H.R. REP. 101-723(I), H.R. REP. 101-723, H.R. Rep. No. 723(I), 101ST Cong., 2ND Sess. 1990, 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 (Leg.Hist.)

***6710** P.L. 101-649, FAMILY UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990

HOUSE REPORT NO. 101–723(I)

September 19, 1990
[To accompany H.R. 4300]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4300) to amend the Immigration and Nationality Act to revise the system of admission of aliens on the basis of family reunification and to meet identified labor shortages, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

***0** The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE: TABLE OF CONTENTS.

(a) SHORT TITLE.–This Act may be cited as the “Family Unity and Employment Opportunity Immigration Act of 1990”.

(b) TABLE OF CONTENTS.–The table of contents of this Act is as follows:

(a) IN GENERAL.–Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended to read as follows:

"WORLDWIDE LEVEL OF IMMIGRATION

"SEC. 201. (a) IN GENERAL.–Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to–

"(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year 185,000 and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under this paragraph for all of such fiscal year;

"(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed 65,000 in each of fiscal years 1992 through 1996, and not to exceed 75,000 in each fiscal year thereafter and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under this paragraph for all of such fiscal year; and

"(3) for fiscal years beginning with fiscal year 1994, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number

not to exceed 55,000 in each fiscal year and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under this paragraph for all of such fiscal year.

"(b) ALIENS NOT SUBJECT TO NUMERICAL LIMITATIONS.–The following aliens are not subject to the worldwide levels or numerical limitations of subsection (a):

"(1)(A) Special immigrants described in section 101(a)(27).

"(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

"(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

"(D) Aliens provided permanent resident status under section 249.

"(2)(A)(i) Immediate relatives. For purposes of this clause, the term 'immediate relative' means a child or spouse of a citizen of the United States and a parent of a citizen of the United States who is at least 21 years of age, and includes, subject to subsection (c) and beginning with fiscal year 1991, a child or spouse of an alien lawfully admitted for permanent residence. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien shall be considered, for purposes of this clause, to remain an immediate relative after the date of citizen's death but only if the spouse files a petition under section 204(a)(1)(A) within 2 years after such date and only until the date the spouse remarries.

"(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

"(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

"(3) An alien who is provided immigrant status under section 203(d) as the spouse or child of an immigrant under section 203(b).

"(c) TREATMENT OF IMMEDIATE RELATIVES OF PERMANENT RESIDENT ALIENS.–In the case of aliens who are immediate relatives (as defined in subsection (b)(2)(A)(i)) as the spouse or child of an alien lawfully admitted for permanent residence, until otherwise provided by law, the number of such aliens who shall be treated as such immediate relatives in any fiscal year may not exceed 115,000. Visas shall be made available to such immediate relatives in the order in which a petition in behalf of each such alien is filed with the Attorney General as provided in section 204.".

(b) PER COUNTRY IMMIGRATION LEVELS.–Section 202 of such Act (8 U.S.C. 1152) is amended–

(1) in subsection (a), by striking "paragraphs (1) through (7) of section 203(a)" and inserting "subsections (a) and (b) of section 203",

"(2) in subsection (c), by striking "a special immigrant" and all that follows through "201(b)" and inserting "an alien described in section 201(b)", and

(3) by amending subsection (e) to read as follows:

"(e) Where it is determined that the maximum number of immigrant visas will be made available under this section to natives of any single foreign state or dependent area in any fiscal year, in determining whether to provide for immigrant visa numbers to natives under section 203(a) or under section 203(b), visa numbers with respect to natives of that state or dependent area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that–

"(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to 3 to 1; and

"(2) the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the proportion of the total number of visas made available under the respective paragraph to the total number of visas made available under such section.

Nothing in this subsection shall be construed as limiting the number of visas which may be issued to natives of a state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively.".

(c) REMOVAL OF LIMITATION ON ASYLUM ADJUSTMENTS UNDER REFUGEE NUMERICAL LIMITATION.–Section 209(b) of such Act (8 U.S.C. 1159(b)) is amended by striking "Not more than five thousand of the refugee admissions" and inserting "Refugee admissions".

(d) CLERICAL AMENDMENT.–The item in the table of contents of the Immigration and Nationality Act relating to section 201 is amended to read as follows:

"Sec. 201. Worldwide level of immigration."

SEC. 102. PREFERENCE SYSTEM FOR ADMISSION OF IMMIGRANTS.

(a) IN GENERAL.–Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended–

(1) by redesignating subsections (b) through (e) as subsections (e) through (h), respectively;

(2) by striking subsection (a) and inserting the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.–Aliens subject to the worldwide level specified in section 201(a)(1) for family-sponsored immigrants shall be allotted visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.–Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 30 percent of such worldwide level.

"(2) UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.–Qualified immigrants who are the unmarried sons or unmarried daughters of aliens lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 19 percent of such worldwide level, plus any visas not required for the class specified in paragraph (1).

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.–Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 16 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.–Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 35 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) through (3).

"(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.–Aliens subject to the worldwide level specified in section 201(a)(2) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

"(1) PRIORITY WORKERS.–Visas shall first be made available to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (D), except that not more than 2,000 such visa numbers may be made available in any fiscal year to aliens under subparagraph (D):

"(A) ALIENS WITH EXTRAORDINARY ABILITY.–An alien is described in this subparagraph if–

"(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

"(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

"(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

"(B) OUTSTANDING PROFESSORS AND RESEARCHERS.–An alien is described in this subparagraph if–

"(i) the alien is recognized internationally as outstanding in a specific acedemic area,

"(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

"(iii) the alien seeks to enter the United States–

"(I) for a tenured position (for tenure-track position) within a university or institution of higher education to teach in the academic area,

"(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

"(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

"(C) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.–An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

"(D) ALIENS WITH BUSINESS EXPERTISE.–An alien is described in this subparagraph if the alien is coming to the United States to perform services not of a temporary nature in business requiring special expertise and has an advanced degree in a field relating to that special expertise.

"(2) OTHER EMPLOYMENT-BASED ALIENS.–

"(A) IN GENERAL.–Visas made available under section 201(a)(2) for a fiscal year not otherwise made available under paragraph (1) shall be made available to qualified immigrants who are capable of performing specified labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

"(B) LABOR CERTIFICATION REQUIRED.–No immigrant visa shall be issued to an immigrant under this paragraph before the date the consular officer receives a certification made by the Secretary of Labor under section 212(a)(14).

"(C) PRIORITY FOR NATIVES OF ADVERSELY AFFECTED FOREIGN STATES.–

"(i) APPLICATION IN FISCAL YEARS 1992 THROUGH 1996.–Immigrant visas made available under this paragraph for any quarter in fiscal year 1992, 1993, 1994, 1995, or 1996, shall first be issued, in a number not to exceed 5,200 in any quarter, to eligible immigrants who are natives of an adversely affected foreign state (as defined in clause (iii)) in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204. Any remaining visas made available under this paragraph for such a quarter shall be issued to all eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

"(ii) SUBSEQUENT FISCAL YEARS.–Visas made available under this paragraph for any quarter in a fiscal year after fiscal year 1996 shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

"(iii) ADVERSELY AFFECTED FOREIGN STATE DEFINED.–In this subparagraph, the term 'adversely affected foreign state' means a foreign state that is not contiguous to the United States and that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986.

"(c) DIVERSITY IMMIGRANTS.–

"(1) IN GENERAL.–Visas made available under section 201(a)(3) for a fiscal year shall be made available in each fiscal year to qualified immigrants who are natives of foreign states in a region as follows:

"(A) DETERMINATION OF PREFERENCE IMMIGRATION.–The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2) or 201(b)(3).

"(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.–The Attorney General–

"(i) shall identify–

"(I) each region (each in this paragraph referred to as a "high-admission region') for which the total of the numbers determined under subparagraph (A) for states in the region is greater than $^{1/6}$ of the total of all such numbers, and

"(II) each other region (each in this paragraph referred to as a 'low-admission region'); and

"(ii) shall identify–

(I) each foreign state for which the number determined under such subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a 'high-admission state'), and

"(II) each other foreign state (each such state in this paragraph referred to as a 'low-admission state').

"(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.–The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

"(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITH LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.–The Attorney General shall determine–

"(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

"(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

"(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

"(E) DISTRIBUTION OF VISAS.–

"(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.–The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

"(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.–Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of–

"(I) the percentage determined under subparagraph (C), and

"(II) the population ratio for that region determined under subparagraph (D)(ii).

"(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.–Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of–

"(I) 100 percent minus the percentage determined under subparagraph (C), and

"(II) the population ratio for that region determined under subparagraph (D)(iii).

"(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.–If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) or the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

"(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.–The percentage of visas made available under this paragraph to natives of any foreign state for any fiscal year shall not exceed 7 percent.

"(2) REGION DEFINED.–Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and each of the following shall be considered to be a separate region:

"(A) Africa.

"(B) Asia.

"(C) Europe.

"(D) North America (other than Mexico).

"(E) Oceania.

"(F) South America, Mexico, Central America, and the Caribbean.

"(d) TREATMENT OF FAMILY MEMBERS.–A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.";

(3) in subsection (e) (as so redesignated)–

(A) by inserting "PRIORITY WITHIN PREFERENCE CLASS.–" before "In considering",

(B) by inserting “or (b)” after “under subsection (a)”, and

(C) by inserting “or (b), respectively” after “in subsection (a)”;

(4) in subsection (f) (as so redesignated)–

(A) by striking “Immigrant visas” and inserting “PRIORITY OF VISA ISSUANCE.–(1) Except as provided in subsection (b)(2)(C), immigrant vias”,

(B) by striking “paragraphs (1) through (6) of subsection (a)” and inserting “subsection (a) or (b)”, and

(C) by adding at the end the following:

“(2) Immigrant visa numbers made available under section 201(a)(3) in a fiscal year for natives of low-admission states shall be made available to qualified immigrants who have filed petitions under section 204(a)(1)(F) strictly in a random order established by the Secretary of State for the fiscal year involved.

“(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.”;

(5) in subsection (g) (as so redesignated)–

(A) by striking the first sentence and in inserting “REQUIREMENT FOR PETITION APPROVAL.–”, and

(B) by striking “to be an immediate relative” and all that follows through “subsection (a),” and inserting “to be entitled to a status for which a petition is required under section 204(a)(1),”; and (6) in subsection (h) (as so redesignated)–

(A) by inserting “USE OF ESTIMATES AND TERMINATION OF REGISTRATION.–” before “For the purposes”, and
(B) by striking “of subsection (a)” and inserting “under subsections (a), (b), and (c)”.

(b) CHANGES IN PETITIONING PROCEDURE.–Section 204 of such Act (8 U.S.C. 1154) is amended–

(1) in subsection (a)(1), by striking “(a)(1)” and all that follows through the end and inserting the following:

“(a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 210(b)(2)(A)(i) may file a petition with the Attorney General for such classification. An alien desiring to be classified as an immediate relative under the second sentence of section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

“(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to an immediate relative status under section 201(b)(2)(A)(i) or a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

“(C) Any alien desiring to be classified under section 203(b)(1)(A) (or any person on behalf of such an alien) (relating to aliens with extraordinary ability) may file a petition with the Attorney General for such classification.

"(D) Any employer (or representative of one or more employers) desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(1)(D), or 203(b)(2) (relating to outstanding professors and researchers, certain multinational executives and managers, aliens with business expertise, and other employment-based aliens) may file a petition with the Attorney General for such classification.

"(E)(i) Any alien desiring to be provided an immigrant visa under section 203(c) (relating to diversity immigrants) with respect to a petitioning period may file a petition at the place and time determined by the Secretary of State for that period. The Secretary of State shall designate a period for the filing of petitions under this subparagraph with respect to one or two fiscal years. Only one such petition may be filed by an alien with respect to any petitioning period, and, if more than one petition is submitted, all such petitions submitted for the period by the alien shall be void. Petitions submitted for consideration with respect to any petitioning period shall be valid only with respect to such period and not with respect to subsequent periods.

"(ii) The Secretary of State shall establish a fee for the filing of such petitions in an amount sufficient to cover the costs of processing petitions under this subparagraph. The Secretary of State shall deposit payments received under this clause in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this paragraph.";

(2) in paragraph (2)(A)–

(A) by striking "spousal second preference petition" each place it appears and inserting "spousal alien immediate relative petition", and

(B) by striking "preference status under section 203(a)(2)" and inserting "immediate relative status under section 201(b)(2)(A)(i)";

(3) in subsection (b)–

(A) by striking "After an investigation" and inserting "Except in the case of a petition under subsection (a)(1)(E), after an investigation",

(B) by striking, ", and after consultation" and all that follows through "203(a)(3) or (6),",

(C) by inserting "or 203(b)" after "203(a)", and

(D) by inserting after the first sentence the following: "In making determinations under section 203(b)(1)(A)(i) (relating to demonstration of extraordinary ability) the Attorney General shall consult with peer groups in the area of the alien's ability, and in making determinations under section 203(b)(1)(B)(i) (relating to international recognition as outstanding in a specific academic area), the Attorney General shall consult with peer groups in the academic area of the alien's recognized ability.";

(4) in subsection (e), by inserting "or 203(b)" after "203(a)";

(5) by striking subsection (f);

(6) in subsection (g)(1)–

(A) by striking "201(b)" and inserting "201(b)(2)(A)(i)", and

(B) by striking "203(a)(4)" and inserting "203(a)(3)"; and

(7) by redesignating subsections (c) and (h) as subsections (f) and (g), respectively.

(c) PROCESSING FEE.–Section 204(b) of such Act (8 U.S.C. 1154(b)) is amended by inserting "(1)" after "(b)" and by adding at the end the following new paragraph:

"(2) The Attorney General shall require by regulation, as a condition for the acceptance and approval of a petition under this section with respect to immigrants described in section 203(b), the payment of a fee to recover the reasonable cost of processing such a petition with respect to immigrants described in such section.".

(d) DEFINITIONS OF MANAGERIAL CAPACITY AND EXECUTIVE CAPACITY.–Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(44)(A) The term 'managerial capacity' means an assignment within an organization in which the employee primarily–

"(i) manages the organization, or a department, subdivision, function, or component of the organization;

"(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

"(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

"(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

"(B) The term 'executive capacity' means an assignment within an organization in which the employee primarily–

"(i) directs the management of the organization or a major component or function of the organization;

"(ii) establishes the goals and policies of the organization, component, or function;

"(iii) exercise wide latitude in discretionary decision-making; and

"(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

"(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.".

(e) ADDITIONAL CONFORMING AMENDMENTS.–

(1) Section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) is amended–

(A) by striking "or" at the end of subparagraph (H),

(B) by striking the period at the end of subparagraph (I) and inserting "; or", and

(C) by adding at the end the following new subparagraph:

"(J) an alien whose deportation was cancelled under section 244.".

(2) Section 212(a)(32) of such Act (8 U.S.C. 1182(a)(32)) is amended by striking "preference immigrant aliens described in section 203(a) (3) and (6) and to nonpreference immigrant aliens described in section 203(a)(7)" and inserting "preference immigrant aliens described in section 203(b)(2)".

(3) Section 245(b) of such Act (8 U.S.C. 1255(b)) is amended–

(A) by striking "or nonpreference",

(B) by striking "202(e) or 203(a)" and inserting "201(a)", and

(C) by striking "for the fiscal year then current" and inserting "for the succeeding fiscal year".

(4) Section 3304(a)(14)(A) of the Internal Revenue Code of 1986 is amended by striking "section 203(a)(7) or".

(5) Section 1614(a)(1)(B)(i) of the Social Security Act is amended by striking "section 203(a)(7) or".

(f) Technical Corrections to Immigration Nursing Relief Act of 1989.–

(1) Section 2 of the Immigration Nursing Relief Act of 1989 (Public Law 101–238) is amended–

(A) in subsection (a)–

(i) by striking ", and the immigrant's accompanying spouse and children", and
(ii) by inserting after the first sentence the following:
"Such numerical limitations also shall not apply to the adjustment of status of, or issuance of an immigrant visa to, the immigrant's spouse and children if accompanying or following to join the immigrant."; and

(B) in subsection (b)–

(i) by striking "December 31, 1989" and inserting "September 1, 1989",
(ii) by striking "in the lawful status" and inserting "in the status",
(iii) by inserting "unauthorized employment performed before the date of the enactment of the Family Unity and Employment Opportunity Immigration Act of 1990 shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and" after "spouse or child or such an alien,", and

(iv) by striking "lawful status as such a nonimmigrant" and all that follows through "subsection (a)" and inserting "lawful status througout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 102(f)(1)(A) of the Family Unity and Employment Opportunity Immigration Act of 1990".

(2) The amendments made by paragraph (1) shall apply as though included in the enactment of the Immigration Nursing Relief Act of 1989.

SEC. 103. LABOR ATTESTATION PROCESS.

(a) IN GENERAL.–Section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)) is amended to read as follows:

"(14) Aliens seeking admission or status as an immigrant under section 203(b)(2) or as a nonimmigrant under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) unless with respect to the aliens the Secretary of Labor certifies to the Secretary of State and the Attorney General that an attestation is on file and in effect under section 212(n) for the employer and occupational classification for which the alien will perform services;".

(b) USE OF ATTESTATIONS.–Section 212 of such Act, as amended by section 3(b) of Public Law 101–238, is amended by adding at the end the following new subsection:

"(n)(1) The attestation referred to in subsection (a)(14), with respect to an alien who is coming to the United States to be employed by an employer in an occupational classification, is an attestation as to the following:

"(A) Subject to paragraph (3), the employer–

"(i)(I) has made and is making positive recruitment efforts, in the recruitment area identified under paragraph (2)(A), reasonably designed to locate and employ able, willing, and qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) workers, and

"(II) recites the specific actions the employer has taken with respect to such recruitment; and

"(ii) has been unable to find such workers who are available at the time and place of need.

"(B) The employer is offering and will offer (in the case of an nonimmigrant under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b), during the period of authorized employment or, in the case of an immigrant under section 203(b)(2), during the first year of employment of the alien by the employer) to aliens and to other individuals employed in the occupational classification and in the recruitment area (identified under paragraph (2)(A)) wages that are no less than the base prevailing wage level (determined under paragraph (6)) and working conditions that are not less than the prevailing working conditions for the occupational classification in the recruitment area.

"(C) There is not a strike or lockout in the course of a labor dispute.

"(D) The employer, at the time of execution of the attestation, has provided notice of the intention to file the attestation under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and recruitment area for which aliens are sought, or, if there is no such bargaining representative, to such State or local government

entity as the Secretary of Labor designates (after consultation with appropriate labor and management organizations) for the recruitment area for purposes of this subparagraph.

The obligation to engage in positive recruitment under subparagraph (A) shall not apply to nonimmigrants under section 101(a)(15)(H)(i)(b) and shall terminate on the date that the alien is provided immigrant or nonimmigrant status in response to the attestation.

"(2)(A) With respect to occupational classifications for which attestations may be filed, the Secretary of Labor (in this subsection referred to as the 'Secretary') shall identify recruitment areas which are the areas of traditional or expected labor supply.

"(B) The Secretary shall make available for public examination, within 2 working days after the date on which an attestation under paragraph (1) is filed, in Washington, D.C., a copy of each attestation (and accompanying documentation) filed under paragraph (1). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed or in effect under paragraph (1).

"(3)(A) If 10 or more attestations meeting the requirements of paragraph (1) (including paragraph (1)(A)) within a region (as defined by the Secretary) (or 5 attestations within a rural region) have been filed within a 1-year period and are in effect with respect to employees in the same occupational classification, and succeeding attestation filed during the succeeding 2-year period for workers in that occupational classification and region may substitute, for the attestation as to the matters described in paragraph (1)(A), an attestation that the employer has not been able to find, after posting of the job offer and advertising to recruit for hire, workers for the occupational classification at the time and place needed.

"(B) In subparagraph (A), the term 'rural region' means a contiguous area of counties (no county of which is an urbanized area) which is identified by the Secretary as representing a labor market with respect to an occupational classification which is separate and distinct from those for adjoining urbanized areas.

"(4)(A) If a bargaining representative described in paragraph (1)(D) or employee representative, within 30 days after the date the employer files an attestation under paragraph (1), submits to the Secretary a written request for a hearing respecting the matters required to be attested to in paragraph (1) and includes with such request a written statement of particular facts contradicting such attestation, the attestation shall not become effective until the date the Secretary has made a determination, after such a hearing, that the facts attested to are true. No attestation shall be effective under this subsection before the end of such 30-day period.

"(B) Within 7 days after the date of submission of a written request under subparagraph (A), the Secretary shall provide for a determination as to whether or not a written statement of particular facts contradicting the attestation has been included. If it has, the Secretary shall provide for a notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, with respect to the attestation within 30 days of the date of the determination. After such a hearing, the Secretary shall make a determination with respect to whether the attestation meets the requirements of paragraph (1) by not later than 30 days after the date of the hearing. In the hearing, the burden of proof on the truth of the facts attested to shall be on the employer.

"(C)(i) An attestation duly filed under paragraph (1) shall be deemed to have been certified by the Secretary and in effect under this subsection at the end of the 30-day period beginning on the date of its filing unless the Secretary otherwise notifies the employer and the Attorney General under clause (ii).

"(ii) If a written request for a hearing has been submitted on a timely basis under this paragraph, the Secretary shall notify the Attorney General and the employer in writing that an attestation, which would otherwise become effective under clause (i), shall not become effective.

"(D) The preceding provisions of this paragraph shall not apply to an attestation under paragraph (1) with respect to nonimmigrants described in section 101(a)(15)(H)(i)(b).

"(E) The Secretary may not refuse to accept for filing a completed attestation filed under this subsection or review in any way such an attestation with respect to which a complaint has not been filed under this subsection.

"(F) Subject to termination under paragraph (5), an attestation shall be effective only for petitions filed during the 1-year period beginning on the effective date of the attestation.

"(5)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to include an element of the attestation required under paragraph (1), failure to meet a condition attested to, or misrepresentation of material facts in an attestation that is in effect under this subsection. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively, or to the extent that the complaint alleges a failure or misrepresentation for which there has been a determination on that issue in a hearing under paragraph (4)(B). The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in subparagraph (C), If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 6 days after the date of the hearing. In the case of similar complaints respecting the same petitioner, the Secretary may consolidate the hearings under this subparagraph on such complaints.

"(C) If the Secretary finds, after notice and opportunity for a hearing, an employer failure or that there was a misrepresentation of material fact in the attestation–

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate, and

"(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

"(D) In addition to the sanctions provided under subparagraph (C), if the Secretary finds, after notice and opportunity for a hearing, that an employer has violated a condition of an attestation relating to the payment of wages at a specified wage level, the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with such condition.

"(6)(A) For purposes of this subsection and section 214(f), the term 'base prevailing wage level', with respect to an occupational classification in an area for which a petition or attestation is filed for purposes of the respective provision of law, means–

"(i) the actual wage level for the occupational classification at the place of employment, or

"(ii) the prevailing wage level for the occupational classification and area determined under subparagraph (B),

whichever is greater, determined as of the time of filing the respective petition or attestation.

"(B)(i) The Bureau of Labor Statistics in the Department of Labor shall periodically determine, for purposes of this subsection and section 214(f), the prevailing wage level for occupational classifications and areas for which determinations of prevailing wage levels are required under this subsection. In the case of a specific occupational classification for which a determination of prevailing wage level is not generally or readily available, the Bureau shall determine such a wage level within 30 days.

"(ii)(I) If the Bureau has not determined a prevailing wage level within 30 days of the date of filing of an attestation, subject to subclause (II), the application of clause (ii) of subparagraph (A) shall be suspended until the date such a determination is made.

"(II) When the Bureau makes such a determination, the employer shall provide, within 30 days of the date of the determination, for such adjustment of wages (including back pay) as provides for the application of such prevailing wage level under subparagraph (A) as though such level had been determined on a timely basis under subparagraph (B).".

(c) REPORT.–The Secretary of Labor shall conduct a study of the feasibility of determining, for purposes of section 212(n) of the Immigration and Nationality Act, national or regional labor shortages in particular occupational classifications, taking into consideration–

(1) the intensity and duration of each labor shortage;

(2) the supply and demand of workers in occupations affected by the shortage;

(3) industrial and geographic concentration of the shortage;

(4) wages for occupations affected by the shortage and how a 20 percent increase in the prevailing wage in the occupation affects the shortage;

(5) entry requirements for occupations affected by the shortage; and

(6) the need for continuous positive national recruitment.

The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act. The Secretary shall include in the report such legislative recommendations as may be necessary to permit the use of national or regional labor shortages in the process of attestations under section 212(n) of the Immigration and Nationality Act.

SEC. 104. NONIMMIGRANT CLASSIFICATIONS.

(a) TREATY TRADERS.–

(1) Section 101(a)(15)(E)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(i)) is amended by inserting ", including trade in services or trade in technology" after "substantial trade".

(2) The largest foreign state in each region (as defined in section 203(c)(2) of the Immigration and Nationality Act) which has 1 or more dependent areas (as determined for purposes of section 202 of such Act) and which does not have a treaty of commerce and navigation with the United States shall be considered for purposes of section 101(a)(15)(E) of such Act to be a foreign state described in such section if the foreign state extends reciprocal nonimmigrant treatment to nationals of the United States.

(3) Section 101(a) of the Immigration and Nationality Act, as amended by section 102(d) of this Act, is amended by adding at the end the following new paragraph:

"(45) The term 'substantial' means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.".

(b) STUDENTS.–Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(f) With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15), the Attorney General shall grant such an alien work authorization to be employed in a position unrelated to the alien's field of study and off-campus if–

"(1) the alien has completed 1 year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

"(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the base prevailing wage level (determined under section 212(n)(6), and

"(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection for a period of 3 years.".

(c) H NONIMMIGRANTS.–

(1) LIMITATION ON NUMBERS.–Section 214 of such Act (8 U.S.C. 1184), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)–

"(A) under section 101(a)(15)(H)(i)(b) may not exceed 25,000,

"(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000, or

"(C) under section 101(a)(15)(P)(i) or section 101(a)(15)(P)(iii) may not exceed 9,000.

"(2) The numerical limitations under paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

"(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

"(4) In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.".

(2) CONSTRUCTION RESPECTING INTENT WITH RESPECT TO ABANDONMENT OF FOREIGN RESIDENCE.–Section 214 of such Act, as amended by subsection (b) and by paragraph (1), is further amended–

(A) in subsection (b), by inserting, "(other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15))" after "Every alien", and

(B) by adding at the end the following new subsection:

"(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant or otherwise obtaining or maintaining the status of a nonimmigrant.".

(3) REVISION OF H–1B CATEGORY.–Subclause (b) of section 101(a)(15)(H)(i) of such Act (8 U.S.C. 1101(a)(15)(H)(i)) is amended by striking "who is of distinguished" and all that follows through "such institution or agency" and inserting the following: "who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) and who meets the requirements for the occupation specified in section 214(i)(2)".

(4) SPECIALTY OCCUPATION DEFINED.–Section 214 of such Act, as amended by subsection (b) and by paragraphs (1) and (2), is further amended by adding at the end the following new subsection:

"(i)(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph (2), the term 'specialty occupation' means an occupation that requires–

"(A) theoretical and practical application of a body of highly specialized knowledge, and

"(B) attainment of a bachelor's or higher degree in the specific specialty (or it equivalent) as a minimum for entry into the occupation in the United States.

"(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are–

"(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation;

"(B) completion of the degree described in paragraph (1)(B) for the occupation; or

"(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.".

(5) LIMITATION ON TRAINEES.–Section 101(a)(15)(H)(iii) of such Act (8 U.S.C. 1101(a)(15)(H)(iii) is amended by inserting before the semicolon at the end the following: ", in a training program not available in the country of nationality of the alien".

(6) TECHNICAL AMENDMENT CONCERNING FOREIGN RESIDENCE.–Section 101(a)(15)(H) of such Act (8 U.S.C. 1101(a)(15)(H)) is amended–

(A) by striking "having a residence in a foreign country which he has no intention of abandoning";

(B) in clause (ii), by striking "who is coming temporarily to the United States (a)" and inserting "(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States";

(C) in clause (ii)(b), by inserting "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States" immediately after "(b)"; and

(D) in clause (iii), by inserting "having a residence in a foreign country which he has no intention of abandoning" after "(iii)".

