



Arguments Against Country Cap Removal for Employment-Based Green Cards (HR1044/S386)

www.NoHR1044.com
www.NoS386.com

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Cause of the backlog

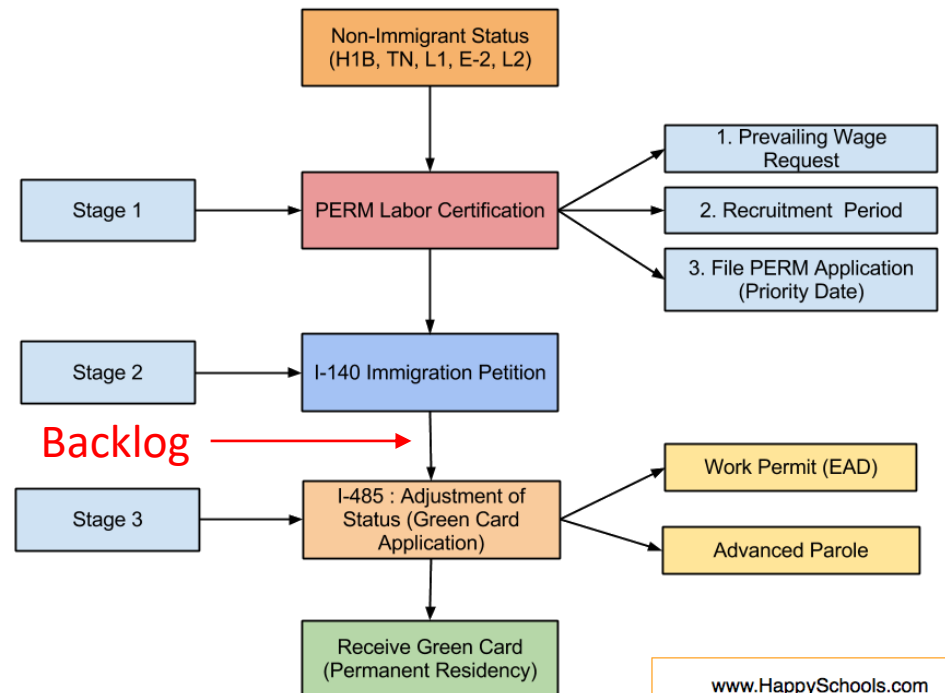
Indian outsourcing firms have used the two main employment visas (H-1B and L1A/B) to bring into the US hundreds of thousands of Indian workers with primarily bachelor degrees from Indian universities. This has created a backlog of Indian applicants waiting to get green cards. The passage of HR1044/S386 would crowd out applicants from over 190 countries—who are more likely to have attended US universities—from getting green cards for the next 12 years.

How the employment green card process works

- H-1B was instituted by law in 1990
- H-1B visa had a maximum duration of 6 years but in 2000 with the enactment of Act 21 workers were allowed to renew indefinitely if they had an I-140 approved.
- At any point during H1-B duration the employer or the employee (in national interest cases) can petition for a green card. 70% of GC applicants are on H1-B.

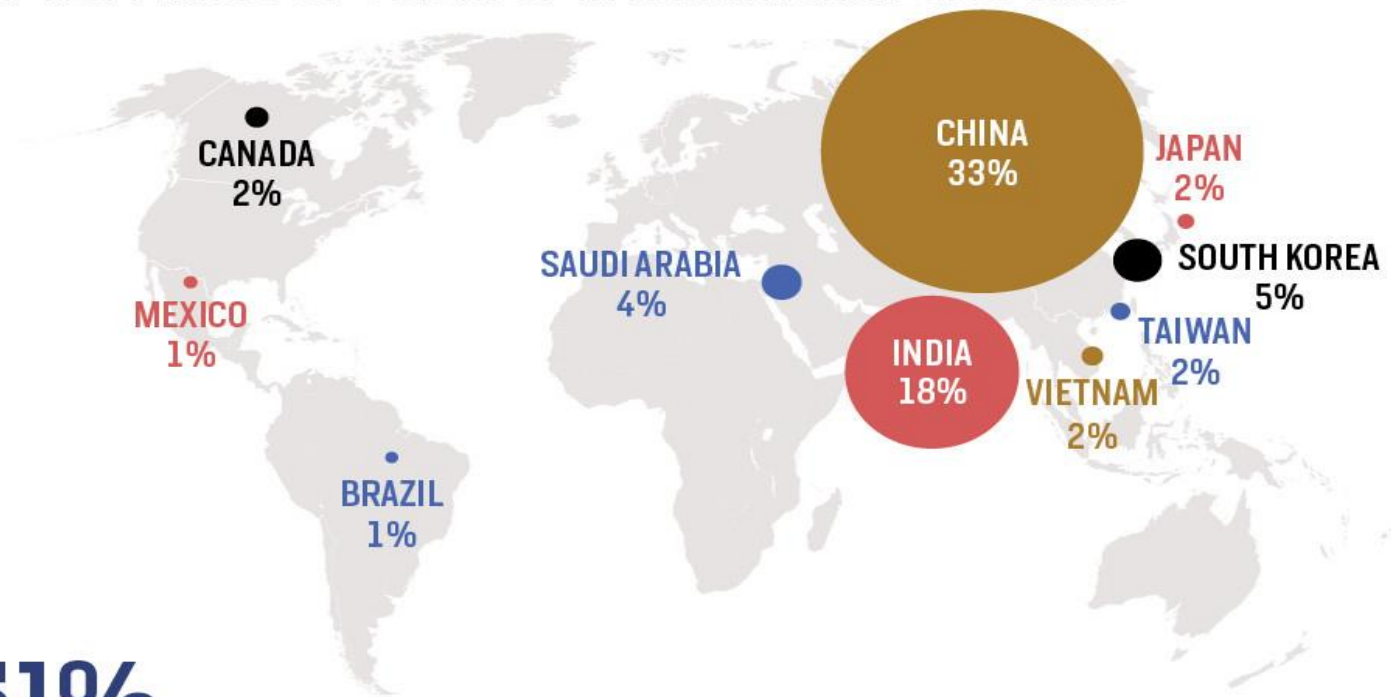
Process for employer-sponsored immigration
(Does NOT include EB1A and EB2 NIW categories which are petitioner-sponsored)

