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Why Don't They Just Get In Line? The Real Story of Getting a "Green Card" and Coming to the United States Legally

Many Americans wonder why all immigrants do not just come to the United States legally or simply "get in line" to gain residence (a "green card") if they are undocumented. Yet few people understand how grossly out-of-date the U.S. immigration system is and how unable it is to keep up with the demands of a growing and changing U.S. economy and to reflect the needs and values of our diverse nation. Lawmakers have failed for nearly 20 years to update our immigration laws or address the limited opportunities for securing legal immigration status. Today's overly restrictive legal limits on green cards mean that virtually all undocumented immigrants have no avenues for legal entry to the United States

No "line" available for the vast majority of undocumented immigrants

Suggestions that immigrants who are in the United States illegally—numbering an estimated [11 million](#)—should simply get in line miss the point: **There is no line available for them and the "regular channels" do not include them.** If given a choice, [opinion surveys](#) of undocumented immigrants indicate that 98 percent would prefer to live and work legally in the United States and would do so if they could. Furthermore, a [recent survey of Latino immigrants](#) found that more than nine in 10 who have not naturalized said they would if they had the possibility.

However, most undocumented immigrants do not have the necessary family relationships to apply for legal entry, or, if they do, they face years or decades of waiting for a visa. Those here illegally generally do not qualify as refugees unless they come from a handful of countries experiencing political unrest. And most undocumented immigrants do not work in professions that qualify for a green card. The annual number of green cards for lower-skilled workers is extraordinarily small and insufficient for America's enormous economy, which depends on high-, medium-, and lower-skilled workers.

Only certain categories of persons allowed to "come legally"

Getting a green card is generally limited to four different routes: employment, certain family ties, refugee or asylee processing, and the diversity lottery. Each of these groups includes specific paths, which in turn are subject to specific limitations (e.g., number of visas available and eligibility requirements) and obstacles (e.g., limits by country). Some of the supposedly available routes are in fact unfeasible.

Employment green card numbers out of sync with America's needs

An employer can request permission to bring in a qualified foreign worker in certain professions based on job skills and education level if the employer cannot find a qualified U.S. worker to take the job first. Most of the qualifying professions are high-skilled and require high levels of education, such as scientists, professors, and multinational executives. The total number of green cards available for all lower-skilled workers is limited to [5,000 per year for the entire United States](#). This grossly insufficient number of green cards in these types of jobs is the crux of the illegal immigration problem in the United States.

The demand for workers in the service sectors has grown considerably¹ while the supply of available U.S. workers has steadily diminished. This is especially true in industries such as construction, food service, and agriculture where the foreign-born represent approximately 20 percent of all workers.² Consider this: In 1960, 41 percent of the U.S. adult population (25 years old and older) did not have a high-school diploma.³ Today, only 7 percent of the adult U.S.-born population lacks a high school diploma—a clear contrast to 29 percent of adult immigrants who have not graduated from high school.⁴ While the number of available workers for these jobs is dropping as Americans become better educated and have fewer children, the demand for workers in these industries is growing and only expected to increase in coming years. Low-skilled immigration helps to fill this gap. In addition, it is positively associated with a number of benefits for American society, including not only cheaper child care, landscaping, and restaurant bills, but also lower prices for and greater availability of food, medical care, and housing.⁵ While a legalization program can address those immigrants currently in the United States without authorization, it must be coupled with a realistic plan for meeting labor demand. Until there are more legal avenues for employers to hire immigrant workers, illegal immigration will fill the gap when demand is high, and we will not gain the measure of control over immigration that the American people demand as a result.⁶

On the other end of the spectrum, the current immigration system also leads to an [inadequate supply](#) of green cards and H-1B visas⁷ for high-skilled professionals. Given that professionals in science, technology, engineering, and mathematics (STEM) fields tend to *create* jobs through their innovative work, such limits are economically self-defeating. The 2012 [report](#) from the Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce notes that “there are talented and accomplished STEM graduates from U.S. universities who are blocked from contributing to the U.S. economy by current immigration law.”⁸

