

Aged-out Indian students in US are most vulnerable under new ICE guidelines

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The recently announced guidelines by the US Immigration and Customs Enforcement (ICE), that international students cannot undertake fully online courses in the coming semester if they wish to continue to stay in US, is causing grief to families with aged-out children.

The main reason – in case the international student is unable to transit to a university that offers hybrid teaching (which includes in-person classes on campus), he or she will have to leave US or face deportation. In case this situation arises, typically a child who has aged-out of an H-4 visa, will have no immediate family back home in India to return to. Once children turn 21, they can no longer continue with their H-4 visa, which is meant for dependents and is typically tied to their parent's H-1B work visa. Generally, at this juncture, they are still studying and have to transit to an F-1 visa meant for international students.

An undergraduate student who reached out to TOI said, there were two choices available to him - move to another city in the US where a larger university has announced in person classes, or move back to India without his parents and start afresh. Each choice has its own inherent challenges.

Rajiv Khanna, managing attorney at Immigration.com says, “One of the worst affected and least heard groups is the aged-out children (21 or older) of parents who have lived in the US for decades. Their parents have worked, paid taxes, and made the US their home. The children know no other home except the US. This group is placed in jeopardy most acutely because they have no foreign residence to return to. What do they do?”

“For aged out students, the option of returning home is fraught with uncertainty. Some children who have now aged out of H-4, have been raised in the US and likely have no more than a tangential relationship with families and cousins back home. Presuming a relative is able to provide care and housing for such students, there is an enormous emotional and psychological toll being forced on a child who has to be forcibly separated from parents in the US. I suspect what we will see is that parents faced with this horror of an option will either decide to leave the US as a family, or the family will be forced to split up so one parent returns to India with the student child,” says Kripa Upadhyay, managing partner at Orbit Law, an immigration law firm.

New York based immigration attorney, Cyrus Mehta, echoes the above sentiments. “The H-4 children who are aging out will be very vulnerable. The reason why they are in this situation is because of the green card backlogs for India, otherwise they would have had green cards by now and potentially even become US citizens. If they have been admitted in a school and already filed a change of status to F-1 which is pending and have turned 21, they may not be able to backtrack and join another school that meets the new guidelines. Indeed, children have borne the brunt of Trump’s immigration policies throughout his presidency and that further demonstrates how cruel they have been.” As of April 2018, there were 6.32 lakh Indians (including spouse and children below 21 years) waiting for their green card in the employment-based immigration category. Indians comprised of 76% of the total employment-based green card backlog.

Cato, a US based think-tank states: “Indian employees of US businesses (falling in the EB2 and EB3 visa groups), who entered the waiting line in 2018, have an impossible half a century long wait.” EB1 green card covers those having advanced degrees, whereas the EB2 is for those having a bachelors’ degree or other works having the requisite experience.

“For those aged-out children whose applications are in pending status, the challenges are worse. USCIS has already issued furlough notices to 13,400 employees and as of today. No formal request for funding has been made to Congress by USCIS which claims it is on the verge of bankruptcy. If the immigration agency is forced to put as high as 73% of their workforce on furlough, it will definitely impact processing times for all applications across the board. Students with pending applications will be in a status of legal limbo,” adds Upadhyay.