(d) ESTABLISHMENT OF SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM.–

(1) IN GENERAL.–Section 101(a)(15)(J) of such Act (8 U.S.C. 1101(a)(15)(J)) is amended–

(A) by inserting "(i)" after "abandoning", and

(B) by inserting after "212(j)," the following "or (ii) who is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in an special education training program described in section 214(j)(1),".

(2) PROGRAM REQUIREMENTS.–Section 214 of such Act (8 U.S.C. 1184), as amended by subjection (b), (c)(1), (c)(2), and (c)(4), if further amended by adding at the end of the following new subsection:

"(j)(1) An alien may not be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15)(J)(ii) unless the alien is entering under a program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

"(2) The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15)(J)(ii) in any fiscal year may not exceed 50.".

(e) AU PAIR CULTURAL EXCHANGE PROGRAM.–

(1) IN GENERAL.–Section 101(a)(15)(J) of such Act (8 U.S.C. 1101(a)(15)(J)), as amended by subsection (d)(1), is further amended–

(A) by striking "or" before "(ii)", and

(B) by inserting after "214(j)(1)," the following: "or (iii) who is coming temporarily to the United States (for a period not to exceed 14 months) as a participant in an au pair program under section 214(k)(1),".

(2) REQUIREMENTS–Section 214 of such Act (8 U.S.C. 1184), as amended by subsections (b), (c)(1), (c)(2), (c)(4), and (d)(2), is further amended by adding at the end the following new subsection:

"(k)(1) An alien may not be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15)(J)(iii) unless–.

"(A) the alien is entering to participate in a program, which participation and program the Secretary of Labor determines meets the requirements of paragraph (2) and will provide the alien a uniquely American cultural experience and additional education; and.

"(B) the alien is entering to be placed with a family which has entered into an agreement described in paragraph (3) and which has not been found by the Secretary of Labor to have violated previously the terms of such an agreement.

If the Secretary determines that a sponsoring program no longer meets the requirements described in subparagraph (A), the Secretary shall disqualify the program under this subsection for a period of at least 3 years.

"(2) The requirements of this paragraph with respect to an alien participating in a program are as follows: .

"(A) The alien participant must reside with a family that has entered into an agreement described in paragraph (3).

"(B) The alien participant must be enrolled on an on-going basis in a course of study at an educational institution or program approved by the Attorney General under section 101(a)(15)(F).

"(C) The alien participant must be provided, not less often than quarterly, a cultural experience (such as travel to national monuments, landmarks, or institutions) unique or specific to the United States.

"(D) If the alien participant provides child care or related services in connection with participation in the program–

"(i) the alien must be paid wages (as defined in section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) not less than the minimum wage applicable under section 6(a) of such Act (29 U.S.C. 206(a)), and

"(ii) the alien may not provide such care or services for more than 40 hours each week.

"(E) The program must provide a suitable bond or other undertaking, in an amount specified by the Attorney General (not to exceed $5,000 with respect to any alien participant) to assure that the alien departs from the United States at the time of expiration of the authorized period of stay under the program.

"(3) The agreement described in this paragraph between a family and an alien participant shall obligate the family to provide for meeting the requirements specified in subparagraphs (B) through (D) of paragaph (2). Such agreement shall be in a form approved by the Secretary of Labor and may be enforced by the alien.".

(f) AMENDMENTS RELATING TO "L" NONIMMIGRANTS.–

(1) CLARIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING FIRMS–In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act, in the case of a partnership that is organized in the United States to provide accounting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

(2) USE OF BLANKET PETITIONS; DEADLINES FOR PROCESSING; PERIODS OF AUTHORIZED STAY; CONSTRUCTION.–Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended–

(A) by inserting "(1)" after "(c)", and

(B) by adding at the end the following new paragraph:

"(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants under section 101(a)(15)(L) instead of filing individuals petitions under paragraphs (1) to import such aliens. Such procedure shall permit the expedited processing of visas for entry of aliens covered under such a petition.

"(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

"(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

"(D) The period of authorized admission for–

"(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

"(ii) a nonimmigrant admitted to render services in a capacity that involved specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.".

(3) PERIOD OF PRIOR EMPLOYMENT WITH COMPANY.–Section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)) is amended by striking "immediately preceding" and inserting "within 3 years preceding".

(g) NEW CLASSIFICATION FOR ALIENS WITH EXTRAORDINARY ABILITY, ACCOMPANYING ALIENS, AND ATHLETES AND ENTERTAINERS.–

(1) IN GENERAL.–Section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)) is amended–

(A) by striking "or" at the end of subparagraph (M),

(B) by striking the period at the end of subparagraph (N) and inserting a semicolon, and

(C) by addubg at the end the following new subparagraphs:

"(O) an alien who–

"(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability, but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States; or

"(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

"(II) is an integral part of such actual performance,

"(III)(a) has a critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant principal photography will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

"(IV) has a foreign residence which the alien has no intention of abandoning; or

"(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien; or

"(P) an alien having a foreign residence which the alien has no intention of abandoning who–

"(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least 1 year and provide functions integral to the performance of the group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete or entertainer with respect to a specific athletic competition or performance;

"(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers, between the United States and the foreign states involved;

"(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a program that is culturally unique; or

"(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien.".

(2) PERIODS OF ADMISSION, ETC.–Section 214 of such Act (8 U.S.C. 1184) is amended–

(A) in subsection (a), by inserting "(1)" after

"(a)" and by adding at the end the following new paragraph:

"(2)(A) The period of authorized status as a nonimmigrant under section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event for which the nonimmigrant is admitted.

"(B)(i) The period of authorized status as a nonimmigrant under section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

"(ii) An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 101(a)(15)(P) may not be readmitted as such a nonimmigrant unless the alien has remained outside the United States for at least 3 months after the date of the most recent admission."; and

(B) in subsection (c), as amended by subsection (f)(2)–

(i) in paragraph (1), by striking "or (L)" and inserting ",(L), (O), or (P)(i)", and
(ii) by adding at the end the following new paragraphs:
"(3) The Attorney General shall approve a petition–

"(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation with peer groups in the area of the alien's ability or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

"(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation with labor organizations with expertise in the skill area involved.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial msut be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion.

"(4)(A) A person may petition the Attorney General for classification of an alien as a nonimmigrant under clause (ii) of section 101(a)(15)(P).

"(B) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved.

"(C) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States, in order to assure reciprocity in fact with foreign states.

"(5)(A) In the case of an alien admitted as a nonimmigrant and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer the alien–

"(i) continues to be authorized to be employed in the occupation for that employer, and

"(ii) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

"(B) In the case of an alien admitted as a nonimmigrant and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer the alien–

"(i) is not authorized to be employed in the occupation for that employer, and

"(ii) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

"(C) With respect to a nonimmigrant described in subparagraph (A) or (B) for whom such a strike or lockout occurs and who does not perform employment not authorized, any limit on the period of authorized stay shall be extended by the period of the strike or lockout.

"(D) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H) (other than section 101(a)(15)(h)(ii)(a)) or section 101(a)(15)(P) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

"(6) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

"(7) The Attorney General shall require by regulation, as a condition for the acceptance and approval of a petition under this section with respect to nonimmigrants under section 101(a)(15) (H), (L), (O), (P)(i), the payment of a fee to recover the reasonable costs of processing a petition under this subsection with respect to such class of nonimmigrants.".

(h) NEW CLASSIFICATION FOR INTERNATIONAL CULTURAL EXCHANGE PROGRAMS.–Section 101(a)(15) of such Act, as amended by subsection (g), is further amended–

(1) by striking "or" at the end of subparagraph (O),

(2) by striking the period at the end of subparagraph (P) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program designated by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.".

SEC. 105. ADMISSION OF ALIENS IN RELIGIOUS OCCUPATIONS.

(a) AS SPECIAL IMMIGRANTS.–Subparagraphs (C) of section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended to read as follows:

"(C) an immigrant, and his spouse and children if accompanying or following to join the immigrant, who–

"(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

"(ii) seeks to enter the United States–

"(I) solely for the purpose of carrying out the vocation of a minister of that religious denomination.
"(II) in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
"(III) in order to work for the organization (or a bona fied organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
"(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);".

(b) AS NONIMMIGRANTS.–Section 101(a)(15) of such Act (8 U.S.C. 1101(a)(5)), as amended by sections 104(g)(1) and 104(h)(3) of this Act, is amended–

(1) by striking "or" at the end of subparagraph (P),

(2) by striking the period at the end of subparagraph (Q) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who–

"(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

"(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).".

SEC. 106. DENIAL OF CREWMEMBERS STATUS IN THE CASE OF CERTAIN LABOR DISPUTES.

(a) IN GENERAL.–Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), as amended by section 104, is further amended by adding at the end the following new subsection:

"(l)(1) No alien shall be entitled to nonimmigrant status under section 101(a)(15)(D) if the alien intends to land for the purpose of performance service on board a vessel of the United States (as defined in section 2101(46) of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

"(2) An alien described in paragraph (1)–

"(A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

"(B) shall be considered not to be a bona fide crewman for purposes of section 252(b).".

(b) CONFORMING AMENDMENT.–Section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)) is amended by inserting "or in section 214(l)" after "except as provided in subparagraph (B)".

(c) CONFORMING REPEAL.–Section 315(d) of the Immigration Reform and Control Act of 1986 (100 Stat. 3440) is hereby repealed.

(d) EFFECTIVE DATE.–The amendments made by this section shall apply to admissions occurring on or after the date of the enactment of this Act.

SEC. 107. EFFECTIVE DATES; TRANSITION.

(a) EFFECTIVE DATE.–Except as otherwise provided in this section, the amendments made by this subtitle (other than by sections 102(f)(1) and 106) shall take effect on October 1, 1991, and shall apply with respect to visas issued before such date.

(b) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.–

(1) EFFECTIVE DATE.–The provisions of sections 201(b)(2)(A), 201(c) and 204(a)(2) of the Immigration and Nationality Act (insofar as they relate to treatment of spouses and children of aliens lawfully admitted for permanent residence as immediate relatives), as amended by sections 101 and 102 of this subtitle, shall be effective beginning with fiscal year 1991.

(2) TRANSITION.–In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1990, for preference status under section 203(a)(2) of such Act (as in effect before such date) as a spouse or child of an alien lawfully admitted for permanent residence, such petition shall be deemed as of October 1, 1990, to be a petition for immediate relative status described in section 201(b)(2)(A)(i) of such Act (as amended by this subtitle).

(c) TRANSITION FOR FOURTH AND FIFTH PREFERENCE.–In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(4) or 203(a)(5) of such Act (as in effect before such date), such petition shall be deemed as of October 1, 1991, to be a petition for preference status under section 203(a)(3) or 203(a)(4), respectively, of such Act.

SUBTITLE B–EDUCATION AND TRAINING OF AMERIAN WORKERS

SEC. 111. FEES FOR ADMISSION OF CERTAIN EMPLOYMENT-BASED ALIENS.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

"(q)(1) In addition to any other fee authorized by law, the Attorney General shall charge and collect a fee in the amount specified in paragraph (2) for the provision of lawful permanent resident status to an alien under subparagraph (A), (B), (C), or (D) of section 203(b)(1) or under section 203(b)(2) or for the provision of nonimmigration status under section 101(a)(15)(H)(ii)(b) or 101(a)(15)(H)(i)(b) after October 1, 1991.

"(2)(A) Except as provided in subparagraph (B), the amount of the fee under this paragraph is $1,000.

"(B) In the case of a petitioner–

"(i) that has fewer than 50 employees, there shall be no fee under this paragraph, or

"(ii) that–

"(I) has more than 49, but fewer than 200, employees, or

"(II) has 200 or more employees and is a nonprofit, charitable agency or governmental agency,

the amount of the fee shall be $^{1/2}$ of the amount otherwise established.

"(3) The fee under this subsection shall only apply to the principle immigrant or nonimmigrant and not to the spouse or children of such alien.

"(4) The fee under this subsection shall be paid by the employer petitioning to import the alien into the United States at a time and in a manner specified by the Attorney General.

"(5) All of the fees collected under this subsection shall be deposited in a separate account within the general fund of the Treasury of the United States, to remain available until expended to carry out sections 112 and 113 of the Family Unity and Employment Opportunity Immigration Act of 1990.".

SEC. 112. EDUCATIONAL ASSISTANCE AND TRAINING.

(a) USE OF FUND.–From the fees deposited each year in the account established under section 286(q)(5) of the Immigration and Nationality Act which are not used for scholarships under section 113, the Secretary of Labor shall provide for grants to

States to provide educational assistance and training for United States workers. The Secretary shall consult with the Secretary of Education in making grants under this section.

(b) ALLOCATION OF FUNDS.–Within the purposes described in subsection (a), funds in the account used under this section shall be allocated among the States based on a formula, established jointly by the Secretaries of Labor and Education, that takes into consideration–

(1) the location of foreign workers admitted into the United States,

(2) the location of individuals in the United States requiring and desiring the educational assistance and training for which the funds can be applied, and

(3) the location of unemployed and underemployed United States workers.

(c) DISBURSEMENT TO STATES.–

(1) Within the purposes and allocations established under this section, disbursements shall be made to the States, in accordance with grant applications submitted to and approved jointly by the Secretaries of Labor and Education, to be applied in a manner consistent with the guidelines established by such Secretaries in consultation with the States. In applying such grants, the States shall consider providing funding to joint labor-management trust funds and other such non-profit organizations which have demonstrated capability and experience in directly training and educating workers.

(2) Not more than 5 percent of the funds disbursed to any State under this section may be used for administrative expenses.

(d) LIMITATION ON FEDERAL OVERHEAD.–The Secretaries shall provide that not more than 2 percent of the amount of funds disbursed to States under this section may be used by the Federal Government in the administration of this section.

(e) ANNUAL REPORT.–The Secretary of Labor shall report annually to the Congress on the grants to States provided under this section.

(f) STATE DEFINED.–In this section, the term “State” has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

SEC. 113. HIGHER EDUCATION SCHOLARSHIP PROGRAM FOR MATHEMATICS AND SCIENCES.

Ten percent of the fees deposited each year in the account established under section 286(q)(5) of the Immigration and Nationality Act shall be available to the Secretary of Education for the awarding (in a manner and amount specified by the Secretary) of scholarships to assist in the cost of postsecondary education of needy individuals who–

(1) are enrolled as full-time students in an accredited postsecondary institution,

(2) pursuing a course of study leading to a degree in mathematics or one or more of the sciences, and

(3) maintain satisfactory progress, as determined by the postsecondary institution the recipient is attending.

The Secretary shall enter into agreements with States to provide for the actual awarding of such scholarships by the States.

TITLE II–OTHER PROVISIONS REGARDING IMMIGRANT VISAS

SEC. 201. TRANSITION FOR ALLIENS WHO ARE NATIVES OF CERTAIN ADVERSELY AFFECTED FOREIGN STATES.

(a) IN GENERAL.–Subject to the numerical limitations established under subsection (b), the Attorney General shall provide for the adjustment of status to that of an alien lawfuly admitted for permanent residence on a conditional basis of an alien who is a native of an adversely affected foreign state (described in section 203(b)(2)(C)(iii) of the Immigration and Nationality Act, as amended by this Act) if the alien–

(1) applies to the Attorney General (beginning on such date as the Attorney General may specify) for such adjustment, and

(2) establishes in the application that the alien–

(A) is a native of such an adversely affected foreign state,

(B) entered the United States before January 1, 1990, and any period of authorized stay as a nonimmigrant expired before such date through the passage of time (and has not been subsequently extended),

(C) has been continuously resident in the United States since before January 1, 1990,

(D) has a firm commitment for employment in the United States for a period of at least 1 year (beginning on the date of adjustment of status under this section), and

(E) except as provided in subsection (d)(1), is admissible as an immigrant.

If the Attorney General receives more than 250,000 applications for adjustment of status under this subsection, the Attorney General may stop accepting applications under paragraph (1) until such date (if any) as the Attorney General determines to be appropriate.

(b) NUMERICAL LIMITATIONS.–

(1) The number of aliens whose status may be adjusted under subsection (a) in each of fiscal years 1991, 1992, and 1993 may not exceed 25,000.

(2) An alien's status may not be adjusted for any fiscal year not specified in paragraph (1).

(3) If the number of aliens eligible for adjustment under this section in any fiscal year exceeds the numerical limitation specified in paragraph (1), consideration shall be given in the order in which the aliens applied for such adjustment.

(c) REMOVAL OF CONDITIONAL STATUS.–

(1) In order for the conditional basis of permanent resident status provided under subsection (a) to be removed, an alien must submit, in a time and a manner specified by the Attorney General, written documentation that the alien has been substantially employed on a full-time basis during the 1-year period beginning on the date the alien was provided such status.

(2)(A) In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the alien fails to submit written documentation required under paragraph (1) by the deadline specified by the Attorney General under such paragraph, the Attorney General shall terminate the permanent resident status as of such date as the Attorney General may specify.

(B) In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions described in paragraph (1).

(3) The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) only if the alien demonstrates that extreme hardship would result if the alien is deported.

(4) Section 216(e) of the Immigration and Nationality Act shall apply to conditional permanent resident status under this section in the same manner as it applies to conditional permanent resident status under section 216 of such Act.

(d) MISCELLANEOUS PROVISIONS.–

(1) Aliens shall not be denied adjustment of status under this section on the grounds specified in paragraphs (20), (21), (25), or (32) of section 212(a) of the Immigration and Nationality Act, and the Attorney General may, in his discretion, waive the ground for exclusion specified in paragraph (19) of such section.

(2) Applications under subsection (a) shall be subject to paragraphs (5) and (6) of section 245A(c) of the Immigration and Nationality Act (relating to confidentiality and penalties for false statements) in the same manner as such paragraphs apply to applications under section 245A of such Act.

(3) In the case of a family, a single application for members of the family may be made under subsection (a).

SEC. 202. TRANSITION FOR CERTAIN DISPLACED ALIENS.

(a) AUTHORIZATION OF ADDITIONAL VISAS.–Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act, there shall be made available to qualified displaced aliens described in subsection (b) not to exceed 15,000 immigrant visa numbers in each of fiscal years 1991, 1992, and 1993, of which not to exceed 1,000 of the total number of immigrant visas in all of such fiscal years shall only be available for qualified displaced aliens described in subsection (b)(1)(B) (or described in subsection (b)(2) as the spouse or child of such an alien).

(b) ELIGIBLE DISPLACED ALIENS.–

(1) An alien is eligible for a visa under this section if the alien–

(A)(i) is a native of a foreign state in Eastern Europe, and

(ii) since before October 1, 1989, has been continuously residing in another foreign state (other than the United States), but is not firmly resettled in that foreign state; or

(B)(i) is a native of Tibet, and

(ii) since before date of the enactment of this Act, has been continuously residing in India or Nepal.

For purposes of subparagraph (B)(i), an alien shall be considered to be a native of Tibet if the alien was born in Tibet or is the son, daughter, grandson, or granddaughter of an individual born in Tibet.

(2) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act) of an alien described in paragraph (1) shall, if not otherwise entitled to immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under subsection (C), if accompanying or following to join his spouse or parent.

(c) DISTRIBUTION OF VISA NUMBERS.–The Secretary of State shall provide for making visa numbers provided under subsection (a) available–

(1) to displaced aliens described in subsection (b)(1)(A) (or described in subsection (b)(2) as the spouse or child of such an alien) in the same manner as visa numbers are otherwise available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act), except that–

(A) preference shall be given to aliens who, before October 1, 1989, filed an application for refugee status with the Immigration and Naturalization Service or otherwise sought such status by registering with a voluntary agency (which is recognized by such Service and provides services to refugees in the Europe) for admission to the United States as a refugee, and

(B) subject to subparagraph (A), visa numbers shall be made available strictly in the chronological order in which the immigrants qualify after the date of the enactment of this Act; and

(2) to displaced aliens described in subsection (b)(1)(B) (or described in subsection (b)(2) as the spouse or child of such an alien) in an equitable manner, giving preference to those aliens who are not firmly resettled in India or Nepal or who are most likely to be resettled successfully in the United States.

SEC. 203. TRANSITION FOR AFRICAN IMMIGRANTS.

(a) AUTHORIZATION OF ADDITIONAL VISAS.–Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act, but subject to the numerical limitations in section 202 of such Act, there shall be made available to qualified immigrants who are natives of a foreign state or dependent area in Africa not to exceed 15,000 immigrant visa numbers in each of fiscal years 1991, 1992, and 1993.

(b) DISTRIBUTION OF VISA NUMBERS.–

(1) The Secretary of State shall first provide for making visa numbers provided under subsection (a) available to qualified immigrants who have classification petitions approved, as of the date of the enactment of this Act, for a preference status described in paragraph (1), (2), (3), (4), (5), or (6) of section 203(a) of the Immigration and Nationality Act. Subject to paragraph (3), visa numbers shall be made available to qualified individuals under, and in the order of, the respective paragraphs without regard to any percentage limitations specified under any such paragraph.

(2) The Secretary of State shall provide for making any remaining visa numbers available to qualified immigrants strictly in the order in which they apply after the date of the enactment of this Act.

(3) Not more than 3,000 visa numbers may be made available in any fiscal year under this section to natives of any single foreign state or dependent area.

(c) DERIVATIVE STATUS.–A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Immigration and Nationality Act) of a qualified immigrant under this section shall, if not otherwise entitled to immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under subsection (b), if accompanying or following to join his spouse or parent.

SEC. 204. BACKLOG VISA NUMBERS FOR SECOND AND FIFTH PREFERENCES.

(a) IN GENERAL.–In addition to the number of immigrant visas otherwise made available in each of fiscal years 1991, 1992, 1993, 1994, and 1995 and without regard to the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act, there shall be made available–

(1) to second preference immigrants (as defined in subsection (b)) 10,000 immigrant visa numbers, and

(2) to fifth preference immigrants (as defined in subsection (c)) 40,000 immigrant visa numbers.

Not more than 27 percent of each such worldwide level for a fiscal year shall be made available in any of the first 3 quarters of the fiscal year. In addition to such visa numbers and without regard to the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act, there shall be made available in each of fiscal years 1991, 1992, 1993, 1994, and 1995, 250 immigrant visa numbers to second preference immigrants who are natives of Lebanon and are not firmly resettled in any foreign country outside Lebanon and 750 immigrant visa numbers to fifth preference immigrants who are natives of Lebanon and are not firmly resettled in any foreign country outside Lebanon.

(b) 2ND PREFERENCE IMMIGRANT DEFINED.–In subsection (a)(1), the term “second preference immigrant” means–

(1) an alien who is the beneficiary of a petition approved to accord status under section 203(a)(2) of the Immigration and Nationality Act, if the petition was filed before the date of the enactment of this Act, or

(2) the child of such an alien if accompanying or following to join the alien.

(c) 5TH PREFERENCE IMMIGRANT DEFINED.–In subsection (a)(2), the term “fifth preference immigrant” means–

(1) an alien who is the beneficiary of a petition approved to accord status under section 203(a)(5) of the Immigration and Nationality Act, if the petition was filed before the date of the enactment of this Act, or

(2) the spouse or child of such an alien if accompanying or following to join the alien.

(d) ORDER OF CONSIDERATION.–Immigrant visas shall be made available under this section in the order in which a petition in behalf of each such alien has been filed with the Attorney General under section 204 of the Immigration and Nationality Act.

SEC. 205. TRANSITION FOR THIRD AND SIXTH PREFERENCE.

(a) IN GENERAL.–In the case of any alien with respect to whom a classification petition has been filed under section 204(a) of the Immigration and Nationality Act for a classification described in paragraph (3) or (6) of section 203(a) of such Act (as in effect before the date of the enactment of this Act) before October 1, 1991, there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991, 1992, 1993, 1994, and 1995, up to 25,000 additional immigrant visas which shall be made available to those aliens (and qualified relatives described in section 203(a)(8) of such Act, as in effect on the date of the enactment of this Act) without regard to section 202(a) of such Act.

(b) ALLOCATION.–Of the visa numbers made available each fiscal year under subsection (a)–

(1) visa numbers shall first be made available, in a number not to exceed 50 percent of the total number available, to qualified immigrants with respect to whom a classification petition was filed under section 203(a)(3) of the Immigration and Nationality Act, and

(2) visa numbers shall be made available in the same priority order in which such numbers were otherwise made available under section 203(a) of such Act.

(c) TRANSITION.–In the case of an alien–

(1) who, as of the date of the enactment of this Act, is in lawful status as a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15) of the Immigration and Nationality Act, and

(2) for whom an application for labor certification under section 212(a)(14) of such Act has been filed as of such date,

the alien shall be considered to be a qualified alien described in section 203(b)(2) of such Act (as amended by this Act) and to have met the requirements of section 212(a)(14) of such Act if the labor certification is approved. In applying such section 203(b)(2) with respect to such an alien, the priority date shall be the date the application for labor certification was filed.

SEC. 206. TRANSITION FOR EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.

(a) ADDITIONAL VISA NUMBERS.–

(1) TREATMENT OF PRINCIPALS.–In the case of any alien described in paragraph (3) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in all of fiscal years 1992 through 1994 and without regard to section 202(a) of the Immigration and Nationality Act, up to 15,000 additional immigrant visas, of which not more than 7,500 may be made available in each of fiscal years 1992 and 1993.

(2) DERIVATIVE RELATIVES.–In the case of any alien who is a spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act) of an alien entitled to immediate issuance of a visa under paragraph (1), visas shall be made available without regard to any numerical limitation under such Act or this section if accompanying, or following to join, the alien's spouse or parent.

(3) EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.–An alien is described in this paragraph if the alien–

(A) is a resident of Hong Kong and is employed in Hong Kong (and has been so employed during the 12 previous consecutive months) as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least $50,000,000, and

(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

(b) PETITIONS.–Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

(c) ALLOCATION.–Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

(d) FEES.–The provisions of section 286(q) of the Immigration and Nationality Act (relating to fees for admission of certain employment-based aliens), as added by section 111 of this Act, shall apply to the aliens provided lawful permanent resident status under subsection (a)(1) in the same manner as they apply to aliens provided lawful permanent resident status under section 203(b)(2) of the Immigration and Nationality Act.

(e) DEFINITIONS.–In this section:

(1) EXECUTIVE CAPACITY.–The term “executive capacity” has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act, as amended by section 102(d) of this Act.

(2) MANAGERIAL CAPACITY.–The term “managerial capacity” has the meaning give such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as amended by section 102(d) of this Act.

(3) OFFICER.–The term “officer” means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistance secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

(4) SPECIALIZED KNOWLEDGE.–The term “specialized knowledge” has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act, as amended by section 104(f)(2) of this Act.

(5) SUPERVISOR.–The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct

them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

SEC. 207. TREATMENT OF HONG KONG AS SEPARATE FOREIGN STATE FOR NUMERICAL LIMITATION PURPOSES.

In applying section 202 of the Immigration and Nationality Act for fiscal years beginning with fiscal year 1991, Hong Kong shall be treated as a separate foreign state, and not a colony or other component or dependent area of a foreign state.

SEC. 208. PERMITTING EXTENSION OF PERIOD OF VALIDITY OF IMMIGRANT VISAS FOR CERTAIN RESIDENTS OF HONG KONG.

(a) EXTENDING PERIOD OF VALIDITY.–

(1) IN GENERAL.–Subject to paragraph (2), the limitation on the period of validity of an immigrant visa under section 221(c) of the Immigration and Nationality Act shall not apply in the case of an immigrant visa issued, on or after the date of the enactment of this Act and before September 1, 2001, to an alien described in subsection (b), but only if–

(A) the alien elects, within the period of validity of the immigrant visa under such section, to have this section apply, and

(B) before the date the alien seeks to be admitted to the United States for lawful permanent residence, the alien notifies the appropriate consular officer of the alien's intention to seek such admission and provides such officer with such information as the officer determines to be necessary to verify that the alien remains eligible for admission to the United States as an immigrant.

(2) LIMITATION ON EXTENSION.–In no case shall the period of validity of a visa be extended under paragraph (1) beyond January 1, 2002.

(3) TREATMENT UNDER NUMERICAL LIMITATIONS.–In applying the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act in the case of aliens for whose visas the period of validity is extended under this section, such limitations shall only apply at the time of original issuance of the visas and not at the time of admission of such aliens.