Stages of Green Card Process : Employment Based



This is the distribution of foreign students studying in the U.S.A. U.S. degrees are considered to be the best in the world. If the system was merit-based we would expect to see a similar distribution in H-1B approvals

TOP TEN PLACES OF ORIGIN OF INTERNATIONAL STUDENTS



51%
of international students come from China and India.

Open Doors is conducted by the Institute of International Education with the support of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. Online at: www.iie.org/opendoors

opendoors®

<https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Scholars/Places-of-Origin>

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H.R. 1044/S. 386** 5

Table 4B. H-1B Petitions Approved by Country of Birth of Beneficiary and Type of Petition (Percent): FYs 2016 and 2017

Country of Birth	All Beneficiaries		Initial Employment		Continuing Employment	
	FY 2016	FY 2017	FY 2016	FY 2017	FY 2016	FY 2017
	Percent	Percent	Percent	Percent	Percent	Percent
Total	-----	-----	-----	-----	-----	-----
Country of birth	100	100	100	100	100	100
India	74.2	75.6	61.8	62.7	80.4	81.0
China, People's Republic Of	9.3	9.4	14.7	14.0	6.6	7.5
Canada	1.0	1.0	1.6	2.1	0.7	0.6
Philippines	1.1	1.0	1.1	1.2	1.1	0.9
Korea, South	1.0	0.9	1.6	1.3	0.8	0.7
Mexico	0.6	0.6	0.8	1.2	0.5	0.4
Taiwan	0.6	0.6	1.1	1.0	0.4	0.4
United Kingdom	0.6	0.5	0.8	0.8	0.5	0.4
Pakistan	0.5	0.4	0.6	0.6	0.4	0.4
France	0.5	0.4	0.8	0.7	0.4	0.3
Brazil	0.4	0.4	0.7	0.7	0.3	0.3
Iran	0.4	0.4	0.7	0.8	0.2	0.2
Turkey	0.4	0.4	0.6	0.5	0.3	0.3
Nepal	0.4	0.3	0.5	0.4	0.4	0.3
Germany	0.4	0.3	0.6	0.6	0.3	0.2
Japan	0.4	0.3	0.5	0.4	0.4	0.3
Italy	0.3	0.3	0.5	0.5	0.2	0.2
Russia	0.3	0.3	0.5	0.4	0.2	0.2
Spain	0.3	0.3	0.5	0.4	0.2	0.2
Colombia	0.3	0.2	0.4	0.3	0.2	0.2
Venezuela	0.3	0.2	0.4	0.3	0.3	0.2
Other countries	6.5	5.9	9.2	9.0	5.2	4.6

Notes: Countries of birth are ranked based on FY 2017 data.

Sum of the percent may not add to 100 due to rounding.

However, India
claims every year
75% of H-1B visas



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Source: USCIS

45% of applicants with approved H-1B visas only have a Bachelor's degree. So assuming that the distribution of degrees among countries is equal (which is not) 34% of H-1B visas go to Indian nationals with Bachelor's degrees.

**Table 6. Percent of H-1B Petitions Approved by Level of Education:
FYs 2014-2017**

Level of Education	FY 2014	FY 2015	FY 2016	FY 2017
Education known	100	100	100	100
Less than a Bachelor's degree	1	1	1	1
Bachelor's degree	→ 45	45	44	45
Master's degree	43	44	45	44
Doctorate degree	8	7	7	7
Professional degree	4	3	3	3

Note: Sum of percent may not add to 100 due to rounding.

