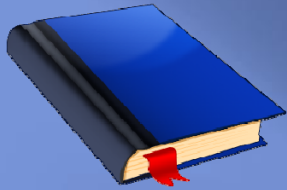


HOW DO WE MAINTAIN THE BEST AND THE BRIGHTEST?

Peter F. Asaad, Attorney At Law
Immigration Solutions Group, PLLC

Wednesday, June 3, 2009

The National Academies Keck Center, 500 Fifth Street, NW,
Washington, DC 20001 – Keck 100



Every year thousands of foreign nationals enter the U.S. to study...

The number of foreign students enrolled in U.S. institutions increased steadily during the four decades prior to 9/11:

- 50,000 (1.3% of total student population) 1959/1960
- 586,000 (3.5% of total student population) 2002/2003

Changes to policy and implementation following 9/11 significantly slowed the visa process for most students and scholars.

- 564,000 (3.2% of total student population) 2005/2006

Source: Institute of International Education

Since then the number of international students increased to a record high of 623,805 in 2007/2008.

Year	Int'l Students	Annual % Change	Total Enrollment	% Int'l
2005/06	564,766	---	17,487,000	3.2%
2006/07	582,984	+3.2%	17,672,000	3.3%
2007/08	623,805	+7.0%	17,958,000	3.5%

New international student enrollment is also rising, increasing by 10% from both 2005/06 to 2007/08 and 2006/07 to 2007/08. The U.S. remains the premier destination for international students.

Source: Institute of International Education

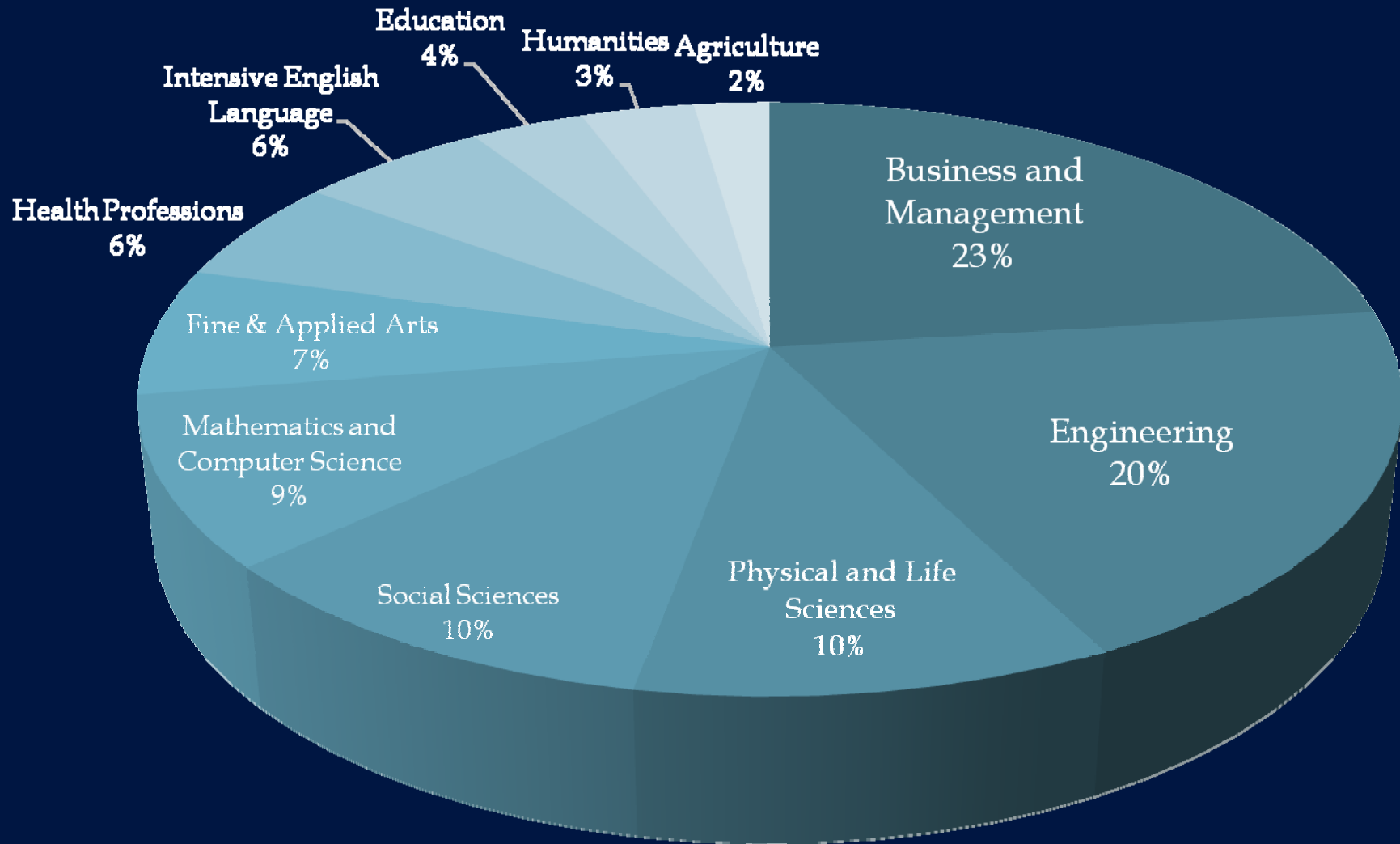
India contributed the greatest percentage, sending 94,563 students in 2007/08. China came in second, contributing 81,127 students.

South Korea (69,124),
Japan (33,974), and
Canada (29,051) round
out the top 5 contributing
countries.