Limited, restricted, and capped family immigration

A legal, qualified family member in the United States can seek permission (a petition) to bring in certain eligible foreign-born family members. U.S. citizens, for example, can petition for a green card for their spouses, parents, children, and siblings. Legal Permanent Residents (LPRs, or “green card” holders) can petition for their spouses and unmarried children, provided they meet other eligibility requirements. In all cases, the legal resident or U.S. citizen family member must demonstrate an income level above the poverty line and legally commit to support the family member they are seeking to bring to the United States. Finally, in most cases, the new immigrant is ineligible for most federal benefits or services until they have resided in the United States for five years.⁹

The very notion of family embedded in current legislation is indeed exclusionary. Based on that notion, same sex partners of U.S. citizens or LPRs are not eligible to apply for an immigrant visa. In particular, because of the Defense of Marriage Act (DOMA), which defines marriage as a relationship between a man and a woman, U.S. citizens or LPRs cannot sponsor same-sex spouses or partners through family-based immigration preferences. In other words, there is no line available for some immediate relatives of U.S. citizens or permanent residents.

In addition, the limitations on the number of total green cards available are unreasonable. There are numerical limits on most family categories, with demand typically higher than the number of available green cards. This results in significant backlogs for most family members hoping to enter the United States legally, with some immigrants from certain countries waiting decades.

While U.S. citizens and LPRs wait their turn to get a green card for their family member, it is nearly impossible for that family member to receive permission to even visit the United States. Mothers, fathers, and children, therefore, face years of separation, prompting some to risk entering illegally. Doing so, however, makes their chances of eventually receiving green cards even more distant and unlikely.

(Some) political refugees, yes; economic refugees, no

Each year, the president, in consultation with Congress, sets a ceiling for the number of refugees who may be admitted to the country. After one year, refugees may apply to become lawful permanent residents. Persons who enter the United States under any category may apply for asylum, but the burden of proof is high and the process is arduous. They must prove that any harm that came to them in their home countries amounts to persecution based on “race, religion, membership in a particular social group, political opinion, or national origin,” and generally must show that they fear further persecution if they return. In some cases, persecution based on membership in a particular social group can be difficult to establish if it is not immediately recognized by adjudicators as a well-defined group. For instance, women who fear female genital mutilation or persons fearing persecution based on sexual orientation fought for years before their claims were recognized, and such cases remain quite difficult to win¹⁰. In addition, asylum applicants must meet other requirements, such as filing an application within one year of entering the United States. In some cases, individuals who fled persecution in their home country may find their applications rejected if country conditions have changed—thus, even if it is no longer feasible for them to return to their country, there may be no legal basis to claim asylum. An immigrant does not qualify as a refugee or an asylee because of poverty or difficult economic conditions in their home country.

Limited lottery for certain countries

The annual Diversity Visa program makes 55,000 green cards available to persons from countries with low rates of immigration to the United States. People from Mexico, China, the Philippines, India, and other countries with higher levels of immigration to the United States are not eligible. To qualify, applicants must have a high school education and two years of job experience. Since each year millions of people around the world apply, the chances of winning a green card are low.

Growing backlogs

The Immigration and Nationality Act (INA) sets the number of immigrant visas that may be issued to individuals seeking LPR status (a green card) each year. According to U.S. Citizenship and Immigration Services ([USCIS](#)), the **length of time** applicants must wait before receiving an immigrant visa or adjusting status depends on the demand for and supply of immigrant visa numbers; per-country visa limitations; and the number of visas allocated for each particular preference category. For some countries, however, not all demand can be satisfied. Those countries are considered “oversubscribed,” which means that applicants who submitted their petitions after a certain cut-off date are not even assigned a visa number.¹¹

The backlogs are primarily caused by an imbalance between the supply and demand of immigrant visas. **The annual limit for total number of legal immigrants to the United States is 675,000.** Of those, a maximum of 480,000 are allocated to family-sponsored visas. By law, however, the number of family-based visas allocated through the preference system may not be lower than 226,000.

On the supply side, there are 2 main factors that result in long waits:

1. **Limits per visa category:** There are [numerical limits](#) on family-sponsored visas, as well as limits on each category of family-sponsored preference visa.
2. **Limit per country:** There is a [maximum number](#) of employment-based and family-sponsored preference visas that can be issued to citizens of any country in a fiscal year. No country can receive more than 7 percent of the visas available in a fiscal year. The per-country limit does not indicate that any country is entitled to the maximum number of visas each year.