Source: USCIS

WHY IS THIS HAPPENING?

Outsourcing firms obtain 1/3 of the H-1B visas (data from 2014)

The top 20 companies granted visas:

7 outsourcing firms based in India

16,573 visas

2 outsourcing firms based in other countries

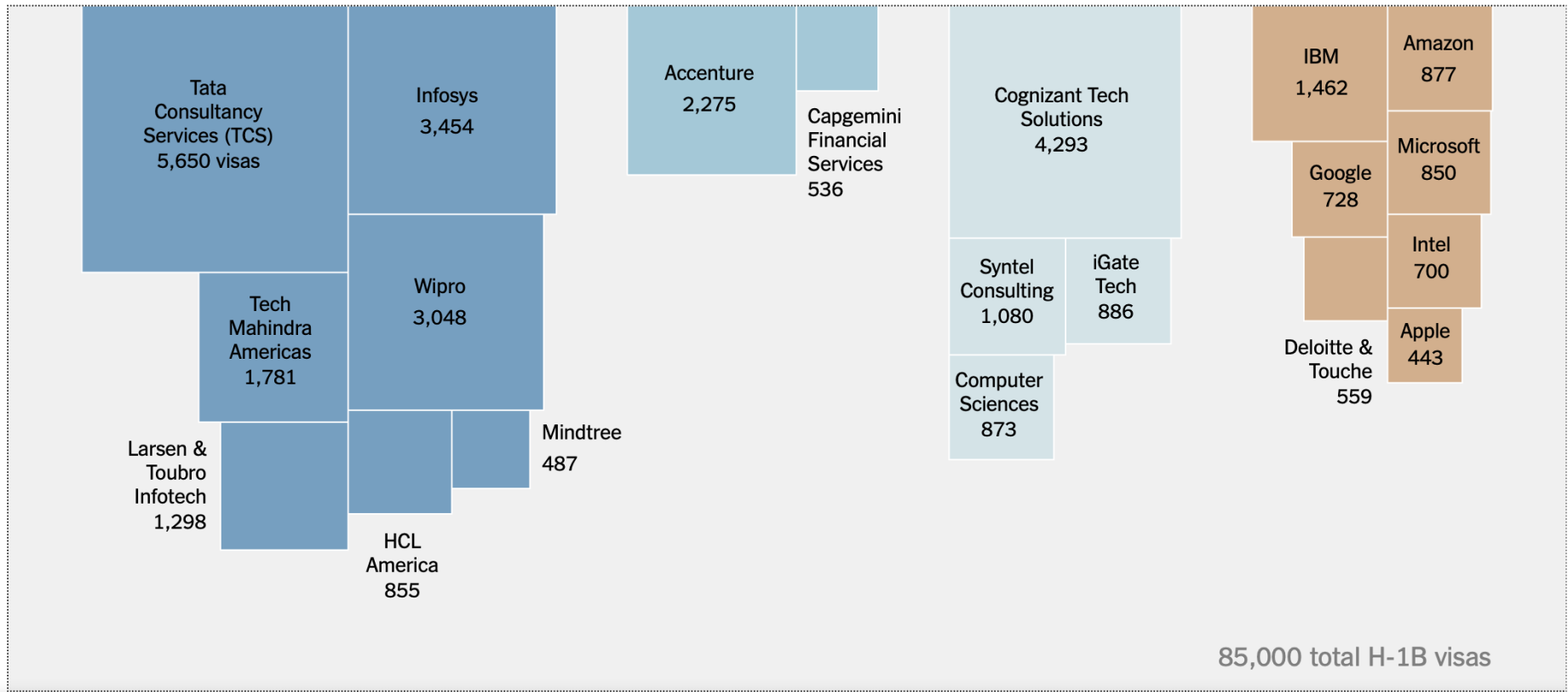
2,811

4 outsourcing firms based in the U.S.

7,132

7 other firms based in the U.S.