(b) ALIENS COVERED.–An alien is described in this subsection if the alien is chargeable under section 202 of the Immigration and Nationality Act to Hong Kong (or is issued an immigrant visa under section 206(a) of this Act) and–

(1)(A) is residing in Hong Kong as of the date of the enactment of this Act and is issued an immigrant visa under paragraph (1), (2), (4), or (5) of section 203(a) the Immigration and Nationality Act (as in effect on the date of the enactment of this Act) or under section 203(a) or 203(b)(1) of such Act (as in effect on and after October 1, 1991), or

(B) is the spouse or child (as defined in subsection (d)) of an alien described in subparagraph (A), if accompanying or following to join the alien in coming to the United States; or

(2) is issued a visa under section 206(a) of this Act.

(c) TREATMENT OF CERTAIN EMPLOYEES IN HONG KONG.–

(1) IN GENERAL.–In applying the proviso of section 7 of the Central Intelligence Agency Act of 1949, in the case of an alien described in paragraph (2), the Director may charge the entry of the alien against the numerical limitation for any fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1996) notwithstanding that the alien's entry is not made to the United States in that fiscal year so long as such entry is made before the end of fiscal year 1997.

(2) ALIENS COVERED.–An alien is described in this paragraph if the alien–

(A) is an employee of the Foreign Broadcast Information Service in Hong Kong, or

(B) is the spouse or child (as defined in subsection (d)) of an alien described in paragraph (1), if accompanying or following to join the alien in coming to the United States.

(d) TREATMENT OF CHILDREN.–In this section, the term "child" has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act and also includes (for purposes of this section and the Immigration and Nationality Act) an alien who was the child (as so defined) of the alien as of the date of the issuance of an immigrant visa to the alien described in subsection (b)(1) or, in the case described in subsection (c), as of the date of charging of the entry of the alien under the proviso under section 7 of the Central Intelligence Agency Act of 1949.

TITLE III–OTHER IMMIGRATION PROVISIONS

SUBTITLE A–PROVISIONS RELATING TO MARRIAGE FRAUD

SEC. 301. BATTERED SPOUSE OR CHILD WAIVER OF THE CONDITIONAL RESIDENCE REQUIREMENT.

(a) IN GENERAL.–Section 216(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1186a(c)(4)) is amended–

(1) by striking "or" at the end of subparagraph (A);

(2) in subparagraph (B), by striking "by the alien spouse for good cause";

(3) in subparagraph (B), by striking the period at the end and inserting ",or";

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) the qualifying marriage was entered into in good faith by the alien spouse and after the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen a permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1)."; and

(5) by adding at the end the following: "The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.".

(b) EFFECTIVE DATE.–The amendments made by subsection (a) shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act.

SEC. 302. BONA FIDE MARRIAGE EXCEPTION TO FOREIGN RESIDENCE REQUIREMENT FOR MARRIAGES ENTERED INTO DURING CERTAIN IMMIGRATION PROCEEDINGS.

(a) IN GENERAL.–Section 245(e) of the Immigration and Nationality Act (8 U.S.C. 1255(e)) is amended–

(1) in paragraph (1), by striking "An alien" and inserting "Except as provided in paragraph (3), an alien", and

(2) by adding at the end the following new paragraph:

"(3) Paragraph (1) and section 204(h) shall not apply with respect to a marriage if the alien establishes to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter.".

(b) CONFORMING AMENDMENT.–Section 204(h) of such Act (8 U.S.C. 1154(h)) is amended by inserting "except as provided in section 245(e)(3)," after "Notwithstanding subsection (a),".

(c) EFFECTIVE DATE.–The amendments made by this section shall apply to marriages entered into before, on, or after the date of the enactment of this Act.

SUBTITLE B–PROVISIONS RELATING TO IMMIGRATION REFORM AND CONTROL ACT OF 1986

SEC. 311. APPLICATION OF EMPLOYER SANCTIONS TO LONGSHORE WORK.

(a) IN GENERAL.–Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES RESPECTING LONGSHORE WORK.–

"(A) TREATMENT OF CERTAIN LONGSHORE WORK.–For purposes of this section, any person or other entity, including but not limited to ships agents, brokers, charterers, and procurers of labor, acting independently or on behalf of any other such person or entity, who brings into the United States (or coastal waters thereof) an individual who performs longshore work (as defined in subparagraph (D)), shall be considered to have hired such individual for employment in the United States within the meaning of subsection (a) as of the first date that the individual first performs such work.

"(B) PAPERWORK REQUIREMENT FOR LONGSHORE WORK.–In applying the requirements of paragraph (3) of subsection (b) (relating to retention of verification forms) to employment described in subparagraph (A), the person or entity shall designate, in writing to the Attorney General, a person or entity located at a port in the United States in the vicinity of the location of the longshore work involved who agrees to be responsible for the retention and making available for inspection of such forms under such paragraph.

"(C) NO AUTHORIZATION MERELY THROUGH CLASSIFICATION AS ALIEN CREWMEN.–The mere classification of an alien as a nonimmigrant under section 101(a)(15)(D) (without the document or documents described in

subsection (b)(1)(E)(i) with respect to the alien) shall not be considered to authorize, for purposes of this section and section 274B, the performance of longshore work by that alien.

"(D) LONGSHORE WORK DEFINED.–In this paragraph and subsection (b)(1), the term 'longshore work' includes activities relating or incident to the loading or unloading of cargo, including the operation of cargo-related equipment, whether or not integral to the vessel, and the securing of the vessel, in the United States or the coastal waters thereof; except that, for purposes of subsection (b)(1)(E)(ii), such term includes such activities with respect to vessels in (or in the coastal waters of) the reciprocal foreign state.".

(b) EMPLOYMENT VERIFICATION SYSTEM.–Section 274A(b)(1) of such Act (8 U.S.C. 1324a(b)(1)) is amended–

(1) in subparagraph (A)–

(A) in clause (i), by striking "or";

(B) in clause (ii), by striking the period and inserting ", or"; and

(C) by inserting after clause (ii) the following new clause:

"(iii) with respect to longshore work, the document or documents described in subparagraph (E)(i).";

(2) by adding at the end the following new subparagraph:

"(E) DOCUMENTS ESTABLISHING RECIPROCITY OF LONGSHORE WORK.–

"(i) IN GENERAL.–The document or documents described in this clause with respect to an individual's performance of longshore work are such a document or documents, in a form acceptable to the Attorney General, that established that–

"(I) the individual is a national of a reciprocal foreign state (described in clause (ii)), and

"(II) the individual will perform such work in connection with a vessel that is documented and enrolled with a reciprocal foreign state.

"(ii) RECIPROCAL FOREIGN STATE DEFINED.–In clause (i), the term 'reciprocal foreign state' means a foreign state which the Attorney General has determined, in accordance with section 553 of title 5, United States Code–

"(I) has in effect immigration laws and regulations which authorize, on a nationwide basis, the performance of longshore work by United States nationals who are crewmembers of vessels which are documented and enrolled in the United States; and

"(II) in the territory or coastal waters of which United States nationals described in subclause (I) have performed such work during the six months preceding the application of clause (i) with respect to a national of the state or vessel documented and enrolled with the state.".

(c) EFFECTIVE DATE.–The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

SEC. 312. ELIMINATION OF PAPERWORK REQUIREMENT FOR RECRUITERS AND REFERRERS.

(a) IN GENERAL.–Section 274A(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)) is amended–

(1) by striking "to hire, or to recruit or refer for a fee, for employment in the United States",

(2) in subparagraph (A), by inserting after "(A)" the following: "to hire, or to recruit or refer for a fee, for employment in the United States", and

(3) in subparagraph (B), by inserting after "(B)" the following: "(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States".

(b) EFFECTIVE DATE.–The amendments made by subsection (a) shall apply to recruiting and referring occurring on or after the date of the enactment of this Act.

SEC. 313. PERMITTING COURT-ORDERED REMEDIES IN CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.–Nothing in the provisions of the Immigration Reform and Control Act of 1986, including the provisions inserted or amended by such Act, (all such provisions referred to collectively in this section as "IRCA") shall be construed–

(1) as preventing judicial review under chapter 7 of title 5, United States Code, under section 1331 of title 28, United States Code, or under section 279 of the Immigration and Nationality Act, of regulations, policies, and practices governing the adjustment of status under IRCA, or

(2) as preventing such a court from ordering, as a remedy in an action brought (before, on, or after the date of the enactment of this Act) challenging such regulations, policies, or practices, the Attorney General–

(A) to accept applications for adjustment of status under IRCA without regard to any application periods established under IRCA for a reasonable period (of not longer than 6 months with respect to any class, except as may be extended as a result of an appeal taken by the Government) specified by the court;

(B) to reopen and readjudicate applications for adjustment of status under IRCA that have been denied; and

(C) to grant temporary stays of deportation and temporary employment authorization for applicants whose applications for adjustment of status under IRCA are reopened or who are permitted to file such applications pursuant to a court-mandated remedy.

(b) EFFECTIVE DATE.–Subsection (a) shall apply as of the date of the enactment of the Immigration Reform and Control Act of 1986.

(c) CONSTRUCTION.–Subsection (a) shall not be construed–

(1) as permitting the Attorney General to appeal any court determination invalidating any rule, regulation, or policy governing the adjustment of status under IRCA if the Attorney General had an opportunity to appeal such a determination but failed to do so in a timely manner, or

(2) as applying to an applicant for adjustment to lawful temporary residence (or from lawful temporary resident status to lawful permanent resident status) who seeks to challenge a denial of an individual application for such adjustment based upon factual determinations made by the Immigration and Naturalization Service regarding the individual applicant's eligibility for such adjustment.

SEC. 314. PROHIBITION OF DEPORTATION OF SPOUSES AND CHILDREN OF LEGALIZED ALIENS.

(a) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN ELIGIBLE IMMIGRANTS.–

(1) IN GENERAL.–The Attorney General shall provide that in the case of an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of January 1, 1990, who has entered the United States before such date, who resides in the United States on such date, and who is not lawfully admitted for permanent residence, subject to paragraph (2), the alien–

(A) may not be deported or otherwise required to depart from the United States, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) EFFECTIVE DATE OF APPLICABILITY.–For purposes of paragraph (1), in the case of an eligible immigrant who is the spouse or child of a legalized alien, paragraph (1) shall only apply on and after the date the legalized alien–

(A) has been granted permanent resident status,

(B) has completed a declaration of intention to become a citizen, and

(C) has submitted a classification petition under section 204 of the Immigration and Nationality Act to classify the eligible immigrant as a preference immigrant described in section 203(a)(2) of such Act or as an immediate relative described in section 201(b) of such Act.

(3) TERMINATION OF APPLICABILITY.–

(A)(i) Paragraph (1) shall not apply 6 months after the date of the Immigration and Naturalization Service has provided the legalized alien with written notice (described in clause (ii)) unless the alien has applied for such naturalization.

(ii) The written notice referred to in clause (i) is a written notice (by certified mail, return receipt requested, in the alien's native language) stating that–

(I) the alien has become (before the date the notice is provided) eligible (by virtue of period of lawful permanent residence) to apply for naturalization, and

(II) application for naturalization must be made within 6 months to continue the benefits of this subsection.

(B) Paragraph (1) shall not apply 2 years after the date of filing a timely application for naturalization unless the alien has been naturalized as a citizen or establishes that the alien has actively pursued naturalization. Time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(b) ELIGIBLE IMMIGRANT AND LEGALIZED ALIEN DEFINED.–In this section:

(1)(A) The term "eligible immigrant" means a qualified immigrant who is the spouse or child of a legalized alien and who, except as otherwise provided under subparagraph (B), is admissible as an immigrant and is not described in subparagraph (C).

(B) In the determination of an alien's admissibility as an immigrant for purposes of subparagraph (A)–

(i) the provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of such section in the case of individual aliens when it is in the public interest; but

(iii) the Attorney General may not waive–

(I) paragraphs (9) and (10) (relating to criminals) of such section;
(II) paragraph (23) (relating to drug offenses) of such section, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana;
(III) paragraphs (27) and (29) (relating to national security) of such section; or
(IV) paragraph (33) (relating to those who assisted in the Nazi persecution) of such section.
(C) An alien shall not be eligible for the benefits of this section if the Attorney General finds that–

(i) the alien has been convicted of a felony or 2 or more misdemeanors in the United States, or

(ii) the alien is described in section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)).

(2) The term “legalized alien” means an alien lawfully admitted for temporary or permanent residence who was provided–

(A) temporary or permanent residence status under section 245A of the Immigration and Nationality Act,

(B) temporary or permanent residence status under section 210 of the Immigration and Nationality Act, or

(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986.

(c) APPLICATION OF DEFINITIONS.–Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section.

(d) TEMPORARY DISQUALIFICATION FROM CERTAIN PUBLIC WELFARE ASSISTANCE.–Aliens provided the benefits of this section by virtue of their relation to a legalized alien described in subsection (b)(2)(A) or (b)(2)(B) shall be ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under section 245A(h) or 210(f), respectively, of the Immigration and Nationality Act.

(e) APPLICATION OF SLIAG PROGRAM.–For purposes of section 204 of the Immigration Reform and Control Act of 1986, an alien who is the spouse or child of a legalized alien and whose deportation is suspended under this section shall be treated as an eligible legalized alien for the same period as such legalized alien is.

(f) CONSTRUCTION.–Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

SEC. 315. TREATMENT OF CERTAIN LEGALIZATION APPLICANTS.

(a) IN GENERAL.–Section 204(c) (1) of the Immigration Reform and Control Act of 1986 is amended by adding at the end the following: "For purposes of subparagraphs (A) and (C), the term 'elgible legalized alien' includes an alien who applies on a timely basis to become an eligible legalized alien beginning on the date that the alien applies for lawful temporary status under section 210, 210A, or 245A of the Immigration and Nationality Act and ending on the date that there has been a final determination with respect to such application.".

(b) EFFECTIVE DATE.–The amendment made by subsection (a) shall take effect as if included in the enactment of the Immigration Reform and Control Act of 1986.

SEC. 316. REIMBURSEMENT THROUGH IMMIGRATION EMERGENCY FUND OF LOCALITIES IMPACTED BY INCREASES IN ALIENS APPLYING FOR ASYLUM.

(a) IN GENERAL.–Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note), as added by section 113 of the Immigration Reform and Control Act of 1986, is amended–

(1) by inserting "to carry out paragraph (2) and" after "to be used",

(2) by inserting "(1)" after "(b)", and

(3) by adding at the end the following new paragraph:

"(2)(A) Whenever a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter, subject to subparagraph (B), funds in the immigration emergency fund provided for under paragraph (1) shall be available for reimbursement of localities that have provided assistance to aliens in that district who have asylum applications pending.

"(B) Not more than $20,000,000 shall be made available for all localities under this paragraph.".

(b) EFFECTIVE DATE.–The amendments made by subsection (a) shall apply with respect to increases in the number of asylum applications filed in a calendar quarter beginning on or after January 1, 1989.

SEC. 317. CLARIFICATION OF AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION EMERGENCY FUND.

(a) IN GENERAL.–Section 404(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101 note), as amended by section 316(a) of this Act, is amended–

(1) by inserting "(for fiscal year 1991 and any subsequent fiscal year)" after "appropriated", and

(2) by striking "$35,000,000" and inserting "an amount sufficient to provide for a balance of $35,000,000 in such fund".

(b) EFFECTIVE DATE.–The amendments made by subsection (a) shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986.

SUBTITLE C–MISCELLANEOUS

SEC. 321. SPECIAL IMMIGRANT STATUS FOR CERTAIN ALIENS DECLARED DEPENDENT ON A JUVENILE COURT.

(a) IN GENERAL.–Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), as amended by section 102(e) (1) of this Act, is amended–

(1) by striking "or" at the end of subparagraph (I).

(2) by striking the period at the end of subparagraph (J) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(K) an immigrant who (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.".

(b) WAIVER OF GROUNDS FOR DEPORTATION.–Section 241 of such Act (8 U.S.C. 1251) is amended by adding at the end the following new subsection:

"(h) Paragraphs (1), (2), (5), (9), or (12) of subsection 241 (other than so much of subsection (a)(1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(K) based upon circumstances that exist before the date the alien was provided such special immigrant status.".

SEC. 322. STATISTICAL INFORMATION SYSTEM.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws. Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), and on aliens who have been excluded or deported from the United States. Such system shall provide for the collection and dissemination of such information not less often than annually.".

SEC. 323. REVISIONS OF HEALTH GROUNDS FOR EXCLUSION.

(a) IN GENERAL.–Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended–

(1) by amending paragraph (1) of subsection (a) to read as follows:

"(1) Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services)–

"(A) to have a physical or mental disorder, and exhibits a current behavior or has a history of behavior (associated with the disorder) that (i) poses or has posed a threat to property or the safety or welfare of the alien or others and (ii) as to a history of behavior, has occurred so recently (taking into account the nature of the disorder) as to suggest the likelihood of its recurrence or the occurrence of other harmful behavior, or

"(B) to be a drug abuser or addict;";

(2) by striking paragraphs (2) through (5) and (11) of subsection (a); and

(3) in subsection (g)–

(A) by striking "who is excludable from the United States under paragraph (1) of subsection (a) of this section, or any alien", and

(B) by striking the second sentence and inserting the following: "The Attorney General may waive the application of subsection (a)(1)(A) in the case of any immigrant, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.".

(b) CONFORMING AMENDMENTS.–

(1) Section 234 of such Act (8 U.S.C. 1224) is amended by striking "paragraphs (1), (2), (3), (4), or (5)" and inserting "paragraph (1)" each place it appears.

(2) Section 236(d) of such Act (8 U.S.C. 1226)(d)) is amended by striking "paragraphs (1), (2), (3), (4), or (5) of section 212(a)" and inserting "section 212(a)(1)".

(3) Section 272(a) of such Act (8 U.S.C. 1322(a)) is amended–

(A) by striking "(1) mentally retarded" and all that follows through "(6) a narcotic drug addict" and inserting "excludable under section 212(a)(1) or (6)", and

(B) by striking "such disease or disability" and inserting "the excluding condition".

(c) EFFECTIVE DATE.–The amendments made by this section shall apply to individuals entering the United States on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 324. WAIVER OF ENGLISH LANGUAGE REQUIREMENT FOR NATURALIZATION.

Section 312(1) of the Immigration and Nationality Act (8 U.S.C. 1423(1)) is amended by striking "is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence" and inserting "either (A) is over 50 years of age and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence, or (B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence".

SEC. 325. TREATMENT OF SERVICE IN ARMED FORCES OF A FOREIGN COUNTRY.

(a) IN GENERAL.–Section 315 of the Immigration and Nationality Act (8 U.S.C. 1425) is amended–

(1) in subsection (a), by inserting "but subject to subsection (c)" after "section 405(b)",

(2) by adding at the end the following new subsection:

(c) An alien shall not be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of the United States pursuant to the exercise of rights under a treaty, if before the time of the exercise of such rights the alien served in the Armed Forces of a foreign country of which the alien was a national.".

(b) EFFECTIVE DATE.–The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to exemptions from training or service obtained before, on, of after such date.

***6711** EXPLANATION OF AMENDMENT

Inasmuch as H.R. 4300 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

The purpose of H.R. 4300, as amended, is to ease current U.S. immigration law restrictions that (1) hinder the reunification of nuclear families, (2) impose barriers to immigration on nationals of countries that have served as traditional sources of immigration to the United States, and (3) severely limit the number of highly skilled or otherwise needed foreign-born workers who may become lawful permanent residents of the United States. The legislation also substantially revises the terms and conditions under which foreign workers may come temporarily to the United States, and it effects a number of additional changes to various portions of the 1952 Immigration and Nationality Act for the purpose of repealing or modernizing outdated laws or easing unintended and harmful consequences of other laws.

COMMITTEE ACTION AND VOTE

H.R. 4300 was ordered favorably reported by the Committee on August 1, 1990, by a roll call vote of 23 to 12.

HEARINGS

During the 101st Congress, the Subcommittee on Immigration, Refugees and International Law held two hearings on legal immigration and related pending and draft legislation, as well as five joint hearings with the House Education and Labor Committee's Immigration Task Force. On the basis of these hearings, H.R. 4300 was introduced by Representative Bruce A. Morrison, Chairman of the Subcommittee, on March 19, 1990.

DISCUSSION

I. BACKGROUND

Until the 1920s, legal restrictions on immigration were essentially qualitative rather than quantitative. That is, there were no restrictions on the number of aliens who could enter, provided that they met the criteria set forth in the law. During the 1920s numerical restrictions were placed on immigration from the Eastern Hemisphere. Western Hemisphere immigration remained numerically unrestricted until 1968. Temporary legislation in 1921 was followed by the permanent Immigration Act of May 26, 1924, which remained in force until 1952. Under the national origins quota formula which went into effect on July 1, 1929, the annual quota of ***6712** any nationality was a number which bore the same ratio to 150,000 as the number of inhabitants in the United States in 1920 having that national origin bore to the number of white inhabitants of the United States in 1920, with a minimum quota of 100 for each nationality. Natives of countries in the "barred zone," encompassing most Asiatic countries, were generally inadmissible as immigrants with certain exceptions.

The Immigration and Nationality Act enacted on June 27, 1952 was a major recodification and revision of existing immigration and nationality laws. The 1952 Act codified and carried forward, with modifications, the essential elements of the 1924 Immigration Act.

As enacted, the 1952 Act combined a four-category selection system with the national origins quota system in the allocation of visas to Eastern Hemisphere countries. This was a refinement of the two-preference selection system based primarily on family relationship contained in the 1924 Act. Under the 1952 Act, 50 percent of each national quota was allocated for first preference distribution to aliens with high education or exceptional abilities, and the remaining three preference categories were divided among specified relatives of U.S. citizens and permanent resident aliens. This four-point selection system was the antecedent of our current preference system, which places higher priority on family reunification than on needed skills.

In terms of policy, the 1965 amendments overshadow the major 1952 recodification, despite the fact that they were enacted within the framework of the 1952 Act. The 1952 Act carried forward the national origins quota system as our basic mechanism for numerical restriction, reaffirming the importance of nationality and ethnic considerations as determinants of our immigration policy. The 1965 amendments rejected these principles, substituting a system of priorities based primarily on reunification of families and needed skills.

The 1965 amendments replaced the national origins quota system as the primary control of Eastern Hemisphere immigration with an annual ceiling on Eastern Hemisphere immigration of 170,000 and a 20,000 per-country limit. Within these restrictions, immigrant visas were distributed according to a seven-category preference system placing priority, in order, on family reunification, attracting needed skills, and refugees. The 1965 law also provided that effective July 1, 1968, Western Hemisphere immigration would be limited by an annual ceiling of 120,000, without per-country limits or a preference system.

Several major perfecting amendments were enacted in the 1970s and 1980, completing the transition to the legal immigration system which is currently in place. The Immigration and Nationality Act Amendments of 1976 extended the 20,000 per-country limit and a slightly modified version of the seven-category preference system equally to the Western Hemisphere. The preference system and the per-country limits were applied to the two hemispheres under the separate ceilings of 170,000 for the Eastern Hemisphere, ***6713** and 120,000 for the Western Hemisphere. Legislation enacted in 1978 combined the separate ceilings into a single worldwide ceiling of 290,000 with a single preference system. The Refugee Act of 1980 eliminated refugees as a category of the preference system, and set the worldwide ceiling of 270,000, exclusive of refugees.

II. HISTORY OF LEGISLATION

The review of current law regulating legal immigration began with the work of the Select Commission on Immigration and Refugee Policy, which submitted its final report to the President and the Congress on March 1, 1981. The 16-member Select Commission was created in 1978 by P.L. 95–412 to conduct a study and evaluation of immigration and refugee laws, policies, and procedures. Its final report was entitled "U.S. Immigration Policy and the National Interest," and the basic conclusion that immigration was in the national interest underlay many of its recommendations. The Commission also stressed the need to improve the enforcement of immigration law. In Chairman Theodore Hesburgh's words, the Commission recommended "closing the back door to undocumented/illegal migration, [and] opening the front door a little more to accommodate legal migration in the interests of this country" (Select Commission Final Report, p. 3).

Some of the Select Commission's recommendations concerning legal immigration were incorporated in the Immigration Reform and Control Act of 1982, identical bills introduced in the 97th Congress on March 17, 1982 by Senator Alan Simpson, the Chairman of the Senate Judiciary Subcommittee on Immigration and Refugee Policy, and by Representative Romano Mazzoli, the Chairman of the House Judiciary Subcommittee on Immigration, Refugees, and International Law. However, the provisions relating to the reform of legal immigration were dropped from the Simpson-Mazzoli legislation before it was finally enacted as P.L. 99–603, the Immigration Reform and Control Act (IRCA) of 1986.

More specifically, major provisions relating to legal immigration were included in the Senate-passed bills in both the 97th and 98th Congresses. However, they were not included in the House bill introduced in the 98th Congress or in either the House or Senate bills introduced in the 99th Congress. The legal immigration provisions were deleted from the House version in the 97th Congress at the behest of House Judiciary Committee Chairman Peter Rodino during full Committee markup, primarily on the grounds that they were premature.

Action in the 100th Congress

Congressional legislative attention shifted to legal immigration in the 100th Congress following the enactment in 1986 of IRCA which focused almost exclusively on illegal immigration. Even before that, the House Judiciary Subcommittee on Immigration, Refugees, and International law held a hearing on the general issue of legal immigration on July 30, 1986.

***6714** On the Senate side S. 2104 passed the Senate on March 15, 1988 by a vote of 88 to 4. This comprehensive legal immigration reform bill represented a compromise between legislation originally introduced by Senator Edward Kennedy and Senator Alan Simpson, respectively the chairman and ranking minority member of the Senate Judiciary Subcommittee on Immigration and Refugee Affairs.

On the House side, the House Judiciary Subcommittee on Immigration, Refugees, and International Law held hearings on general reform of the legal immigration system on July 21, 1987 and on related pending legislation on June 21, 1988, H.R. 5115, the "Legal Immigration Amendments of 1988," was introduced on July 28, 1988, by Chairman Rodino, and Subcommittee Chairman Mazzoli. Hearings on H.R. 5115 were held September 7 and 16, 1988.

Like S. 2104, H.R. 5115 would have established separate tracks for family and independent immigrants, and increased the number and proportion of independent visas. However, it differed significantly from the Senate-passed bill in not amending current law to include immediate relatives of U.S. citizens under an overall cap on legal immigration. There was near-unanimous agreement among witnesses testifying on the House and Senate bills during hearings held by the House Judiciary Immigration Subcommittee in September 1988 that there was insufficient time left in the 100th Congress for major legislation.

As a result, only P.L. 100–658, temporary legislation addressing limited concerns, was enacted in the 100th Congress. It originated on the House side during subcommittee markup on September 30, 1988. The full Judiciary Committee reported

H.R. 5115 with the stripped-down subcommittee amendment on October 3, 1988 (H. Rept. 100–1038). It passed the House on October 5 and the Senate on October 21, 1988, and was signed into law on November 15, 1988. Briefly, P.L. 100–658, the Immigration Amendments of 1988, amended section 314 of IRCA, which made more visas available to countries disadvantaged by the repeal of the national origins quota system, by extending it to fiscal years 1989 and 1990 and by increasing the annual number of visas available from 5,000 to 15,000. It also made 10,000 immigrant visas available each year for fiscal years 1990 and 1991 to underrepresented countries in the immigrant visa allocation in fiscal year 1988; and extended H–1 professional temporary worker nonimmigrant status for certain registered nurses through December 1, 1989.

Action in the 101st Congress

In the 101st Congress, comprehensive legal immigration reform legislation, S. 358, was passed by the Senate on July 13, 1989, by a vote of 81–17 following three days of debate and significant floor amendment. It originated as a compromise measure offered by Senator Kennedy and Senator Simpson.

On the House side, beginning on September 27, 1989, the Subcommittee on Immigration, Refugees, and International Law held a series of hearings on legal immigration and related pending and draft legislation, often jointly with the House Education and Labor ***6715** Committee's Immigration Task Force chaired by Representative Tom Sawyer. Specifically, an additional hearing was held by the Subcommittee on February 21, 1990, and joint hearings were held on February 21 and March 1, 7, 13 and 14, 1990. During the course of the hearings in the 101st Congress the Subcommittee heard testimony from a total of 50 witnesses, including officials from the Departments of Justice, State and Labor, representatives of various ethnic and religious groups, economists, local officials, representatives of both business and labor, along with other interested parties.

H.R. 4300, the “Family Unity and Employment Opportunity Immigration Act of 1990”, was introduced by Representative Bruce A. Morrison, Chairman of the Subcommittee, on March 19, 1990. The bill was marked up by the Subcommittee on March 21, and April 3, 4, and 18. The bill, as amended, was favorably reported to the full Judiciary Committee with a single amendment in the nature of a substitute on April 18, 1990 by a record vote of 6–4.

