

Aged-out kids in US: Must opt for international student-visa or self deport

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Lubna Kably | TNN | Updated: Sep 30, 2019, 17:51 IST

Highlights

- Once the children turn 21, they can no longer continue with their H-4 visa which is meant for dependants and is typically tied to their parent's H-1B work visa
- This leaves them with no option but to obtain an F-1 visa meant for international students and continue with their studies in the US or self-deport to India

MUMBAI: The US Senate recently blocked one of the two bills (S386) that seeks to lift the per-country green card limit, dashing the hopes of several Indian families whose children have aged-out (turned 21) or are in the process of ageing-out.

Once the children turn 21, they can no longer continue with their H-4 visas which are meant for dependents and is typically tied to their parents' H-1B work visa.

Generally, at this juncture, they are still studying. This leaves them with no option but to obtain an F-1 visa meant for international students and continue with their studies in the US or self-deport to India.

There is no guarantee that the students will get an F-1 visa, which adds to the anguish. If they decide to return to India, several of them who migrated to US while they were very young find it difficult to adjust to the new environment.

The root cause of their woes is the long waiting time for green cards. Annually, the US sets aside only 1.40 lakh green cards for employment-based applicants and there is a 7% per country cap. Given the heavy influx of Indians in the US – majority of them holding an H-1B visa – this restrictive policy poses challenges.

“Unlike people born in other countries, those born in India are subject to decade-long backlogs. So most other nationals can get their green cards within the six-year term of the H-1B, but not Indians,” says Cyrus Mehta, founder of a New York-based immigration law firm.

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 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.” EB2 green card covers those having advanced degrees, whereas the EB3 is for those having a bachelors’ degree or for those having the requisite experience. An Ohio-based student, currently pursuing a master’s degree in technology, says: “On

turning 21, I hit a wall I hadn't even thought would affect me – it was my immigration status.”

On the other hand, his younger sister is a US citizen. She was born in the US (citizenship by birth is enshrined in the US constitution, even as President Trump has on occasion announced his plans of ending this) and she will not face the same issues. Not all children of H-1B parents are born in the US.

His parents had moved to US when he was just seven years old. “When I applied to graduate school, I was considered an international student. After I complete my studies, I will continue to be treated as an alien and will be allowed to work only through the complicated H-1B visa lottery system,” he adds.

A North-Virginia based student migrated with her parents when she was ten years old – “My father applied for permanent residency (green card) six years ago, not much movement has happened in our status, nor will it anytime soon. This poses a problem, as in my last year of under-graduation, I will no longer be able to rely on a dependent's visa and will have to apply for an International Student visa.”

While changing of status to an F-1 can be done while in the US or through the consular route from India – both entail costs. Her father chimes in, “There are also risks of denial of the student visa.”

F-1 visa applicants need to prove a non-immigration intent, for children that have aged-out, this itself poses problems. **Rajiv Khanna, Arlington-based immigration advocate says:**

“Many of the cases where a change to student status is requested do get approved. But there are also cases where it is rejected owing to the boilerplate reason that the student has the entire family in the US, therefore they have no ties to their home country.” “The life of a youngster and the family unity should not have to depend upon the 'benevolence' of an immigration officer,” he adds.

In addition, aged-out children, like any other international student, have to grapple with issues of higher fees (nearly triple in some instances), lack of scholarships (many are meant only for permanent residents and citizens) and the inability to work part-time. Some parents cite that for aspiring doctors, the going is tougher as majority of the medical schools do not grant admission to international students. The few that do, have very high fees.

Activists are coming out in full support of ‘H4-Dreamers’ (as the aged-out children are referred to). Unlike the ‘Dreamers’ who came into US illegally as children, the H-4 Dreamers held legal dependant visas, but aged-out.

Vikas Grover, volunteer with a community group, Win Virginia, says that there is no end to the problems these children face. Like other volunteers across several community groups, he has arranged meetings of children and their parents with senators and urged them to write petitions. His activism led Senator Mark Warner to co-sponsor this bill. For now, the Indian diaspora is hoping the blockage will be addressed.

The long wait for a green card has additional problems. “Typically, only children below 21 are covered by a green card, but the Child Status Protection Act (CSPA), in certain cases, provides limited protection to children who have turned 21 and retains their age at below this limit – based on a computation formula. Unfortunately, CSPA may not apply when the green card backlogs are decades long,” explains Mehta.

“Lifting of the green card cap will be the first step that will help future generation of children,” says Khanna.

“In addition to removing the per country quotas, an ideal legislation to resolve the backlog is to not count family members in the cap, but only the principal applicant,” Mehta adds.