Source: Institute of International Education

Top 10 Fields of Study for International Students



Source: Institute of International Education

International Students:

- Help fill the science and engineering talent pool that fuels innovation and keeps U.S. companies competitive;
- Enrich the educational experiences of their peers and bring different perspectives to their disciplines, often initiating new research directions that may lead to scientific or technological breakthroughs;
- Provide a positive link between the U.S. and their home countries, helping the U.S. to establish the friendly ties that aid in public diplomacy and foreign policy; and
- Contribute over \$15.5 billion to the U.S. economy through their expenditures on tuition and living expenses.

Source: Institute of International Education



International students also become a talented, trained, and well-educated group of potential employees, the kind many employers are interested in...

...But navigating employment eligibility as a foreign worker can be a daunting task.

**So you want to
recruit the best
and the brightest?**

**It' going to be
a bumpy road...**

Imagine that you are a
foreign national coming
to the U.S. ...



Congratulations! You have
been admitted into the U.S. on
a F-1 student visa.



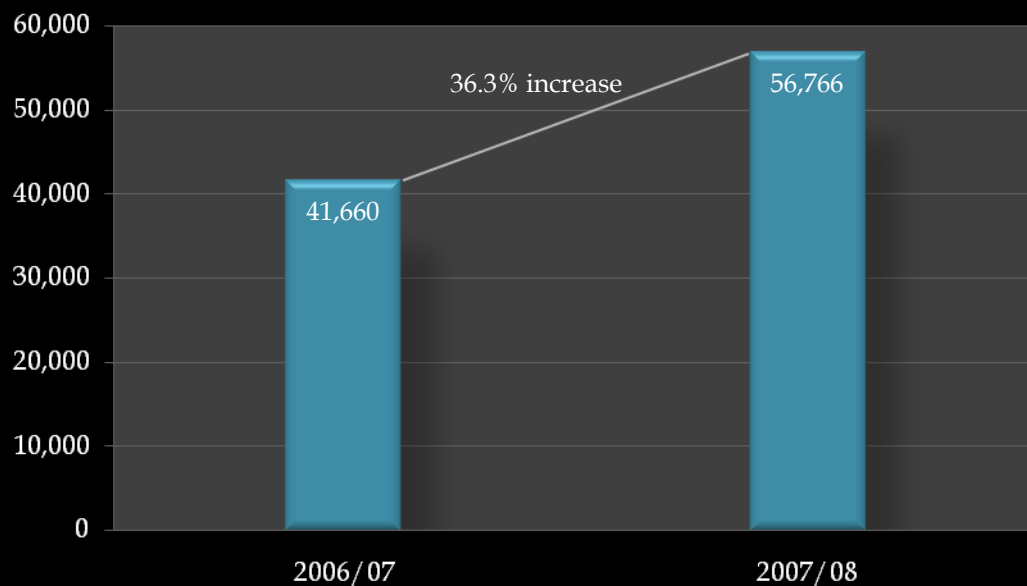


You complete your
S&T advanced
degree and graduate
at the top of your
class. Well done!

You work via Optional Practical Training (OPT) for 12 months (potentially 29).



Students on OPT



In the 2006/07 academic year there were 41,660 international student on OPT. By 2007/08 that number had grown to 56,766, a 36.3% increase.

Source: Institute of International Education

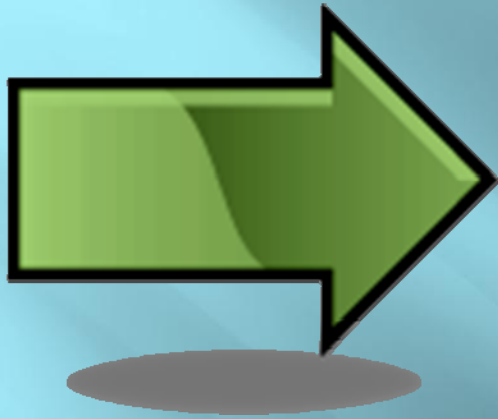
You decide that you
want to permanently
reside and work in
the U.S. ...



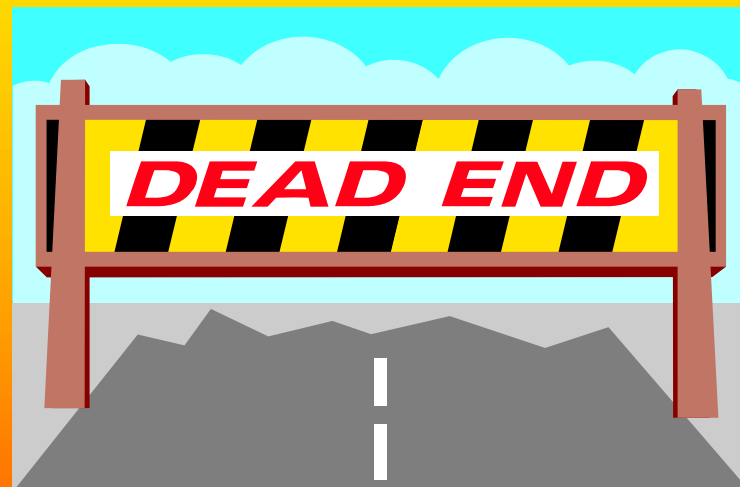


... your F-1 visa is not dual intent. You cannot adjust status to legal permanent residence.

The choice:



- You weigh returning to your home country or staying in the U.S. where you have been educated and trained.
- You accept that you must first reside and work in the U.S. temporarily if at all.
- The H-1B visa is dual intent; it's too early for an O-1 visa; the L-1 requires a year of work at a branch office abroad. Your option is just the H-1B visa.



The H-1B cap is reached and you were not randomly selected. You cannot work on an H-1B visa.



