



April 27, 2021

The Honorable Zoe Lofgren
Chair, House Committee on the Judiciary, Immigration and Citizenship Subcommittee
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Tom McClintock
Ranking Member, House Committee on the Judiciary, Immigration and Citizenship
Subcommittee
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Lofgren and Ranking Member McClintock,

As an employer who sponsors highly skilled immigrants for green cards as a complement to our U.S. workforce, Microsoft has a long history of supporting reforms that seek to preserve and strengthen our nation's ability to attract the world's best talent. Those reforms must also ensure integrity in immigration programs and grow opportunities for U.S. workers in the modern economy.

We appreciate the Committee on the Judiciary's attention to these issues with this week's hearing, and we respectfully offer our perspectives on the critical issues in immigration requiring attention and reform.

The United States must reform and modernize its approach to employment-based immigration.

Highly skilled immigrants are an essential component of our country's innovative capacity, competitive advantage, and economic strength. The COVID-19 pandemic has highlighted the vital contributions of immigrants to the country's response and recovery—with many immigrants working and contributing in essential fields like healthcare, information technology, and other critical infrastructure roles.

Unfortunately, our employment-based immigration system is out of date and out of synch with today's economy. This comes as no surprise, as the framework and key numerical quotas for the system have not been updated since 1990, at a time when the phrase

“world wide web” had yet to be coined. During the more than three decades since, the global economy, technological innovation, and nearly every aspect of modern life has undergone enormous transformation. Today, the computational power that previously required a room filled with microprocessors is now surpassed by the everyday phones in our pockets. Advances in cloud computing, machine learning, and artificial intelligence are democratizing the power of technology and creating enormous opportunities. And new cybersecurity risks and threats are emerging every day that need to be confronted and mitigated.

Our nation’s laws and policies have failed to keep up with these technological advances and economic transformation. In the ambition to drive the kind of innovation that can foster greater prosperity and economic inclusion, businesses and immigrants are facing an increasingly unworkable system that is impeding pathways to progress. And for our nation, it means we are failing to realize the full potential of these technological advances, with a growing risk of losing ground in a globally competitive world.

There are many challenges faced by our current system and many reforms that are needed. Below we describe just a few of the most pressing burdens and barriers the status quo imposes on businesses, workers, and families.

1. *Green card backlogs have reached extraordinary thresholds due to outdated quotas and arbitrary limits based on country of origin.*

Our laws fail to provide clear paths for individuals with degrees in high-demand fields from U.S. universities and from around the world to stay and contribute to U.S. economic growth. Despite the increasing need for talented people with technology skills, the number of employment-based green cards available each year remains at only 140,000—a number that has not changed since 1990. These limits are made more problematic by the “per-country cap,” which limits the number of green cards allocated to a single country of origin to 7%—only 9,800. That limit, which is unrelated to actual global talent flow, leads to decades-long backlogs for individuals from larger countries, despite already meeting the extensive documentary requirements for permanent residence.

These two constraints mean that the annual supply of employment-based green cards falls drastically short of the actual number of immigrants who are otherwise eligible for permanent residence, an issue that has been at the center of Microsoft’s work on immigration reform for more than a decade. Right now, there are an estimated 1.2 million sponsored high-skilled employees (along with their spouses and children) in the employment-based green card backlog.¹ These are individuals who have *already been fully approved as qualified and eligible for green cards* by the government, based on their jobs and their skills. They are just waiting for a number to become available.

Because of per-country limits, individuals from only a few countries bear the disproportionate burden of this backlog. That burden has fallen principally on those born in India or China. To illustrate the effect, at Microsoft, we have nearly 700 employees whose underlying green card qualifications were approved by the government in 2011 or

¹ See David Bier, *Employment-Based Green Card Backlog Hits 1.2 Million in 2020*, Cato at Liberty blog (November 20, 2020), <https://www.cato.org/blog/employment-based-green-card-backlog-hits-12-million-2020>.

earlier, who are still waiting for a green card number to become available and be issued to them. And the timeline is even more stark for those who are coming to the U.S. today. For example, an India-born immigrant starting the process today faces an estimated eight-decade wait to get an employment-based green card.² Their spouses—many of whom are highly-skilled in their own right—face uncertainty about whether or not they will be able to work and contribute to the economy while they wait.

Such an untenable prospect—that the estimated green card backlog could exceed one’s *remaining life expectancy*—is not the way to attract and retain the world’s top talent. And yet, even with this backlog, the system cannot ensure that all statutorily available green card numbers can be fully utilized before the end of the fiscal year, resulting in wasted green card numbers.³

2. *Children who grew up in the U.S. with documented status are increasingly at risk of being forced to leave because the length of the green card backlog will foreclose their path to a green card.*

Additionally, because of these extensive delays, many children who have grown up in the U.S. are forced to leave when they turn 21 and no longer qualify for residency based on their parents’ delayed visa applications. This eventuality weighs heavily on families who have relocated to the U.S. to apply their skills and invest their futures in this country. Our immigration laws should be reformed to ensure that the green card backlog does not, as an unintended consequence, foreclose the ability for children to remain in the U.S. with their families. Protecting these children from “aging out” of green card eligibility can be accomplished with a simple legislative fix.

3. *Improving and modernizing agency processes is long overdue and essential to reduce the significant hardships being caused by current system delays.*

Administrative delays and uncertainty in adjudications add additional instability to an already uncertain future for employment-based immigrants and the businesses that employ them. While we recognize that immigration agencies operate with significant demand, processing times have become so lengthy that certain categories of individuals—like spouses of H-1B and L-1 visa holders—are guaranteed to face employment gaps due to those delays, which means a loss of valued workers at a critical time for businesses and financial hardship for families. In other areas, the administrative process is unnecessarily inefficient and burdensome. In some cases, these challenges can be addressed through modernization and digital transformation of operations. In others, it is a matter of

² There are a range of estimates on the approximate length of the green card backlog for India-born employment-based immigrants. Based on the latest data available, there are over 815,000 sponsored employees, spouses, and children in the India-born green card backlog. Under the standard annual allocation of 9,800 green cards each year per country, it would take over 83 years to issue green cards to each of those individuals. This does not take into account complex rules for distribution of unused green card numbers that are not subject to per-country limits.

³ See U.S. Department of State: Consular Affairs, *May Visa Bulletin Youtube Live Q&A* (April 22, 2021), comments by Charles Oppenheim, Chief, Visa Control and Reporting Division, <https://youtu.be/ORqfhwLIHck> (“Therefore, we believe it would be somewhat unrealistic not to expect there to be tens of thousands of unused [green card] numbers, despite everybody’s best efforts this year.”).

resourcing, policy simplification, and clarity in adjudicatory standards. These issues create a lack of predictability that disrupts business planning while placing unnecessary anxiety on families navigating an already complicated immigration system.

Lastly, while not the focus of this hearing, it is critical that Congress find a bipartisan legislative solution for Dreamers. Microsoft is proud to have Dreamers among our employee community, each of whom is contributing to our company's mission and success. We are grateful for the work in the House to pass H.R. 6, the American Dream and Promise Act, and we are hopeful for bipartisan movement in the Senate, on behalf of our employees as well as the more than 600,000 Dreamers who are waiting for a defined pathway to citizenship.

We appreciate the committee's attention to the critically important issue of immigration reform.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jack Chen', with a long horizontal line extending to the right.

Jack Chen
Associate General Counsel
Microsoft Corporation