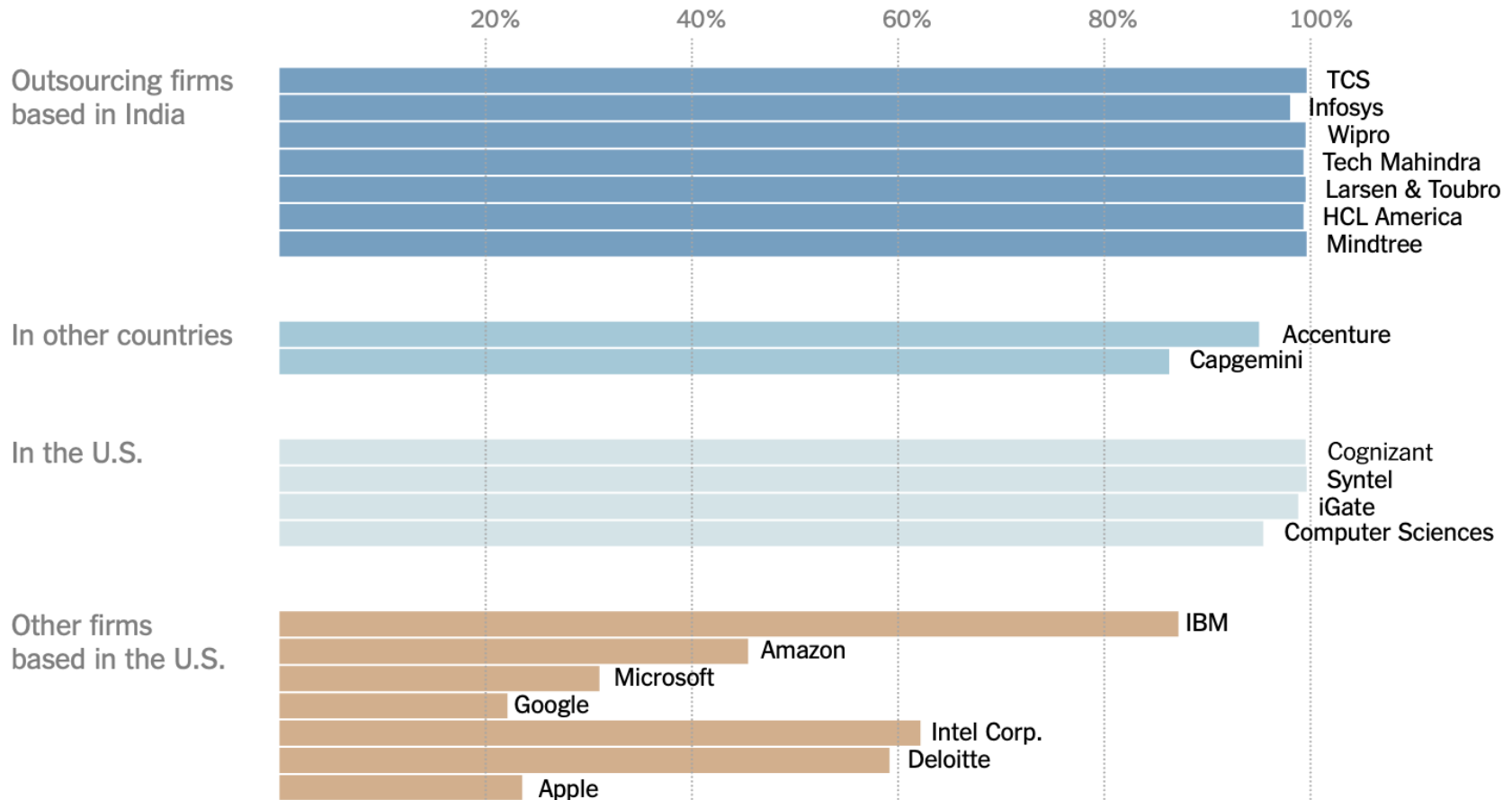
5,619



<https://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html>

The vast majority of these workers are from India

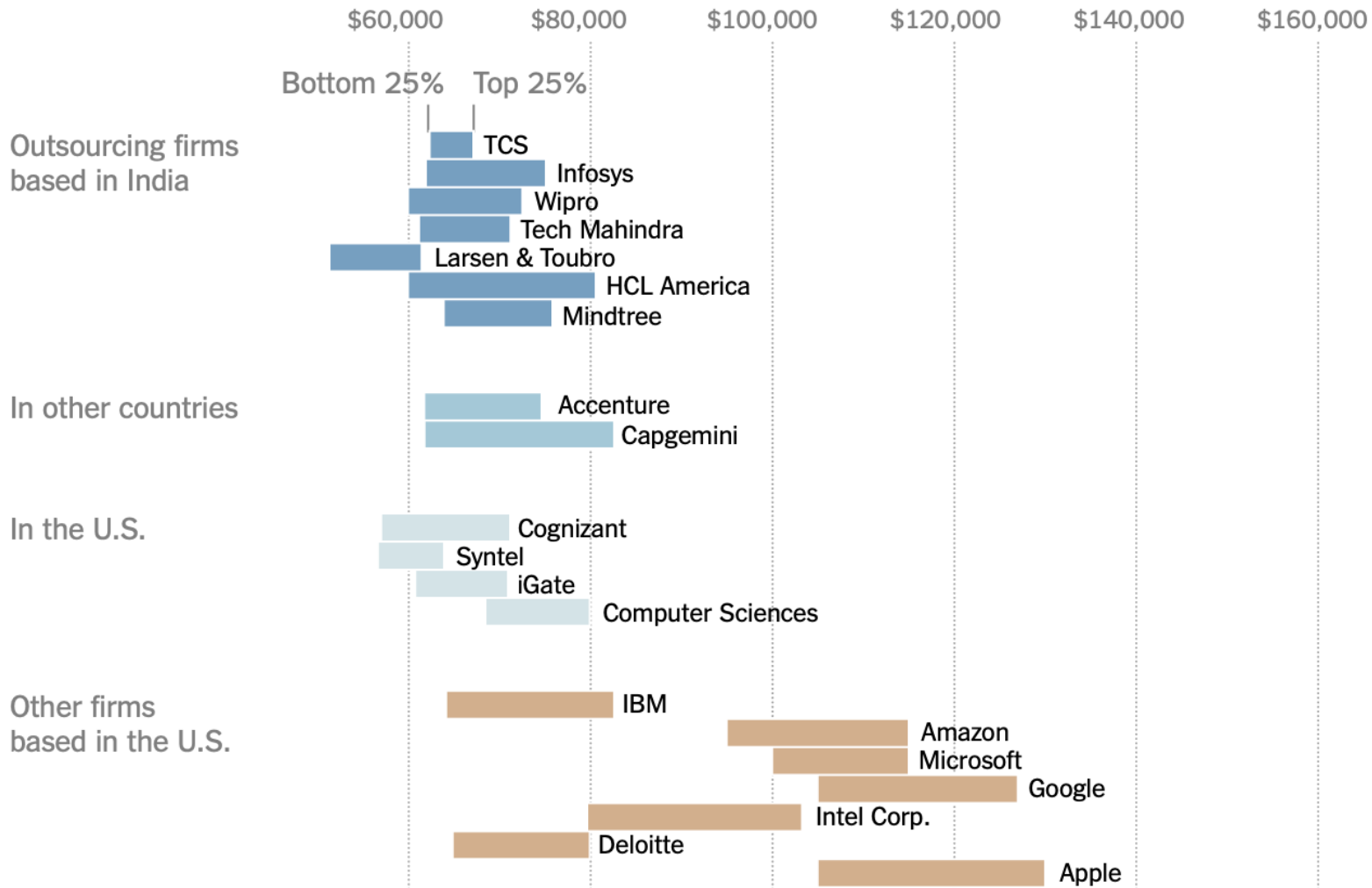
Share of H-1B workers from India, from 2005 to 2012



<https://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html>

These workers accept low salaries

Wage distribution for new H-1B workers in 2013



<https://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html>

In other words these Indian nationals with Indian Bachelor's degrees are displacing Americans IT workers. They are given preference because they accept lower salaries and are dependent on their employer until their green card is issued. This is a snapshot from an **Indian news outlet** about the effect of increasing H-1B denials

Local hiring

This has compelled Indian IT majors to increase hiring in the US, leading to an escalation in employee costs and impacting their cost structures, the report added.

Over the past five years, the number of H-1B approvals has declined by 21 per cent. However, the decline has been sharper year-on-year (YoY) in FY18, at 50 per cent.

In FY18, the total number of approved H-1B petitions for the top five Indian IT companies — TCS, Infosys, Wipro, Tech Mahindra Americas and HCL America — was 22,429. Of these, 72 per cent persons held bachelor's degrees while the balance 28 per cent held Master's degrees.

<https://www.thehindubusinessline.com/economy/h-1b-rejections-hit-it-firms-hard-in-fy18/article26750011.ece>

