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Lives on Hold and Dreams Delayed
Legal Immigrants Remain Trapped in Green Card Limbo
Andrew Menezes

To an outsider, Vikram Raj has the perfect life. The Mumbai native works at a multinational software company in Palo Alto which has sponsored him for a United States green card. He owns a three-bedroom house with his wife in Sunnyvale, an upper middle class neighborhood in the California Bay Area. He has plans to do some business consulting on the side. He enjoys biking, hiking and playing with his beloved Golden Retriever, and weekends are never boring with his diverse circle of friends.

But in reality, Raj's perfect life exists on a knife edge. Any day it could all be overturned. Raj has been waiting in line for over five years for a green card. His current immigration status prevents him from doing what other ambitious colleagues in Silicon Valley are doing - starting a business of his own. His house, dog and the life he has built for himself in America could all go away in an instant if he loses his job or his green card application is denied. Raj guesses it could still take another three years or more before he gets an answer.

"Had I know about all this, I would not have chosen to go through this process," he mused as he drove home on a recent Saturday after completing a half-day at work. "I would have found another way."

He is not alone. Legal immigrants from countries with large numbers of applicants have been stuck in green card backlogs for years. For some, that has been as long as a decade though extreme estimates say wait times could theoretically run as high as 70 years. In the meantime, the immigrants find themselves in jobs with few prospects for promotion or better career opportunities and with the constant fear that their lives could change in an instant.

Raj's visa journey has hamstrung his career in more subtle ways. He has spent the past six years in his current position at the same company - a time frame that he says is generally frowned upon as too long in Silicon Valley.

"The culture here is that you work for a company for three years and then you move on," Raj says. "People keep moving between companies, and not only that, but they move on to bigger and better roles."

That is not an option for Raj. With his employer sponsoring his green card, switching jobs or even getting transferred or promoted within the company is fraught with difficulty. It could jeopardize his current application or he would have to start the process all over again.

And so he remains in his current position, unable to progress and fulfill his ambitions, just like an estimated 500,000 other immigrants in the same boat. The contentious Republican presidential primary campaign has put immigration back on the national agenda. Illegal immigration is out of

control, say some Republican hopefuls, with undocumented immigrants unwilling to obey the rules.

But the legal immigration system is broken according to immigrant-rights advocates. Archaic immigration rules have failed to keep up with the increase in green card applications in recent decades.

“It’s a case of supply and demand,” says Cyrus Mehta, an immigration attorney in New York. At present “there’s more demand than supply” for green cards for high-skilled Indian workers like Raj.

Raj is not his real name. Like all immigrants interviewed for this story, he asked not to be identified. Most said they fear retribution from immigration authorities or employers. Though none had any proof that would happen, the immigrants say the process is so opaque, there was no way to guarantee that their applications would not be affected.

For many immigrants, getting the green card has long been the embodiment of achieving the American dream. There are 675,000 green cards available each year under the current law. 480,000 are available for family-based applicants, 140,000 for employer-based applicants and the rest get allotted based on a diversity lottery to people from countries with historically low levels of immigration to the United States.

No country can get more than seven percent of the total green cards. Which means, regardless of their population sizes, Monaco with a population of just under 38,000 and India with about a billion get the same amount. The numbers and percentages have not changed since 1995 while the overall count of applicants has only grown with the increased demand for high-skilled labor. Immediate family members count against the overall green card quota. So a successful applicant with a spouse and two children uses four green cards and not one.

All this has created a backlog that is especially onerous for Indians who are estimated to represent the highest number of applicants in the employment-based category and routinely exceed their annual allotment. They end up waiting the longest for green cards through employment.

This was not something that was on Maya Krishnan’s mind when she began her green card process five years ago. The Bangalore native moved to the United States in 2004 to pursue an M.B.A. at Boston University on a scholarship. After graduating among the top of her class two years later, Krishnan says she had no trouble landing a job at a business consulting firm in New York.