The H-1B Cap:

In an attempt to balance the needs of U.S. employers with employment opportunities for U.S. residents, Congress passed the Immigration Act of 1990. This created the H-1B visa with a yearly cap of 65,000.

In Fiscal Year 1997, the cap of 65,000 was reached for the first time prior to the end of the fiscal year.

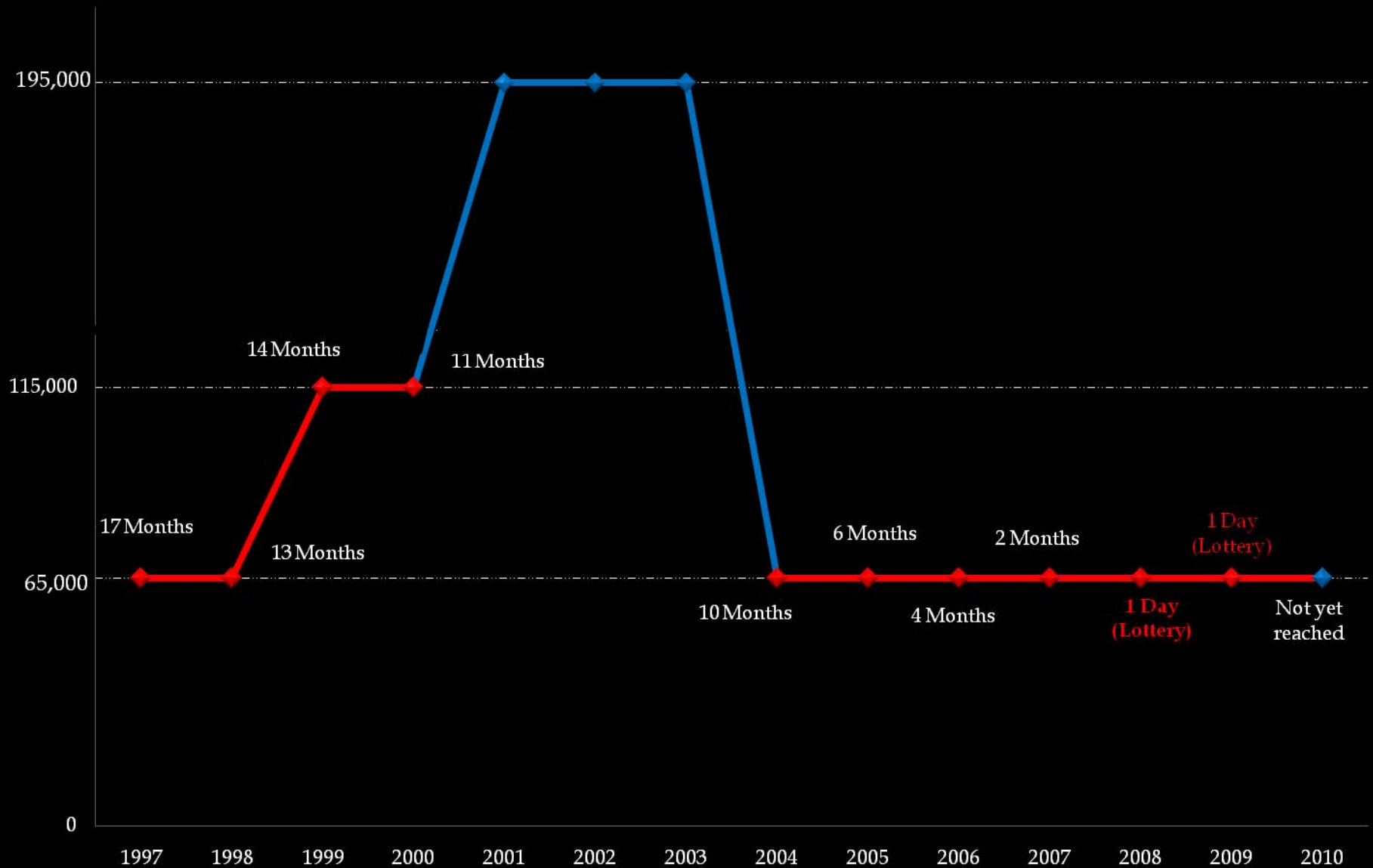
Since 1997 congress has taken steps to accommodate the demand for H-1B visas, including:

- Increasing the cap to 115,000 in FY1999-FY2000 and to 195,000 in FY2001-FY2003.**
- Allowing H-1B workers to remain if their employers petitioned for them to become Legal Permanent Residents.**
- Exempting up to 20,000 applicants holding a Master's degree or higher from a U.S. university from the annual cap.**

-However, these steps have often not effectively matched the demand for H-1B visas.

H-1B Visa Cap

- Cap is reached before the end of the fiscal year
- Cap is not reached





The Critics:

- There is no compelling evidence that the demand for workers in H-1B professional areas cannot be met by hiring newly graduating students and retraining the existing U.S. workforce.
- If there was in fact a labor shortage, salaries and compensation would be rising in these professional areas to attract qualified U.S. workers.



The Critics:

- Some employers prefer H-1B workers because they are less demanding in terms of wages and working conditions.
- An investigation of Labor Certification Applications in 2005 reported that many employers were paying H-1B visa holders below the median prevailing wage for the corresponding occupation and location.



The Critics:

- Education and training of U.S. students and workers should be prioritized instead of fostering a reliance on foreign workers.
- An industry's dependence on temporary foreign workers may lead the best and brightest U.S. students to seek positions in fields that offer more stable and lucrative careers.



Supporters of increasing the H-1B cap:

- H-1B workers are essential for the United States to remain globally competitive.
- Education of students and retention of the current workforce is a long term approach, but employers need qualified workers now.