More and more people are recognizing this phenomenon:

Technology

The Secret Way Silicon Valley Uses the H-1B Program

Indian companies are applying for a lot of visas for workers to fill jobs at the headquarters of American tech companies

And American workers have been trying to fight back through several lawsuits:

H-1B visa: HCL to face lawsuit for alleged hiring bias in US

India's homegrown IT service firm, HCL Technologies is now being accused of discrimination while hiring for its US locations. The news comes months after another Indian IT firm, **TCS faced a lawsuit** over a similar issue. Indian IT firms are facing major heat in the US after the Trump administration increased scrutiny of the H-1B visa program.

<https://www.bloomberg.com/news/articles/2017-06-06/silicon-valley-s-h-1b-secret>

<https://content.techgig.com/h-1b-visa-hcl-to-face-lawsuit-for-alleged-hiring-bias-in-us/articleshow/68760151.cms>

And these H-1B visas slowly move towards green cards

OFFICE OF FOREIGN LABOR CERTIFICATION

Permanent Labor Certification Program – Selected Statistics, FY 2018

Top 5 Countries of Citizenship	→ India	56,537	52% ←
	China	11,925	11%
	South Korea	4,796	4%
	Canada	4,137	4%
	Mexico	3,569	3%
Minimum Education Requirements	Advanced Degree	50,276	46%
	→ Bachelor's	43,570	40%
	Less than Bachelor's	12,592	11%
	Other	3,107	3%

https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2018/PERM_Selected_Statistics_FY2018_Q4.pdf

And the same companies that misused the H-1B program sponsor a big part of EB green cards