She took advantage of a visa program that permits foreign students to work for up to a year after graduating from a U.S. school. Her company then sponsored her for an H-1B visa which is designed to help employers hire foreign workers in select professions in the United States for up to six years. Things did not work out at the firm and she ended up changing employers, twice - a

fairly straightforward process with the H-1B as long as the new position, salary and job duties are similar to the previous one.

Krishnan says she always made sure she had her paperwork done right and that there was no gap in her work timeline, terrified that one small misstep might endanger her legal status and possibly see her forced out of the country.

“My last day would be effective Friday and then I would start at the new job on a Monday,” she says. This is not uncommon, Krishnan points out, for people in her situation who “followed the rules every step of the process, making sure we had the right documentation and that we were never out of status.”

The rules currently allow an employer to sponsor a foreign employee based in the United States for a green card under a multi-step process (*see sidebar*). How quickly you can get your green card depends on what category of employment you fall under. At present, there are mostly no wait times for three categories covering “persons of extraordinary abilities” (read: professors, researchers and international executives), wealthy investors, religious workers and employees of the U.S. government abroad.

The two categories with the longest wait times are the second group which covers professionals like Krishnan with advanced degrees and the third category for Bachelor's degree holders. There are further quotas based on an applicant's country of birth. If Krishnan had been born anywhere except for India or the Philippines, she would have had her green card by now.

The road to the coveted green card begins with the employer first certifying that no American citizen can be found to do the work. The date the labor certification is filed - called a priority date in immigration parlance - will later determine when the immigrant can apply for a green card. The employer next petitions the government to allow the foreign employee to become a permanent resident. Once the petition is approved, theoretically, the immigrant is ready for the third and final step - to turn in an application for a green card.

But that can only be done if a green card is available. And with the present backlog, those have been hard to come by. The State Department puts out a monthly visa bulletin containing a list of immigrant categories and corresponding priority dates. Immigrants who started the process on or before the date for their category can apply for a green card.

Checking the visa bulletin has become a monthly ritual for many immigrants - and a particularly frustrating one for Indians in employment-based categories like Krishnan as her place in line crawls at a glacial pace. She is in her fifth year of waiting to get a green card which she now says “seems like some far-off dream.”

While it may be hard to have much sympathy for a high-paid business consultant, Krishnan can narrate in aching detail the way the green card backlog has affected her professionally. She says 12-hour workdays, five days a week, have taken a toll as she has been stagnating in her

current position. Ambitious and driven, she has not had a promotion since September 2011 while she continues to perform the same job duties for over five years.

“You have to be a robot literally, put a smile on your face and just pretend to be happy and just do whatever they ask you to do,” she says.

And she says it is hard not to be envious of colleagues who can switch jobs and move up the corporate ladder so easily.

“You want to make sure that you’re happy or at least that you’re being challenged,” she says. “Being in the same job for five years and looking at people around you, who came in much after you, getting promoted. It’s not an easy situation to be in.”

It is not for lack of trying. Krishnan had a chance to move to a position within the company to China but had to give it up as relocation is not allowed while your green card is in process. She had to turn down a second intra-company opportunity in New York because the new position was substantially different from her present one. Two years ago, she had to forgo a job offer of an executive position at a multinational cosmetics firm when the issue of her green card came up. Choosing the job would have meant starting the green card process all over again - something her potential employer was not ready to do.

Without her green card woes, Krishnan says her career trajectory would have been very different. She says she could have been a Vice-President at her current job by now earning at least 30 percent more than she currently does. And she would have relished the increase in job responsibilities. Her current employer is frustrated that she cannot be assigned more challenging tasks.

“You just feel like everybody will be 40 by the time they get their green cards,” says Krishnan, who is 34. “And who starts their career at 40?”

Krishnan has spent almost a decade in New York where, she says, “you can do so many things with your life.” An avid reader of mystery novels, she works out daily and loves taking her dog for walks in Central Park.

