



Specter and Frist Immigration Proposals May Increase EB Backlogs

Re-imposition of Hard Country Quota on Employment-Based Green Cards

Originally, both family-based and employment-based green cards were subject to a 7% hard country cap. **In 1999, the American Competitiveness in the 21st Century Act, recognizing that diversity was being unnecessarily imposed on an immigration category that values skill and knowledge, set a soft market-based country cap on skilled employment-based immigrants – Sec 202(a)(5) of the Immigration and Nationality Act.** The Specter immigration markup and the Frist immigration bill (S.2454) re-impose a hard country quota on skilled employment-based immigrants, by striking out Sec. 202(a)(5) (Sec 402(2) of the Frist bill; and Sec 502(2) of the Specter markup). Though these bills have other measures that benefit employment-based immigrants, **the re-imposition of a hard country cap would likely increase backlogs by transferring green cards meant for highly skilled workers to unskilled workers. Applicants from countries with large numbers of highly skilled workers, such as India and China, are already facing huge backlogs – and their wait will likely increase. A diversity visa lottery of 50,000 green cards already exists, solely to promote diversity among immigrants.**

Sec. 202(a)(5) of the Immigration and Nationality Act: Text

(5) Rules For Employment-Based Immigrants - (A) Employment-Based immigrants Not Subject to Per Country Limitation If Additional Visas Available- If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

Analysis of Sec 202(a)(5)

Excess visas in each EB category will first be given to oversubscribed countries in that same category. For instance, EB2 excess visas will be given to EB2 applicants from oversubscribed EB2 countries. If there are visas left over after satisfying all requests, then they will spill over to the next lower EB category.

Under Specter-Frist, Skilled category Green cards slip to the Unskilled; India EB2 quota only 52% of 2005 approvals; India EB3 quota is 87% of 2005 approvals; Backlogs will increase

The striking of Sec 202(a)(5) means that all countries will now be subject to a hard country cap of 10%, and hence visas in a specific category may end up unused. **Unused Green cards will likely slip down all the way to the EB5 unskilled category, and will not be used in the highly skilled category that they were intended for. Backlogs will increase.** India is used in the example below. The calculation eliminates dependents from the EB quota, as Specter and Frist intend. Though Specter-Frist exempt some advanced degree holders from the EB quota, no good numerical estimates exist for these exemptions. The calculation omits this provision.

EB Category	Proposed Annual Category Allotment	Hard 10% Per-Country Allotment (Dependents Not Included)	INDIA FY05 Actual Approvals (Dependents Not Included)	INDIA Hard Limit As % OF FY 2005 Primary Applicants	Rest Of The World (TOTAL - INDIA-CHINA) Hard Limit	Rest Of The World FY05 Actual Approvals (Includes Recaptured Visas)	Unused Visas Not Available to Backlogged Countries: Will Slip Down	Percentage of Category Visas unavailable to Backlogged Countries
EB-1	43,500	4,350	3,168	137%	34,800	53,586	(18,786)	-43%
EB-2	43,500	4,350	8,344	52%	34,800	17,379	17,421	40%
EB-3	101,500	10,150	11,700	87%	81,200	93,733	(12,533)	-12%
	188,500	18,850	23,211	81%	150,800	164,698		