

Trump 2.0 to end citizenship by birth on Day 1? Should over 1 million Indians in Green Card backlog be worried

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Donald Trump's proposed executive order to end automatic US citizenship for children of non-citizens stirs legal and community concerns, particularly among Indian families facing prolonged green card backlogs.



Donald Trump, the next President of the United States, has prioritised ending automatic birthright citizenship through an executive order to be signed on his first day in office. This controversial move, announced on the Trump-Vance campaign website, would deny automatic citizenship to children born in the US unless at least one parent is a US citizen or lawful permanent resident.

While the measure aims to curb birthright citizenship for children of undocumented immigrants, its implications reach further. The draft executive order stipulates that federal agencies require proof of a parent's citizenship or permanent residency for a child to be granted automatic citizenship.

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The draft executive order reads, “It will direct federal agencies to require that at least one parent be a US citizen or lawful permanent resident for their future children to become automatic US citizens.”

Immigration advocates argue that this interpretation contravenes the 14th Amendment, which states that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Backlog woes for India workers

The proposed policy has raised alarm within the Indian American community, particularly for Indian nationals on H-1B visas facing extended green card wait times due to strict caps. Employment-based green cards are limited to 140,000 annually, with a seven percent per-country cap, creating severe delays for Indian applicants.

According to the Cato Institute, the backlog for employment-based green cards in the EB-2 and EB-3 skilled worker categories exceeded one million as of March 2023. The projected wait for green cards is between 54 and 134 years, meaning thousands of Indian applicants may not receive residency within their lifetime.

Over 100,000 children are expected to “age out” and lose dependent status by turning 21, forcing them to self-deport or switch to a new visa type.

The loss of birthright citizenship would compound these challenges. Many Indian parents in the U.S. take comfort in knowing that, even if they remain in limbo, their US-born children are granted stability through citizenship. This proposal, however, threatens that stability.

Ashwin Sharma, an immigration attorney, called the proposal “staggeringly cruel,” arguing that it unfairly punishes Indian professionals who have dedicated their careers to the US economy.

“For the thousands of Indian nationals on H-1B visas already enduring the green card backlogs, Trump's proposal is illogical and staggeringly cruel. These skilled professionals often dedicate their prime years building lives and careers—to advance America's economy. One of the few consolations they have had during this ordeal is that their US-born children would have the security of US citizenship, sparing them from the

relentless cycle of immigration issues. Trump's proposed executive order threatens to snatch away even this small solace from everyone who has played by the rules," Sharma was quoted as saying in a Times of India report.

Legal challenges and the 14th Amendment

Immigration attorneys and scholars anticipate strong legal challenges, asserting that Trump's proposal conflicts with a longstanding interpretation of the 14th Amendment. The 1898 U.S. Supreme Court ruling in *United States v. Wong Kim Ark* upheld the principle of birthright citizenship, granting citizenship to a San Francisco-born child of Chinese nationals under the Chinese Exclusion Act.

In a TOI report, Attorney Cyrus D. Mehta highlighted that the Supreme Court applied the 14th Amendment to an individual born to parents of Chinese descent, even during a period when Chinese nationals faced exclusion laws.

"If a child whose parents are in H-1B status is not issued a US birth certificate, they can seek review in federal court and should win. The Trump administration is capable of taking the case to the Supreme Court to test their theory, but even if the Supreme Court has Trump appointed justices it does not mean that they will abide by the policies of the Trump administration if they are in direct contradiction to the US Constitution," Mehta further stated.

Greg Siskind, another immigration attorney, stated that the policy would "certainly be litigated" and likely challenged in federal court, with a strong chance of reversal. Attorneys contend that those legally present in the U.S.—such as H-1B workers, L-1 transferees, and F-1 students—fall under the 14th Amendment's jurisdiction.

Impact on the Indian diaspora

The executive order's passage could significantly impact the Indian community in the US. According to Pew Research Center data, around 4.8 million Indian Americans reside in the country, with about 1.6 million born in the US. Should the policy be enacted, children born to Indian parents without US citizenship or green cards would lose automatic citizenship, adding to the uncertainty faced by the diaspora.

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For Indian families in green card limbo, Trump's proposal casts doubt on the future of their US-born children's citizenship.

“The Trump plan suggests no automatic citizenship for children born in the US. This is almost certainly a contravention of the 14th Amendment of the US Constitution. A Supreme Court judgement is available to counter Trump’s misinterpretation,” Rajiv S. Khanna, an immigration attorney, was quoted as saying in the TOI report.

As Trump prepares to enact this policy, immigration advocates and attorneys brace for an imminent legal showdown, highlighting the high stakes for immigrant communities across the country.