And as a single woman in her thirties, Krishnan considers herself fortunate to call New York home.

“If I lived in India, it would be a stigma with society,” she says with a chuckle. “But here it doesn't bother me and I'm glad I don't live in a society where they look down upon that.”

But Krishnan says the stress of the indefinite wait means her green card woes are constantly on her mind - except “maybe when I’m sleeping.”

“If I’m working out, like at 7:00 in the morning,” she says. “I’ll be thinking, maybe today they’ll announce something.”

As the stress piles up, Krishnan says her friends have noticed how frustrated she has become over the last three years. And while they sympathize, they remain puzzled about the process.

“They just don’t get why someone like me is still waiting,” she says. “Someone who has lived here for a decade and who has worked here for a decade and pays taxes like a citizen.”

Besides working and paying taxes, high-skilled foreign workers like Krishnan can also be a key factor in the competitiveness of U.S. businesses in the global marketplace. But a recent study by the Business Roundtable, a public policy group of CEOs of major U.S. corporations, found that the U.S. fared poorly compared to other English-speaking Western countries when it came to offering permanent residence to these immigrants. Australia allows individuals on temporary work visas to become permanent within two years while the wait time is five years for foreign workers in the United Kingdom. In Canada, an immigrant can switch to permanent residency status within two years of applying. A new program introduced in January aims to shorten that time to six months.

It is no surprise then that countries like Canada or the United Kingdom are tempting to Stateside immigrants caught in the green card backlog. “If someone had said that by 2016, you’d still be waiting for your green card,” Krishnan says, “I would have just left.”

But after spending almost ten year working in the U.S., she has resigned herself to waiting it out.

Congress has not passed major comprehensive immigration reform since 1990. In 2013, the Democratic-controlled Senate passed an immigration reform bill that included a provision to speed up the green card backlog. But the bill died in the Republican-led House. Despite the fact that support for and opposition to legal immigration reform often crosses party lines, no serious attempt to fix the current system has been considered since.

That is, until November of last year. In a surprise move, President Barack Obama announced a series of executive actions which he portrayed as his attempt to bypass Congress and institute fixes to the immigration process. He called for extending temporary legal residence for undocumented immigrants who arrived in the country before their sixteenth birthday as well as relief for undocumented immigrants with U.S. citizen or permanent resident children.

While most of his executive actions were related to the highly-charged issue of illegal immigration, the President added a final call to the Department of Homeland Security to directly address the long wait times for green cards. Several proposals in particular were especially welcomed by Indian immigrants. One was a call to modernize the visa system and allow for a more transparent and efficient processing of green card applications. Another proposal called for increased work portability to make it easier for employees to accept promotions, switch

positions and even employers. “By removing unnecessary restrictions to natural career progression, workers will have increased flexibility and stability, which would also ensure a more level playing field for U.S. workers,” the order said.

Over the next twelve months, the initial burst of euphoria that greeted the President’s announcement eventually gave way to a more resigned melancholy as weeks turned into months with no significant action. There were fleeting moments of hope along the way. In September, a new visa bulletin significantly brought forward priority dates for many Indian immigrants including Krishnan and Raj which meant they could finally apply for a green card. Thrilled, Krishnan started getting her paperwork ready to file with the USCIS. Raj did the same and says he paid \$600 in fees for a medical examination for him and his wife required when applying for a green card. All thought they were finally seeing the light at the end of the tunnel.

Sixteen days later, the State Department reversed course with a revised visa bulletin. The department said they did not have enough green cards to give to all immigrants who were allowed to apply. It was a cruel blow for people like Raj and Krishnan who went back to their previous positions in line. They had spent almost a year of waiting in anticipation and at the end, they were no closer to the endgame.

“It’s like dragging a bone in front of a dog but never actually giving it,” Krishnan said a month later, the frustration still detectable in her voice.