The full Judiciary Committee considered the bill on July 31 and August 1, 1990, and on the latter date ordered H.R. 4300, as amended, favorably reported to the House by a record vote of 23–12.

III. NEED FOR LEGISLATION

Background

The system by which aliens are currently permitted to come to the United States and remain here permanently consists of three major components: (1) the preference system; (2) the immediate relative to U.S. citizens program; and (3) the refugee program.

Under the preference system the United States makes available 270,000 immigrants visas annually. Of this number 216,000 are made available to individuals who have family members in the United States and 54,000 are made available to individuals (and their immediate families) who possess employment skills in short supply in this country. In all, there are six preferences, four of which relate to family-sponsored immigration and two of which (the third and sixth preferences) relate to employment-based immigration. Within the worldwide ceiling of 270,000 each country may send up to 20,000 immigr nts to the United States annually.

Under the immediate relative program the spouses, parents, and minor unmarried children of adult U.S. citizens are permitted to enter the United States without numerical restriction. Currently, the number of such individuals entering the United States annually is approximately 220,000.

In order to be admitted to the United States as a refugee an individual must demonstrate persecution or a well-founded fear of persecution. Each year the number of such individuals to be admitted to the United States in the upcoming fiscal year is set by the President, in consultation with Congress. For FY 1990 the refugee admissions ceiling has been set at 125,000.

H.R. 4300, as amended, reflects the Committee's belief that both the preference system and the immediate relative program are in ***6716** need of reform. With regard to the preference system, the Committee is convinced that the number of employment-based immigrants must be substantially increased, that the procedures governing their admission must be streamlined, that both temporary and permanent programs are needed to promote diversity of nationalities within the immigrant streams, that backlogs within the current family related preferences need to be reduced, and that the ceiling on the number of immediate relatives of lawful permanent resident aliens should be significantly raised. With regard to the immediate relative program, the Committee believes that the spouses and unmarried minor children of lawful permanent resident aliens should be admitted without regard to the per-country annual ceiling of 20,000, thereby treating them the same as immediate relatives of U.S. citizens. The legislation makes no changes in the refugee admissions program.

As amended, H.R. 4300 would increase the number of immigrants (exclusive of refugees) admitted each year from the current level of about 530,000 to about 770,000. The Committee is convinced that this increase is well within this nation's absorptive capacity and that each of the component programmatic increases that comprise this overall increase will serve the economic, social, and cultural interests of the United States.

Under H.R. 4300, as amended, the 54,000 visas now allocated under the employment based preferences is now capped at 75,000 principals. Those family members accompanying or following to join are not included in this cap. The effect of this change would be to increase the proportion of employment-based immigration within our total immigration system. Thus, whereas under current law fewer than 10 percent of all immigrants are admitted under the employment preferences, under H.R. 4300, as amended, that percentage would increase to about 25 percent.

The idea of augmenting the number of employment-based visas has been supported by the President's Council of Economic Advisors, which in its February 1990 Report stated,

> Currently, U.S. immigration policy is based primarily on the humanitarian principles of family reunification and refugee resettlement. Fewer than 10 percent of immigrants in recent years were admitted because of their skills. Less skilled immigrants will clearly continue to be a valuable resource for employers. Yet, with projections of a rising demand for skilled workers in coming years, the Nation can achieve even greater benefits from immigration by augmenting this traditional emphasis on family reunification with policies designed to increase the number of skilled immigrants. Immigrants with more education or training will likely make the greatest contributions to the U.S. economy, suggesting that basic skill levels could be one guide to admitting new immigrants under a skill-based criteria. (p. 165).

The labor market impact of immigration is a product not only of employment-based admissions but also family sponsored admissions. ***6717** Indeed, an intending immigrant coming here to be reunited with family may be denied admission if that alien is likely to become a “public charge.” In reviewing the economic impact of immigration in general, therefore, the Committee has found it highly relevant that in a recent poll of 38 of the nation's top economists 63 percent endorsed “more legal immigrants” and none endorsed fewer. The following comments were also offered:

The major economic effect of immigration is to provide a steady stream of fresh human resources to the economy. Provided immigrants are attracted by the opportunities of the American economy, rather than by the welfare provided by the American polity, they contribute greatly to the vitality of the economy. They are highly motivated, willing to work and venture, and bring in fresh insights. Immigrants have made a disproportionate contribution to dynamism of the economy because of these characteristics ever since our forefathers first landed in the New World.

Milton Friedman; The Hoover Institute; President of the American Economic Assoc., 1967; Nobel laureate, 1976.

Immigration promotes growth and prosperity. Immigrants provide willing and eager workers. Incomes of native born Americans rise as immigrants are typically complimentary to skilled workers.

Thomas G. Moore; Hoover Institute; Member, Council of Economic Advisers, 1985–1989.

Evidence strongly supports the view that immigrants have a favorable effect on our overall standard of living and development. Despite some possible short run displacement, immigration has improved job opportunities and wage levels for other workers. They also pay more in taxes than they use in social services.

Beryl W. Sprinkel, Member, Chairman, Council of Economic Advisers, 1984–1989.

The Committee is convinced that family reunification should remain the cornerstone of U.S. immigration policy. The Select Commission on Immigration and Refugee Policy said in its Final Report, “The reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well being of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States.” (p. 112).

Conferral of Immediate Relative Status

The current worldwide backlog of spouses and minor children of permanent residents is approximately 245,000, or 58 percent of the total second preference backlog of 420,000. Years of waiting are required before immediate families of permanent residents can be reunited.

***6718** The legislation addresses this problem by redefining spouses and minor children as permanent residents as “immediate relatives.” However, unlike the “immediate relatives” of U.S. citizens, who are allowed to enter in unlimited number, the immediate relative spouses and minor children of permanent residents will be limited under H.R. 4300 to 115,000 annually, “until otherwise provided by law.”

New petitions for spouses and children of permanent residents are currently filed at a rate of approximately 75,000 each year. Assuming the new 115,000 annual limitation, and based on the current waiting list and visa demand, it is anticipated that about 100,000 of the first year's visas will go to applicants from the three highest demand countries (Mexico, the Philippines, and the Dominican Republic), since these applicants have the earliest priority dates and have been on the waiting list the longest. Immediate relatives, unlike petitioners under the preference system, are not limited by the 20,000 per country ceiling (5,000 per dependency).

In the first year only about 15,000 of the 115,000 visas will be available for the rest of the world. However, by the second year some 86,000 visas will be available for the rest of the world.

By about the fourth year, assuming new visa demand remains at current levels, the waiting list would be nearly eliminated for these immediate relatives, and visas should be available without a waiting period. However, projections are not entirely clear because within the next few years some three million people will have become eligible to be permanent residents under the regular and seasonal agricultural worker legalization programs contained in P.L. 99–603, the Immigration Reform and Control Act of 1986 (IRCA).

Since IRCA did not provide derivative status for the spouses and children of those legalized under its programs, it is not known how many of these newly legalized residents will need to petition for their families. It is therefore difficult to estimate the number of second preference petitions that will be filed by this group, or when the day will come that demand begins to fall.

Family Preferences and Other Numerically Exempt Categories

Approximately 220,000 spouses, children and parents of U.S. citizens over age twenty-one enter the country annually, outside the preference system, as immediate relatives. There is no cap on this number but, except for the likely increase at the time those legalized under IRCA become citizens, it is not expected to change significantly. As discussed above, 115,000 spouses and children of permanent residents will also enter outside the preference system, as immediate relatives.

The total number of family preference visas under H.R. 4300 will be 185,000, as opposed to 216,000 under current law. Thirty percent of the total family preference visas (or 55,500) will be available for the first preference category of unmarried sons and daughters of U.S. citizens. Under current law, first preference receives twenty-five percent of the 270,000 total.

***6719** Adult (over 21 years) unmarried sons and daughters of permanent residents will continue to be admitted in the second preference category for which 35,000 (plus fall-down) visas will be made available annually (about half the number available under current law for all second preference beneficiaries, including spouses and minor children).

The third and sixth preference categories, currently available as employment-related visas, are eliminated as an on-going preference category under H.R. 4300. The current fourth preference category, married sons and daughters of U.S. citizens, will become the new third preference with up to sixteen percent, (or 30,000, plus fall-down) of the worldwide family preference visas available to it.

The current fifth preference category, brothers and sisters of U.S. citizens twenty-one years old and over, will become the new fourth preference with thirty-five percent (or 65,000 plus fall-down) of the new worldwide family preference visas.

Backlog Reduction Visas

Under current law the spouses and unmarried sons and daughters of lawful permanent residents are provided visas under the second preference. The number of people actually entering the United States each year on second preference visas is slightly over 100,000, but the number currently on the waiting list for such visas totals 420,000.

Nearly half the 420,000 backlog in the second preference consists of natives of three countries: Mexico, the Philippines and the Dominican Republic. According to the State Department, Bureau of Consular Affairs, as of August 1, 1990, the second preference priority date for Mexicans was June 15, 1980. For Filipinos the priority date was July 1, 1983, and for Dominicans the date was March 13, 1987. The date for all other countries of the world is July 22, 1988. In terms of duration of wait, these dates mean that for natives of most countries the wait for family reunification is between two and a half and three years; for Mexicans the wait is about fifteen years; for Filipinos it is about seven years; for Dominicans it is between six and seven years. The Committee believes that the separation of nuclear families for such long periods of time is not only antithetical to the

national objective of preserving the integrity of the family unit, but is also counterproductive in terms of controlling illegal immigration. The requirement that nuclear families live apart inevitably provides an incentive to illegal entry, since the basic human urge to keep the family together can override the desire to abide by the law.

H.R. 4300, as amended, addresses the particular need for reunification of nuclear families of lawful permanent residents not only by increasing from 42,000 to 115,000 the admissions levels for spouses and minor unmarried children of such residents, but also by providing 10,000 additional visas for each of five years for second preference backlog reduction. The bill also addresses the problem of the enormous backlog of fifth preference visa applications by providing 40,000 additional visas for each of five years for ***6720** that category. (The waiting list for fifth preference–siblings of adult U.S. citizens–is 1.4 million worldwide.) The State Department estimates that eighty-five to ninety percent (or about 1.2 million) of the applicants would take these visas if offered today. Most of the backlogged applicants are from five countries: Mexico, Philippines, India, Korea, and mainland China. The State Department estimates that about 500,000 are from countries other than these five.

For all countries, including the oversubscribed, the waiting period for fifth preference visas is about 30 years. For the Philippines it is well over 30 years.

Family Reunification for Legalized Aliens

Both the regular legalization program (Section 245A of the Immigration and Nationality Act–"INA") and the seasonal agricultural worker program (Section 210 of the INA), which were created under IRCA provided that all aliens must qualify for legalization on their own behalf. In order to qualify for legalization under Section 245A of IRCA, applicants were required to have continuously resided in the United States since before January 1, 1982. There was no specific provision for derivative status for spouses and children.

In a great many instances a father illegally entered the United States prior to the January 1, 1982 cutoff date, found work and housing, and eventually arranged for his family to join him. If the mother and children arrived after January 1, 1982, they were not eligible for legalization

In 1987 then-Commissioner Alan Nelson of the Immigration and Naturalization Service ("INS") announced a "family fairness" policy under which children of legalized aliens would not be deported, and the status of ineligible spouses and ineligible children of only one legalized parent would be decided on a discretionary case-by-case basis. Indefinite voluntary departure would be granted to unmarried children under the age of eighteen who could establish that they were in unlawful status prior to November 6, 1986 (the date of enactment of IRCA).

Despite Commissioner Nelson's policy, immigrant advocacy groups reported that young children, including a three-year-old and a child with cancer, were being deported by INS. Efforts were made in both the House and Senate in the 100th Congress to legislate against deportation of spouses and children of legalized aliens, but no legislation was ultimately encated.

On February 2, 1990, newly appointed INS Commissioner Gene McNary issued a new set of guidelines. Commissioner McNary mandated implementation of those guidelines by all INS district directors, eliminating the discretion that had been granted by Commissioner Nelson. He also eliminated the requirement that a spouse show "some compelling or humanitarian factors" beyond the hardships normally caused by spousal separation. Unlike Commissioner Nelson, he allowed work authorization for those qualified for the indefinite voluntary departure. However, the McNary ***6721** guidelines continue the requirement that the spouses and children of legalized aliens must have entered the United States before November 6, 1986.

Although the McNary policy, which is still in effect, is more generous to families and promotes more consistent and uniform treatment than the earlier policy, the 1986 cutoff date has continued to impose hardship on families. Thus, once again there have been reports of children being deported. Eduardo Jr. and Norberto Morales, ages six and three, are in deportation proceedings because they entered the United States after the 1986 cut-off date. Many families, like the Moraleses, did not bring their children into the United States until after the passage of IRCA because it was not until after that they themselves knew they could qualify for legalization. To remedy these hardships, therefore, the legislation advances the "family fairness" cutoff date to January 1, 1990 for both the section 245A program and the section 210 program.

Employment-Based Immigration

The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages. The second problem concerns the increasing skills gap in the current and projected U.S. labor pool. "Workforce 2000," which was prepared for the Department of Labor by the Hudson Institute, is one study among several that indicates that the education and skills of the emerging U.S. labor force will be mismatched with labor market needs. Because it is unlikely that enough U.S. workers will be trained quickly enough to meet legitimate employment needs, and because such needs are already not being met, the Committee is convinced that immigration can and should be incorporated into an overall strategy that promotes the creation of the type of workforce needed in an increasingly competitive global economy without adversely impacting on the wages and working conditions of American workers.

The Report of the President's Council of Economic Advisors (February 1990) supports the proposition that immigration may play a key role in meeting domestic labor market demands:

> Immigration policy can also contribute to the smooth operation of the U.S. labor market in the 1990's. While continuing the humanitarian principles that have shaped immigration policies in the past, the Federal Government can encourage the immigration of workers with skills important to the economy, both by increasing the number of visas for workers with a job in hand and by increasing quota levels for potential immigrants with higher levels of basic and specific skills. This approach will strengthen the prospects for successful assimilation of immigrants into U.S. society and increase the economic gains from immigration for the population as a whole. (p. 166).

***6722** The Committee believes, however, that immigration must be part of an overall human resources policy that recognizes the needs of members of our own society who have been left behind. As Deputy Assistant Secretary of Labor for Employment and Training David O. Williams stated, "We must guard against making a fundamental miscalculation and relying excessively on immigration. Doing so could place immigration policy in conflict with other national priorities ... by interfering with our resolve as a nation to bring into the economic mainstream some of those who are not now there: minority youth, the disabled, the disadvantaged, older Americans." (Immigration Act of 1989, Pt. 3, Jt. Hearings, Ser. No. 21, p. 8)

These challenges are met in this legislation by creation of a system under which certain employers who are granted permission to import foreign workers will be required to pay a fee that will be deposited in an account in the Department of Labor. Funds from this account will be used for education and training of U.S. workers as part of the broader linkage between immigration and labor policy.

The competitive influences of the Asian Pacific Rim, Caribbean Basin, and the European Community are forcing re-evaluation of the U.S. role in the world. Immigration law is not now in synchronization with these global developments. Its current structure inhibits timely admittance of needed highly skilled immigrants. The highest preference in the employment category, relating to

people of exceptional ability, currently involves an 18-month wait for a visa. The other employment category, for skilled and unskilled workers, is subject to a $2^{1/2}$ year wait. This lack of responsiveness may impede the ability of businesses to plan and operate efficiently and effectively in this global economy. As noted by the American Council on International Personnel, "The ability to put the best manager or the most expert technician in the right position within the company at the precise moment that he or she is needed is an absolute requirement to assure that a business stays even or ahead of well-financed and highly efficient overseas competitors". (Id p. 509). During hearings, the National Foreign Trade Council further testified, "Our biggest problem with permanent immigration is that there are simply not enough employment related visas available under our current system." (Id p. 201) Other concerned groups also advocated increased permanent immigration numbers: the National Association of Manufacturers, the U.S. Chamber of Commere, the American Immigration Lawyers Association, the American Council of International Personnel. The bill responds to these needs by providing 134,000 additional employment-based immigrant visas and prioritizing the entry of certain categories of workers who are vital to business.

Many employers prefer to hire domestically and place much effort in the search for workers, yet are unable to find the technician or expert needed. Additionally, the current labor certification process required to prove that this search has occurred is fraught with time-consuming hurdles. In many parts of the country this part of the immigration process alone can take 15 months. The bill ***6723** responds to this problem by allowing employers to file an attestation as to recruitment, payment of prevailing wages, and strike conditions, thus replacing the lengthy, adjudicatory, labor certification process with a process that allows attestations that have not been challenged to become effective. Attestations that have been challenged will go through a thorough administrative review procedure. This will focus Department of Labor resources on enforcement procedures, not on universal, routine and frequently unnecessary administrative screening and review activities.

Temporary Workers

The supply of foreign temporary workers has not kept up with the demands of American business in the international marketplace. Various technological advances have rendered the treaty trader visa ("E-visa") unavailable to several categories of workers. The intracompany transferee visa ("L-visa") has not been responsive to the need to rotate executives and managers for assignments in the United States. The bill addresses these problems by expanding access to the E visa to allow transfer of technology and services. It also broadens the L visa to include affiliated accounting firms and reduces time frames for previous employment with the company.

The current labor certification process lacks any meaningful access for an affected person to challenge an employer's petition with respect to recruitment or wages. Thus, U.S. Workers must rely totally on the Department of Labor's determinations that an adequate search of the domestic market has been made. However, Department of Labor acquiescence to state procedures has resulted in little uniformity of administrative procedures; recruitment is not standardized as much as it could be due to lack of definitions; prevailing wage determinations many times are made on an ad hoc basis; schedules of categories for which there is no test of the market are established and removed without labor market data or Congressional and public input. All of these have combined to create a lack of faith in the system and a strain on the relationship between business and labor. As Professor Philip L. Martin, a leading expert on labor certification, testified:

> In the United States the Employment Service does not play a major job matching role ... Under the current labor certification system, the employment service is supposed to determine whether Americans are available to fill a vacant job, even if the employment service has limited experience placing workers in the type of job for which immigrants are being requested. Since employers do not obtain worker or union concurrence before requesting immigrant workers, and the employment service has inadequate labor market information to determine quickly whether American workers are available, it is easy to understand why U.S. labor certifications often includes litigation. (1989 Hearings, Pt. 3, p. 102)

***6724** Additionally, he noted that once employers make the investment in obtaining access to alien workers "they no longer have a real economic incentive to search for U.S. workers." (Id. p. 103).

The bill responds to these shortcomings through an enforcement mechanism which allows U.S. workers to challenge an attestation by an employer with respect to the recruitment which has taken place and the wages offered the alien. Additionally, prevailing wages are determined by the Bureau of Labor Statistics.

The H–1 visa (aliens of "distinguished merit and ability") has been the most controversial nonimmigrant visa because entry is not conditioned on any domestic labor market test and because admissions levels under this category have been escalating–from 45,000 in 1981 to 78,000 in 1988. Also, the erosion of definitional lines through administrative decisionmaking has meant that little-known entertainers and their accompanying crews qulaify within this category, and aliens with nothing more than a baccalaureate degree have been deemed "distinguished" (Matter of Essex Cryogenics Industries, 14 INA Dec. 196, 1972). Because of its concern over the manner in which INS has implemented the H–1 program Congress has intervened on two occasions to prevent administrative broadening of the H–1 visa category. (P.L. 100–202, P.L. 101–238).

The bill responds to the problem of H-visa abuse by redefining and splitting out certain categories of workers and by placing annual admissions ceilings through the establishment of a ceiling of 100,000 on all formerly H visas. Within that cap 9,000 P visas are for entertainers and athletes, 25,000 new H (i)(b) visas for specialty occupations, and 66,000 for nonagricultural temporary workers under H(ii)(b).

The admission of certain entertainers and accompanying aliens has fueled many of the concerns with respect to H–1 numbers and definitions. A number of situations have occurred to reinforce the Committee's belief that these visas have been abused. In 1984, 46 members of a theatrical troupe were admitted to perform "Evita" over serious objections of U.S. actor's guilds and notwithstanding regulations requiring an advisory opinion from labor organizations and definitions requiring unique qualities for accompanying aliens. In denying the petition on appeal, INS noted "little evidence" supporting qualifications of the cast and stated that if proper consultation had taken place it would have provided the necessary "safeguards against the abuse of the nonimmigrant visa worker programs". (Matter of Evita, HHW-N 5086, August 21, 1984). In other cases, however, the Department of Justice has had some complicity in the abuse of the visa process. In 1987, twelve members of a motion picture film team who had been deemed ineligible for H-1 status were paroled into the United States by the Attorney General to participate in the filming of a television production.

The increased reliance on foreign H–1 nurses in many of the nation's largest cities prompted Congressional action last year to require hosptials to engage in domestic recruitment and offer appropriate ***6725** wage levels prior to seeking alien nurses, while allowing those already in the United States to adjust to permanent resident status (P.L. 101–238). According to the Bureau of Labor Statistics, the real wages of nurses for those cities experiencing heaviest use of H–1 nurses increased at a rate far behind other cities. H.R. 4300 corrects a situation outside nursing by extending similar respnsibilities for recruiting and wages to employers of most H–1 (b) aliens.

Regarding engineeers, the Institute of Electrical, Electronics and Computer Engineers, representing more than 300,000 engineers, submitted information indicating that salary levels for more experienced engineers have not changed noticeably since the early 1970s when compared to other professions, although starting salaries have increased. Additionally, a study by the National Research Council in 1988 ("Foreign and Foreign-born Engineers in the U.S.") noted 45% of engineering graduate students in 1985 were aliens with temporary visas, and while recognizing the contributions of these engineers it was noted the presence of a large number of foreign engineers may discourage female and minority students from entering the engineering profession and may limit the appointment of U.S. PhD engineers to faculty positions. The recruitment procedures in the bill address these concerns.

A February 1990 General Accounting Office report on the exchange visitor ("J-visa") program indicated that many J-visas are inappropriately utilized for employment purposes. Of these, the most abused has been the au pair program. Accordingly, the bill revises the au pair program to require the payment of at least minimum wages and to provide other labor protections. Other exchange programs in the bill are required to provide prevailing wages if employment is a factor in the program. Additionally, prompted by inadequate proposals under considerations by INS to expand work authorization of foreign students, the bill expands the ability of students to work, but requires maintenance of academic standing and domestic recruitment prior to access to foreign student workers.

Education and Training of U.S. Workers

By creating an Education and Training Fund as a component part of H.R. 4300, the Committee recognizes the need to balance the short term employment demands of employers with the need to train and educate the new generation of American workers. The Committee believes that increased immigration levels should not lead to a dependence on foreign workers, nor should they place training of unemployed U.S. citizens at risk. The fund established in the bill will supplement national efforts in assisting the unemployed and underemployed in obtaining the necessary skill levels to compete in today's market. Employers seeking foreign workers have a special obligation to ensure that obtaining workers from abroad is a last resort. Payment of fees by these employers into the fund for training American workers will assure that continuing effort.

***6726** The so-called "de-skilling of America" is considered by many to be the biggest single problem facing the U.S. workplace in the near and distant future. The study Workforce 2000 states that "Labor markets will be tighter, due to the slower growth of the workforce and the smaller reservior of well-qualified workers" (p. 79). Similarly, a recent Industry Week report noted that "By the year 2000 an estimated 5 to 15 million manufacturing jobs will require different skills," and that there are "1.5 million workers permanently displaced from jobs each year [who] will require some kind of assistance in order to re-enter the workforce." (September 19, 1988, p. 52). To this end, the fund will help to train and retrain U.S. workers in the skills they will need for the future if U.S. workers, industry, and the country as a whole are to remain competitive in a global economy. Business leaers agree that there is an obligation to train domestic workers. American corporations are investing substantial sums of money in training. Additionally, as the National Association of Manufacturers stated during hearings: "We believe that American indsutry has no choice but to continue educating the work force." (Immigration Act of 1989, Hearings, Pt. 1, Ser. 21 p. 472). Yet in many cases, those investments are employer-specific, leaving the broader needs of the workforce begging.

One of the most acute problems contributing to the skills gap is the paucity of American students sufficiently versed in the areas of mathematics and the sciences. Currently, in many cases students from other countries surpass the achievements of U.S. students in math and science. Additionally, the campuses of many U.S. colleges and universities have a large proportion of students from other countries who have come to obtain a post-secondary degree, and who will then return to their native countries to help business and industry there. These opportunities should be available to U.S. students, particularly in math and science so that they can compete in the high-tech fields of business and commerce. With this in mind, H.R. 4300 requires that 10% of the fund be set aside for use solely to educate needy individuals enrolled in courses leading to a degree in mathematics or any of the sciences at an accredited post-secondary institution. This is one step toward educating U.S. workers in the math and science areas which are so crucial to today's business world.

Hong Kong

The colony of Hong Kong was acquired from China in three segments by Britian under the terms of three treaties in the nineteenth century: the 1842 Treaty of Nanking, the First Convention of Peking in 1860, and the Second Convention of Peking in 1898. The New Territories, consisting of a mainland area and adjoining Kowloon and 235 adjacent islands (90% of Hong

Kong's land area), were leased to Britain for 99 years beginning July 1, 1898 in the Second Convention of Peking. On July 1, 1997, the People's Republic of China (“PRC”) will permanently resume sovereignty over Hong Kong.

During the negotiations in 1984, policies were set regarding the administration of Hong Kong after 1997. These are included in the constitution called the Basic Law. Pursuant to the Basic Law, Hong Kong will be governed as a Special Administrative Region of the ***6727** PRC for the next 50 years. The Basic Law provides a system to ensure that fundamental rights and freedoms of its residents, convertibility of the Hong Kong dollar, and local administrative autonomy are maintained in Hong Kong to secure economic prosperity in the future.

However, the brutal repression of pro-democracy demonstrators on June 4, 1989 in Tiananmen Square has aroused legitimate fears among residents of Hong Kong as to what life may be like under PRC rule. Although the PRC has agreed to leave Hong Kong's social and economic system undisturbed for 50 years, Hong Kong citizens have lost confidence and are searching for ways to emigrate before 1997. It is estimated that 55,000 Hong Kong Chinese will emigrate in 1990, the majority going to Canada, Australia, and the United States. Other countries have made their immigration policies less restrictive concerning immigrants from Hong Kong. For example, Britain announced that it would grant full British citizenship to about 225,000 people, and France has promised passports to qualified employees of French companies in Hong Kong.

Currently, as a dependent area of a foreign state, the Hong Kong per country ceiling is set at 5,000. Prior to the passage of IRCA in 1986 its ceiling was set at just 600. Thus backlogs in the preference system for Hong Kong have been long and will continue to grow unless remedial action is taken.

Raising the per country ceiling from 5,000 to 20,000 is one way the legislation responds to the unique needs of Hong Kong.

American investment in Hong Kong is estimated at over $6 billion. At present the more than 900 American firms doing business in Hong Kong employ approximately 200,000 Hong Kong nationals. Due to the scheduled reversion of sovereignty of the colony and the recent events in the PRC, U.S. companies are facing serious personnel shortages. According to the American Chamber of Commerce (Hong Kong), American firms in Hong Kong have lost 24% of their key employees in the last year as a result of emigration from Hong Kong and transfers to non-U.S. businesses that have hired key executives, managers, and highly skilled employees of U.S. firms by offering them immigration benefits as a perquisite condition of employment. The Committee believes that these practices by foreign businesses and governments place American businesses in Hong Kong at a competitive disadvantage. The legislation responds to this problem by providing an additional 15,000 immigrant visas to residents of Hong Kong who are employed in Hong Kong by a U.S. business and who can be similarly employed in the United States.

Diversity

In the late 1800s and early 1900s, emigration to the United States shifted from Northern and Westen Europe to Southern and Eastern Europe. The early 1900s also saw the codification of existing restrictions on the entry of Asians and the addition of new ones, such as the curtailment of immigration from Southern Europe by placing literacy restrictions on admission. In 1952 the Immigration and Nationality Act recodified existing immigration laws and slightly relaxed the prohibition of Asians. In 1965, the national origin quota system was repealed and the preference system was initiated. The change in the 1965 law, however, had an unintentional ***6728** adverse affect on immigration from certain countries. Natives of countries such as Italy, Ireland, Poland, and Argentina, who traditionally immigrated to the United States, now found the channels closed. Thus, since 1965, the major source of immigration has been from Asia and Latin America.