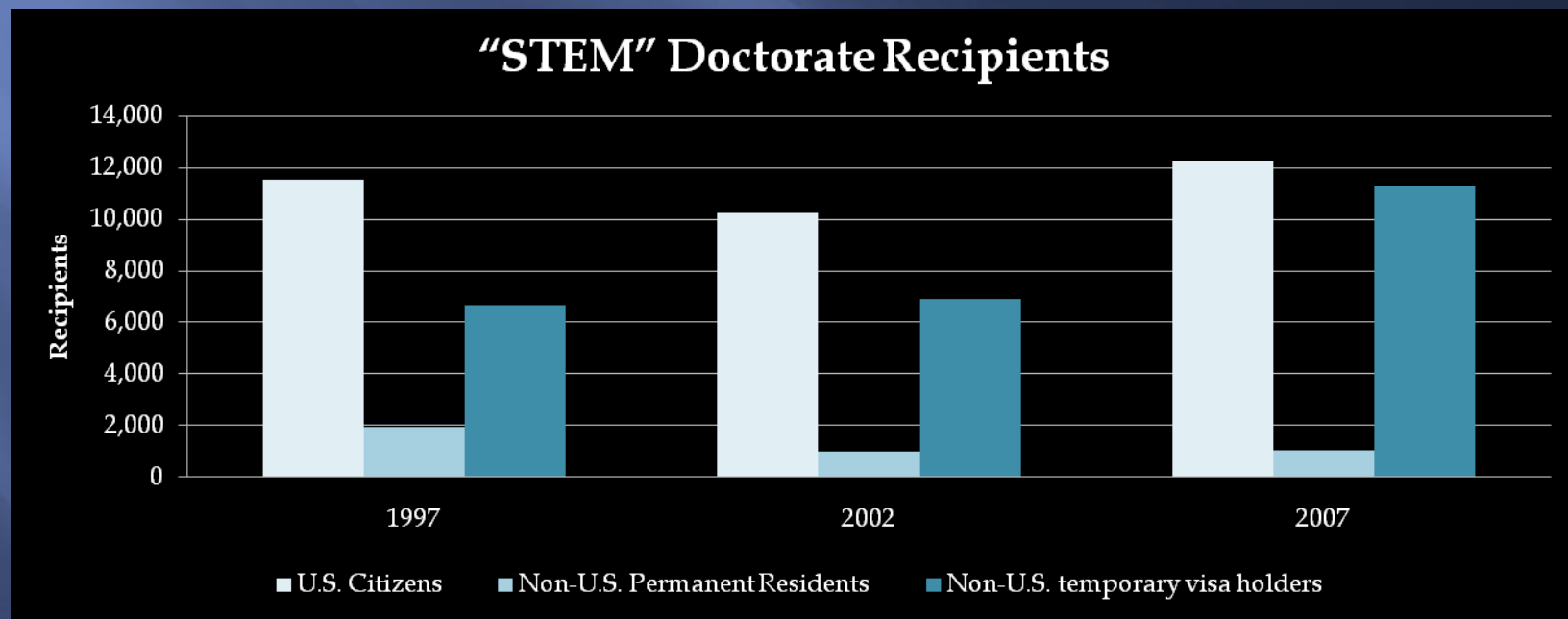
Supporters of increasing the H-1B cap:

- Employers should be free to hire the best people for the job.
- Market forces should regulate H-1B visas, not an arbitrary ceiling.



Supporters of increasing the H-1B cap:

- Many science, technology, engineering and mathematics (“STEM”) graduates of U.S. colleges and universities are foreign students:



Source: National Science Foundation

Top 20 Countries of Origin of Non-U.S. Citizens Earning Doctorates at U.S. Colleges and Universities (2007):

Rank	Country	Number of Doctorate Recipients
1	China (PRC)	5,002
2	India	2,228
3	Korea	1,529
4	China (Taiwan)	755
5	Canada	629
6	Turkey	559
7	Japan	330
8	Thailand	275
9	Russia	269
10	Germany	237

Rank	Country	Number of Doctorate Recipients
11	Mexico	229
12	Romania	209
13	Brazil	180
14	Great Britain, UK	174
15	France	173
16	Iran	163
17	Italy	147
18	Argentina	141
19	Jordan	132
20	Egypt	127

Source: NSF/NIH/USED/NEH/USDA/NASA 2007 Survey of Earned Doctorates

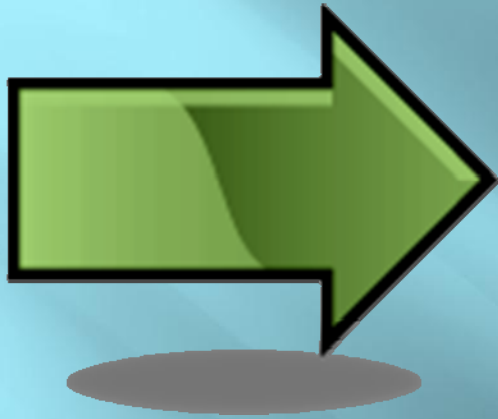


Supporters of increasing the H-1B cap:

- Over half of Silicon Valley tech start-ups and a quarter of those nationwide were founded by immigrants from 1995-2005.
- In 2005 alone, these companies generated \$52 billion in revenue and employed 450,000 workers (a number greater than the number of H-1B workers in the tech industries over the prior 10 year period).
- Foreign nationals in the U.S. contributed to 25.6 percent of our global patents in 2006.

Source: Institute of International Education

Merely increasing the
H-1B cap will not clear
the path for the best and
the brightest.