The disappointment with the President over the failure so far to enact reform could potentially open up a conflict with immigrants in the country without proper work authorization. Legal immigrants have long complained that conflating illegal and legal immigration is unfair. Lawmakers and citizens would be more amenable to specific reforms targeting legal applicants. But many Democrats remain opposed to piecemeal legislation, opting instead for comprehensive reform which would tackle both sides of the immigration argument at once.

Unlike their undocumented colleagues, legal immigrants are often not in tune with the world of activism. Online forums buzz with complaints and shared tales of despair, but organizing and mobilizing to make their voices heard in Congress and beyond is rare. Long consigned to the shadows with so much at stake, many legal immigrants fear a more public profile might draw retaliation from the USCIS.

Immigration attorneys say such fears are unfounded but many immigrants speak of a sense of powerlessness in dealing with the agency. The green card journey is often just an endless and bewildering exchange of paperwork and documentation without the applicant ever seeing a real person. And with no voting rights and few institutionalized forums to challenge their treatment, many feel their best option is to wait out the process in silence.

But that may be changing. The recent fiasco over the reversed visa bulletin galvanized immigrants who teamed up with concerned attorneys to file a class action lawsuit against the State Department and the Department of Homeland Security.

“People are showing their exasperation,” says Ron Gotcher, an immigration attorney in the Los Angeles area. “They are not really willing to sit back and just passively accept what happened.”

In November, about 30 mostly Indian immigrants from across the country gathered in Washington, D.C. for a protest rally in front of the White House to call attention to the employment-based green card backlog. (*see slideshow*)

Sandhya Seth is the co-founder of a new nonprofit group advocating for skilled immigrant workers. Between sips of a small Americano at a Starbucks a few blocks from her New York Upper East Side apartment, the 46-year-old intellectual property lawyer says that despite being relatively new to immigration advocacy, her legal background comes in handy. “Being a lawyer, you tend to think logically,” she says. “You learn to articulate your thoughts in a much more organized and forceful manner.”

Seth’s passion for this issue stems from her own immigrant experience. She first came to the United States in 2006 and later went on to earn her law degree. She says she has switched employers twice since she first arrived. She was advised to stick it out with one until she got her green card but chose not to. “I was not going to compromise on what I did in my career just for my green card,” she says.

But that decision has been costly. With each new employer, Seth had to start the process from scratch. She was not affected by the visa bulletin from September but the reversal still hurt. A speeding up of the process would have meant a cut in her wait time but those hopes were quickly dashed.

“Right now, the way the queue looks, I might get the green card in 2025,” she says, which would be almost 19 years since she first arrived here.

Till then, Seth would be unable to start a practice of her own - something she would like to do - because she requires an employer to sponsor her. More crucially, her lack of a green card means that while she practices patent law, she is not registered with the United States Patent and Trademark Office - a qualification reserved for U.S. citizens or permanent residents.

All Seth gets is a limited form of recognition which allows her to represent clients as long as she has an attorney who is either a U.S. citizen or a green card holder accompanying her on the case. She says the USPTO sees her current immigration status as temporary as she “could have to leave [the country] any day and that would jeopardize the clients.”

Not being on the register has also made it difficult for Seth to seek better career opportunities. Law firms that specialize in patent law would not give her a second look, she says.

On the personal front, Seth, who is single and lives in a rented apartment, says life without a “sense of permanence” has made her reluctant to buy a house in the U.S.

“What good is having a house here,” she asks, “if tomorrow, I lose my job and I’m asked to pack my bags and leave?”

While Seth travels to India every year to see her parents, she says that as an American-trained attorney her professional future lies in the United States.

“Law is territorial,” she says. “Nobody needs a U.S. lawyer in India.”

Faced with these frustrations, getting involved in immigration activism has been a form of therapy for Seth. From looking into litigation options to raising publicity and developing inside connections to pro-immigration lobbyists, she says she is “cautiously optimistic” that things will change.

