to return home to their families after their seasonal or temporary work is done. This pathway should remain an option for the workers that prefer it.

## Expanding Pathways for Dual Intent

The high-skilled working group discussed the need to expand dual intent and facilitated pathways to immigrant status for foreign students in the U.S. There are few clear pathways for F-1 (or J-1) students to remain permanently in the U.S. after graduation, though the Biden administration has tried to expand possibilities for foreign STEM graduates to stay in the U.S. through [agency actions](#) in January 2022.<sup>4</sup> Foreign students will build equity in the U.S. in the four years (or more) they spend here during schooling through friendships, relationships, and personal and professional networks. The group felt it was necessary to acknowledge that many would wish to remain, but that was not a negative thing, as many of these students could be critical to the United States' continued competitiveness.

Members in the lesser-skilled group agreed that the law should clarify that people in the lesser-skilled status are eligible to adjust status, and that the system should allow for dual intent.

## Making More Green Cards Available

Both groups believed that more green cards should be made available, pointing out that the present system is severely skewed toward temporary visas. While acknowledging that there would never be an equal balance of green cards to temporary visas, members agreed more green cards should be made available, and the system overall should be “harmonized” so that fewer backlogs exist, minimizing the need for workarounds to the system.

Members of the lesser-skilled group emphasized that green cards should not necessarily be based on education or skill levels, as current immigration law does, but rather on demonstrated labor needs and a history of work in the country. They also concurred that after workers have been here for a certain amount of time, they should be allowed to petition or apply for a green card.

Members in the higher-skilled group underscored the need to balance diversity with differential demand across countries, pointing to long wait times and backlogs for applicants from countries like India. While there was no specific consensus on a solution, a “belt and suspenders” approach was discussed, with one group member proposing that one-third of green cards be set aside for countries that have more applicants and opportunities, and two-thirds be set aside for countries with fewer opportunities. Such a system would ensure diversity and might decrease backlogs over time, though this is not guaranteed. Others suggested that for visas based on workforce needs and

skills, country of origin should be irrelevant, although supporting generally the idea of reducing backlogs and increasing diversity. Group members also discussed increasing incentives to recruit in other countries, for both higher education and employment to reduce the over-representation of certain countries in the visa system.

## Streamlining Processes

In the lesser-skilled group, members emphasized that immigration processes should be streamlined, and should be more easily accessible online to potential workers. They said that the processes can be confusing and difficult, both for employers and foreign workers, and argued that many elements of the process could be feasibly digitized, making it easier for both employer and employee. A suggestion was made that seasonal employers should have the ability to receive expedited processing, or a more technologically expedient application process, and there was no dissent on that suggestion.

## Independent Permanent Commission on the Labor Market

Both working groups agreed the visa system must more accurately reflect current workforce needs—an issue exacerbated in recent months by persistent labor shortages, which some economists [predict could](#) last years or become endemic.<sup>5</sup>

The possibility of an Independent Permanent Commission on the Labor Market was raised by group members for both lesser-skilled and high-skilled visa categories. Such a commission would be a neutral arbiter of data, staffed by career experts rather than political appointees, and ensure the visa system reflects labor market needs. Career experts would be drawn from multiple stakeholder sectors and would likely apply for appointment to the commission. The commission could examine labor data and trends and make recommendations on possible occupations to be added to Schedule A—the labor certification list of occupations determined to be in shortage and for which individual recruitment is not necessary—which has not been updated in decades. The commission could also identify other potential future workforce needs. These occupations could then receive preference when deciding who receives visas. There would need to be transparency for the work of this commission and the ability for interested parties to provide input throughout the process, perhaps through a specifically required consultation process. This could also minimize the need for lobbying and ensure that the commission’s decisions are as politically neutral as possible.

There was discussion in both cases about the ability of individual employers who felt they had an unmet need in the commission’s recommendations to be able to access the visa system, possibly with a specialized recruitment requirement with a potentially higher level of review. There was also discussion about whether the commission would actually set levels or make recommendations for Congress. Most agreed that Congress would want to have the final say but perhaps could have a limited means of overturning the recommendations, and some sort of fast-track up or down consideration. Again, these details would need to be addressed should any legislation on this issue move forward.



## Ensuring Complementarity

Members in both working groups underscored that any changes to the legal immigration system and visa regime must ensure that U.S. workers are protected, and that workers entering the country are complementary to existing workers in the country and not fostering undue competition. Guaranteeing a fair labor certification process is an essential part of ensuring complementarity. An Independent Permanent Commission on the Labor Market could help ensure this as a neutral external arbiter making data-driven decisions on occupation shortages.