In 1986 Congress recognized the serious imbalances in our immigration system. Consequently, section 315 of IRCA was adopted to provide visas to certain countries that had been “adversely affected” by the 1965 law. This program was extended in

1988, and a second program (P.L. 100–658) was created to provide natives of underrepresented countries access to the United States. These programs reflected Congress' desire to promote diversity in our current immigration system.

The Committee is convinced that in order to correct ongoing inequities in current law, changes must be made to further enhance and promote diversity within the present system. This legislation creates three temporary programs to broaden the regional base from which people come to the United States. One temporary measure provides 25,000 additional visas for each of three years to natives of the "adversely affected" countries. Another allows displaced Eastern Europeans 15,000 visas for each of three years. Finally, the Continent of Africa, which has a history of low immigration to the United States, is provided an additional 15,000 visas for each of three years.

In order to maintain diversity in immigration to our nation, a regional program is created by the bill. This ongoing program, which begins in 1944, provides 55,000 annual visas for natives of regions of the world where immigration through the preference system has been lower than 50,000 over the previous five years.

Eastern European Transition

East Europeans have been seeking asylum in the West since the end of World War II. West Germany and Austria both have served as countries of first asylum. Since 1945 Austria received over two million refugees, resettling some 600,000 of them. It offered first asylum to Hungarians in 1956, to Czechoslovakians following the 1968 uprising, and to Poles in the early 1980s when martial law was imposed in Poland.

As of September 30, 1989, Austria was providing assistance to over 13,000 refugees, and there were 17,000 Poles awaiting interview in Frankfort, Germany. The people in Austria were living in four refugee camps and in over three hundred small hotels and rooms. Among these are over 5,000 Rumanians, 3,000 Czechs, 1,000 Poles, and others from Yugoslavia, Bulgaria, and Hungary.

These Eastern Europeans are not firmly resettled in the West. They are living as displaced persons and work as part of an underground economy. By the same token, they have been away from their homelands for an extended period of time, and they frequently have no desire to return.

In recent years, Poles and Hungarians have comprised the bulk of U.S. refugee admissions. The ceiling on all Eastern European refugee slots for FY 1990 is 6,500. There is presently a backlog of 20,000 Poles and Hungarians in Western Europe who are registered ***6729** to be considered for refugee resettlement in the United States.

As of November 22, 1989, no new applications for refugee status were being accepted from Hungarians and Poles: April 6, 1990 was the cut-off for Czechs, and May 4, 1990 for Rumanians and Bulgarians. Because of the changes in conditions in Eastern Europe, the U.S. State Department has decided that most Eastern Europeans no longer qualify for refugee status.

IRCA Related Provisions

In the interests of stanching the flow of illegal immigration, Congress included provisions in the Immigration Reform and Control Act of 1986 (IRCA), requiring that all U.S. employers, and those who, for a fee, recruit or refer employment applicants, verify the eligibility, under the immigration laws, of the prospective employees to work in the United States.

When INS final regulations on employer sanctions were published in the May 1, 1987 Federal Register (vol. 52, pp. 16216–16228), INS received 4,000 comments, 3,100 of which related to the recruiter/referrer provisions. INS subsequently modified the

provisions, although it correctly determined that repeal was beyond the scope of its authority. The modification clarified that: (1) the recruiters and referrers were not obligated retroactively to verify applicants referred or recruited in the past; (2) verification was required only for applicants actually hired; and (3) the verification process could be completed by those designated to act in the recruiters' or referrers' interest, such as notaries, attorneys, or employers themselves. (8 CFR 274a.2).

Although the modifications made the requirements slightly less onerous than they would have been originally, recruiters and referrers continued to feel burdened by paperwork that appeared to serve no reasonable purpose. They argued, and the Committee agreed, that since businesses themselves cannot hire illegal aliens without penalty, there was no incentive for placement professionals to recruit illegal aliens. Doing so would in fact waste the recruiters' time and risk damaging the recruiter-client relationship.

Several class action law suits have successfully challenged the validity of various INS regulations and practices relating to the legalization of aliens under IRCA. In the landmark, multifaceted case, Ayuda, Inc. v. Thornburgh, 687 F.Supp. 650 (D.D.C. 1988) the District Court agreed with plaintiffs' contention that the INS regulations defining the phrase “known to the government” in section 245A(a)(2)(B) of the INA, was unduly restrictive. Numerous aliens, otherwise eligible for legalization under the IRCA legalization program, were barred from the program because they were unable to demonstrate that their “continuous unlawful residence in the U.S. since 1982,” was “known to the government,” as interpreted by INS regulation. Although other elements of the case were appealed, the government did not contest the finding with respect to the validity of the regulation.

The court found that INS implementation of the invalid regulation unlawfully precluded otherwise eligible aliens from the legalization program. Nevertheless, it held that, because the application period had passed, no relief was available for the plaintiff class, because ***6730** the Court lacked authority to extend or reopen the application period. Plaintiffs were found to have a right without a remedy.

Other cases with outcomes similar with respect to the validity of an INS practice or regulation are pending, awaiting adjudication with respect to other issues: At issue in Catholic Social Service v. Meese, Nos. 88–15046, 88–15127, and 8815128 (9th Circuit), was an INS regulation with respect to the “continuous physical presence” requirements. In LULAC v. INS, No. 88–6447 (9th Circuit) the issue related to an invalid INS rule regarding fraudulent reentry documentation.

In each of these cases INS subsequently conceded that its regulations were invalid, modified the challenged regulations, and did not appeal the merits of the court order. However, in all of these cases the modifications in policy came too late to help the eligible applicants.

In INS v. Pangilinan (486 U.S. 875 (1988)), the Supreme Court held that the courts lacked inherent authority, through the invocation of their equitable powers or otherwise, to confer naturalization benefits to new alien applicants who could no longer qualify for those benefits under then existing law, even if the applicants could show that they had failed to file for benefits under earlier, more favorable law because of wrongful government implementation. The courts have differed on whether Pangilinan bars on extension of eligibility in the amnesty context.

Although the Ayuda opinion is not a decision of the Supreme Court, and therefore has limited binding effect nationwide, district courts in judicial circuits outside the District of Columbia have cited the decision in denying relief or in staying orders pending a decision on the jurisdictional issue by the appropriate circuit court.

The Committee believes that a legislative response is necessary because of the inequities created by the anomaly of the courts' having found a right to apply for legalization, without a means of exercising the right.

The Committee also recognizes that an inequity was being created by what it regards as misinterpretation of current law. The court in Ayuda suggested that the only way for an alien to challenge the validity of an INS rule or practice was in the context of a deportation or exclusion proceeding. The Committee believes that this interpretation is incorrect, and requires legislative redress.

In fact, for class members in Ayuda, Catholic Social Services, LULAC, and Zambrano, whose applications were erroneously rejected for filing, or who were improperly discouraged from filing timely applications, there are no "denials" of legalization that could be appealed through the procedures set forth in section 245A(f)(4) of the INA.

The bill responds to this problem by authorizing Federal courts to order the Attorney General to accept new applications and readjudicate them in instances in which the court has found that INS had improperly applied the law.

Marriage Fraud

The Immigration Marriage Fraud Amendments of 1986 (P.L. 99–639) require a two-year conditional residence status for certain alien spouses, sons, and daughters of United States citizens or permanent ***6731** resident aliens. The conditional basis of the alien spouse's permanent resident status may be removed after two years upon the filing of a joint petition by the conditional resident and the petitioning spouse. In addition, there are two waivers available under the IMFA for not filing the joint petition to remove the conditional status from the alien spouse's permanent residence. One is by establishing that extreme hardship would result if the alien is deported, the other is by establishing that the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause.

The independent waivers do not address the issue of battered spouses and children. The terms of the statute do not make it sufficiently clear that an abused spouse who has entered a marriage in good faith will be granted the waiver either on the basis of "extreme hardship" or termination of the marriage for "good cause". In many cases there are obstacles that prevent a battered alien spouse from initiating a divorce, such as lack of resources to pay for a lawyer; ethnic or cultural prohibitions against divorce; fear of further physical violence; and the risk of deportation itself.

In addition, many states have no-fault divorce laws which make it impossible for an alien spouse to establish that the marriage was terminated for good cause. INS allows a divorce obtained under a no-fault law to be used to support a waiver request. The alien, however, must establish that the nofault option was used either to expedite the divorce or for economic reasons. Often, aliens are denied the waiver because they cannot satisfy the "good cause" requirement under no-fault laws. Also, a U.S. citizen or permanent resident spouse need only file for a divorce first to obtain the advantage in situations where a waiver of the joint petition requirement is being sought, again preventing the alien spouse from applying for a good faith/good cause waiver.

Present law does not ensure that a battered alien spouse or child will not be forced to remain in an abusive relationship for fear of deportation. Immigrant and family law attorneys, refugee service agencies, and battered women's advocates agree that current provisions of the IMFA do not go far enough in ensuring the safety and protecting the legal rights of immigrants in situations of domestic violence. The Committee believes that the creation of a battered spouse/child waiver and changes to the good faith/good cause waiver will clarify Congressional intent.

Section 302 of H.R. 4300 amends section 5 of the Immigration Marriage Fraud Amendments of 1986, which prohibits the INS from approving any visa petition that is based on a marriage between an alien and a citizen if the marriage occurred while the alien was in deportation or exclusion proceedings, unless the alien spouse resides outside the U.S. for two years.

Deportation proceedings can often last many years, for reasons not under the alien's control. During the pendency of the process, it is not unusual for an alien defendant, who is frequently young and single, to meet someone, develop a relationship, get married, and even have children. Numerous examples of such marriages have been documented since the enactment of section 5. Yet, such ***6732** a marriage, under the current statute, is presumptively regarded as non bona fide, with no opportunity for rebuttal.

Even if the marriage is indisputably bona fide, the current section 5 compels the alien spouse to reside outside the country for two years because there is no opportunity to establish the legitimacy of the marriage. Consequently, the American citizen spouse is either compelled to live apart from the alien spouse for two years, or the citizen spouse must abandon his/her own residence in the United States for the duration of the two year period. The American citizen spouse is forced, by the provisions of section 5 IMFA, to choose between abandoning his/her spouise or abandoning his/her country. Counsel for aliens subject to section 5 have contended that the provision contravenes the due process and equal protection guarantees of the Constitution.

Section 302 of H.R. 4300 addresses the problem of irebuttability by permitting couples to overcome the bar on filing and approval of a visa petition when the marriage is demonstrated to be bona fide.

Health Related Exclusions

Need for revision of the health related grounds for exclusions was recognized in 1981 in the Final Report of the Select Commission on Immigration and Refugee Policy, which recommended a re-examination of all grounds of exclusion. The Committee has had such revisions under extensive consideration since that time, and legislation amending the health exclusions has been reported by the Committee on several different occasions. In 1983 legislation to provide a comprehensive revision and reform of the grounds for exclusion was introduced by the Hon. Barney Frank (H.R. 4509), and in 1984 the Subcommittee on Immigration, Refugees, and International Law commenced hearings on that legislation. Further hearings were held in 1987 on a similar bill (H.R. 1119), and Subcommittee markup was held on April 20, 1988. A substitute bill (H.R. 4427), which was reported favorably from full Committee on June 22, 1988, included substantial revisions to the health exclusions. In the 101st Congress a similar bill (H.R. 1280) was approved by the Subcommittee on April 18, 1989.

H.R. 4300, as amended, repeals the specific disorders now listed in INA paragraphs 212(a) (1) through (5) as grounds for exlcusion. These grounds represent outmoded and inflexible notions of medical diagnoses, and the Committee strongly believes they should be replaced with more enlightened and flexible alternatives that focus on the dangers that may be posed by mental and physical disorders. This bill accomplishes that goal by replacing those five grounds for exclusion with two new activities-based grounds.

As under existing law, the Department of Health and Human Services (HHS) would have the primary responsibility for providing health screening to aliens seeking entry to the United States. Current regulations (43 CFR 34) provide guidance for the medical examination of aliens in order to determine whether they are excludable. The bill broadens the HHS role by moving away from specific mental and physical exclusions to more generic terms that are easily adaptable to medical advances. The bill does not change screening procedures either abroad or domestically. It also retains existing requirements under which each immigrant must submit to a medical examination and each nonimmigrant may be required to submit to ***6733** a medical examination in the discretion of the visa issuing officer. Because the new health grounds are intentionally more general in order to provide maximum flexibility, HHS will be required to establish specific criteria to guide its Public Health Service (PHS) physicians, and to assist the Attorney General, consular officers and the general public in understanding the foundations upon which an exclusion is based.

The bill does not repeal the Attorney General's discretionary authority to admit or exclude aliens or exercise waiver authority for certain health conditions. In this regard, the Committee recognizes that the Attorney General may be required to impose certain requirements in order to address possible health threats or public charge situations, including specific follow-up treatments and institutional care. It is expected that HHS and the Attorney General will work closely together in setting guidelines for the imposition of such conditions. Although the Attorney General may impose bonds and other conditions as prerequisites to admissions, such requirements are not to be interpreted so strictly as to undermine the purpose of the bill in this area, namely to make it possible for aliens who do not pose a danger to enter this country.

The legislation establishes a new general category of exclusion based on physical or mental disorders. Although general in nature, this ground is linked carefully to behavior and potentially harmful activities. Therefore, as opposed to current law, mental retardation and mental illness, per se, would not be grounds for exclusion. In testimony submitted for the record at the 1987 hearing held by the Immigration Subcommittee on the predecessor of this legislation, the American Psychiatric Association commented:

> [We] do not believe that any mental disorder alone should be a basis for exclusion. We ar pleased to see the proposed changes in the statute as they incorporate the concept that the diagnosis of any mental disorder or history of treatment for a disorder is not sufficient to exclude an alien who wishes to immigrate. Specific individuals suffering from these illnesses who display certain manifestations that are not consistent with acclimating or functioning satisfactorily in society should perhaps qualify for exclusion, but mental illness in and of itself should not be the reasons. [pp. 261, 262.]

This principle is followed in the bill in that two requirements must be met if an alien is to be excluded because of a mental or physical disorder. The alien must be determined to have a particular physical or mental disorder and a history of behavior (or current behavior associated with the disorder) that may pose a threat to property or the safety and welfare of the alien or others. The Committee notes that this standard is based on the behavior of the alien, and not merely a diagnosis that the alien has a particular disorder. Thus, an alien who was previously diagnosed as having a condition that posed a danger to others would be eligible for admission if this condition no longer existed or have been otherwise overcome by some form of treatment or therapy.

***6734** It is important to note that, even in cases in which the particular condition exists, if the condition can be controlled through medication or some other means to a degree that removes the potential danger, the alien could be admitted in the discretion of the Attorney General and on the advice of the Secretary of HHS. In such cases, admission of the alien can be conditioned or a requirement that the alien pursue a specific regime of treatment to control the disorder. The Committee expects that this provision will result in the admission of aliens who previously had been permanently barred from entry despite the fact that they had fully recovered from a disorder and did not represent a danger to themselves or others. Since the role of the alien's behavior in determining exclusions under this clause is crucial, discussion of some specific examples is appropriate. An alien diagnosed as a manic-depressive who was involved in a street fight years ago and had no recent episode of illiness or incident of violence could be safety admitted to the United States. On the other hand, a diagnosed schizophrenic who engages in destruction of property or an individual who at the time of attempted entry engages in threatening behavior would certainly be among those cases in which PHS and the Attorney General may make a determination that admission would not be appropriate.

Clearly, immigration law should provide authority for the exclusion of aliens who would engage in these kinds of violent acts. However, the Committee notes that under the language referring to a “threat to...the safety or welfare of the alien or others” the relevant behavior would not necessarily have to be violent in order to render the alien excludable. At the 1984 hearing on exclusions legislation, HHS noted examples of behavioral disorders that are not necessarily violent, but which ought to be grounds for exclusion:

> Some aliens with manifestations of conditions such as anti-social personality disorders or pedophilia (child molestation) may present a danger to public safety; other such as voyeurs and exhibitionists, may violate the rights of other persons, even

if not necessarily endangering them. Still others, such as those grossly disorganized because of psychoses, may present a burden to society if costly medical care or other care should be required. [Testimony of Dr. James Mason, p. 64.]

In addition, HHS noted in its 1984 testimony other behavior-based diagnoses that could result in harmful activity physchotic disorders, paraphilias, or other disorders that result in antisocial acts or conduct. Alcohol dependency was also cited as a condition that results in harm, particularly to the alien, and that could form the basis for exclusion, except in circumstances where the dependency was overcome by treatment. Because many of these disorders are not easily translated into commonly understood terms, and because some of them do not necessarily represent a threat to safety or welfare, the Committee requests that INS and HHS develop guidelines on the kinds of behavior associated with various mental and physical disorders that form the new bases for exclusions under this legislation.

***6735** As discussed earlier, this bill complements the changes in many U.S. laws to prohibit discrimination against handicapped individuals. These changes resulted from a growing recognition that individuals afflicted with physical and mental disorders can be self-sufficient and make valuable contributions to our economy and culture. The Committee believes that it is essential that these changing attitudes also be reflected in the training and behavior of immigration and consular officers. Therefore, the Committee anticipates that a certain amount of special training of personnel in the relevant agencies will be necessary in order to familiarize the officers with the needs and abilities of those with mental and physical disorders so that inadvertent labeling, peremptory exclusions and other unfair treatment do not occur. The Committee is particularly concerned about the treatment of mentally retarded aliens in this context. The only circumstances in which mental retardation would be ground for exclusion would be when the alien's mental condition poses a threat (as described above) or when the condition makes it likely that the alien will become a public charge. Regardless of the specific circumstances, the Committee strongly believes that mentally retarded aliens must be treated in a sensitive fashion, and that such aliens should not be separated from their families for long periods of time when they arrive in this country, or in other ways subjected to treatment that fails to take into account their unique needs.

Drug abuse continues to be a national concern, both as a health matter and as a criminal matter. Like current law, the bill treats the two problems in separate provisions. The health provision is designed to permit the exclusion of aliens with serious health problems associated with drug abuse and addiction. The provision replaces the term “narcotic drug addict” of current law with the term “drug abuser or addict.” This change reflects recognition that certain drugs, like cocaine, are not considered to be narcotic, but can be addictive, and that abuse of drugs–even without addiction–can have a harmful impact on our society and pose a danger to residents of the United States. Since this provision in included in the health grounds for exclusion, aliens who may be excludable under it should be subject to the same procedures regarding medical examinations as apply to the other health grounds, and they should receive the same consideration in possible admission if the abuse has been overcome.

The medical field is changing at a rapid pace, and as medical diagnoses change adaptation is impossible within the current confines of the statute. This was graphically demonstrated during the 1989 Cuban/Haitian influx when PHS was required to “match-up” 40-year-old statutory exclusions with current diagnostic categories. This required a significant amount of adaptation and extrapolation, which created the appearance of arbitrary march-ups, making the process susceptible to both legal and medical criticism. By establishing certain basic principles for the screening of aliens for health reasons and granting PHS more flexibility to meet medical advances, the bill avoids the need to constantly revisit the statute.

The Committee notes that the current law's permanent bar on the admission of aliens for certain health reasons places an undue hardship on many families. Allowing the admission of aliens whose ***6736** health is not a detriment to the country, not a financial burden on the public by means of a more expansive waiver policy will both promote family unity and alleviate the need to consider the significant number of private immigration bills that involve these issues.

The law also needs to be updated in its treatment of sexual orientation. The term “sexual deviation” (INA 212(a)(4)) was included with the other mental health exclusion grounds expressly for the purpose of excluding homosexuals. Not only is this provision out of step with current notions of privacy and personal dignity, it is also inconsistent with contemporary psychiatric theories. When this provision was adopted, homosexuality was commonly viewed as a form of mental illness. However, in 1973, the American Psychiatric Association determined that homosexuality is not a mental disorder. Subsequently, in 1979, the Surgeon General determined that the PHS could no longer issue medical certificates that an alien was homosexual, since homosexuality is not a medical condition.

Nonetheless, the law remains on the books, and court interpretations have been inconsistent and confusing. For example, in 1983, the Ninth Circuit held that INS could not exclude a homosexual absent a medical certificate. Hill v. INS, 714 F.2d 1479 (1983). However, shortly therefter, the Fifth Circuit held to the contrary. Matter of Longstaff, 716 F.2d 1439 (1983). When the Supreme Court denied certiorari in Longstaff, the State Department noted that the law in this area was left in a “confused state” and that whatever position the State Department took would “result in unfairness to some visa applicants.” To put an end to this unfairness Congress must repeal the “sexual deviation” ground, an action which was formally endorsed by Administration witnesses in both the 1984 and 1987 hearings on exclusion legislation. Therefore, in order to make it clear that the United States does not view personal decisions about sexual orientation as a danger to other people in our society, the bill repeals the “sexual deviation” exclusion ground.

The legislation also removes polygamy as a ground of exclusion. There were only five denials of immigrant visas in this category in FY 89. Aliens who seek to enter the United States for immoral purposes, on the other hand, may be excluded under INA 212(a)(13).

Alien Crewmembers

The bill closes a gap in immigration law which unfairly harms American workers who exercise their right to strike. Because there have been no restrictions on the admission of nonimmigrant alien crewmembers working on certain international routes of American aircraft or vessels during labor disputes between American workers and their employers, nonresidential aliens may be employed as strikebreakers. This amendment will prohibit the admission of such aliens when American workers are involved in a strike or lockout.

The provision has been the subject of extensive review by both the Committee on the Judiciary and the Committee on Education and Labor. A one year prohibition on entry of crewmen during strikes was incorporated into the “Immigration Reform and Control Act of 1986” (P.L. 99–603, November 6, 1986) as a compromise of an earlier measure sponsored by the Hon. Marge Roukema. That provision expired November 5, 1987. The Committee on Education ***6737** and Labor held hearings on a subsequent measure, H.R. 285, in 1987 and the bill was reported by the full Committee July 28, 1987 and passed the House March 22, 1988.

The need for this provision became evident primarily as a result of a lengthy labor dispute between Trans World Airlines and its flight attendants. The Independent Federation of Flight Attendants brought to the Committee's attention allegations that the company had employed nonresident aliens on trans-Atlantic flights during an ensuing strike, a fact acknowledged by the company. It stated in written testimony submitted for the Subcommittee hearing that it “trained a number of its European based employees as contingent Flight Attendants in the event that those represented by IFFA elected to strike.” Thus, it not only employed nonresident aliens on flights originating or terminating in the United States during the strike, but it explicitly made advance preparations for the use of such aliens as strike replacements.

As discussed above, there is no prohibition against such employment of aliens using Class D nonimmigrant crewmember visas when American employees are exercising their right to strike. The Committee believes there should be one. Permitting employers to use foreign workers in order to break the strikes of American employees is contrary to all notions of justice and fairness and upsets the traditional model of both labor's and management's use of their respective economic weapons during labor disputes without undue interference. Further, government permission for the use of such aliens both jeopardizes the essential role of government as a neutral umpire in a labor dispute and in effect encourages American employers to replace American worekrs. Although it is obviously too late to prevent foreign competition against the TWA flight attendants, the Committee believes it is essential to ensure that American employees never again have to face competition from nonresident aliens working in their jobs while they are on strike or are locked out. There is absolutely no reason why there should be an exception in the law permitting nonimmigrant alien crewmembers to work during strikes when no other class of nonimmigrant alien is permitted to work during such time periods.

The Immigration and Nationality Act permits the issuance of temporary nonimmigrant visas for certain foreign persons who plan to work as crewmembers on American vessels or aircraft which either depart from a foreign country for a U.S. destination or depart from the United States for a foreign destination. Two definitions of “crewman” are contained in the Act. Section 101(a)(10) defines a crewman as “a person serving in any capacity on board a vessel or aircraft. “Section 101(a)(5), which defines various classes of nonimigrant aliens, defines a nonimmigrant alien crewman as follows:

> (D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft.

***6738** Aliens fitting these descriptions are issued “Class D” nonimmigrant visas permitting their admission to the United States as crewmembers of an American vessel or aircraft. No certification process regarding either the nonavailability of American workers or the need for alien workers is required. The fact that these visas pertain only to trips on which the vessel or aircraft departs from a foreign port for a U.S. port or vice versa should be emphasized. Aliens seeking to work on American vessels or aircraft which will travel between foreign ports only do not, of course, need U.S. visas. Furthermore, non-resident aliens are forbidden from working on trips which are soley domestic in character. Chapter 6 of the Immigration and Nationality Act, “Special Provisions Relating to Alien Crewmen,” contains detailed procedures pertaining to the employment and entry into the United States of alien crewmen.

The Immigration and Nationality Act permits the issuance of temporary nonimmigrant visas for foreign persons planning to perform other types of work in the United States–for example, temporary farmworkers entering the country under Class H visas. However, regulations prohibit these other types of nonimmigrant aliens from working when their employers's American workers are involved in a strike or lockout. There has been no similar prohibition against the employment of nonimmigrant alien crewmembers when American crewmembers are on strike and this permits unfair competition against American workers. This will close the gap by denying nonimmigrant status/admission to nonimmigrant alien crewmembers when there is a strike or lockout in the bargaining unit of a U.S. employer where the alien intends to work. Any crewmember attempting to work on an American vessel or aircraft who is denied nonimmigrant crewman status/admission will be considered an illegal alien prohibited from entering the country, any such crewman who has already entered will be subject to deportation.

IV. ANALYSIS OF SPECIFIC PROVISIONS

The foregoing has been a general discussion of the need for various provisions of the bill. The following is a more detailed analysis of provisions of particular importance.

A. Employment-Based Immigration

The substantial increase provided for in the bill in the number of visas for permanent employment will help meet current demands and reduce the backlogs which have hampered employers' ability to conduct business. The bill allows 75,000 principals to enter the United States for employment. Those family members accompanying or following to join are not included in the cap. According to the Department of State, the average employment-based immigrant is accompanied by 1.5 derivatives (spouses and children). Based on that pattern, the Committee estimates a total of 188,000 annual admissions. The increase in numbers will also reduce the use of temporary workers for permanent jobs and displacement of American workers. The majority of permanent immigrants will require employer attestation as to recruitment of U.S. workers, wages, and working conditions, but the bill exempts certain categories where ***6739** in the past there has not been a demonstrated and significant labor impact.

1. Priority Workers

Section 102 of the bill provides priority issuance of visa to four categories of workers within the 75,000 ceiling. They are (1) aliens of extraordinary ability, (2) outstanding professors and researchers, (3) multinational executives and managers, and (4) aliens with business expertise (limited to 2,000 visas). These are similar to classifications under exiting law that exempt certain occupations from labor certification through the use of Department of Labor schedules. Although no domestic labor market tests are required as a precondition of admission for such aliens, in some cases consultation is required with appropriate peer groups which may include labor. The ability of such workers to enter the U.S. promptly will assist employers and serve the national interest, and the quarterly estimation of visas for the priority category will allow the Department of State to provide sufficient visas to accommodate the demand. Aliens not qualifying as priority workers may seek admission as “other Employment-Based Aliens”, a category that is subject to an attestation as to availability of U.S. workers.

(a) Extraordinary ability.–In order to qualify for admission in this category an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation); (2) be coming to the United States to continue work in that area of expertise; and (3) by virtue of such work benefit the United States. Documentation may include publications in respected journals, media accounts of the alien's contributions to his profession, and statements of recognition of exeptional expertise by qualified organizations. Recognition can be through a one-time achievement such as receipt of the Nobel Prize. An alien can also qualify on the basis of a career of acclaimed work in the field. In the case of the arts, the distinguished nature of the alien's career may be shown by critical reviews, prizes or awards received, box office standing or record sales. In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.

Any qualified alien may file a petition to seek admission as an alien with extraordinary ability. INS must consult with peer groups in the alien's field prior to determining eligibility.

(b) Outstanding professors and researchers.–An alien who is recognized internationally as outstanding in a specific academic area and has at least three years experience in teaching or research in that area, may seek to qualify under this category. The alien must be offered a tenured or tenure-track teaching position, or comparible position as a researcher. Further, if a tenure-track position was offered and accepted, but the alien subsequently failed to achieve tenure, the alien would not thereby lose permanent resident status.

Researchers for private employers are also eligible for admission within this category if there are at least three persons employed full-time in research. Such researchers are also required to meet the definition of international recognition and be

outstanding in a specific academic field. The Committee notes that the employer's ***6740** department or division also must have achieved documented accomplishments in an academic field.

An invitation for employment by a university or private employer must accompany a petition for admission. Prior to final action on a petition, INS is required to consult with the alien's peers.