The six countries with the highest number of waiting list registrants in 2012 are as follows:

Country	Applicants	Limit per country per year
Mexico	1,316,118	47,250
Philippines	432,145	47,250
India	332,846	47,250
Vietnam	267,281	47,250
China-mainland born	240,637	47,250
Dominican Republic	169,422	47,250

Source: U.S. Department of State, [Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2012.](#)

Within each country the allocation of available visas is not always consistently distributed among different categories. As a result, it is not possible to estimate the exact number of years that it will take for a new applicant in a specific category to receive a visa number. However, there is clear evidence that certain categories are backlogged in some countries.

From the figures reported in the March 2013 [Visa Bulletin](#) issued by the Department of State, it is possible to infer that applications in some family preferences in oversubscribed countries may take a significant number of years to receive a visa number. The chart below indicates which categories are currently being processed. Some of the most notoriously backlogged categories

are the sibling preference category in the Philippines; unmarried sons and daughters of permanent residents in Mexico; and married sons and daughters of U.S. citizens in China.

Cut-off dates for family-sponsored preferences in some oversubscribed countries

Family-sponsored category	China-mainland born	India	Mexico	Philippines
Unmarried sons and daughters of U.S. citizens	15JAN06	15JAN06	15JUL93	08MAR98
Spouses and Children of Permanent Residents	22OCT10	22OCT10	08OCT10	22OCT10
Unmarried Sons and Daughters (>=21) of Permanent Residents	15JAN05	15JAN05	15DEC92	15MAY02
Married Sons and Daughters of U.S. Citizens	08JUL02	08JUL02	08MAR93	22AUG92
Brothers and Sisters of Adult U.S. Citizens	15APR01	15APR01	01AUG96	01JUN89

Source: United States Department of State, Bureau of Consular Affairs, *Visa Bulletin* No. 53, Vol. IX, February 2013.

Conclusions

The argument that undocumented immigrants who want to regularize their status in this country should go to the “back of the line” is fallacious on many levels. There are many lines, but a large number of aspiring legal residents are not eligible to be in any of them. Even if a prospective immigrant does have the formal requirements to apply for permanent residence, the wait can be everlasting if she or he is applying from countries that are currently oversubscribed.

The legal immigration system should provide positive incentives for aspiring immigrants to follow the rules. A system that does not provide realistic options for legal immigration is unsustainable over time. The presence of 11 million undocumented immigrants in the country constitutes powerful evidence of the failure of the current immigration system to both encourage and allow newcomers to enter the United States through legal routes.

Endnotes

¹ David H. Autor and David Dorn, [“The Growth of Low Skill Service Jobs and the Polarization of the U.S. Labor Market,”](#) *American Economic Review*, forthcoming.

² Audrey Singer, [Immigrant Workers in the U.S. Labor Force](#) (Washington DC: Brookings Institution, March 15, 2012).

³ US Census Bureau, [“Educational Attainment of the Population of the United States: 1960,”](#) 1960 Census of Population-Supplementary Reports, December 27, 1962.

⁴ Audrey Singer, [Immigrant Workers in the U.S. Labor Force](#) (Washington DC: Brookings Institution, March 15, 2012).

⁵ Harry J. Holzer, [Immigration Policy and Less-Skilled Workers in the United States: Reflections on Future Directions for Reform](#) (Washington DC: Migration Policy Institute, January 2011).

⁶ [There is growing consensus among business and labor organizations about the need for a new visa system that allows businesses to meet their demand for lower-skilled workers while protecting American workers.](#) See Ashley Parker, [“Visas Are Urged for Lower-Skilled Work,”](#) *New York Times*, February 21, 2013.

⁷ The current [annual cap](#) on the H-1B category is 65,000.

⁸ Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, [Help Wanted: The Role of Foreign Workers in the Innovation Economy](#) (Washington, DC: December 2012), p. 3.

⁹ For a review of eligibility rules see Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, [Summary of Immigrant Eligibility Restrictions under Current Law as of 2/25/2009](#).

¹⁰ Swetha Sridharan, [The Difficulties of U.S. Asylum Claims Based on Sexual Orientation](#), Migration Information Source, Migration Policy Institute, October, 2008.

¹¹ The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. The priority date is the date that the petition is properly filed with USCIS or the date the labor certification application was accepted for processing by the Department of Labor (when a labor certification is required).