## Reimagining Labor Certification

Working group members concurred that ensuring complementarity is essential to reimagining the labor certification process. Working group members in the high-skilled group agreed that the present labor condition application process to secure high-skilled worker visas is not a true domestic recruiting process and discussed solutions including expanding job advertisement placements and increasing transparency and clarity in the recruitment process. Given the consensus that conversion of temporary visas to permanent residence should be easier, the group agreed that the labor certification and recruitment could be moved to the front end of the temporary-to-permanent process in order to streamline the permanent residence application process. However, employer representatives cautioned that requiring a second, duplicative labor recruitment if the worker is being sponsored by the same employer as their temporary visa sponsor would undermine this goal.

## Increasing Portability

Members of both working groups advocated for increased portability specifically through permitting workers to change jobs and employers more easily, expressing concern that the current system locks workers in undesirable employment situations. They agreed that lesser-skilled workers should be able to leave exploitative working situations without pressure to stay due to their visa being tied to their employer, advocating for increased understanding and flexibility in such situations. On the high-skilled side, many working group members emphasized that workers often feel tied to one employer, since the employer sponsors their visa and it is difficult to “hop” visas and move from job to job, particularly if they are seeking sponsorship for permanent residence. The working group members agreed the transaction cost to workers changing jobs should be lower, and the process should be easier.

There was discussion among those representing employers of the employer’s interest in ensuring that the workers they sponsor stay with them for some period, especially if the employer devotes time and resources to the visa application. While there was agreement that workers should not be obligated to remain where they are subject to abuse, the appropriate period that a worker could be expected to remain was subject to discussion. Overall, employers agreed to increasing portability, especially if streamlining the process reduces the costs and time involved in sponsoring workers.

Nevertheless, members of both working groups cautioned against using portability as a “silver bullet,” arguing that increased portability would not solve all inequity issues between workers and employers and that enforcement of labor and sponsorship rules for employers was still necessary.

## Workers’ Rights and Employer Accountability

Employer accountability was a particular concern among members of the lesser-skilled working group, who expressed that lesser-skilled workers are particularly vulnerable to exploitation. Worker advocates noted that ensuring that workers are treated fairly, know their rights, and understand the job they are signing up for is crucial. Workers should also understand that they are protected from retribution if they make a complaint and should understand the mechanism to file a complaint. Members of this working group expressed that employer accountability is important from the employer side as well, remarking that exploitative employers create difficulties for employers who follow the rules. They stressed the need for increased employer accountability to meet standards, and consequences for employers that do not.

Working group members from the labor perspective, worker advocates, and some employer representatives expressed that more wage and hour inspectors as well as increased worksite enforcement would help ensure standards are met. They felt this would even the playing field for employers and ensure that good employers are successful while protecting workers and their rights. Other employer representatives cautioned that simply increasing investigations when most employers are “following the rules” could simply create more compliance costs for employers. It was pointed out that there are almost never sufficient enforcement resources available to government, so crafting a system in which such actions are less likely and with positive incentives to comply are also necessary.

## Keeping Families Together

In the lesser-skilled group, members agreed that workers’ families should be allowed to accompany the worker to the U.S. if they wish, with some members also arguing that family members should be allowed to work legally while in the country, as many already do. However, the group did not reach a consensus around work authorization for accompanying family members. This was not a specific issue in the higher-skilled working group, given that most employees do bring their families with them, and employment authorization is already available to most spouses.

## Rewarding Equity

Working group members agreed that foreign students and workers who have spent time in the U.S. have built up equity and should be rewarded in the immigration system, and in some cases prioritized to receive more permanent status. This would include those who received an education in the U.S., completed seasonal or long-term work in the country (especially multiple cycles of seasonal work), or had family members in the country. These characteristics were deemed to show that the workers would be more

likely to successfully integrate into the U.S. labor market and communities. Members pointed out that many of those who have spent years here are trying to build a life in the U.S., and their efforts should be recognized and rewarded.

Members also noted that entities in the U.S., such as universities and employers, invest in these students and workers through time and resources dedicated to educating and training them, and failing to allow those workers to stay hurts employers and the United States as a whole. A particularly salient example are physicians that hold J-1 visas, which allow them to participate in Graduate Medical Education programs. Upon completing training in the U.S., visa holders must return to their home country for a period of two years. Though there are some waivers of this requirement available, each state's health department is only issued 30 waivers a year through the Conrad 30 program, and many more doctors return abroad. This wasted training is particularly notable at a time when we are projected to face large physician shortages.

The system through which equity could be rewarded was debated and discussed. A points system, like the system Canada uses, was discussed as a possibility. Canada's system rewards equity by awarding points based on factors such as whether the applicant completed their education in Canada, whether the applicant has a job offer from an employer in Canada, and whether the applicant has worked in Canada before. However, the group members did not reach consensus on the best way for the U.S. to proceed on this issue.