Top 100 Green Card Sponsors -2019 Green Card Report

1 - 25 | [26 - 50](#) | [51 - 75](#) | [76-100](#) | [search all](#)

Category: [Case Status](#) | [Citizenship](#) | [Visa](#) | [Job Title](#) | [Occupation](#) | [Industry](#) | [Work City](#) | [Work State](#)

Rank	Green Card Sponsor	Green Card Petitions	Average Salary
1	Cognizant Technology Solutions	4,232	\$83,091
2	Microsoft	1,995	\$133,632
3	Google	1,792	\$140,435
4	Amazon	1,615	\$130,542
5	Intel	1,473	\$123,223
6	infosys	993	\$117,768
7	Apple	929	\$157,330
8	Hcl America	834	\$103,646
9	Facebook	692	\$148,537
10	George's Processing	655	\$22,091
11	Qualcomm Technologies	627	\$122,909
12	Oracle America	555	\$127,099

Source: myvisajobs.com

Striking difference of educational background and country of birth between the IT firms and other tech companies

Cognizant

Profiles of foreign workers who applied for green card under PERM:

Citizenship: India(6880); United States Of America(19); China(9); Canada(3); Cameroon(2); Nepal(2); Singapore(2);
United Kingdom(2); Ethiopia(1); Mexico(1)

Class of Admission: H-1B(6561); L-1(337); Parolee(8); L-2(5); H-4(2)

Education: Bachelor's(4994); Master's(1574); Other(359)

Collected: Anna University, India(1039); University Of Madras, India(427); Jawaharlal Nehru Technological University, India(416); The West Bengal University Of Technology, India(240); Visveswaraiah Technological University, Belgaum, India(236); Bharathidasan University, India(204); Osmania University, India(177); Anna University Chennai, India(174); University Of Pune, India(174); Anna University, Chennai, India(152)

Major: no records

Google

Profiles of foreign workers who applied for green card under PERM:

Citizenship: China(1660); India(952); Canada(361); South Korea(89); Taiwan(82); Australia(60); France(59);
Germany(57); Ukraine(51); United Kingdom(51)

Class of Admission: H-1B(3040); L-1(582); F-1(292); TN(162); E-3(37); H-1B1(9); J-1(8); L-2(7); O-1(5); Parolee(5)

Education: Master's(2505); Bachelor's(1160); Doctorate(482); None(5); Other(4)

Collected: Carnegie Mellon University(291); University Of Southern California(143); Columbia University(113); University Of Waterloo, Canada(88); Stanford University(72); Cornell University(67); New York University(65); University Of Pennsylvania(56); University Of Toronto, Canada(48); Peking University, China(48)

Major: no records

In other words, when the employment is merit-based, green card applications closely mimic the distribution of foreign students studying in the U.S. In outsourcing IT companies though, merit does not play a role. Indians have dominated the industry and as a result they employ thousands of Indian nationals with Bachelor's degrees to do the work, displacing American workers.


Employment-Based Green Card Categories (140K Green Cards / Year)

- First preference (EB-1) – priority workers (40K/year)
 - Foreign nationals with extraordinary ability in the sciences, arts, education, business, or athletics
 - Outstanding professors and researchers
 - Certain multinational managers and executives
- Second preference (EB-2) (40K/year)
 - Members of the professions holding **advanced degrees (lawyers, MDs, PhDs, Master's and Bachelor' degrees with 5 years of experience**
 - Foreign nationals with an exceptional ability (including requests for national interest waivers)
- Third preference (EB-3) (40K/year)
 - Skilled workers, professionals, or other workers
- Fourth preference (EB-4) - special immigrants (10K/year)
 - Religious workers and special immigrant juveniles
- Fifth preference (EB-5) - immigrants investors (10K/year)

The fact that workers with Bachelor's degrees (from any country) and 5 years of experience qualify to apply for EB2 under the current law led to a huge backlog. 93% of the applicants on EB2 backlog are Indian nationals.

Table 5. Approved Pending Employment-Based Immigrant Petitions at USCIS

(Actual principal immigrant petitions and estimated derivative immigrants included, April 20, 2018)

	1st (Priority)	2nd (Professional)	3rd (Skilled)	3rd (Other)	4th (Special)	5th (Investor)	Total
Actual Principal Immigrants	58,354	233,301	60,316	737	19,381	22,936	395,025
Derivative Immigrant Multiplier	1.4	1.0	1.1	1.5	0.3	1.9	N/A
Estimated Derivative Immigrants	81,696	233,301	66,348	1,106	5,814	43,578	431,842
Total Estimated Immigrants	140,050	 466,602	126,664	1,843	25,195	66,514	826,867

Source: USCIS, "Form I-140, Immigration Petition for Alien Worker, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant - Employment Based Form I-526, Immigrant Petition by Alien Entrepreneur, Count of Approved Petitions as of April 20, 2018 with Priority Date On or After May 2018 Department of State Visa Bulletin." Estimated derivative immigrants and total estimated immigrants were computed by CRS using the derivative immigrant multiplier found in the USCIS report cited above.