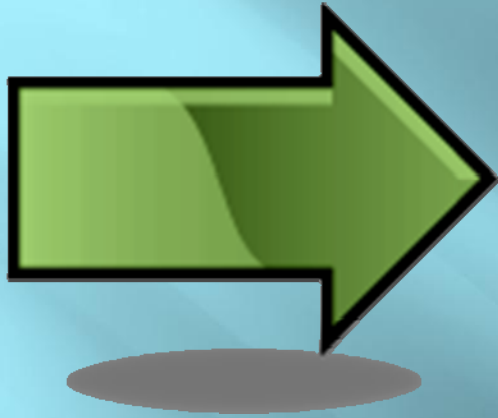
H-1B cap is not reached, or you
are randomly selected.

You can now work
on an H-1B visa.

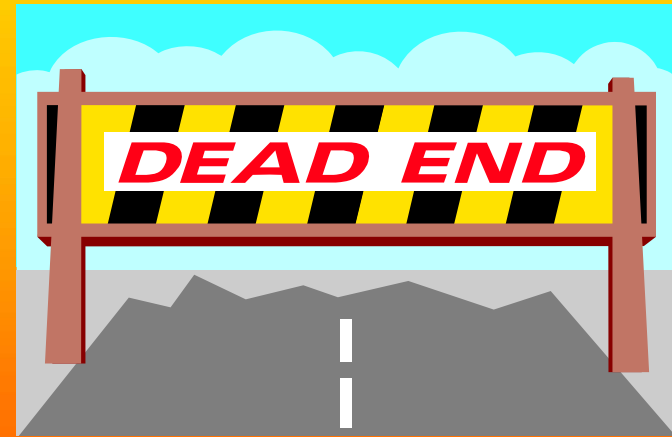




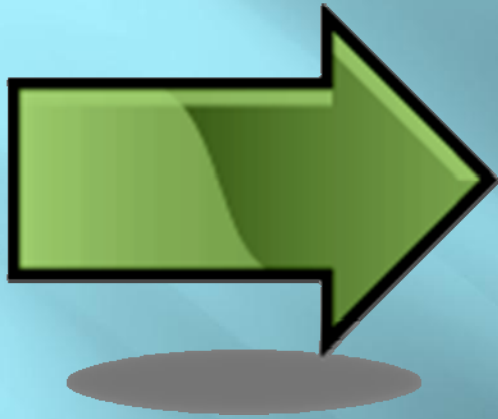
You reach the temporary stay six year
limit on your H-1B visa.



Your H-1B is a dual intent visa, so your employer is able to sponsor you for legal permanent residency.



The Labor Certification Process yields a willing, available and minimally qualified U.S. worker for the position. You cannot get your labor certification approved.



The Labor Certification Process does NOT
yield a willing, available and minimally
qualified U.S. worker for the position.
Your labor certification gets approved!