# Remaining Challenges

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## Regulating Recruitment

One of the most difficult areas on which to reach consensus in both working groups was on employee recruitment, and how (or whether) to regulate the process to ensure maximum protection for the worker while still ensuring the process works for the employer. Balancing those interests is difficult, and some group members underscored the reality that third party recruitment would remain a part of the employment process, since many employers do not want to take on the job of recruitment due to time and staffing constraints. However, all agreed that labor recruiters should have accountability and oversight of their role to ensure fair practices and transparency. Several potential solutions to problems with recruitment were discussed, though a conclusion was not reached, including working with countries that are large senders of migrants to regulate recruitment, making it easier to recruit in-country, having consulates participate more in the process of recruitment, and setting up a certification for “trusted recruiters” who would spearhead recruitment efforts in-country.

## Balancing Workers' Rights and Employer Concerns

Group members also failed to reach an agreement on balancing workers' rights with employer concerns. Members wanted to ensure that foreign and domestic workers were protected but expressed that employers would need to agree to any new system of worker protection. Immigrant workers can be an especially vulnerable category given language constraints and their visas being “tied” to an employer, putting them at risk of exploitation and underscoring the need for stronger worker protections. On the other hand, employers are often concerned about overregulation, arguing that, overall, good actors are much more common than bad actors and should not be punished for the actions of bad actors through overly harsh and punitive measures or burdensome regulation. However, there was general agreement that exploitative employers are a problem for both employers and worker advocates.

Many of these discussions touched on longstanding areas of tension between employers and worker advocates and were not just immigration-related. Any immigration reform in this area could set precedent for other areas of labor law that implicate a broader set of employers and other labor union interests. While expanding worker protections might gain labor support, it could also cause employer opposition, so discussions and considerations in this area must carefully balance these interests to gain sufficient support for enactment. It was agreed that these issues would likely be the subject of detailed negotiations in any legislative action.

## Looking to the Future

These working group discussions were intended to build a practical base for future legal immigration reform legislation. The conversations made clear that there are broad areas of consensus among a diverse set of stakeholders and voices who want to make the legal immigration system work better for everyone. All participants agreed that the current legal immigration system does not work for anyone, and in fact no longer works as intended, given the decades since the system was last updated.

Though these conversations are encouraging and present a broad basis for advancing reforms, wider sets of stakeholders from diverse industries and perspectives should be involved going forward, and these conversations must continue to address remaining areas of challenge in order to achieve much-needed reforms. Transparency regarding where there is room for compromise and where compromise might be difficult is also critical.

The importance of reforming the legal immigration system must also be socialized among lawmakers, as there is often less focus on the issue on the Hill compared to other immigration issues. A common narrative among legislative staff is that only certain immigration bills can move, and this often ends up promoting the interests of some immigrants over others. Pushing back against that narrative and advocating for holistic immigration reform that includes changes that affect legal immigrants and future legal immigration is as important as addressing the status of the undocumented. Clarifying the ineffectiveness of the legal immigration system, its failure to work as intended for all involved, and its impact on the other aspects of the immigration system, from border control to undocumented immigrants, is needed to push the issue forward in Congress.



# Endnotes

- 1 Mallory Newall, “On Immigration, Americans Favor Both Restrictions and Reforms,” Ipsos, May 20, 2021, <https://www.ipsos.com/en-us/news-polls/immigration-americans-favor-both-restrictions-and-reforms>.
- 2 Ibid.
- 3 Theresa Cardinal Brown, Sadikshya Nepal, and Rachel Iacono, “BPC/Morning Consult Poll Finds Economic, Legal Immigration a Pathway for Bipartisan Legislation,” Bipartisan Policy Center, May 27, 2021, <https://bipartisanpolicy.org/blog/bipartisan-immigration-reform/>.
- 4 The White House, “Face Sheet: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness,” January 21, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administration-actions-to-attract-stem-talent-and-strengthen-our-economy-and-competitiveness/>.
- 5 [i] Michael Cembalest, “Help Wanted,” J.P. Morgan, October 20, 2021, <https://privatebank.jpmorgan.com/gl/en/insights/investing/eotm/help-wanted>.  
  
[ii] Craig Torres and Alexandre Tanzi, “Scarce Labor Is Likely to Squeeze U.S. Business Long After Covid,” Bloomberg, January 5, 2022, <https://www.bloomberg.com/news/articles/2022-01-05/scarce-labor-is-likely-to-squeeze-u-s-business-long-after-covid>.



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