Congress Should Not Eliminate Per-Country Caps, Must Not Be Fooled by H-1B Reforms

BACKGROUND

House Democrats may bring the EAGLE Act to the floor in an attempt to jam the bill through Congress during the lame-duck session. The most prominent change made to our immigration system by the EAGLE Act is eliminating per-country caps on employment-based green cards.

Per-country caps were added to the Immigration and Nationality Act (INA) of 1965 to create a basic rule of fairness: that no country or group of countries should be able to dominate or manipulate our immigration system. Eliminating per-country caps – here with respect to employment-based green cards – eliminates that rule and allows nationals of the two countries with the largest number of employment-based applications, India and China, to gobble up the majority of the immigrant visas allowed each year under current law.

Whether eliminating per-country caps for employment-based green cards comes in the guise of the so-called Fairness for High-Skilled Immigrants Act or the Equal Access to Green Cards for Legal Employment Act (EAGLE Act), the result is the same. Slipping in carve-outs and questionable concessions for the H-1B program to appease special interest groups, as House Democrats have done, does not undo the damage. Yet, this is what some proponents are willing to do to get the provision passed.

This EAGLE Act is just one more effort from a political class out of touch with the American people, seeking to import cheap foreign labor at the urging of business lobbyists and activist groups. Apparently incapable of learning the lessons of past failures with the Fairness for High-Skilled Immigrants Act in 2020, the EAGLE Act's supporters seem determined to continue down the same path.

To be clear, the EAGLE Act is fundamentally premised on a false narrative that it will not harm American workers, whether or not it also includes throwaway H-1B reforms. Any H-1B reform effort must truly change the deeply-flawed program or end it altogether and ensure that large tech corporations do not supplant American labor with cheap foreign alternatives—especially in this economy. And most importantly, Congress should focus their legal immigration reform efforts on the entire system, finally moving us toward a merit-based system.

WHAT ARE PER-COUNTRY CAPS?

Per-country caps are an essential feature of our immigration system. The INA replaced the national-origins quota system – which favored immigration from northern and western European nations – with per-country caps.

On an annual basis, the INA allocates 140,000 visas for five employment-based categories. It also limits each country to an annual cap of seven percent of family and employment-based admissions. Certain exceptions to the per-country cap are built in. Applicants from countries with long wait-times (India and China) typically receive more visas than the seven percent per-country cap allows. Why? Because they annually receive green cards unused by other countries and continuing employment visas generally do not count against the cap but add to the backlog.

WHY REMOVING PER-COUNTRY CAPS IS HARMFUL

Repealing per-country caps is step in the wrong direction.

The real beneficiaries of eliminating per-country caps will be the tech industry, Indians, and the Chinese. Indian workers have long dominated the H-1B program, with Chinese nationals second. Because H-1B workers are allowed under the law to convert their H-1B visas into green cards, Indians and Chinese constitute the large majority of aliens waiting in the green card queue. Without a per-country cap, Indian and Chinese nationals will monopolize employment-based visas, more than they do already, especially in the EB-2 and EB-3 categories. And the majority of H-1B workers, particularly those from India and China, have flocked to the tech industry in recent decades, allowing Big Tech to displace American workers and depress wages.

Despite the fact that only about a third of American-born workers with college degrees in STEM fields hold STEM jobs, tech companies have consistently argued that they face worker shortages and need increased access to foreign labor. Due to their sheer numbers and powerful outsourcing firms like Infosys and Tata, Indian and Chinese nationals have grown to dominate this system in recent decades.

If per-country caps are entirely removed, outsourcing firms would further exploit the system to import even more Indian and Chinese workers into the tech industry, allowing even more workers to apply for green cards and continuing employment visas exempt from the annual H-1B cap.

Eliminating per-country caps is also deeply unfair to employment-based green card applicants from every other country in the world. Instead of being able to receive a green card within a relatively short amount of time, applicants from other countries will be forced to wait years, if not decades, depending on the visa category.

The result will be to drive **ALL** employment-based green card applicants into the H-1B program. For Indian and Chinese workers, becoming an H-1B worker becomes much more desirable because the wait time to convert to a green card has dropped dramatically. For individuals from the rest of the world, it will become unrealistic to apply for an employment based-green card because the wait will be years and the job will likely be gone. So, in order to take that job in the United States, workers will

have to have their employer sponsor them as an H-1B worker first, allowing the worker to come to the U.S. immediately. The employer can then take advantage of deeply-flawed H-1B rules to depress the employee's wage for years, and ultimately, the employer may never sponsor the worker to become a green card holder.

Furthermore, not all workers who are recruited by U.S. employers will even qualify for an H-1B visa. The H-1B program requires that the beneficiary work in a "specialty occupation" and meet certain educational requirements. Those who do not qualify will essentially be barred from employment-based green cards altogether, only deepening the inequities of our immigration system.

And even if the per-country caps are repealed for employment-based green cards, it will not reduce the backlog. Applications will continue to increase and the queue will grow. The only difference will be the distribution of the green cards. Under the EAGLE Act, the overwhelming majority of the recipients will be from India and China, and the rest of the world will be moved behind that backlog, which was caused by their monopolization of the H-1B program.

So while the backlog currently affects only a few countries, the EAGLE Act will ensure that the backlog burdens all countries. In short, the EAGLE Act will wreck the employment-based immigration system for applicants from the rest of the world for the sole purpose of shifting more green cards to India and China.

Before too long, eliminating per-country caps will place so much pressure on the system, that special interests will soon come back to Congress with demands to increase the H-1B cap or increase the cap on employment-based green cards—or both. This would further accelerate the displacement of American tech workers, and undermine benefits of a tightening labor market for American workers. It could squeeze many Americans out of that market almost entirely.

Ultimately, eliminating per-country caps does not advance America's national interest. It undermines the fairness in our immigration system by creating a preference for workers from one or two nations at the expense of all other workers across the globe. It also eliminates diversity in the workers who come to the U.S. permanently. And, in the end, it would do nothing to reduce the line for employment-based green cards but would instead create more competition for American workers, particularly in the tech industry.

CONCLUSION

For decades, lawmakers here in Washington have ignored the practice of replacing Americans with "temporary" foreign workers, even as many of those foreign workers eventually adjust their status to seek citizenship. The current employment green card system needs to be replaced by one that is merit-based, offering a reasonable number of green cards to highly qualified applicants. **Instead of doing so, the EAGLE Act maintains the current dysfunctional system, doing nothing for American workers while further strengthening foreign workers' place in the American labor force – it must be rejected.**