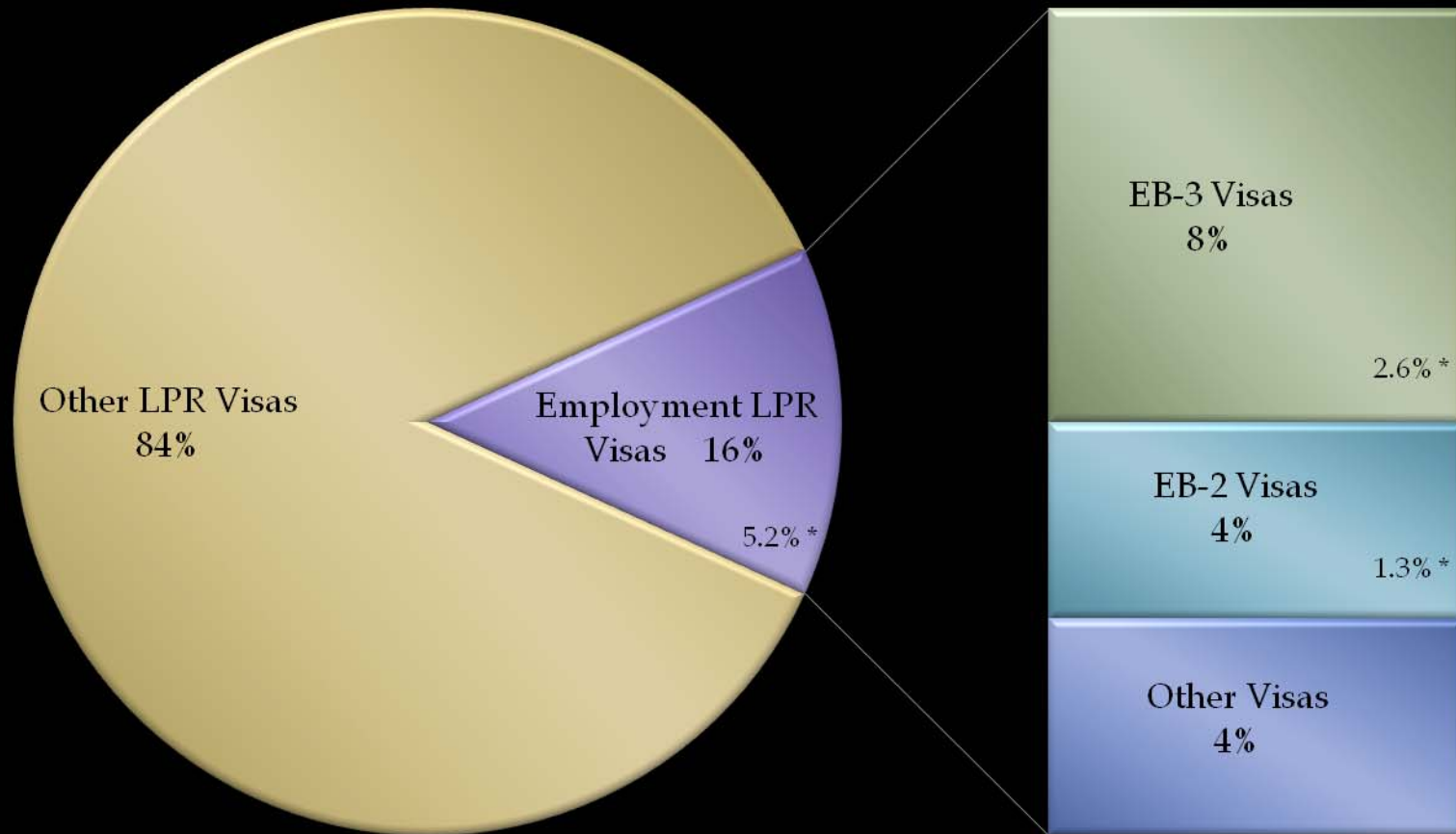


A 7% per country cap on 140,000 employment-based green cards per year, allocated per employment-based category, with 2/3 of the available green cards going to immediate family members => means that your wait for an immigrant visa number could be up to 20 years...

The employment preference limit per year = 140,000 + any unused family preferences from the previous year. The 140,000 includes immediate family members immigrating with the principal applicant. This reduces the total by approximately 2.1 relatives for every principal applicant.

These limitations mean that, on average, employment-based LPR flows have accounted for only a fraction of the total number of LPR visas granted.

2002-2008 LPR Visa Breakdown



* Indicates actual principal applicants.

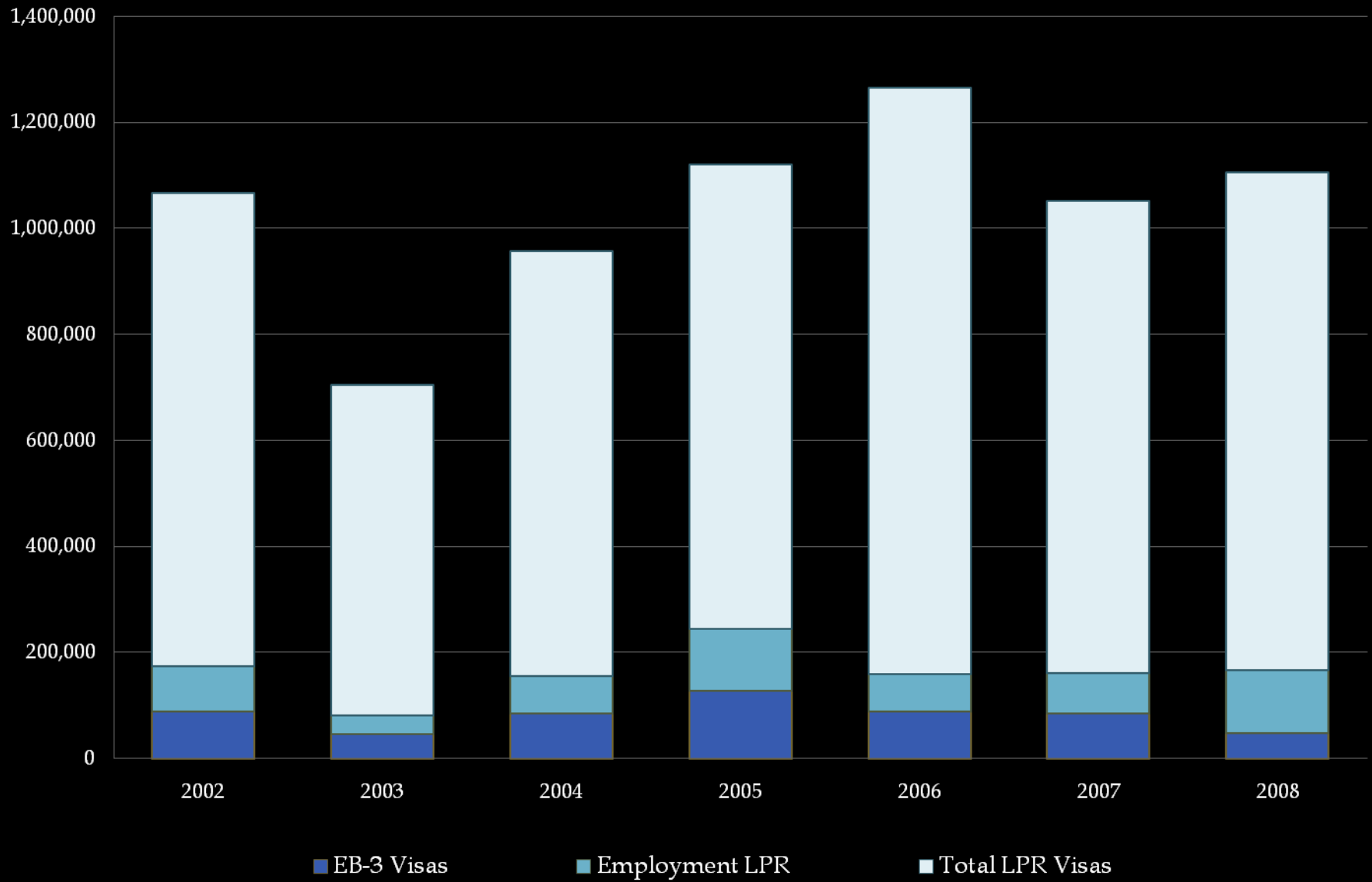
Source: U.S. State Department

EB-3 Visas, or 3rd preference category immigrant visas, are for professionals, skilled workers, and unskilled workers.*

While historically the EB-3 category has been the largest, the number of new LPRs using the third preference category decreased by 42% from 2007 to 2008.

