

A Guide to Advocacy for Legal Immigration Reform H-1B and H-4 visas and the South Asian American Community

Introduction

The South Asian American community is one of the fastest growing demographic groups in this nation and spans a rich diversity of immigration statuses from undocumented to Deferred Action for Childhood Arrivals (DACA), to Temporary Protected Status (TPS) to asylum seekers to H-1B and H-4 visa holders to green card holders.

As we grow to over five million South Asians in the United States, the diversity of our population has also grown. Nearly half a million Indian-Americans alone are undocumented. As India ranks one of the top ten countries of origin for DACA recipients, 3,600 Indian Americans obtained DACA since 2012.[1] Nearly 1,879 Pakistani Americans and 594 have applied and received DACA.[2] Over 9,000 Nepali Americans are at risk of losing TPS in June 2019.[3] In fiscal year 2018, South Asians have been detained in 16 out of the 19 border patrol sectors across the country ranging from Rio Grande Valley to Vermont.[4] Since 2015, over 90% of the H-4 visa holders granted employment authorization are from India, and may lose their work permits with an anticipated rule from this current administration.[5]

Our nation's immigration system has been broken and unjust for centuries: from enslavement to forced migration and displacement to discriminatory quotas based on country of origin to the present day. Today, deportations have rapidly increased, the border has become militarized, citizens are being denaturalized, and authorized immigrants are aging out their visas, being denied work authorization, and unable to obtain green cards.

SAALT has been consistently engaged in the fight for undocumented South Asian Americans, DACA recipients, TPS holders, asylum seekers and refugees, and H-4 visa holders. We believe these populations within our community are the most vulnerable and have the least attention, resources, and advocacy dedicated at the national level.

In today's fractured political climate, we have observed a disturbing trend. Some immigrant rights advocacy groups are advocating for immigration policies that benefit them, but harm other immigrant groups. One such example is using green card processing fees to fund a border wall, which we discuss in detail later in this guide.

Comprehensive immigration reform that truly transforms our immigration system is the only path forward to address the struggles of all immigrant populations. SAALT does not support any solution, legislative or otherwise, that would advance the rights of one group of immigrants at the direct expense of another group.

In this guide, we lay out SAALT's perspective on the political and advocacy landscape for H-4 visa holders who stand to lose their hard fought work authorization and H-1B visa holders and others who face indefinite wait times for green cards.

What is an H-4 Visa?

The H-4 visa is issued to spouses and dependent children of H-1B visa holders, also known as "highly skilled workers" employed in specialty occupations requiring relevant bachelor's or advanced degrees. Since 1997, more than 1.7 million individuals have received H-4 visas.

According to the State Department, the overwhelming majority (nearly 90%) of these individuals are of South Asian descent.

In December 2017, the Department of Homeland Security announced its intent to rescind Employment Authorization Documents (EAD) for H-4 visa holders, which will revoke their right to work. A Notice of Proposed Rulemaking (NPR) is expected to be published as early as January, 2019. This proposed rule is a direct outgrowth of this Administration's "Buy American, Hire American" executive order, which guts employment protections, benefits, and pay for foreign workers, targeting H-1B and L visa holders. Stripping the hard fought work authorization of H-4 visa holders, granted to some spouses and minor children of H-1B visa holders through an Obama-era rule is yet another component of this administration's anti-immigrant agenda. [Please see here for a more detailed guide on this important issue.](#)

What is a "legal DREAMer" and why should I care?

Minor children, who age out of their H-4 visa at the age of 21 and must bridge to a student or other visa to remain in the country, have been called "legal DREAMers" by some advocacy groups. [Please see here for guidance from South Asian immigration attorneys](#) around the country who explain the shared plight, but important distinctions between H-4 visa holders and DACA recipients.

This framing as legal "DREAMers" is flawed. It creates a "hierarchy of the deserving," utilizing divisive arguments about who should be "first in line" rather than viewing an entirely broken immigration system that serves no one.

What can we learn from DREAMers?

We have many DACA recipients or DREAMers within our own South Asian American community. The DREAMers have been successful in winning over 75% of the American public and Members of Congress, who support them remaining in the country with a path toward citizenship. They have accomplished this because they are unwilling to sacrifice any other group of immigrants to win, all while facing the threat of deportation themselves every day. In fact, they have joined forces with Temporary Protected Status (TPS) recipients to demand that the next Congress pass legislation that combines protections for both DACA and TPS recipients within the first 100 days, which will likely happen.

If they can exemplify this level of leadership and collaboration, then we must follow their example and find ways to jointly address the problems facing authorized and unauthorized immigrants instead of insisting that DREAMers go to the back of the line.

What is H.R. 392 and how does it resolve the green card backlog?

Indians in the U.S. have among the longest wait times for green cards. The reason? Current immigration policy does not allow one particular country to account for more than 7% of visas leading to a green card in any given year. This means countries that fall below the 7% threshold have much shorter wait times than large countries like India, which has among the longest green card backlogs.

The "Fairness for High Skilled Immigrants Act of 2017" (H.R. 392 in the House of Representatives & S. 281 in the Senate), first introduced by Rep. Chaffetz of Utah and Rep. Lofgren of CA and most recently championed by Rep. Yoder of Kansas following the murder of Srinivas Kuchibhotla by a white supremacist at a Kansas bar in his Congressional District,

would lift the 7% green card cap in an effort to clear significant backlogs. However, helping clear the green card backlog for Indians does not actually eliminate the backlog, it simply moves it around to other countries.