Notes: "N/A" indicates not applicable for the category.

Source: Congressional Research Service 2018 Report

What Does HR1044/S386 Do?

According to the current law, no country can claim more than 7% of yearly EB green cards. This cap was employed to prevent monopolization of the immigration system from one country. However, a country may take more green cards if no other country claims them for the same year.

In a three-year transition period, this bill amends the Immigration and Nationality Act to eliminate the per-country cap for EB immigrants

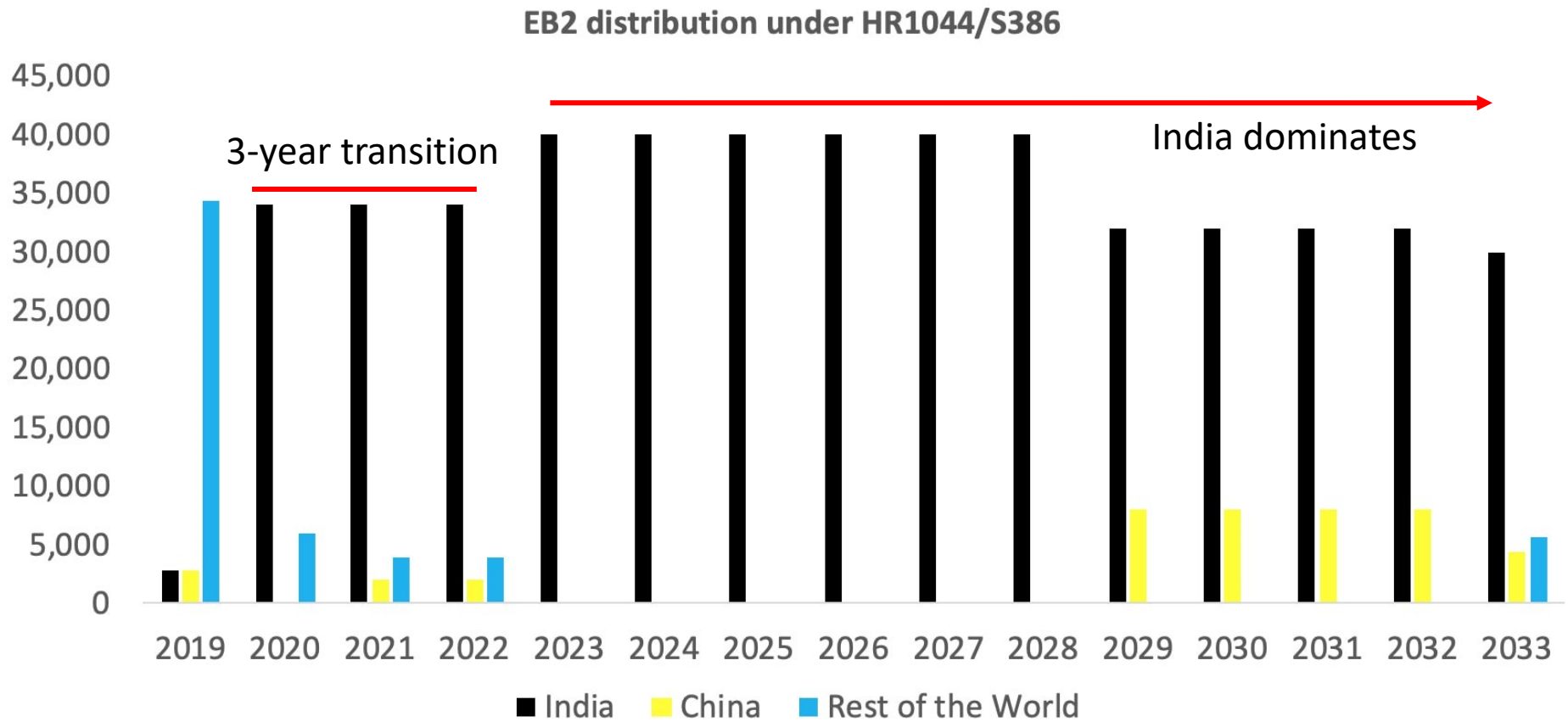
Transition period:

1st year, 15% is allotted to natives of countries other than India and China
2nd & 3rd year, 10% is allotted

No-harm clause:

Every applicant with approved I-140 outside India and China will not be affected by this law.

A Forecast of Immigration Visa Distribution for the next decade if HR 1044/S 386 passes



The graph was created from data presented in the Congressional Research Service 2018 Report

Why the transition period and the no-harm clause do not protect other countries

- As shown in the graph, the transition period reserves 14K green cards in EB2 for countries apart from India and China for the next 12 years. These GC will cover the needs of these countries ONLY for the first 4 months after the bill's enactment.
- Applicants from other countries do not have any backlog. So at any given moment, applicants with approved I-140 waiting for their green card is a small number. As a result, the no-harm clause practically has no use
- Foreign nationals from around the world have spent years studying in the U.S. and performing research in world-renowned universities. But suddenly, their path to a green card will be shut for 12 years if this law passes.