* They can account for no more than 28.6% of the total. There is a per country limit of 7% of the total employment preferences.

LPR Flow EB-3

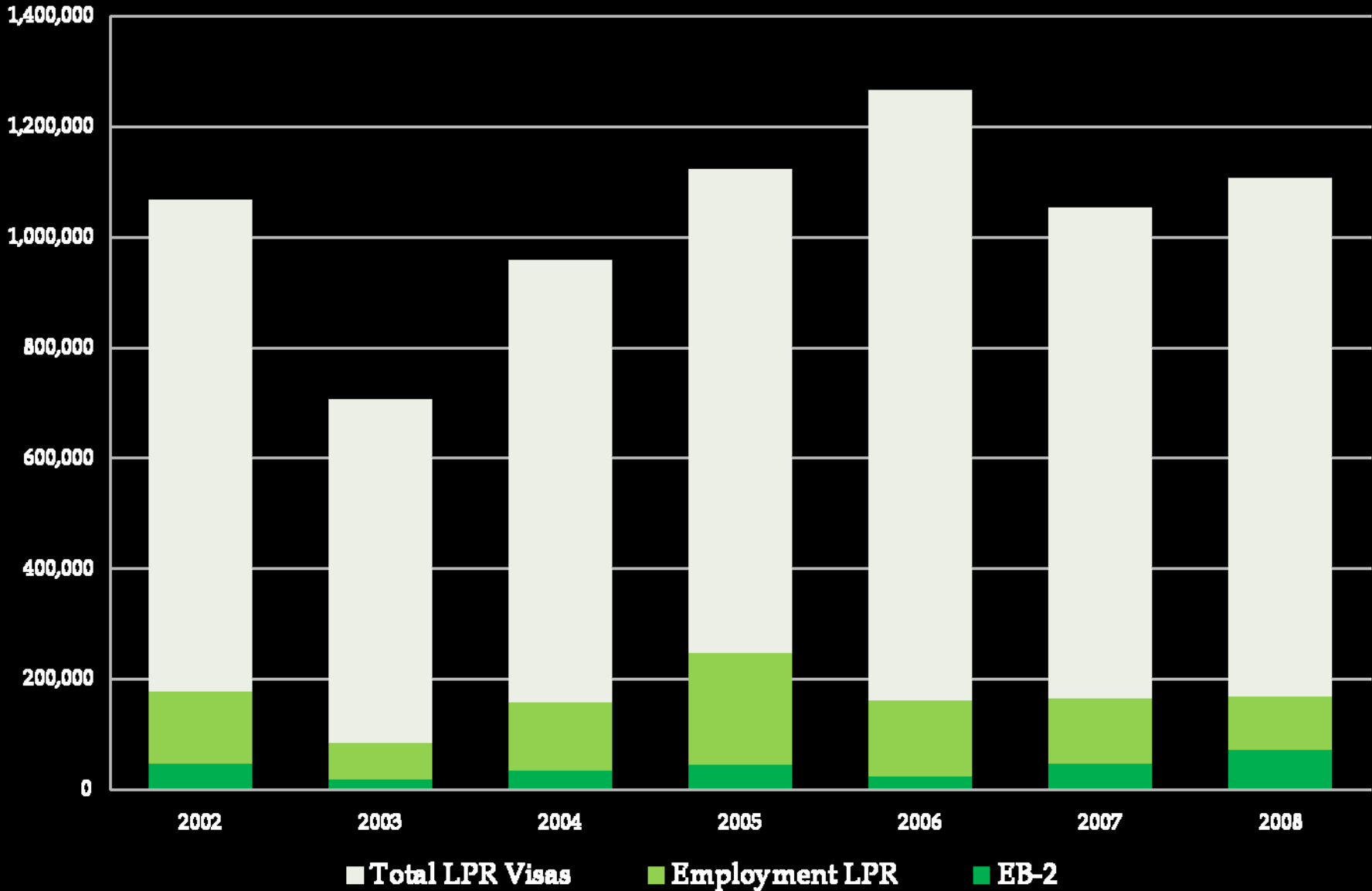


EB-2 visas, or second preference category visas, are for professionals with advanced degrees.*

While historically the EB-3 category has been the largest, the number of EB-2 category applicants increased from 2007 to 2008 by 59%.