(c) Multinational Managers and Exceutives.–Executives and managers employed for one year within the preceding three years by a firm or corporation are eligible to quality upon petition by the same employer, affiliate or subsidiary. The Committee notes the need of multinational business to transfer key personnel around the world as nonimmigrants is paralleled in this category to allow a basis upon which these individuals may immigrate. The bill also provides definitions of executive and managers which recognize that a manager or executive may not only supervise people but may also manage a function of an organization. In the case of an executive, the alien may either direct the management of an organization or a major component or function of the organization. This activity must also entail the establishment of goals and policies of the organization, component or function, the exercise of wide latitude in discretionary decisionmaking and only a general level of supervision or direction from higher level executives, the board of directors or stockholders of the organization.

In the case and a manager, the bill requires a four-tier anlaysis. An alien must manage the organization, itself, or a department, subdivision, function or component of the organization. The alien must also either supervise and control the work of other supervisory, professional, or managerial employees or he or she must manage an essential function within the organization or a department or subdivision of the organization.

If an employee or other employees are directly supervised, a manager must possess the authority to either hire and fire these individuals or recommend those as well as other personnel action. If no employee is directly supervised, the manager must function at a senior level within the organization's hierarchy or with respect to the function managed. Finally, the alien must exercise discretion over the day-to-day operations of the activity or function for which he or she has authority.

(d) Special business expertise.–The fourth priority worker group under the bill consists of aliens coming to the United States to perform business services that are not temporary, that require special expertise, and that require an advanaced degree in a field relating to that special expertise. The term “business” means the regular, systematic and continuous provision of goods or services and is intended to encompass a wide variety of industries including hospitals, banking, hi-tech firms, manufacturing and others. The alien's advanced degree must relate to the field of exertise; it need not necessarily be a degree in business. Thus, engineers as well as scientists and researchers will qualify for such visas if they possess an advanced degree and have special expertise in the field for which they are needed. Moreover, aliens with business expertise can be individuals coming here to conduct research in either private sector employment or at a university. Upon the exhaustion of the 2,000 visas made available under this priority, similarly qualified ***6741** aliens would be eligible for admission as “Other Employment-Based Aliens”.

2. Other Employment-Based Immigrants

All other aliens for whom employers seek immigrant visas must be entering for the purpose of meeting a shortage of employable and willing U.S. workers in specified labor that is not temporary or seasonal in nature. In order to bring in an alien workers, an employer must file an attestation that it has made specific efforts to find and hire U.S. workers for the job without success, having offered certain wages and working conditions. In addition, such employer must attest that there is no strike or lockout in the course of a labor dispute, and provide notice.

The category will receive visas that have not been used by priority workers, and all occupations in this category are treated equally, i.e., there is no higher preference given an engineer than an auto mechanic. This reflects the Committee's view that irrespective of the qualifications of the alien, each employer's need arises from the unavailability of an American worker.

3. Domestic Labor Market Tests–Attestations

The bill replaces the current labor certification process with a streamlined attestation process that places certain responsibilities on the employer and those U.S. workers who may be adversely affected by importation of foreign workers. The current certification process neither serves business needs nor protects the domestic labor force. The Committee recognizes, however, the importance of the principles embodied in section 212(a) (14) of the INA which unfortunately have become camouflaged behind multiple layers of adjudication, imprecise recruitment guidelines, and lengthy processing time frames. The Department of Labor's role is transformed from that of a procesing instrument to a complaint-driven investigative and adjudicative agency, one which can serve as a labor resource for employers and workers alike. Moreover, providing the legal process for enforcement on challenges and complaints about attestation conditions gives meaningful protections for U.S. workers. Expedited time frames provide rapid turnaround to meet employer needs. As a labor market resource provider, the Department of Labor will be required to issue guidelines on availability of workers for employers, generate meaningful statistical information, and identify recruitment areas and regions for schedules.

With respect to the duties of the Department of Labor upon the filing of an attestation, the bill prohibits any pre-screening of the employer's assertions and promises as long as the attestation is filled out in a complete manner. Instead, the resources of the Secretary will be directed toward investigating complaints received on the attestation.

No temporary workers under H(i) (b) or H(ii)(b), and no nonpriority permanent workers are allowed admission unless an attestation is on file with the Secretary of Labor and so certified. However, priority workers and some nonimmigrant categories are not subject to the attestation, and the H(i) (b) “specialty occupations” are subject to a modified attestation without a recruitment requirement or ***6742** challenge, except after the attestation is in effect and the alien has entered the country.

(a) Recruitment.–The first criterion for the attestation is the requirement that positive and detailed recruitment efforts be made in the recruitment areas that are reasonably designed to locate able, willing, and qualified workers, and that the employer has been unable to find such workers who will be available at the time and place of need.

The employer is required to attest that positive recruitment efforts have been and are being made and to document those specific actions. As noted above, positive recruitment requires a number of affirmative steps. In addition, within the attestation, the employer is required to list the specific actions taken with respect to recruitment. Concrete description is required of actions that the employer has taken and is taking, and not simply a statement that the employer “has made and is making positive recruitment efforts”. The Committee notes that the attestation (other than the recitation of recruitment efforts) may be one piece of paper setting forth the obligations assumed through attestation. Alternatively, the employer who chooses to do so may submit large quantities of information accompanying the attestation.

The Committee anticipates that an affirmative search will entail not only adverstisements in newspapers but also the exploration of all potential sources of labor through a variety of means including, for example, notice to the total employment office, trade magazines, private employment agencies, notice to the State AFL-CIO and local central labor organizations, and of course the collective bargaining representative, if any, of similarly situated employees of the employer. The Department of Labor should provide a listing, developed in consultation with labor and management, of organizations in the area which may be sources of workers. The Department of Labor is expected to provide other labor market information which will assist employers but not relieve them of the burden of pursuing other means of recruitment. The employer must do all those things

that an employer would do who, in good faith, sought a needed employee who could be obtained only from among persons authorized to work in this country.

The recruitment should continue over a sufficient period of time to obtain workers. For instance, brief advertising in a shopping mall magazine would not be adequate, nor would recruitment with a job description tailored so that no person other than the employer's choice would qualify. Additionally, onerous minimum skill, training or experience requirements that purposely minimize the pool of qualifying workers would be suspect. In fact, such actions could be subject to charges of misrepresentation.

Additionally, the Secretary of Labor is required to identify recruitment areas of traditional or expected labor supply, which in some cases could be nationwide. The Committee notes that the wider the area the more likely it is that U.S. workers will be available. At the same time, however, recruitment in locations that have not yielded results may be fruitless. The complexity of labor markets demands constant attention, and the Department of Labor is best qualified to identify traditional or expected areas where workers may be available or willing to relocate. The Secretary may ***6743** from time to time use other tools and resources to identify geographic areas and changes in the marketplace, including employer organizations and labor groups.

Regardless of the attestation submitted, the Committee expects the employer to be in a position to defend the attestation with pertinent documents identifying contacts for recruitment purposes, places of recruitment such as vocational schools, trade organizations, labor sources that have been tested, advertising, the length of time for recruitment, and interviews of available workers and why they were found not qualified. The employer is also expected to keep abreast of current and possible changes in areas of recruitment.

In the case of subsequent attestations for occupations that have been scheduled for a region, that is, when ten or more attestations have been filed within one year are in effect for an occupations, the employers' recruitment responsibilities are lessened since the prior ten attestations in the area have sufficiently demonstrated that even with positive recruitment it is difficulty to obtain workers for such jobs. However, the employer must post each job offer and advertise in an effort to recruit for hire workers in the occupational classification. Such an offer could be posted on the employer's premises and in the general vicinity where it might attract workers if they were available.

Schedules are automatically established for the following two years when ten or more attestations are filed and in effect within a region (or five in a rural region) within a 1-year period for the same occupational classification. The Secretary is required to define the region subject to a schedule, and the Committee notes that the region would likely be the area of traditional or expected supply of workers. For instance, if the employer is seeking an auto mechanic for a local business establishment, which generally requires positive recruitment within the state, then the schedule would most likely be for the state area. On the other hand, if an employer is seeking an engineer for which the traditional area of labor supply is nationwide, then the schedule would operate nationwide and would require nationwide recruitment.

Modified attestations based on schedules cannot be counted toward the ten attestations needed before the occupation is scheduled as one in which a shortage exists. Attestations which include paragraph (1)(A) of section 212(N) of the INA requirements will fulfill the requirement of having ten attestations on file in any one year period before an occupation is scheduled. This is done so that the filing of ten of these modified attestations does not force the occupation to remain on the schedule for an indefinite period of time without the positive recruitment that is necessary under such an attestation. However, if, during the two years that an occupation is on the schedule, one or more employers choose to file ten new section 212(N)(1)(A) attestations within a year's time, then that occupation will be rescheduled for a new two years beginning on the date that the tenth new attestation becomes effective.

(b) Wages and Working Conditions.–The bill requires the payment of wages that are not less than those prevailing in the occupation in the recruitment area, or the employer's actual wage level, whichever is higher, and working conditions

similarly measured. ***6744** The bill requires the Bureau of Labor Statistics to make determinations on prevailing wages and this information is to be made readily available to employers and workers. The Committee is aware that BLS currently does occupational wage surveys in 90 areas of the country and in 40 industries. Among those surveys available are the Employment Cost Index (ECI) giving broad wage change measures; industry surveys; area wage surveys for occupations in various geographic areas; and the Professional Technical Clerical Survey covering government wage levels. Other surveys are done which supplement this information. BLS has the capability to analyze these labor markets and provide assessments as to prevailing wages in particular occupations and areas. An objective means of providing prevailing wage levels is a key factor in equalizing the knowledge available to employers and workers alike when recruitment occurs. The bill provides that when the employer's actual wage is higher than the prevailing wage that the former must be offered. This is to protect situations in which wages have increased at the location as a result of, for example, collective bargaining. The Committee intends and expects the BLS to have prevailing wage information readily available. If the prevailing wage is the measure and it is not immediately available, the employer must apply it retroactively as soon as BLS makes the information available. The Committee plans to monitor this situation in cooperation with the Committee on Education and Labor.

The wages by BLS are determined at the point of filing the attestation. The Committee notes that this “snapshot” guarantees that wages will not go below the prevailing wage or that which the employer has offered. At the same time, however, there is no provision which prohibits a later increase in wage or promotions to higher levels. But if an increase or promotion occurs, or the prevailing wage rises, these changes do not affect the attestation which has been filed.

(c) Strikes.–The bill requires an applying employer to attest that there is not a strike or lockout in the course of a labor dispute occurring in the employment for which foreign workers are sought.

(d) Notice.–All attestations require the employer to provide notice to the bargaining representative of the employer's workers in the occupational classification (if any). If there is no such representative, notice must be provided to state or local government entities designated by the Secretary of Labor in consultation with labor and management organizations. The state or local entities are responsible for contacting any other organizations suggested through the consultative process where there may be additional labor sources. The Committee anticipates that the Department of Labor as well as state and local governments will provide timely and responsive information.

(e) Disclosure.–The Secretary is also required under the bill to make available for public examination in Washington, DC., within two working days after the date of filing, a copy of the attestation along with accompanying documentation. Employers and workers alike will need timely and pertinent information to assess the availability of workers and challenge or enforce attestations. Therefore, the information provided by the Department of Labor is crucial to the integrity of the entire process. Moreover, the availability ***6745** of data on employer petitions and attestation will enable researchers and others to compile reliable information on use of employment-based visas, information on which is presently inadequate.

Bargaining representatives or other employee representatives may challenge an atterstation. Notice by the employer and centralized posting by the Department of Labor in Washington, DC. will provide assurance that attestations can be monitored by geographic area or industry by those concerned about possible violation. In certain cases a challenge may be filed prior to the admission of a foreign worker as well as whenever there is a violation of an attestation that is in effect. In other cases a challenge may be filed only after the alien has entered the United States.

Challenges.–A bargaining representative or other employee representative who seeks a hearing on the content of an attestation prior to its going into effect is required to submit a written request for a hearing within 30 days of the attestation's filing, and include with the request a “statement of particular facts” contradicting the attestation. The next step in the process will screen out frivolous claims. Within seven days after submission of a written request for a hearing, the Secretary of Labor must make a determination as to whether the required factual statement has been submitted. If it has not, the request fails and the attestation

will go into effect on the 31st day after filing. If, however, the necessary factual statement has been submitted with the request, the attestation cannot become effective until a determination is made on the challenge. A notice to interested parties and an opportunity for a hearing must be provided within the next 30 days, and the Secretary must determine the truth of the attested facts within 30 days after the hearing.

An attestation become effective automatically if there is no challenge within 30 days after it is filed. The bill does not permit this initial challenge to an attestation for an H(i)(b) speciality occupation alien.

The bill establishes a process by which persons or organizations aggrieved by employer failure to include a required element in an attestation or to take an action to which it has attested, or by a misrepresentation of a material fact in that attestation, may complain of the employer's action and obtain redress. The bill specifies that a bargaining representative may itself be an “aggrieved organization.”

The bill limits the period during which such a complaint may be filed to the 12 months following the date of the employer's action or inaction. This process is designed to protect employer and worker due process rights to the statutorily-prescribed and employer-attested conditions. Following the timely filing of a complaint, the Secretary of Labor is to investigate and determine within 30 days if there is reasonable cause to believe that a failure or misrepresentation has occurred. The Committee notes that an issue once resolved cannot be challenged twice. However, this does not mean that once one part of an attestation has been challenged another part cannot be challenged, nor does it mean that if one aspect of an attestation has already been challenged, but a new complaint arises about that issue which is not related to the old one that this ***6746** new complaint should not be adjudicated. Once a determination has been made that there is reasonable cause to believe that a violation has occurred, the Secretary must move swiftly to adjudicate the matter. The Secretary of Labor must notify interested parties and provide a hearing conforming to the Administrative Procedures Act within 60 days. Should there be more than one complaint against a petitioner, similar in nature or content, the Secretary has the authority to consolidate the hearings. A finding on the merits is required within 60 days after the hearing.

When a failure or misrepresentation is found, a series of remedial actions may be taken: (1) The Secretary must notify the Attorney General, who is thereupon barred from approving petitions by or for that employer for alien employees for a period of not less than one year; (2) The Secretary may impose other administrative remedies, including civil monetary penalties of no more than $1000 per violation; and (3) If the Secretary finds a violation relating to the payment of specified wages, the Secretary is required to order the employer to pay such back pay as may be required. The Committee notes that a failure to pay the attested wages is a violation each time an inadequate pay check is issued.

4. Temporary Workers

The availability of certain categories of nonimmigrant visas has enhanced trade and accommodated useful movement of people and products, and many of the provisions in the bill broaden the availability of these visas. On the other hand, other categories, such as “H–1”, have been abused. These have been narrowed in the bill through definitions that more precisely set forth legislative intent as to an alien's qualifications and the purpose of the visa. The bill also sets numerical limitations and labor tests for many of these temporary visas.

(a) Treaty traders.–The bill expands the availability of the E visa to include trade in services and trade in technology. The Committee notes that there have been differing interpretations as to what constitutes substantial investment or trade. The bill therefore requires that the Secretary of State consult with appropriate agencies, such as the U.S. Trade Representative, to establish guidelines in that area.

(b) Foreign students.–The ability of foreign students to work in the United States provides an opportunity for exposure to nonacademic areas of American life and helps in meeting expenses. The Committee notes that employers in some geographic areas have been unable to attract workers other than foreign students. The Committee recognizes their problems, but is concerned that this potential pool of young workers do not have adequate labor protections. The bill therefore expands the current authority of students to work off-campus, but subjects employers to an attestation requirement similar to that for other visas, requiring recruitment of U.S. workers and payment of prevailing wages. The bill also retains both the ban on work in the first year as a student and the 20 hour per week employment limit during the academic term. Additionally, to assure compliance with the student visa, the alien is required to be in good academic standing.

***6747** The Committee notes that a number of proposals were under consideration by INS which would have expanded work authorization for students. These proposals fell far short of guaranteeing the proper academic standards and did not contain any labor safeguards. The committee notes this provision is not intended to be administered as a temporary worker program, nor is it intended to be used as a training program for future immigration prospects. It is intended to be a minimal work program providing opportunities for both U.S. employers and students to achieve their respective goals.

(c) H-nonimmigrants.–The bill establishes numerical limitations for three categories of temporary aliens: Entertainers and athletes–9,000; specialty occupations–25,000; and nonagricultural temporary workers–66,000. As stated above, unwarranted administrative expansion of the statutory terms in the H–1 category has resulted in a labor impact necessitating a limitation on those admisions. Consultation with appropriate peer groups and labor organizations, as well as specific time periods for admission, are required. Additionally, the Committee suggests that centralized processing would alleviate many concerns with respect to forum shopping and promote uniformity of decision-making. These visas shall be issued on a first come, first served, basis. There shall be no quarterly or other type of allocation.

The bill recognizes that certain entry-level workers with highly specialized knowledge are needed in the United States and that sufficient U.S. workers are sometimes not available. At the same time, heavy use and abuse of the H–1 category has produced undue reliance on alien workers, particularly because at present employers are not required to test the U.S. labor market as a prerequisite to petition approval. Because the legislation provides additional permanent visas to help address foreign labor shortfalls, reliance on temporary foreign labor is expected to be reduced. The fact that the number of H–1 admissions has increased over the years does not in itself demonstrate a need to sustain such high lelves. The requirement in the bill that a petitioning employer test the labor market for many of the occupations that have been admitted under H–1 will provide a more valid test of the employer-asserted need.

A specialty occupation is defined as one that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's (or higher) degree in the specific specialty to meet the minimium requirement for a person entering that occupation. Thus, a baccalaureate degree alone would not suffice in the case of an occupation which normally requires a higher entry-level education.

An individual seeking to qualify for a specialty occupation must have full licensure if such licensure is required to practice in the occupation, and completion of the requisite degree. But experience equivalent to a degree, along with recognition of expertise in the specialty through progressively responsible positions in or related to it, can substitute for a degree. In allowing experience to substitute for a degree, the Committee intends that appropriate documents be presented that substantiate that experience. Documentation which may be presented could include letters from peers and ***6748** organizations, special honors recognition, or authorship of textbooks.

Nonimmigrants in specialty occupations will be admitted on the basis of a streamlined attestation with no recruitment requirement or any possible challenge prior to entry. Additionally, the Committee notes the H(i)(b) category is the only temporary work visa that allows the temporary admission of aliens for permanent jobs. It is important to reiterate, however,

that the legislation provides a greater number of immigrant visas in order to accommodate the demand for permanent workers and that this is the preferable means of admitting such workers. Those employers seeking workers for temporary jobs may use the H(ii)(b) visa, of which 66,000 are available.

The trainee visa H(iii) has provided a useful means of allowing employers to impart knowledge regarding U.S. products and corporate structure to foreign nationals. Unfortunately, the visa has at times been used to circumvent the labor protections required for a temporary worker visa by providing productive employment. The bill requires that training programs, in order to be eligible for H-iii, not be available in the home country. The Committee expects that structured programs will be established by employers that reinforce the concept that the training visa is an educational tool that uses hands-on experience. The Committee notes, however, that administration of the training visa is not to be unduly restrictive in the case of those programs designed to provide managerial training. Currently, the H-iii visa is subject to certain administrative safeguards which prevent it being used as a de facto means of immigration by a regulation requiring a certain period of time outside the U.S. after the program has ended. The Committee endorses this requirement as carrying out its intent.

(d) Au pair Program.–The United States Information Agency (USIA) au pair program, established in 1986, has exposed American families to persons of different cultures and helped them obtain child care. It has also provided opportunities for foreign visitors to become familiar with U.S. society and obtain educational benefits. Currently, there are eight programs, each of which can bring into the United States 2,800 au pairs. The programs, however, have been criticized because many of the duties performed by au pairs are viewed as employment. A 1990 General Accounting Office study (Inappropriate Uses of Educational and Cultural Exchange Visas) noted, “We believe that the currently structured au pair programs are not compatible with the original intent of the 1961 act.” (p. 20) The Committee agrees that there are work components of the program that must be addressed, but believes that if this is done there are major cultural and educational benefits to this program.

The bill addresses those parts of the program which have been of concern with respect to labor safeguards and provides a structure that will assist in achieving needed uniformity in the guidelines while not hindering program effectiveness. Specifically, the bill places the program under the auspices of the Department of Labor, requires that the minimum wage be paid for child care (with consideration for housing and other factors), and limits the number of hours of work to 40 hours per week. It also requires a contract between ***6749** the au pair and the U.S. family. Moreover, the program reconfirms the traditional goal of the exchange program: to provide a unique cultural and educational experience, through travel to U.S. points of interest, national monuments, institutions, and participation in certain courses of academic study.

(e) Intracompany transferees.–The L visa has provided multinational corporations the opportunity to rotate employees around the world and broaden their exposure to various products and organizational structures. This visa has been a valuable asset in furthering relations with other countries but the Committee believes it must be broadened to accommodate changes in the international arena. First, the bill allows accounting firms access to the intracompany visa. Long-established international firms providing accounting services along with consulting and managerial expertise adhere to the same quality standards, techniques and methodology which are associated with an intracompany transferee, but because of the different ownership structures have been denied use of the L visa. This provision would allow the benefits of the L Visa for this particular industry, based on agreements which indicate participation in the control of the worldwide coordinating organization, thus allowing the smoother interchange of personnel. Second, the streamlined blanket petition available under current regulations is placed into the statute for maximum use by corporations. Third, the requirement of employment with the company within the one-year period immediately prior to admission is expanded so that the one year may be within three years prior to admission. Fourth, the bill's seven-year period of admission for managers and executives provides greater continuity for employees.

One area within the L visa that requires more specificity relates to the term “specialized knowledge.” Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the

company. The time limit for admission of an alien with specialized knowledge is five years, approximately the same as under current regulations.

(f) Extraordinary ability (O Visas).–The bill's definition of aliens of extraordinary ability requires sustained national or international acclaim. This definition is identical to that for the comparable category of priority workers for permanent immigration. Thus, the same extensive documentation in support of a claim for status will be required. The bill includes no provisions for temporary admission of less than extraordinary individual entertainers unless they meet the qualifications, outlined below, for separate visas based on reciprocity or participation in culturally unique programs.

Accompanying foreign workers are admissibly only to assist an alien of extraordinary ability, and only for the specific event or events for which that alien is admitted. The accompanying alien must be an integral part of the actual performance and possess critical skills and experience with the principal that are not of a general nature and cannot be performed by others. In the case of motion pictures or television, the critical skills and experience must be either based on a long-standing working relationship or, if in connection with a specific production only, because significant ***6750** photography will take place both inside and outside the United States and continuing participation is essential to the production.

The accompanying alien achieves status through the relationship with the principal and any subsequent entries made by the alien must be through individual qualifications or as accompanying artists with the principal.

Consultation with peer groups is required for aliens of extraordinary ability. These peer groups may be appropriate associations and labor organizations with expertise in that area. Consultation for accompanying aliens, however, must be with labor organizations. The special circumstances relating to motion pictures and television require consultation concerning the principal alien with an appropriate union representing the alien's occupational peers and a management organization. These consultations are advisory in nature, but any recommendation of denial is required to be in writing and appended to the Attorney General's decision. In making the final determination on such a motion picture or television case, the exigencies and scheduling of the production are to be taken into consideration.

The admission period for both extraordinary aliens and those accompanying such aliens is for the period of time of the event or performance. The Committee notes that scheduling of events is usually sufficiently advanced that itineraries and plans for the event will be in place and thus included in the petition, so that INS will have some knowledge of the appropriate length of time of admission. In some cases where there may be several events coinciding with one another, a more detailed explanation would be needed. On the other hand, the Committee does not expect visits for the purposes of entertainment to be “rolled over” for continuing stays in the United States. In such cases, the alien may exit the United States and reenter with another petition.

In the case of persons with extraordinary ability in the sciences, education and business, and those artists who are not entertainers, the concept of “event” is intended to cover the specific performance for which the visa is issued, whether that be to participate in a semester or academic year, or a particular scientific project, a conference or convention, a lecture or series of lectures, a separate business project, an exhibit, or a like “event.”

(g) Group entertainers and athletes (P(i) Visas).–This category includes those entertainers who perform as a group and therefore would be ineligible for a visa under the program described above unless qualifying individually as persons of extraordinary ability. It also allows admission of athletes individually or as a group. In order to qualify as group entertainers, the group must have been recognized internationally as outstanding in the discipline for a sustained and substantial period of time, and the individual members are required to have had a substantial relationship with the group for at least one year and provide functions integral to the group's performance. Length of time as a group is important to demonstrate cohesiveness, but the Committee recognizes there may be cases in which the replacement of a particular member of a group is required and for that reason the bill allows a one-year period of time with the group.

***6751** Consultation with labor organizations with expertise in the specific field is required, and the period of admission is for the competition, event or performance. As with the "O" visa, information on the itinerary is required. In the case of athletes, however, the period of admission can be as long as 10 years. This extended time period is needed in view of the short professional life of the athlete and the unduly restrictive interpretations given by INS in this area.

(h) Reciprocal agreements (P(ii) Visa).–Reciprocal agreements that provide for the interchange of productions and individuals or groups between countries have been increasing in the entertainment area. The bill provides a special reciprocal visa that allows admission under the auspices of organizations in the United States and abroad that have established reciprocal exchange programs. The Committee notes that the reciprocal exchanges could be one-for-one or group-for-group. Organizations involved in the reciprocal agreements need not be government-endorsed.

Consultation is required with labor organizations representing U.S. artists and entertainers to assure reciprocity. The admission period is that which is required for the performance or event, but there is a three-month waiting period after each admission before re-entry may be allowed.

(i) Cultural uniqueness (P(aiii) Visas).–The third category that promotes diversity in entertainment allows entry for those entertainers or artists who are part of culturally unique programs. Such culturally unique art forms could include Georgian dancers, Irish harpists, or other traditional forms of expression representative of particular countries. These artists must perform such art on a full-time basis while in the United States and have had substantial experience in performing the unique art form over a period of time.

Consultation is required with labor organizations with expertise, and the period of admission is for the event or performance. A three-month hiatus is required before re-entry to prevent rollover of the temporary visa.

(j) Cultural exchange (Q Visas).–A separate exchange program is established as a nonimmigrant category in order to enhance the knowledge of the diversity of other cultures. The purpose of this program is to recognize the unique aspects of the country of the alien's nationality. Safeguards in terms of wages and working conditions are placed in the bill.

(k) Strikes.–The bill provides that whenever nonimmigrants constitute a majority of a bargaining unit, during the period of a strike or lockout, the alien is allowed to work for that employer or in any occupation for any other employer where there is no ongoing strike. On the other hand, when nonimmigrants do not constitute a majority the alien is not authorized to be employed by that employer during a work stoppage but may work in any occupation for any other employer so long as there is no strike there. Additionally, the period of stay of an alien is extended by the time periods during which the alien has refrained from doing unauthorized work. This provision allows the alien the choice of honoring the strike when in the majority or seeking other employment without jeopardizing the visa. It protects the strike when nonimmigrants are not in the majority but are represented in the bargaining unit ***6752** by prohibiting strikebreaking but allowing employment in other areas or occupations. The period of authorized stay for aliens on strike is necessary because cases have been brought to the Committee's attention in which employers have used the filing of a petition as a defense for not reinstating workers who engaged in a strike. Additionally, current regulations and policy which jeopardize the status of striking aliens force them to be starved into a strike or be subject to deportation. Petitions filed during a strike for prospective entry of aliens should not be approved, consistent with the intent of this provision. The provisions in the bill are an important addition to current practices and provide symmetry between labor and immigration law. The Committee notes that aliens are recognized as "employees" within the meaning of the National Labor Relations Act (See, Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984)) and approves that ruling. This legislation attempts to harmonize the employment rights of nonimmigrants under the National Labor Relations Act with the long-standing policy that our immigration law should protect U.S. workers against unfair competition from abroad.

B. Education and Training of U.S. Workers

Providing a link between immigration and labor through the education and training of American workers is a key element of the bill; that is, meeting employer's needs while addressing the needs of the domestic workforce.

The bill establishes a separate account in the U.S. Treasury for the deposit of fees collected based on the admission of certain employment-based aliens. Not more than 5% of the money is to be used for state administrative costs, and the overhead costs of the Federal Government is limited to 2%. Additionally, 10% is to be used for funding post-secondary education at an accredited institution in the fields of mathematics and the sciences. The remaining 83% is to be used to train U.S. workers in fields which have a shortage of employees, as determined by the Department of Labor in consultation with the Secretary of Education.