“We have got to have hope,” she says. “You still have to have faith that the system will work howsoever broken it is.”

Seth says she hopes her efforts can help “raise public awareness and shame the President into doing what he promised and is backing off from doing.” Her group’s goals echo the same proposals put forward by President Obama last November - a modernization of the current visa system and job portability for green card applicants.

Job portability would allow legal immigrants the flexibility to accept promotions or change jobs. Under present law, this option is only available at the tail end of the process, once an applicant can apply for a green card. But advocates like Seth hope to see this benefit extended to immigrants earlier - after the second stage. While this would not affect the long wait times, the ability to switch positions or employers would make the intervening years more bearable and allow for natural career progression.

Another goal of Seth’s organization is recovering wasted green cards. Surprisingly, there have been many years when the annual quotas were not reached. In other words, green cards that were available to be given out were never issued while legions of legal immigrants remained desperate for them. Although current law mandates 140,000 employment-based green cards to be given out each year, there is no guarantee of that number being reached.

“Congress can pass the legislation but it cannot go to the desk and process those visas,” says Seth. “It is up to the adjudicators of the USCIS to do that.”

And that is something adjudicators have not always done. An analysis by Brent Renison, a Portland, Ore.-based immigration attorney, found that since 1992, more than half a million green cards were not issued, or wasted. About 180,000 of them were recaptured and given out through Congressional action but 326,000 unissued green cards still remain.

“Over 8,500 employment green cards were wasted, just in the past five years alone,” Renison wrote in a blog post on his firm website in October. “Those are more than just numbers. Those are lives hanging in the balance.”

Recovering them will not be easy. The USCIS funds almost all its activities including the processing of green cards through the fees it charges. Congress has very limited control over its budget or activities and cannot force them to issue those missed green cards.

A current House bill, H.R. 213, the Fairness for High-Skilled Immigrants Act contains a provision that excites some advocates. The bill, which currently has 65 co-sponsors, would eliminate the per country numerical limitations for the employment-based green cards. Passing the bill would mean faster processing times for Indian applicants. But that in turn would not be good news for applicants from other countries. Their processing times would stand to increase as Indian immigrants with earlier priority dates would take precedence.

“It is going to spread the misery around for sure,” says Seth, who says she holds no hope of the bill ever making it to the floor of the House for a vote. “It is just going to make everybody get backlogged.”

While Seth is resolved to soldiering on with her advocacy work, Krishnan admits to a deflated sense of the future. She says she is afraid of getting her hopes up again only to be disappointed when attempts at immigration reform fail. She lost her mother before she came to the United States and her father passed away while she was at university. But despite almost a decade in New York, her stay here entirely hinges on her keeping her current job.

“There is no wiggle room,” she sighs. “You make one slip, you’re out of this country. Everything you’ve built for yourself in the ten to twelve years is gone.”

Sidebar: The Road to a Green Card

For an employment-based green card, a foreign employee must have an American employer willing to act as a sponsor. Most applicants are already on work visas like an H-1B. With extensions, the visa is usually good for six years.

The green card process often begins at least a year before the work visa expires. There are three steps.

1. **Labor Certification:** The employer files a labor certification with the Department of Labor to attest that willing and qualified U.S. workers cannot be found for the job. Ron Gotcher, an immigration attorney based in the Los Angeles area, says this first step often represents “90% of the difficulty” in the green card process.
2. **Immigrant Petition:** Once the labor certification is approved, the employer petitions the USCIS for the foreign employee to become a permanent U.S. resident by filing a Form I-140. When the petition gets approved, the employee can, in theory, apply for a green card.
3. **Green card application:** The monthly visa bulletin put out by the State Department lets the employee know whether a green card is available. Until then, the immigrant has to wait. During this waiting game, the employee remains on a work visa which can be extended incrementally as long as the application is pending. Once a green card becomes available, the employee files an adjustment of status, or a Form I-485, with the USCIS requesting to become a permanent resident of the United States.