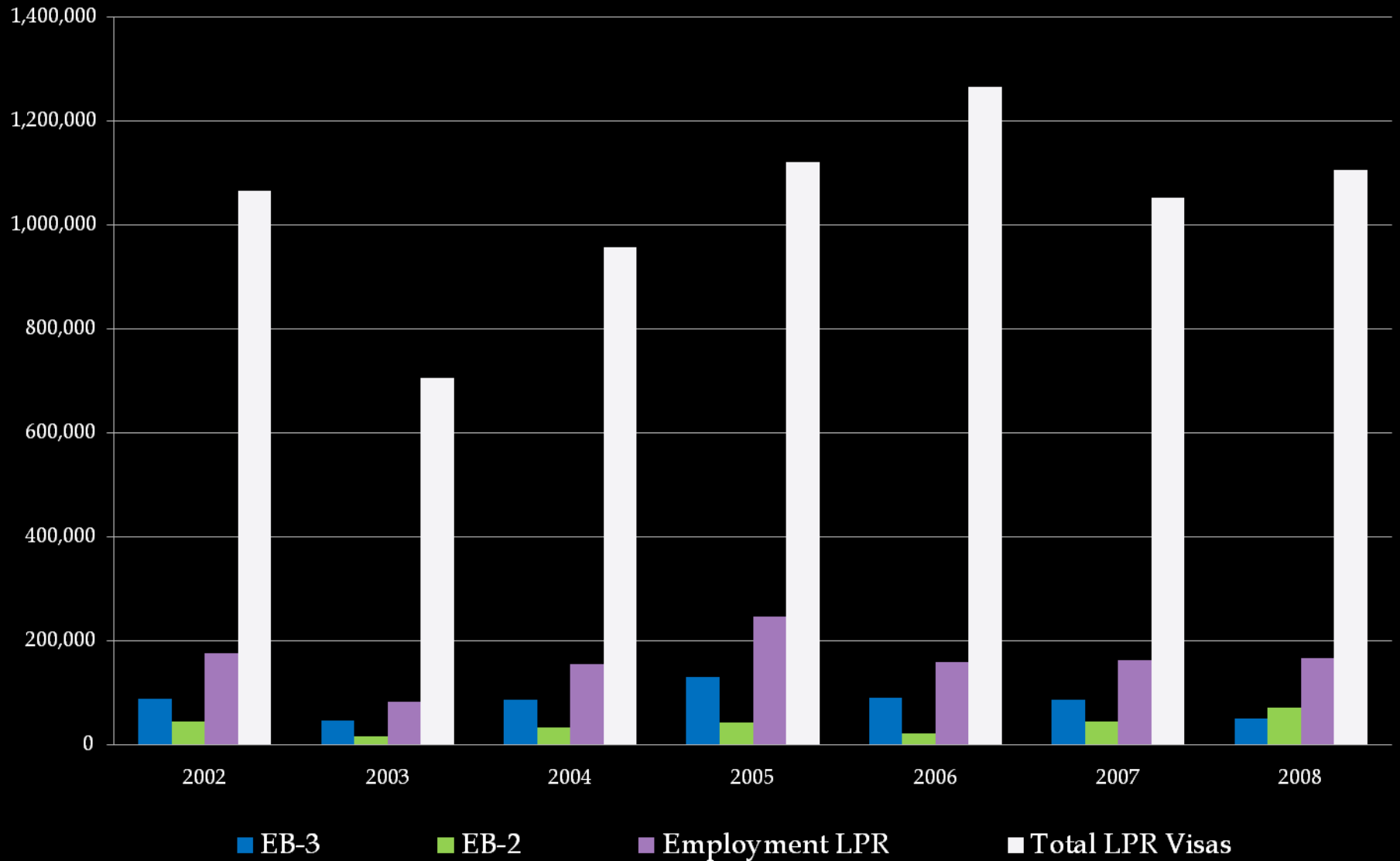
* They can account for no more than 28.6% of the total. There is a per country limit of 7% of the total employment preferences.

LPR Flow EB-2



Source: U.S. State Department

LPR Flow

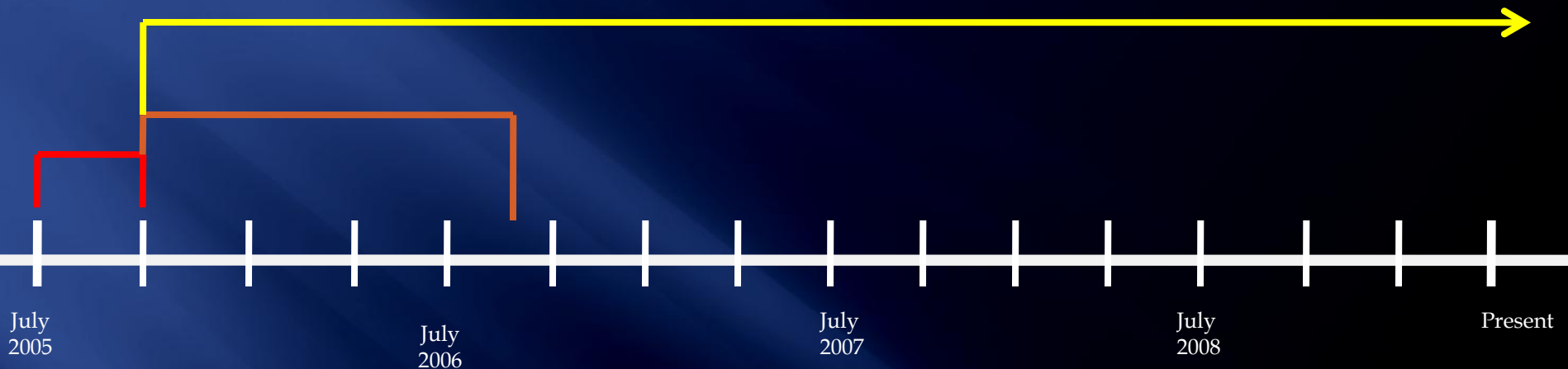


Source: U.S. State Department

In 2003 and 2004, USCIS failed to process applications and use the available visa numbers. During this time tens of thousands of applicants became eligible to file for adjustment of status, but their applications were not processed. Many of these cases had priority dates that were already several years old.

There are currently **400,000 – 500,000** applications stuck in a backlog.

Unavailability Issues:



— July – Sept. 2005: Entire EB-3 category cannot apply.

— October 2005 – September 2006: EB-1 category unavailable for China and India.

— October 2005 - Present: EB-2 category unavailable for China and India. Currently visas are not available for applications filed after February 2005 for China and after January 2000 for India.

Source: U.S. State Department

MORE CAVEATS:



- Your spouse cannot work until an immigrant visa becomes available.
- You cannot get promoted or change jobs because the labor certification was for your initial position only.
- You may get delayed entry due to visas mantis security checks.
- The “deemed export” rule may prevent you from working in certain areas considered to be national security-related issues.

You are finally able to file for
a green card!



You receive your green card!



However, if you go home now to marry your sweetheart, your spouse would have to wait 8 years to join you in the U.S....