1. Criteria for Funds

Three criteria are used to determine which states will receive the funds and the distribution to each state. The first is the location of foreign workers admitted to the United States. The second is the location of unemployed and underemployed U.S. workers. Since it is difficult to ascertain the number of underemployed in a given area, unemployment figures could be used as a proxy for this number. The final criterion is the location of individuals in the U.S. who would benefit from such retraining.

2. Allocation of the Fund

For a state to qualify for funding, certain threshold levels should be met. The state should have a high ratio of alien employees to U.S. employees so as to accurately reflect the impact alien workers have on the state's workforce. This number is used because it is the clearest indication of areas where there is a shortage of U.S. workers. The state should also have a fairly high percentage of all unemployed persons in the United States, so as to spread the money ***6753** from the fund to the states which need it most, i.e., states with a large number of unemployed workers. This number is used because even if there is a high alien worker population in a state, there may be relatively few unemployed persons in that state, which means that relatively fewer workers in that state would be available to be trained to take these jobs in the future. In order to achieve flexibility in administering the program, certain adjustments may be necessary. For instance, if a state meets both of the criteria cited above then it could be eligible for this fund. However, if a state does not meet the level in one of these areas, but far surpasses the level in the other area, then an application from that state for a grant based on need could be considered.

C. Family Reunification for Legalized Aliens

Section 314 of the legislation provides for a stay of deportation and work authorization, where appropriate, for the children and spouses of legalized aliens who entered the United States prior to January 1, 1990. A comparable INS directive issued by Commissioner Gene McNary in February 1990, applies only to those who entered the country before November 6, 1986. Unlike the McNary directive, this section requires that the prinicipal alien (1) has been granted permanent resident status; (2) has completed a declaration of intent to become a U.S. citizen; (3) has filed either an immediate relative or second preference petition for the spouse and/or children; and (4) applies for naturalization within six months of notice of eligibility by INS. Public welfare assistance is restricted for such spouses and children in the same manner and for the same period of time as for the principal alien.

D. Hong Kong

1. Per-country Ceiling

This provision allows Hong Kong to be treated as a foreign state for purposes of the per-country numerical limitations under Section 202 of the INA. It is the Committee's intent that Hong Kong continue to be treated as a separate foreign state after 1997.

2. Visa Validity

This provision allows aliens from Hong Kong under family or priority employment visa categories and certain employees of U.S. businesses in Hong Kong to request an extension of the validity of their immigrant visas until September 1, 2001.

The standard four-month period of visa validity shall be waived, provided that the alien given the visa makes a request to do so during the four-month period. The Committee expects the State Department to inform aliens given a visa after the enactment of this bill that they have the option to extend its validity. If an alien so elects and then decides to use it before it expires in 2002, the alien must be interviewed again for purposes of overcoming the grounds for exclusions. However, immigrant visa holders who leave within the standard four-month period after applying for the extension are not required to be interviewed again. The Committee notes that aliens who elect to extend the period of validity would not be subject to the annual limits on visas from Hong Kong if they ***6754** decide to use their visas later (though they would be subject to the limits at the time of visa issuance). This means that if the situation in Hong Kong deteriorates rapidly at some point in the future, more than 20,000 people could leave in a given year. The Committee further notes that the derivative family members would be covered under the visa extension provision.

Children born during the period of extension and children who come of age (21 years) during the extension would still be eligible to enter as dependent children. In the case of death of a visa holder the Committee believes that the derivatives with family members in the United States should be able to use the visa. However, those derivatives of an employment-based immigrant should not, due to the fact that the visa holder has died and the job connection with the United States has ceased.

3. Business

This provision allows 15,000 visas to be used for employees of U.S. companies in Hong Kong. The alien must be employed in Hong Kong during the 12 previous consecutive months as an officer, supervisor, or in a capacity that is managerial, executive, or involves specialized knowledge. The recipient of the visa may ask for an extension under section 208 of H.R. 4300.

A United States employer must provide a qualifying job offer at the time the initial petition is filed. However, the Committee does not intend that the employer hold a specific position open and available during the entire interval between the filing and alien employee's eventual arrival in the United States. Rather, it is the intent of the Committee that the employer only be required to have a qualifying job available at the time the alien employee enters the United States as an immigrant. The Committee also intends that this provision be interpreted as requiring continuing employment with the same United States business entity from the time of the initial registration until the time the alien employee enters the U.S. as an immigrant. Transfers within the same company, but different divisions or sections, would constitute continuing employment. Termination of employment before entering the United States, however, would result in termination of eligibility under this provision.

It would be appropriate to permit employers filing large numbers of petitions to incorporate by reference to earlier filed petitions standard information relating to the ownership of the business and the relationship between the domestic and foreign business. Also, registrations under this provision shall be made on a first filed, first served, basis.

At the time of entry to the United States as a permanent resident, these aliens will be subject to provisions of section 286(q) of the INA (relating to fees for admission of certain employment-based aliens).

4. CIA

This provision authorizes the Director of Central Intelligence to apply any unused portion of the annual allocation provided by Section 7 of the Central Intelligence Act of 1949 for fiscal years 1991 through 1996 to permit the entry into the United States of employees ***6755** of the Foreign Broadcast Information Service in Hong Kong and their dependents, provided they enter the United States before the end of fiscal year 1997. The Committee notes that a child who reaches the age of 21 after the visa allocation but before entry into the United States shall remain eligible to enter as a dependent child.

E. Religious Workers

There are three provisions in the bill relating to the admission of religious workers. Currently, nonimmigrant religious workers are required to pursue business-related visas, such as B, H and L, for admission to the United States, and immigrant religious workers are admitted as special immigrants. The bill establishes three categories of religious workers. The first category is available to ministers of religion, for whom special immigrant status is available in existing law. The second group is for those who work in a professional capacity in a religious vocation or occupation. This would encompass occupations such as teachers. Religious workers and those in a religious vocation may be admitted in the third category, which includes those who take vows, such as nuns and monks, and may include others who pursue religious vocations in other capacities such as liturgical workers, religious instructors, counselors, cantors and catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators or broadcasters. These provisions relate to traditional religious functions and are not intended to cover janitors, maintenance workers and clerks. These three categories will apply to both immigrants and nonimmigrants alike.

Substantial case law has developed concerning religious organizations and occupations. Although the bill expands some of these categories the essential elements of a religious organization is to remain the same. In addition, a number of safeguards are instituted to prevent abuse. For instance, all prospective immigrants and nonimmigrants must have been members of the religious organization for the two years immediately preceding application for a visa. Additionally, the authorized period of stay for nonimmigrants is limited to five years.

F. Diversity

1. Adversely Affected Nations

Section 201 allows the Attorney General to provide for adjustment of status to that of an alien lawfully admitted for permanent residence on a conditional basis, to aliens who have established residence in the United States before January 1, 1990, are from “adversely affected” foreign states, and have a firm commitment for employment for at least one year. The documentation that must be submitted to support the job commitment should be a letter from a bona fide employer communicating the willingness to hire the alien.

The Committee believes that two part-time positions can be construed as full-time employment provided the alien submits letters from each employer to support the job commitment. Further, the Committee believes that the conditional resident need only demonstrate ***6756** that he or she has been self-sustaining over the one-year period in order for the conditional status to be removed.

The written documentation that must be supplied to the Attorney General to remove the conditions can include a letter from the employer(s) verifying that the alien has been employed, paycheck stubs, W–2 forms, or income tax returns, or other acceptable documentation.

Individuals who entered the United States on nonimmigrant visas must establish that their period of authorized stay expired before January 1, 1990 solely through the passage of time. Any extension of that nonimmigrant stay will disqualify an applicant from this program if that extension authorizes the alien to remain in the United States beyond December 31, 1989. However, an individual who entered the United States without inspections will be eligible under this section provided that the alien demonstrates continuous residence in the United States since before January 1, 1990.

An individual who entered the United States with a nonimmigrant visa and whose period of stay may have expired through the passage of time prior to January 1, 1990, may have left the United States for a brief period or periods of time. If the absence or absences are sufficiently brief such that they do not interrupt the alien's continuous residence, the absence or absences will not prohibit the individual from otherwise qualifying under this section.

It is also the intent of the Committee that the definition of “continuously resident” be interpreted in a way consistent with the definition of “continuous residence” as found in 8 CFR 245a.1(c)(1). Therefore, any single absence from the United States of less than forty-five (45) days, and an aggregate of all absences not exceeding one hundred and eighty (180) days since January 1, 1990, will not be reason to prohibit the alien from otherwise qualifying under this section.

An applicant under this provision who would otherwise be qualified under this section except for having reentered the United States subsequent to January 1, 1990, on a nonimmigrant visa, will be eligible to qualify under this section, if otherwise admissible. It is the intent of the Committee that the discretion of the Attorney General to waive the provisions of section 212(a)(19) will apply in the same generous manner as was applied to such a waiver of that provision under section 245(d) of the INA and the implementing regulations under 8 CFR 245a.2(k)(2).

“Adversely affected” countries are allowed 20,800 employment visas from the “Other Employment-Based Immigration” category each year for five years. As described previously, the 1965 Act had the effect of limiting immigration opportunities from many European countries. The Committee believes this short-term program will re-establish former immigration streams and assist in promoting diversification. The bill requires priority for these 20,800 visas chronologically within the current system of registration. The bill provides that the first pass-through for selection will be for the benefit of seeking registrants from adversely affected countries who will then be scheduled for interviews, and if qualified, visa issuance. The second pass-through would be within the same listing for other countries.

***6757** Adversely affected countries are those designated by regulation by the Secretary of State under the 1986 Immigration Reform and Control Act, except countries contiguous to the United States: Albania, Algeria, Argentina, Austria, Belgium, Bermuda, Czechoslovakia, Denmark, Estonia, Finland, France, German Democratic Republic, Federal Republic of Germany, Gibraltar, Great Britain and Northern Ireland, Guadeloupe, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, New Caledonia, Netherlands, Norway, Poland, San Marino, Sweden, Switzerland, and Tunisia.

2. Eastern Europe and Tibet

Because of the humanitarian concern about the people from Eastern European countries, many of whom left their native lands either under duress themselves, or to join family members who left under duress, the bill provides a limted program of entry into the United States for such persons. Similarly, the bill establishes a system of visa availability for Eastern Europeans who

left their countries in pursuit of better economic or educational opportunity than they could find in their native lands under the Communist regimes of post World War II.

Section 202 will make available up to 14,000 visas annually for fiscal years 1991, 1992, 1993, for natives of Eastern Europe, and their immediate families, who have been living in a foreign country, other than their own and the United States, as displaced persons.

Visas to Eastern Europeans shall be distributed, giving priority to persons who filed refugee applications or who otherwise sought refugee status by registering with a recognized voluntary agency that provides services to refugees. The term "registering with" can include informal contact with such agency to make known the alien's interest in immigrating to America. Visa numbers are to be made available strictly in the chronological order in which the immigrants qualify after the date of the enactment.

Because of humanitarian concerns, concerns about the preservation of Tibetan culture, and the desire to assist displayed Tibetans in furthering their education and economic opportunities so that they can help their countrymen in Tibet, India, and Nepal, section 202 of H.R. 4300 provides for 1,000 visas spread over fiscal years 1991, 1992, and 1993, to be made available to natives of Tibet who, since before the date of enactment have been continuously residing in India or Nepal. A "native of Tibet" is considered one who was born in Tibet, or is the son, daughter, grandson, or granddaughter of a person born in Tibet. Since the Tibetans who would benefit from this provision are coming as immigrants, rather than refugees, there are no explicit requirements for the federal government to provide funding. However, since most of them will not have relatives here and will not tend to be wealthy, the Committee anticipates that the U.S. government will work with U.S. based voluntary organizations that are interested in resettling the Tibetans. The Committee also expects that the groups and the U.S. government will work closely with and consult with the Tibetan government in exile in India.

***6758** Section 202 indicates that preference is to be given to Tibetans who are not firmly resettled and to those most likely to be successfully resettled in the United States. These two criteria may seem to be contradictory in that those who have recently left Tibet, and are therefore less firmly resettled, are also less likely to have financial assets, linguistic skills and other attributes that would make their resettlement here "successful." However, by working with voluntary agencies, this problem could be alleviated. In addition, the Committee expects some Tibetans who have been in India or Nepal for longer periods of time, and who have a certain level of education or business skills, to also qualify under this provision. The exact ratio of recent arrivals from Tibet and those who have been in India and Nepal for longer periods of time who should qualify under this provision should probably be worked out by the Administration, in consultation with the VOLAGs and the Tibetan government in exile.

3. Underrepresented Nations

Section 203(c) of the bill provides 55,000 visas annually to foreign states that are underrepresented among the immigrant groups coming to the United States. The formula for this program is designed to account for varying immigrant flows from foreign states over time and is self-adjusting to maintain diversity among the immigrants from the various regions of the world.

This program will divide the world into high and low admission regions. These regions are then given visas in the inverse proportion the percentage of immigrants sent to the United States. The visas are then apportioned according to the population of the region. In determining the total number of aliens admitted during a five-year period, the Committee notes that only the following shall be considered: lawful permanent residents (as family-sponsored immigrants), employment-based immigrants and their spouses and children, and immediate relatives of United States citizens.

The Committee further notes that when a new application period commences previously registered applications shall not be considered for the new period.

G. Marriage Fraud

This provision allows the Attorney General to remove the conditional basis of an alien's permanent residence status if (1) the alien spouse can demonstrate that the marriage was entered into in good faith and that after the marriage the alien spouse was battered by or was subjected to extreme mental cruelty by the U.S. citizen or permanent resident spouse; 2) or the alien child can demonstrate that the alien was battered by or subjected to extreme mental cruelty by the U.S. citizen or permanent resident parent.

The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering or cruelty to the spouse or child is demonstrated. Evidence to support a ***6759** battered spouse/child waiver can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies. The Committee notes that the discretion given to the Attorney General to decide to deny waiver requests under this provision is to be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.

In addition, the phrase “by the alien spouse for good cause” is removed from current INA Section 216(c)(4)(B), allowing aliens to file for removal of conditional basis even if they were not the moving party in terminating a marriage. The change will allow the alien to file independently for a waiver if the marriage was entered into in good faith and the marriage has been terminated or termination proceedings have commenced.

H. Treaty Nationals

The United States has entered into a number of bilateral treaties under which U.S. citizens and nationals of treaty States are each granted the right to be exempted from military service in the armed forces of the other nation. However, alies who exercise that right are permanently ineligible for U.S. citizenship under section 315 of the INA. The existing law punishes individuals who have done nothing more than exercise their lawful treaty rights.

Over the years section 315 has been applied inconsistently and haphazardly. The law imposes needless burdens on an already overburdened INS. Its repeal would relieve INS of unnecessary bureaucratic functions, reduce government costs, and remove a small but constant irritant in our relationships with our treaty partners. It would also enable treaty nationals to apply for U.S. citizenship, a benefit that has been denied to them because they exercised a right conferred by an international treaty. Under the bill, in order to exercise the right to be exempt from U.S. military service the alien must demonstrate that the alien has served in the armed forces of the aliens country. Service abroad that has been deemed dishonorable or otherwise deficient shall not constitute valid service for purposes of this section.

I. Recruiters and Referrers

Section 331 of H.R. 4300 eliminates the requirement in Section 274A(a)(1) of the INA, that recruiters and referrers of employment applicants verify the eligibility under the immigration laws of prospective employees to work in the United States.

The Committee regards as unnecessary and duplicative the requirement that recruiters and referrers complete and maintain I–9 files on people they place with their clients. There appears to be no real justification for retaining the provision since it just imposes a paperwork burden on recruiters and referrers who do not, in fact, ultimately do the employing.

The Committee has been careful to distinguish, however, between personnel recruiters/referrers and agricultural associations or employers, and farm labor contractors. Reference has been made to Section 3 of the Migrant and Seasonal Agricultural Worker Protection Act for definitions of the latter. This provision does not ***6760** impose any additional legal obligations upon agricultural entities that were imposed by IRCA, nor should any be implied.

J. Dual Intent

The difficulties encountered by those seeking temporary admission who have also expressed a desire to immigrate at some time in the future have caused severe personal hardship as well as inhibited frequent travel to the United States for business purposes. This has been particularly onerous for the beneficiaries of H and L visas. The Committee sees no useful purpose in denying temporary entry to the United States for business purposes because of an inability to show that a residence abroad will not be abandoned. Such presumption of immigrant intent in particular circumstances creates purposeless, but often insurmountable, barriers for the prospective employee and the employer. For all categories of nonimmigrant visas (including the H and L), the bill provides that the filing of an immigrant petition cannot be a factor in determining whether an alien intends to abandon a foreign residence. The Committee notes, however, that the consular officers may rely on other evidence indicating the possibility of overstaying a visa, such as records of past visits to the United States.

K. Alien Crewmembers

The prohibition against the status/admission of aliens contained in the bill is intended to apply only in cases where the employer is an American employer. The language which references Section 2101(46) of Title 46, U.S.C. and Section 101(3) of the Federal Aviation Act of 1958 (49 U.S.C. app. 1301(3)) performs this function. Section 2101(46) of Title 46, U.S.C. is the provision in shipping law which defines vessels documented under the laws of the United States. In shipping law, the country of documentation is the country whose laws govern a vessel. Thus, vessels documented in the United States must abide by U.S. law. It should be pointed out that U.S. ownership of a vessel does not mean that there is U.S. documentation of the vessel. For example, if a ship has U.S. ownership but is documented in Liberia, the laws of Liberia will apply. With regard to the airlines, the Federal Aviation Act applies only to American airlines.

The Committee's intent that the bill cover only U.S. employers addresses Department of State concerns that this bill not “insert U.S. legislation into foreign labor disputes” or “raise serious questions of consistency with the United States' international legal obligations, including the rights granted in our numerous bilateral air services agreements.” The limitation to U.S. employers ensures that there will be no effect on our international air and maritime transport relations.

The provision would institute a complete prohibition against the use of nonimmigrant alien crewmembers during a labor dispute in the bargaining unit of an employer experiencing a strike or lockout. The only possible exception would be in those rare cases where the Attorney General makes the determination that it is necessary to parole nonimmigrant alien crewmembers for national security reasons. This complete prohibition corresponds with the prohibition against the employment of other classes of nonimmigrant aliens ***6761** during strikes and lockouts. For example, with regard to H workers, if there is a strike in progress where a nonimmigrant alien intends to be employed, the petition for a visa will be denied. If the visa has already been approved, but the alien has not yet entered the United States, the approval of the petition is automatically suspended and the application for admission on the basis of the petition will be denied. If the alien has already entered the United States and is actually working, a strike or lockout will result in the suspension of the alien's authorization to work. We intend a similar

result in the case of nonimmigrant alien crewmembers, consistent with the procedures and requirements contained in Chapter 6 of the Immigration and Nationality Act.

It is the Committee's intent that the bill institute a complete prohibition against the employment of nonresident aliens as crewmembers during a strike or lockout, recognizing that any exemptions, such as the one included in the 1-year moratorium permitting the continued employment of alien crewmembers who had been employed before the strike, could circumvent the entire purpose of the bill so as to make it a nullity. Such an exemption could actually encourage employers to hire a complement of nonimmigrant alien crewmembers in order to have them available for work in the event that a strike ever took place. There would be no way to determine whether the hiring was for this reason or for a legitimate purpose. TWA, in fact, stated that the reason it began training nonresident alien employees to work as crewmembers was in the event that the union called a strike. But regardless of the original reason for the hiring of alien crewmembers, an exemption for those who were previously employed is contrary to the intent of the bill–to prevent unfair competition against American workers when they are on strike or locked out.

Moreover, an exemption for previously employed nonresident aliens is impossible to administer. Both the Department of State and the Immigration and Naturalization Service testified that a total prohibition would be simple to enforce, while it would be “very difficult, if not impossible,” to administer a prohibition containing such an exemption. No extra administrative function by either the State Department or the Immigration and Naturalization Service other than sending a telegram to the appropriate offices informing them that alien crewmembers are inadmissible on a particular airline or shipping line is required. Since an INS agent is already required to check every airplane and ship when it enters a U.S. port and verify the immigration status of crewmembers before allowing any crewmembers to enter the country, no additional administrative procedure is required. In short, the Committee intends an across-the-board prohibition against the employment of nonresident aliens during strikes and lockouts, save for the national security exception.

The Committee also intends that the prohibition of the bill go into effect immediately and automatically upon the commencement of a strike or lockout. It is essential to have an immediately effective prohibition because any pre-requirement of an administrative procedure will delay the enforcement of the prohibition, resulting in an undercutting of the American workers' right to strike without competition from nonresident alien strikebreakers. Many ***6762** strikes, in fact, would be over by the time it would take to exhaust any administrative procedure. The Committee, of course, recognizes that some strikes are ultimately determined to be illegal, and in cases where an injunction has been issued ordering the employees back to work, we intend the prohibition in the bill would be lifted.

It should be pointed out that there are several reasons why the temporary prohibition against the employment of nonimmigrant alien crewmembers will not result in passengers being stranded in other countries with no means of transportation. In the airline industry, there is always a lengthy period of notice before a strike can take place. Labor relations in the airline industry are governed by the Railway Labor Act, which contains a great deal of government control over the parties. Neither labor nor management may engage in “self help” before participating in mediation conducted by the National Mediation Board. The Board mediates as long as it wants to, and the parties may not make any changes in the status quo before the Board releases the parties in writing from mediation. Even after the Board issues a written release, there is a 30-day “cooling off” requirement. Only after the termination of this period may employees strike. The entire process often takes many months, which obviously allows the employer sufficient time to make alternative arrangements to keep passengers from being stranded in foreign countries.

Finally, the Committee intends that the new employer sanctions contained in Section 273 of the Immigration Reform and Control Act of 1986, as well as the sanctions pertaining specifically to alien crewmen contained in Section 257 of the Immigration and Nationality Act, apply to employers who violate the prohibition against the employment of alien crewmembers. We would also like to make it clear that any private right of enforcement of the Immigration and Nationality Act as may exist shall apply with respect to these changes.

L. Application of Employer Sanctions to Longshore work.

Section 311 of H.R. 4300 is intended to restrict the performance of traditional longshore work by nonimmigrant alien crewmen as defined at 8 U.S.C. S 1101(a)(15)(D), and by other nonresidents who have not been authorized to perform such work in the absence of certification by the Secretary of Labor under 8 U.S.C. 1182(a)(14); to require employers of foreign workmen whom they engage to perform longshore work to comply with the employment verification system under the Immigration Reform and Control Act of 1986 (P.L. 99–603), 8 U.S.C. 1324, et. seq. "IRCA"); and to subject employers to sanctions and penalties attached to the violation of those provisions.

The essence of "longshore work" is defined as it is commonly understood in the domestic maritime industry. It delineates the persons and entities who are to be responsible for employing individuals engaged in such activities and makes them accountable for verifying their immigrant status and for examining documents required in order to determine that they meet the statutory and regulatory requirements for employment in the United States, including coastal waters. It clarifies the status of alien crewmen under section 101(a)(15)(D) (8 U.S.C. S 1101(a)(15)(D)), by explicitly providing ***6763** that an alien crewman serving aboard a vessel, irrespective of whether it is located dockside or in coastal waters, is no different from other nonimmigrant aliens who are subject to the foregoing provisions and probibitions with respect to the performance of longshore work. However, an exception is provided for an individual crewman who can demonstrate that he is a national of–and that the vessel involved is registered with–a foreign country whose own immigration laws and regulations authorize such work to be performed within its jurisdiction by United States crewmen aboard U.S.-registered vessels. Lastly, employers who fail to abide by its terms are subjected to the same penalties under IRCA as are incurred by those who employ unauthorized workers in all other U.S. industries.

HISTORY OF LEGISLATION

Section 311 embodies H.R. 2138 which was passed by the House on October 17, 1989. (H.Rept 101–280).

CORRESPONDENCE WITH THE COMMITTEE ON EDUCATION AND LABOR

Committee on Education and Labor,
Washington, DC, September 18, 1990.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I wish to congratulate you and the entire Committee on the Judiciary on your successful completion of H.R. 4300, the Family Unity and Employment Opportunity Immigration Act of 1990. While H.R. 4300, as amended, does not please everyone, it does reflect a carefully crafted balance between the interest of family-based immigration and employment-based immigration.

As you know, the Education and Labor Committee has a strong interest in the employment-based immigration provisions as contained in this measure, including the application of employer sanctions to longshore work, provisions relating to the status of crew members who are on strike, and the education and training trust fund. Mr. Chairman, under normal circumstances the Committee on Education and Labor would exercise its sequential referral rights over H.R. 4300. This committee, however, having been given the opportunity to work closely with your committee in the formulation of these sections and, in recognition of the end-of-the-Congress time pressures, we will not exercise our jurisdiction. The committee appreciates your acknowledgment of our jurisdictional claim and your support for our committee's eventual request for conferees on these sections. We very much wish to assist you in the passage of this proposal.

I look forward to working with you as we attempt to pass this most important piece of legislation.

Sincerely yours,

GUS HAWKINS, Chairman.

***6764** Committee on the Judiciary,
Washington, DC, September 18, 1990.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter concerning H.R. 4300, the "Family Unity and Employment Opportunity Immigration Act of 1990". I appreciate your committee's willingness to forego a referral of this bill for matters within your committee's Rule X jurisdiction, specifically the application of employer sanctions to longshore work, provisions relating to the status of crew members who are on strike, and the education and training trust fund.

Upon final House passage of this bill we anticipate going to conference with the Senate and will support your committee's desire to be included as conferees on those matters within your committee's jurisdiction committed to conference.

Sincerely,

JACK BROOKS, Chairman.

VIEW OF THE COMMITTEE ON FOREIGN AFFAIRS

Committee on Foreign Affairs
Washington, DC, September 14, 1990.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I understand that your committee intends to file its report on H.R. 4300 which contains certain provisions of interest to the Committee on Foreign Affairs.

In particular, section 102(c), which falls under the jurisdiction of the Committee on Foreign Affairs, contains authority for the Department of State to retain fees generated from certain visa applications (the diversity immigration category) to fund future visa processing costs in this category only. Pursuant to the consultations between our staffs and my review of this proposal. I have no objection to the inclusion of this provision in H.R. 4300 as reported by the Judiciary Committee without further review by and without prejudice to the jurisdiction of the Committee on Foreign Affairs.

The Committee on Foreign Affairs has also considered authorizing the use of passport and visa fees to support the costs of State Department consular operations. I believe that this limited use of such authority will be a good test case for future considerations on this issue. If this provision is enacted, I will ask the State Department to report to the Congress on the implementation of the authority and the use of the funding derived thereunder.

I would respectfully request that you include this correspondence in the Judiciary Committee's report on H.R. 4300.

Sincerely yours,

DANTE B. FASCELL, Chairman.

***6765** COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

REVENUES

Pursuant to the requirements of clause 2(l)(3)(B) of House Rule XI, the Committee concurs with the estimate of increased revenues which is provided in the estimate of the Congressional Budget Office below.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives the Committee sets forth, with respect to the bill H.R. 4300, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 10, 1990.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4300, the Family Unity and Employment Opportunity Immigration Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT F. HALE,
(For Robert D. Reischauer, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4300.

2. Bill title: Family Unity and Employment Opportunity Immigration Act of 1990.

3. Bill status: As ordered reported by the House Committee on the Judiciary, August 1, 1990.

4. Bill purpose: H.R. 4300 would revise the numerical limitations, preference system and related provisions regulating the numbers and composition of legal immigration. The bill would establish separate systems for employment-based immigration and family-sponsored immigration, which are considered together under current ***6766** law. The bill also would amend the Immigration Reform and Control Act of 1986 (IRCA).

For family-sponsored immigration, Title I of H.R. 4300 would redefine the term “immediate relatives” to include the spouses and minor children of immigrants, subject to an annual limit of 115,000; currently this group is part of the preference system for classifying immigrants. Other family-sponsored immigration would remain subject to a preference system, similar to current law. Title I also would increase employment-based immigration from the current annual limit of 54,000 to 65,000 annually for fiscal years 1992 through 1996 and to 75,000 annually thereafter. The bill would establish a fee to be paid by employers petitioning for the admission of employment-based immigrants and certain non-immigrant workers. This fee would be up to $1,000 per alien, with lower amounts for small businesses, nonprofit, charitable, and government agencies. The receipts from these fees would be available without appropriation to the Departments of Labor and Education for job training and education programs.