At this time, the language of H.R. 392 has been included in the House appropriations (funding) bill for the Department of Homeland Security (DHS). While the Senate passed a Continuing Resolution in an effort to avoid a government shutdown, neither the House nor the Senate passed the actual Homeland Security appropriations bill. The Senate version of this bill does not currently include language about lifting green card caps. If the House language is included in the final version of the appropriations bill, it could pass each chamber and ultimately be sent to the President for signature. Even if the House passes the Continuing Resolution to avoid a government shutdown now, this would only delay the vote on the funding bill until February 8, 2019.

How does H.R. 392 hurt some immigrant groups?

While H.R. 392 has gained wide and even bi-partisan support, its proposal to remove green card caps does not actually increase the number of green cards available, but redistributes them by application date rather than country of origin. This inherently favors nations with much larger demand for green cards, most notably, India. But, this comes at the direct expense of countries with lower demand, who will experience higher wait times. Among South Asian countries, this puts green card applicants from Bangladesh, Pakistan, Sri Lanka, Nepal at a much greater disadvantage.

Between 2015-2017, only 55,000 Pakistanis, 46,000 Bangladeshis 37,000 Nepalis, and 5,300 Sri Lankans obtained green cards. [6] Comparatively, individuals from the top two countries of origin, China and India, obtained 228,000 and 190,000 green cards respectively.

And, this makes it even harder for countries like Iran, Libya, Somalia, Syria, Yemen, North Korea, and Venezuela who fall in this category and are additionally impacted by this administration's discriminatory immigration policies like the Muslim Ban. Such a proposal all but closes the door on nationals from these countries who want to remain in the country or be reunited with their families. In FY 2017, Indian nationals were the number one beneficiaries of H-1B visas with over 276,000 approved petitions followed by 34,477 visas granted to Chinese nationals. Only 1,643 Pakistanis received H-1B visas; 1,390 Iranis; 1,279 Nepalis; and 900 Venezuelans. [7]

Additionally, not all green card applicants are H-1B visaholders. For example, foreign nurses are not eligible for H-1B visas and must obtain green cards to work in the United States. H.R. 392 would drastically reduce the number foreign-born nurses who could enter the country with green cards from 77% to 100% in the next five years and beyond, devastating the healthcare system. H.R. 392 ignores the real problem, which is a significant mismatch in immigrant visas overall to meet the demand for foreign-born, high-skilled workers across industries.

Why is H.R. 392 not the best solution?

In January, 2018 a "Dear Colleague" letter circulated by Congressional co-sponsors of H.R. 392 from both parties framed H.R. 392 as a potential solution for the "DACA problem." In it they state, "H.R. 392 can be passed along with amended language containing a fee that can be assessed upon the beneficiaries of the legislation that will raise billions of dollars. These critical funds can be used to enhance the likelihood of passage of a DACA deal, by either enabling Congress to pay for border security or other items in a manner that does not increase deficits,

burden U.S. taxpayers, or cause any opposition to the nature of the funding source.” This means the funds from additional green card processing fees would go toward further militarizing the border, possibly even funding this administration’s wall.

In February, 2018 hundreds of [Indian-Americans rallied](#) outside the White House supporting this administration’s immigration policies, drawing attention to the green card issue. In particular, they held a sign saying “Dreamers pay for the wall” and offered to pay additional fees toward their green card applications to finance a border wall by supporting H.R. 392.

The South Asian American community must categorically reject such a divisive approach toward immigration reform.

What is a stronger solution?

The Reuniting Families Act, which will be re-introduced in the new Congress, would improve our family-based immigration system, reunite and keep families together, clear the family-based backlogs **and eliminate the country caps in both family and employment-based visas**, rectifying the backlogs for all those seeking employment-based green cards. At a time when the administration is attacking immigrants from all directions, it is particularly important that we advocate for solutions that strengthen and unite rather than divide our communities.

[1] “State-Level Unauthorized Population and Eligible-to-Naturalize Estimates” *Center for Migration Studies*, 2015 <http://data.cmsny.org/>

[2] Wong, Tom. “DACA AAPI Data” *WHIAPPI* (2016)

[3] “Temporary Protected Status Designated Country: Nepal” *U.S. Citizenship and Immigration Services* <https://bit.ly/2KIQU6I>

[4] “Border Patrol Arrests CBP Data through April 2018 sort via All < Citizenship < Border Patrol Sector” *TRAC Immigration* <http://trac.syr.edu/phptools/immigration/cbparrest/>

[5] “Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform” *Migration Policy Institute*, 2018 https://www.migrationpolicy.org/sites/default/files/publications/H-1B-BrinkofReform-Brief_Final.pdf

[6] “Table 3: Persons Obtaining Lawful Permanent Resident Status by Region and Country of birth: Fiscal Years 2015 to 2017.” *Department of Homeland Security* <https://bit.ly/2ScgTHS>

[7] “Characteristics of H-1B Specialty Occupation Workers. Fiscal Year 2017 Annual Report to Congress.” *U.S. Citizenship and Immigration Services* <https://bit.ly/2GI568j>