

Elaborate Bait and Switch

The broken system hurts immigrants—and makes it harder for the United States to compete.

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When my friend Lakshminarayana Ganti, an operations management and cybersecurity specialist from India, texted me this year to let me know that the U.S. Department of Homeland Security (DHS) had “lost” the \$1,225 check his lawyer had submitted as payment for processing his green card application, I wasn’t especially shocked. Such incompetence is commonplace in U.S. immigration bureaucracy, and most immigrants to the United States have experienced or heard of similar treatment.

The resulting delay though meant that his eligibility for a green card lapsed—the official term is “retrogressed”—and he could now be looking at another year or more before he can reapply. He has already been waiting nearly 10 years. Travel outside the country is severely restricted for green card applicants; he will miss the overseas wedding next February of his nephew, his only close relative currently living in the United States. Both he and his employer, a data management company in Washington, will face thousands of dollars in additional legal expenses to renew his work permit and refile applications.

Ganti has a great deal of company these days. At the end of 2021, there were 1.4 million immigrants on temporary visas working in the country and waiting for the U.S. government to issue them green cards that will finally give them permanent residence and a path to citizenship. David Bier, an immigration expert at the Cato Institute, calculates that the backlog is now so long that more than 200,000 eligible people could die without ever receiving their green card. Some 90,000 children of people in the backlog will “age out”—turning 21 years old without the permanent status in the United States that they would have

immigration system has and should be told—again and again. The United States is relying on its engineering and science talent to stay ahead of China in what has become an existential struggle to lead in the industries of the future, from artificial intelligence to green energy to bioengineering. At U.S. universities, international students make up 74 percent of graduate electrical engineering students, 72 percent of computer and information science students, and half or more students in pharmaceutical sciences, mathematics, and statistics. Foreign students who settled in the United States now head flagship high-technology companies, including Microsoft CEO Satya Nadella, Alphabet CEO Sundar Pichai, IBM CEO Arvind Krishna, and Nvidia CEO Jensen Huang. The obstacles thrown up by the immigration system are a growing economic and national security risk to the United States.

Today, more Indian students are heading to Canada than to the United States.

The short version of how the current immigration debacle unfolded is that due to partisan differences between Republicans and Democrats over immigration—which are deeper today than ever before—the U.S. Congress has not revised immigration quotas since 1965, when the U.S. population was almost 140 million people smaller. Nor has Congress revisited the rules for highly educated immigrants since 1990—which was before the U.S. information technology sector created millions of new jobs in technical fields that have attracted so many immigrant scientists and engineers. Reforming immigration

next two years.

These antiquated laws impose arbitrary caps on the number of green cards that can be issued each year to nationals of any single country, which hits populous countries the hardest. Under the 1965 law, no more than 7 percent of the 140,000 employment-based green cards issued each year can be given to citizens of any one country. The backlog depends on demand, and a surge in applications can push back waiting times. Currently, the U.S. government is only processing employment-based green card applications for Indians with at least a bachelor's degree—known as the EB-2 category—if they filed their application before April 1, 2012. Ganti's "priority date" is July 25, 2013; if the Department of Homeland Security had not lost his application check, then he would have had his green card before the date retrogressed.

There is also a more personal story about the Kafkaesque horrors of the way the United States mistreats its immigrants—those, to be clear, who are following all the rules and behaving exactly as the U.S. government has asked them to. Most come initially as foreign students, and from the first day they arrive, they are expected to navigate a bureaucratic system of almost unimaginable complexity, with the penalty for even one small mistake potentially being the loss of their education, jobs, families, and friends—as well as their removal to a country they left years or even decades before. Immigrants awaiting green cards are forced to make personal decisions about which jobs to take, whether to buy property, and whether to marry—always with a nagging dread that the U.S. government could rip it all apart in an instant. Leaving an unpleasant or underpaid job is difficult because they risk losing their spot in the coveted green card queue. What the government does to immigrants is immensely cruel to people who want nothing more than to build good lives in the United States and are following the rules to do so.

In many ways, immigration to the United States has become an elaborate scheme of bait and switch. U.S. universities are only too happy to receive large tuition checks from foreign students, who often come from wealthy families or are otherwise ineligible for financial aid. U.S. companies are happy to hire them on temporary work visas, of which the most common is the H-1B visa for

When international students choose to stay, they face a downward spiral into a deep, dark abyss of rules, visas, delays, fear, and worst of all, a crippling uncertainty about their future.”

Indian students are well aware of the risks, Today, more are heading to Canada than to the United States—even though the former has around one-tenth the population of the latter—largely because they see a more realistic path to successful permanent residence and citizenship. The loss will be felt more acutely with the continued decline of Chinese students at U.S. schools; amid growing U.S.-China tensions and China’s zero-COVID restrictions, student visa applications from China fell by more than 50 percent during the first half of this year compared to pre-pandemic levels.

I came to know Ganti the first time the U.S. immigration bureaucracy tried to rip away his life. He came to the United States as an engineering student in 1996, when the green card wait was several years at most. He was encouraged by his father, who taught electrical engineering for many years at the prestigious Indian Institute of Technology, and he won a scholarship to attend Purdue University in Indiana. Ganti went on to earn his MBA from Babson College in Boston and was hired in 2006 as a quantitative analyst by a financial company.

He had reached out to me early in 2009 because of my writing on issues of immigration and national security. Some 16 months earlier, he had traveled back to India to visit his family. Expecting that his work visa would be routinely renewed for him to return to his job in Boston, he instead got caught up in the often arbitrary and lengthy scrutiny that faced unlucky visa applicants for many years after the 9/11 terrorist attacks. He waited month after month without any word from the U.S. State Department on when his visa might be issued. In all, he was trapped back in New Delhi for more than two years and lost his job in the United States. When he finally got a new job offer to return and applied for a new visa, he ended up caught in a second lengthy review. In neither case did the U.S. government explain the rationale for the delays.

Having invited these immigrants in, the government then makes it impossible for many to live any semblance of a normal life.

Ganti is a good and trusted citizen, if the word “citizen” has any meaning. But with the exception of the two years he was stuck back in India, he has now lived in the United States legally for 26 years without the slightest assurance that he will be permitted to stay, and he still risks being locked out again for arbitrary reasons if he travels abroad.

There is little legal recourse for those caught in situations like Ganti’s. Immigration lawyers have been filing a record number of so-called mandamus cases—three times the number of just two years ago. These are a type of legal action that can force the government to speed up the processing of work permits and travel authorizations. In addition to statutory waiting times, DHS often takes many months or longer to handle routine document requests, and the delays became much worse in the wake of COVID-19-related shutdowns. But processing delays are not the biggest issue. Indeed, under the Biden administration, U.S. Citizenship and Immigration Services (the DHS agency that processes claims), has made some significant progress. This year, it has issued some 280,000 green cards, double the normal number, using provisions that allowed the agency to “recapture” green cards that were not issued in 2021, largely because of pandemic shutdowns.

The bigger problem remains the outdated quota restrictions imposed by Congress. In the latest of many efforts at a partial remedy, House Democrats included in their version of the CHIPS and Science Act provisions that would have created exemptions from annual green card limits for foreign nationals with a doctorate in science or technology as well as for those with a master’s degree in “critical” industries like semiconductors, where U.S. need for highly skilled workers is growing. But the measure was blocked by 89-year-old Iowa

Immigrants like Ganti will keep coming, though in significantly smaller numbers in recent years, because of the hope and opportunities still offered by the United States. But unless something dramatic changes in U.S. immigration law—which seems less likely now than ever—they, too, will be betrayed by the country they have chosen.

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