Effects of HR1044/S386

- The healthcare and biomedical industry will be devastated as the majority of Indian applicants that will receive green cards in the next 12 years work in the information technology sector
- The USA will face a sudden shortage of nurses. Nurses come to work in the USA only on green cards (most are not eligible for H1B) and because of the backlog green cards will not be available for 12 years if this bill passes.
- Researchers from around the world will be suddenly forced to wait 12 years to obtain a green card. Especially for researchers this is devastating, as NIH funding depends on permanent resident status
- Talented students from the rest of the world will not choose U.S. to study as there will not be a feasible pathway to permanent residency
- Apart from the healthcare industry, any other industry outside IT will be adversely affected (ie automobile industry)

<https://www.forbes.com/sites/andyjsemotiuk/2019/03/18/indian-and-chinese-tech-workers-could-go-to-front-of-green-card-line-under-new-bill/#572174471835>

The Congressional Research Service clearly predicts:

“For example, shorter wait times for LPR status might actually incentivize greater numbers of nationals from India, China, and the Philippines to seek employment-based LPR status. If that were to occur, the reduction in the number of approved petitions pending might be short-lived. In addition, absent a per-country ceiling, a handful of countries could conceivably dominate employment-based immigration, possibly benefitting certain industries that employ foreign workers from those countries, at the expense of foreign workers from other countries and other industries that might employ them.”

<https://crsreports.congress.gov/product/pdf/R/R45447>

Lee Francis Cissna (Former USCIS Director)

“All the flow of immigrants in the EB category will be only from India for many years”

<https://www.youtube.com/watch?v=L25NkKOoA40&t=1s>

Fact Checking of HR1044/S386 Supporters

- High-skilled green cards from other nationalities remain unused: **Incorrect**
 - All the green cards which are not used by each nationality will be distributed to the nationalities that hit their cap. The second distribution is based on application date and is called “Spillover”.
- Current system is unfair to Indians. **Incorrect**
 - India has 17% of the world’s population, and gets 17% of the employment-based green cards each year due to spillover. This is way higher than the 7% cap.
- A low-skilled worker from other nationalities gets his/her permanent residency faster than an Indian doctor: **It needs context**
 - Currently a person of other nationality in EB3 (skilled) gets his green card faster than an Indian doctor in EB2(high skilled). A merit-based immigration system would fix this issue. HR1044/S386 would allow Indian applicants with Bachelor’s degrees from Indian universities to overwhelm the system and crowd out doctors from ALL countries (not just India).
- The law will clear the backlog: **Incorrect**
 - This law doesn’t increase the green cards so NO backlog will be cleared. Instead it will be redistributed among all countries leading to a 12-year backlog for any applicant. From a system that doesn’t work for one country, it will create a system that doesn’t work for ANY country.
- The law will not increase immigration because it does not increase green cards: **Incorrect**
 - As the Congressional Research Service reports this law will incentivize Indians and other nationals from countries with significant backlog to immigrate to the USA. Because of ACT 21 these immigrants can stay on H1B forever until a green card becomes available. So in summary, this law will increase immigration and will worsen the backlog.

India receives 17% of yearly employment-based green cards which is directly proportionate to its population

*Table 10. Persons Obtaining Lawful Permanent Resident Status By Broad Class Of Admission And Country Of Birth:
Fiscal Year 2017*

Country of Birth	Total	Immediate Relatives of U.S. Citizens	Family-Sponsored Preferences	Employment-Based Preferences	Diversity	Refugees and Asylees	Other
Total	1,127,167	516,508	232,238	137,855	51,592	146,003	42,971
India	60,394	20,549	14,962	23,569	40	795	479

Source: USCIS 2017 Yearbook of Immigration Statistics

Organizations that are publicly against the bill

- The American Hospital Association
- US Technology Workers
- Protect US Workers
- Progressives for Immigration Reform
- Canadian American Bar Association
- The UC Student-Workers Union
- Korean Americans in Action
- South Asian Americans leading together
- Philippine Nurses Association
- National Iranian American Council
- Muslim Public Affairs Council
- The Greek American Community & AHEPA
(<https://www.gopetition.com/petitions/fairness-for-high-skilled-immigrants-act.html>)

Conclusions

- HR1044/S386 will allow thousands of Indian IT workers with Bachelor's degrees from India to monopolize immigration.
- HR1044/S386 will create an instant 12-year backlog for all countries in EB2 category.
- Indian nationals with advanced degrees (MDs, PhDs, US Masters) are truly in a position they do not deserve but the solution is not to make all people with advanced degrees suffer.
- A merit-based solution is urgently needed.