Title II of the bill would establish several new immigration categories. Beginning in 1994, 55,000 visas would be made available annually based on diversity; these slots would be available by lottery to residents of countries that have had very low levels of immigration to the U.S. during the preceding five years. Other new categories would be for people from adversely affected foreign states and for the reduction of existing backlogs.

Subtitle B of Title III would amend IRCA in several respects. First, the bill would prohibit the deportation of spouses and children of aliens legalized under the provisions of IRCA. The bill also would permit applicants for legalization under IRCA to be treated as eligible legalized aliens for purposes of the State Legalization Impact Assistance Grant program (SLIAG) until a final determination is made with respect to their applications. Finally, the bill would change the procedures for making expenditures from the Immigration Emergency Fund. Under current law, the President must declare that an immigration emergency exists before any amounts in the fund can be spent. H.R. 4300 would require that amounts in the fund up to $20 million annually be used to reimburse state and local governments if the number of asylum applicants has increased by 1,000 during any calendar quarter after January 1, 1989.

5. Estimated cost to the Federal Government: The estimated budget effect of these proposals relative to the CBO baseline is shown in the following table for fiscal years 1991 to 1995.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***6768** Basis of estimate: We have assumed that the bill would be enacted around October 1, 1990. The outlay estimates are based on historical spending patterns. The revenue estimates are based on historical data on fee collections and on information provided by the Immigration and Naturalization Service (INS) and the Department of State.

Under H.R. 4300, we estimate that the level of immigration to the United States would increase by nearly 250,000 people in 1991 and by roughly 300,000 people annually for 1992 through 1995 from the current level of roughly 650,000 annually. Because the costs of processing immigration applications are covered by fees that are counted as federal revenues, these changes in immigration levels would affect both federal revenues and spending, with little overall effect on the federal deficit. There would be spending increases in several entitlement programs because of the IRCA amendments.

Federal Revenues

Based on information provided by the Department of State and the Immigration and Naturalization Service (INS), we estimate that the increased federal revenues under H.R. 4300 would be $60 million in 1991, and $100 million to $120 million annually for 1992 through 1995. For this estimate, we have assumed that the various processing fees would remain at current levels.

Employment-Based Fee.–The largest component of the increased revenues would be from fees on employment-based immigration. Under H.R. 4300, this fee–which could be up to $1,000, depending on the size and type of firm–would apply to 65,000 immigrants and 91,000 non-immigrants annually beginning in 1992. Based on information provided by the INS and the Department of Labor, we estimate that this fee would generate additional revenues of $50 million per year from 1992 through 1995. Assuming the distribution of immigrants by size and type of firm would be similar to current patterns, we expect the average fee paid would be $300 to $325 per employee.

State Department Fees.–There also would be additional revenues from the fees collected by the State Department for processing the additional visas. Currently, the fees associated with the visa application and issuance process total $150 per person. Under H.R. 4300, we expect that the State Department will issue nearly 200,000 additional visas in 1991, and roughly 300,000 additional visas annually thereafter. We estimate that the resulting increase in revenue relative to the CBO baseline would be around $30 million in 1991 and $45 million to $50 million annually from 1992 through 1995.

There also would be a new fee associated with the diversity immigration category established by the bill. Under this category, 55,000 visas would be awarded annually beginning in 1994 to aliens from countries that have had very low levels of immigration during the previous five years. Visas would be awarded through a lottery system run by the State Department with the processing costs covered by fees. Based on information provided by the State Department, we expect that these processing costs–and the associated revenue from the fees–would be $7 million annually.

***6769** INS Fees.–Revenues associated with fees paid to the INS would increase by $25 million annually in 1991 and 1992 and by around $5 million annually thereafter, primarily because of the amendments to the IRCA affecting dependents of legalized aliens. We expect that a total of 680,000 additional dependents would be admitted in 1991 and 1992 under the IRCA provisions of this bill, and that the fees charged would be similar to existing fees for stays of deportation.

Direct Spending

H.R. 4300 would affect direct spending in several areas of the budget. Several entitlement programs would be affected because of the amendments to the IRCA. The fees collected by the INS for processing applications are available for spending without appropriation, as would be receipts from the new fee for employment-based immigrants and the receipts from the fee collected by the State Department for administering the diversity program. Additionally, outlays from the Immigration Emergency Fund would increase relative to current law.

Spending from Fees.–The receipts from the fees on employment-based immigrants would be available for grants to states. The Secretary of Labor would be required to use 90 percent of the amounts available for educational assistance and training grants. The Secretary of Education would be required to award the remaining 10 percent of the funds to states for college scholarships. Spending for these grants would be equal to the fees collected, $50 million annually.

For the diversity immigration program established by Title I of the bill, the State Department would be required to establish a lottery system for the awarding of visas. Under this program, 55,000 visas would be made available annually beginning in 1994. Based on information provided by the State Department, we estimate that the costs of this program would be roughly $7 million annually, beginning in 1994, which would be funded by application fees.

Spending by the INS for processing applications also would increase. In the immigration legalization program, spending authority would increase by $15 million per year in 1991 and 1992 to process stays of deportation for dependents of legalized aliens. Direct spending through the immigration examinations program–$10 million in 1991 and 1992, and $5 million annually thereafter–would result from the processing of aliens from adversely affected states, and from an increase in relative and employment petitions and non-immigrant authorizations.

Immigration Emergency Fund.–We estimate that outlays from the Immigration Emergency Fund would increase by $20 million relative to the baseline in 1991 because of the provision of H.R. 4300 requiring that amounts in the fund be used to reimburse state and local governments. Because this provision would cover events occurring in 1989, certain counties in Florida and Texas would be eligible for immediate reimbursement. The fund currently contains $35 million. Based on information provided by the Office of Management and Budget, we do not expect any additional expenditures in following years.

***6770** SLIAG and Other Entitlement Programs.–By prohibiting the deportation of spouses and children of aliens legalized under the provisions of the IRCA, this bill would increase costs in a number of federal entitlement programs.

Undocumented aliens are not eligible for most federal and state need-based programs. By allowing them to remain in the United States, or by explicitly conferring eligibility, the bill would permit the spouses and children to receive certain program benefits if they were otherwise eligible. The most important affected programs are State Legalization Impact Assistance Grants (SLIAG), Aid to Families with Dependent Children (AFDC). Medicaid, and Unemployment Insurance. The spouse and children would not be eligible for the Food Stamp program by our reading of the bill.

This bill generally would extend the same benefits and exclusions from federal programs to the spouses and children that the IRCA had previously extended to the undocumented aliens it legalized. Moreover, the benefits and exclusions would apply for the same time period that applied to the original legalized alien spouse or parent, in some cases making benefits retroactive to fiscal year 1988. Thus, the spouses and children would be eligible for Medicaid for emergencies and for the care of children and of pregnant women. On the other hand, they would be precluded from receiving federal aid based on financial need, including AFDC, for the five-year period following legalization of the spouse or parent; this five-year period begins to expire in fiscal year 1992. Finally, states would be able to claim SLIAG funds for spending on the spouses and children over the five-year period of eligibility pertaining to the IRCA-legalized aliens, which began in 1988.

Costs are based on an estimated 300,000 spouses and 380,000 children of the aliens legalized under the IRCA who would be eligible for prohibition of deportation. Based on a survey of the aliens legalized under the IRCA on the basis of residency in this country prior to 1982 (called the pre-1982s), INS estimated that 350,000 spouses and children (about 50 percent of each) would qualify for a prohibition of deporation under this bill. For the other group of aliens legalized under the ICRA–special agricultural workers (SAWs)–the numbers of spouses and children who would qualify are very uncertain. CBO estimates that 175,000 spouses and 300,000 chilren of SAWs would qualify, based on demographic information for the IRCA-legalized aliens from INS and from studies in California and Maryland. Not all of the qualifying aliens would apply for the change in status; for example, in the California study 6 to 7 percent said they would not apply for citizenship and only about 80 percent said they intended to apply. Thus, CBO assumes that only 85 percent of the qualifying pre-1982s and 80 percent of the SAWs would actually attain the new status. Costs have been reduced substantially in 1991 and slightly in 1992 to allow for the time it would take both to implement the new policy and to receive and process the aliens' applications.

We have not reduced estimated costs of this bill for spouses and children determined to be eligible for voluntary departure, and thus to remain in the United States, under INS's “family fairness” policy, which became effective on February 14, 1990. This policy affects only those spouses and children residing in the United States ***6771** prior to November 6, 1986. Moreover, only 60,000 applications have been made to INS so far under this policy, which represents less than 10 percent of the estimated spouses and children. If large numbers of the spouses and children were to apply to INS under “family fairness”, then costs

of this bill would be lower, primarily because the affected spouses and children would already qualify for AFDC, Medicaid, and Unemployment Insurance.

Federal spending on the grants to states under SLIAG is estimated to increase by $15 million in 1991, $160 million in 1992, and $165 million in 1993, before declining by $270 million in 1994 and by $70 million in 1995. Over the five years, we estimate that federal spending would be unchanged. Under CBO's baseline, SLIAG spending approximately equals the full $4 billion appropriated for SLIAG in the IRCA. Thus, any increased spending claims for the spouses and children would merely serve to speed up the spending. However, if states were to spend less than the full appropriated amount under current law, which is a distinct possibility, federal spending on SLIAG over the five years would rise with the increased spending claims for the spouses and children.

The estimate for SLIAG allows for a reduction of about $25 million in the state grants required under current law. Current law provides for reimbursement of federal costs associated with the aliens' receipt of certain entitlement programs (primarily Medicaid). Thus, some of the increased federal spending shown under Medicaid, and discussed below, would be offset by a reduction in SLIAG spending.

Spending by states on the qualifying aliens that can be claimed under SLIAG falls mainly into four broad categories: public assistance, public health, adult education, and elementary and secondary education. In the areas of public assistance and public health, estimates of SLIAG spending are generally based on the per person costs reported by states for SLIAG for 1989 and 1990. Because the mix of adults and children is quite different for the spouses and children than for the original legalized aliens, and because the spouses and children have no English language requirement to meet, spending for the education programs could not be based on current per person SLIAG spending. To estimate education spending, we assumed a participation rate of 10 percent in adult education and 17 percent in elementary and secondary education, with per participant spending rising from $400 to $475 over the period. For the years 1988 through 1990 or 1991, costs other than public health are reduced by 50 percent (public assistance), 75 percent (elementary and secondary education), and 100 percent (adult education) because of the problems of verifying claims from prior years. Spendout rates are assumed to be 50 percent in year one and 50 percent in year two.

AFDC costs are estimated to increase by $1 million in 1992, rising to $20 million in 1995. As noted above, the legalized aliens–and their spouses and children–do not begin to qualify for AFDC until 1992 because of the five-year prohibition on receipt of benefits. The numbers qualifying rise over time but do not reach 100 percent until 1995. The estimates of AFDC costs are based on the estimated percentage of all Hispanic families receiving AFDC-Unemployed Parent (UP) benefits–1.4 percent. Because California includes ***6772** 54 percent of the legalized aliens, and has a sizable AFDC-UP program, the estimates of recipiency are based on weighted averages for California and other states. Benefits per family are based on reported AFDC benefits, weighted for the proportion of aliens in California, which has relatively high benefits, in Texas, which has relatively low benefits, and in the remaining states. In 1992, average monthly benefits per family are estimated to be $705.

In Medicaid, costs are estimated to rise from $2 million in 1991 to $20 million in 1995. Medicaid costs have two major components. During the five-year period of restricted benefits, aliens can receive Medicaid only for emergencies and for care of pregnant women and children, as noted earlier. These costs, which peak in 1992 and are zero by 1995, are partially offset in the SLIAG program as a result of the federal reimbursement described above. Estimates of those costs are based on SLIAG costs reported by the states. The second component is for full Medicaid benefits after the period of prohibition is over. These costs begin in 1992 and rise over the period. They include Medicaid for the families receiving AFDC-UP, for relatively medically-needy families, and for pregnant women and children under the recent Medicaid expansions. Federal Medicaid costs per family for those on AFDC-UP are estimated to total just over $2,900 a year. Medically needy families are estimated to have total federal Medicaid costs equal to about 15 percent of costs for the AFDC-UP families. The estimates for the pregnant women and children expansions are based on the SLIAG estimates for Medicaid. Other CBO work has shown that the Medicaid expansions for pregnant women have added 24 percent to Medicaid spending for pregnant women and that the expansions for children have

added 12 percent to Medicaid spending for children. Finally, both cost components have been reduced for the current law that provides Medicaid benefits to undocumented aliens for emergencies, including emergency labor and delivery. CBO estimates that 44 percent of the first Medicaid cost component would be offset by the current-law emergency benefits and that 15 percent of the second Medicaid cost component would be offset.

Unemployment Insurance (UI) outlays would increase by an estimated $5 million in 1991 and $35 million in 1995. According to data from a California survey of aliens legalized under the IRCA, about 2 percent were receiving UI benefits. This represents a recipiency rate of 2.5 percent for those in the workforce (about 80 percent of the respondents). Assuming the spouses legalized under the bill are roughly comparable to the Hispanic population overall and that female spouses outnumber male spouses 9 to 1, 56 percent of the spouses would be in the labor force and 1.5 percent–4,200 persons–would be receiving UI benefits in a typical week. Based on Census data on the earnings of Hispanics relative to all workers, wages are assumed to be about 80 percent of the national average and to translate into weekly UI benefits 20 percent lower than the national average. Estimated UI benefits rise from $127 per week in 1991 to $150 per week in 1995.

The bill also would allow states to make claims in SLIAG for spending associated with undocumented aliens applying for legalization under IRCA whose applications have not yet been processed, until a final determination of their status has been made. ***6773** This provision would move spending forward into 1991 from later years. CBO estimates that SLIAG costs would increase by $20 million in 1991 and decrease by $20 million in 1993. As of mid-August, about 525,000 applications were yet to be processed, more than 90 percent of them for SAWs. In fiscal year 1991, 130,000 more persons on average each month would be eligible for SLIAG, based on a reduction of 50,000 each month in pending applications (the average monthly reduction between May and August). Estimated SLIAG costs for these persons are based on SLIAG costs reported by the states. Spendout rates are assumed to be 50 percent in years one and two.

Authorizations of Appropriations

Although H.R. 4300 would not provide any specific authorizations of appropriations for administrative costs, programs in the Departments of State and Labor would face increased costs. We estimate these costs would total roughly $40 million in 1991, and $60 million to $65 million annually for 1992 through 1995, assuming appropriation of the necessary amounts.

Most of these costs would be incurred by the State Department for the processing of visa applications. Based on information provided by the State Department, we estimate that processing costs would increase by around $40 million in 1991 and by $55 million to $60 million for 1992 through 1995. For this estimate, we have assumed that the costs of processing and issuing visas is between $175 and $200 per applicant.

For the Department of Labor, we estimate that costs associated with the labor attestation process established by Title I of the bill would be $5 million annually. We estimate that the Labor Department would receive over 100,000 applications annually, and that the processing costs would be around $50 per application.

The bill would also authorize the appropriations necessary to maintain a $35 million balance in the Immigration Emergency Fund. With spending from this fund expected to be $20 million in 1991, a $20 million appropriation would be authorized in 1991. We do not expect that there would be any additional spending from the fund in subsequent years.

6. Estimated cost to State and local governments: The estimated costs to state and local governments that would result from this bill are shown in the following table.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

States and localities would face increased costs over the five-year period as a result of the provision that would prohibit deportation of spouses and children of aliens legalized under the IRCA. As shown in the table, costs in the AFDC and Medicaid programs, of ***6774** which states on average finance 45 percent, would total an estimated $2 million in 1991 and $35 million in 1995. In addition, they would have some small increased costs in public assistance programs funded entirely by states and localities, such as General Assistance.

If our estimate that all of the SLIAG funds will be used under current law is correct, then states and localities would gain no additional funds in SLIAG over the entire five-year period. In 1991–1993, however, they would have savings, followed by costs in 1994–1995. The savings would occur because states and localities incur spending under current law for the spouses and children that would be reimbursed under SLIAG, for example, for elementary and secondary education and medical care in public hospitals. If all of the SLIAG funds are not used under current law, then states and localities would have savings over the five years as a result of this provision.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts, Jan Peskin, Paul Cullinan, Corey Leach, John Stell, and Joe Whitehill.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4300 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE 1–GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act–

(1) ***

* * * * * * *

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens–

(A) ***

* * * * * * *

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

* * * * * * *

(H) an alien [having a residence in a foreign country which he has no intention of abandoning] (i) (a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility for which the alien will perform the services, or (b) [who is of distinguished merit and ability and who is coming temporarily to the United States to perform services (other than services as a registered nurse) of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or non-profit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency] coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in paragraph (O) or (P)) in a specialty occupation described in section 214(i)(1) and who meets the requirements for the occupation specified in section 214(i)(2); or (ii) [who is coming temporarily to the United States (a)] (a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and

the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him, in a training program not available in the country of nationality of the alien;

* * * * * * *

(J) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), (ii) who is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in an special education training program described in section 214(j)(1), or (iii) who is coming temporarily to the United States (for a period not to exceed 14 months) as a participant in an au pair program under section 214(k)(1), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(L) an alien who, [immediately preceding] within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or (ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I)[.];

(O) an lien who–

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability, but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic preformance of an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien

which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant principal photography will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who–

(i)(I) performs as an athlete, individually or as part of an group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least 1 year and provides functions integral to the performance of the group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete or entertainer with respect to a specific athletic competition or performance;

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers, between the United States and the foreign states involved;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program designated by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who–

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

* * * * * * *

(27) The term “special immigrant” means–

(A) ***

* * * * * * *

[(C((i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide

organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join them;]

(C) an immigrant, and his spouse and children if accompanying or following to join the immigrant, who–

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
(ii) seeks to enter the United States–
(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
(II) in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
(III) in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
(iii) has been carrying on such vocation, professional work, or other work continuously, for at least the 2-year period described in clause (i);

* * * * * * *

(H) an immigrant, and his accompanying spouse and children, who–

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state.
(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.
(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and
(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry; [or]
(I)(i) ***

* * * * * * *

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family[.] ;

(J) an alien whose deportation was cancelled under section 244; or

(K) an immigrant who (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

* * * * * * *

(44)(A) The term “managerial capacity” means an assignment within an organization in which the employee primarily–

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term “executive capacity” means an assignment within an organization in which the employee primarily–

(i) direct the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercise wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term “substantial” means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

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POWERS AND DUTIES OF THE ATTORNEY GENERAL AND THE COMMISSIONER

SEC. 103. (a)***

(c) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws. Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), and on aliens who have been excluded or deported from the United States. Such system shall provide for the collection and dissemination of such information not less often than annually.

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TITLE II–IMMIGRATION

CHAPTER 1–SELECTION SYSTEM

[NUMERICAL LIMITATIONS

[SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: Provided, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the statuts of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.

[(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: Provided, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.]

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.–Exlusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to–

(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year 185,000 and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worlwide level under this paragraph for all of such fiscal year;

(2) employment-based immigrants described in section 203(b) (or are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed 65,000 in each of fiscal years 1992 through 1996, and not to exceed 75,000 in each fiscal year thereafter and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under this paragraph for all of such fiscal year; and

(3) for fiscal years beginning with fiscal year 1994, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed 55,000 in each fiscal year and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under this paragraph for all of such fiscal year.

(b) ALIENS NOT SUBJECT TO NUMERICAL LIMITATIONS.–The following aliens are not subject to the worldwide levels or numerical limitations of subsection (a):

(1)(A) Special immigrants described in section 101(a)(27).

(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

(D) Aliens provided permanent resident status under section 249.

(2)(A)(i) Immediate relatives. For purposes of this clause, the term "immediate relative" means a child or spouse of a citizen of the United States and a parent of a citizen of the United States who is at least 21 years of age, and includes, subject to subsection (c) and beginning with fiscal year 1991, a child or spouse of an alien lawfully admitted for permanent residence. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien shall be considered, for purposes of this clause, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A) within 2 years after such date and only until the date the spouse remarries.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(3) An alien who is provided immigrant status under section 203(d) as the spouse or child of an immigrant under section 203(b).

(c) TREATMENT OF IMMEDIATE RELATIVES OF PERMANENT RESIDENT ALIENS.–In the case of aliens who are immediate relatives (as defined in subsection (b)(2)(A)(i)) as the spouse or child of an alien lawfully admitted for permanent residence, until otherwise provided by law, the number of such aliens who shall be treated as such immediate relatives in any fiscal year may not exceed 115,000. Visas shall be made available to such immediate relatives in the order in which a petition in behalf of each such alien is filed with the Attorney General as provided in section 204.

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in section 101(a)(27), section 201(b), and section 203: Provided, That the total number of immigrant visas made available to natives of any single foreign state under [paragraphs (1) through (7) of section 203(a)] subsections (a) and (b) of section 203 shall not exceed 20,000 in any fiscal year: And provided further, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.

* * * * * * *

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than [a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined

in section 201(b)] an alien described in section 201(b), shall be chargeable for the purpose of the limitation set forth in subsection (a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year.

* * * * * * *

[(e) Whenever the maximum number of visas have been made available under this section to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 5,000 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

(e) Where it is determined that the maximum number of immigrant visas will be made available under this section to natives of any single foreign state or dependent area in any fiscal year, in determining whether to provide for immigrant visa numbers to natives under section 203(a) or under section 203(b), visa numbers with respect to natives of that state or dependent area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that–

(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to 3 to 1; and

(2) the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the proportion of the total number of visas made available under the respective paragraph to the total number of visas made available under such section.

Nothing in this subsection shall be construed as limiting the number of visas which may be issued to natives of a state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively.

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. [(a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a perference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shal be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by the State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: Provided, That

no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1) (A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraphs (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.] (a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.–Aliens subject to the worldwide level specified in section 201(a)(1) for family-sponsored immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.–Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 30 percent of such worldwide level.

(2) UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.–Qualified immigrants who are the unmarried sons or unmarried daughters of aliens lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 19 percent of such worldwide level, plus any visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.–Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 16 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) BROTHERS AND SISTERS OF CITIZENS.–Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 35 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.–Aliens subject to the worldwide level specified in section 201(a)(2) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) PRIORITY WORKERS.–Visas shall first be made available to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (D), except that not more than 2,000 such visa numbers may be made available in any fiscal year to aliens under subparagraph (D):

(A) ALIENS WITH EXTRAORDINARY ABILITY.–An alien is described in this subparagraph if–

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
(iii) the alien's entry into the United States will substantially benefit prospectively the United States.
(B) OUTSTANDING PROFESSORS AND RESEARCHERS.–An alien is described in this subparagraph if–

(i) the alien is recognized internationally as outstanding in a specific academic area,
(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
(iii) the alien seeks to enter the United States–
(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.–An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(D) ALIENS WITH BUSINESS EXPERTISE.–An alien is described in this subparagraph if the alien is coming to the United States to perform services not of a temporary nature in business requiring special expertise and has an advanced degree in a field relating to that special expertise.

(2) OTHER EMPLOYMENT-BASED ALIENS.–

(A) IN GENERAL.–Visas made available under section 201(a)(2) for a fiscal year not otherwise made available under paragraph (1) shall be made available to qualified immigrants who are capable of performing specified labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(B) LABOR CERTIFICATION REQUIRED.–No immigrant visa shall be issued to an immigrant under this paragraph before the date the conuslar officer receives a certification made by the Secretary of Labor under section 212(a)(14).

(C) PRIORITY FOR NATIVES OF ADVERSELY AFFECTED FOREIGN STATES.–

(i) APPLICATION IN FISCAL YEARS 1992 THROUGH 1996.–Immigrant visas made available under this paragraph for any quarter in fiscal year 1992, 1993, 1994, 1995, or 1996, shall first be issued, in a number not to exceed 5,200 in any quarter, to eligible immigrants who are natives of an adversely affected foreign state (as defined in clause (iii)) in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204. Any remaining visas made available under this paragraph for such quarter shall be issued to all eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

(ii) SUBSEQUENT FISCAL YEARS.–Visas made available under this paragraph for any quarter in a fiscal year after fiscal year 1996 shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

(iii) ADVERSELY AFFECTED FOREIGN STATE DEFINED.–In this subparagraph, the term “adversely affected foreign state” means a foreign state that is not contiguous to the United States and that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986.

(c) DIVERSITY IMMIGRANTS.–

(1) IN GENERAL.–Visas made available under section 201(a)(3) for a fiscal year shall be made available in each fiscal year to qualified immigrants who are natives of foreign states in a region as follows:

(A) DETERMINATION OF PREFERENCE IMMIGRATION.–The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or othewise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2) or 201(b)(3).

(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMINISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.–The Attorney General–

(i) Shall identify–

(I) each region (each in this paragraph referred to as a "high-admission region") for which the total of the numbers determined under subparagraph (A) for states in the region is greater than $^{1/6}$ of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a "low-admission region"); and

(ii) shall identify–

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a "high-admission state"), and

(II) each other foreign state (each such state in this paragraph referred to as a "low-admission state").

(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.–The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.–The Attorney General shall determine–

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) DISTRIBUTION OF VISAS.–

(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.–The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.–Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of–

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.–Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of–

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.–If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.–The percentage of visas made available under this paragraph to natives of any foreign state for any fiscal year shall not exceed 7 percent.

(2) REGION DEFINED.–Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and each of the following shall be considered to be a separate region:

(A) Africa.

(B) Asia.

(C) Europe.

(D) North America (other than Mexico).

(E) Oceania.

(F) South America, Mexico, Central America, and the Caribbean.

(d) TREATMENT OF FAMILY MEMBERS.–A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

[(b)] (e) PRIORITY WITHIN PREFERENCE CLASS.–In considering applications for immigrant visas under subsection (a) or (b) consideration shall be given to applicants in the order in which the classes of which they are members are listed in subsection (a) or (b), respectively.

[(c) Immigrant visas] (f) PRIORITY OF VISA ISSUANCE.–(1) Except as provided in subsection (b)(2)(C), immigrant visas issued pursuant to [paragraphs (1) through (6) of subsection (a)] subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

(2) Immigrant visa numbers made available under section 201(a)(3) in a fiscal year or natives of low-admission states shall be made available to qualified immigrants who have filed petitions under section 204(a)(1)(F) strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

[(d) Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a preference status under paragraphs (1) through (6) of subsection (a), or to a special immigrant status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b).] (g) REQUIREMENT FOR PETITION APPROVAL.–In the case of any alien claiming in his application for an immigrant visa [to be an immediate relative of a United States citizen as specified in section 201(b) or to be entitled to preference immigrant status under paragraphs (1) through (6) of subsection (a),] to be entitled to a status for which a petition is required under section 204(a)(1), the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

[(e)] (h) USE OF ESTIMATES AND TERMINATION OF REGISTRATION.–For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories [of subsection (a)] under subsections (a), (b), and (c), and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who estiblished within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination and approval of any petition approved pursuant to section 204(b) shall be automatically revoked.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. [(a)(1) Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 203(a), or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2), or any alien desiring to be classified as a preference immigrant under section 203(a)(3) (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 203(a)(6), may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.] (a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification. An alien desiring to be classified as an immediate relative under the second sentence of section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to an immediate relative status under section 201(b)(2)(A)(i) or a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

(C) Any alien desiring to be classified under section 203(b)(1)(A) (or any person on behalf of such an alien) (relating to aliens with extraordinary ability) may file a petition with the Attorney General for such classification.

(D) Any employer (or representative of one or more employees) desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(1)(D), or 203(b)(2) (relating to outstanding professors and researchers, certain multinational executives and managers, aliens with business expertise, and other employment-based aliens) may file a petition with the Attorney General for such classification.

(E)(i) Any alien desiring to be provided an immigrant visa under section 203(c) (relating to diversity immigrants) with respect to a petitioning period may file a petition at the place and time determined by the Secretary of State for that period. The Secretary of State shall designate a period for the filing of petitions under this paragraph with respect to one or two fiscal years. Only one such petition may be filed by an alien with respect to any petitioning period, and, if more than one petition is submitted, all such petitions submitted for the period by the alien shall be void. Petitions submittted for consideration with respect to any petitioning period shall be valid only with respect to such period and not with respect to subsequent periods.

(ii) The Secretary of State shall establish a fee for the filing of such petitions in an amount sufficient to cover the costs of processing petitions under this subparagraph. The Secretary of State shall deposit payments received under this clause in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this paragraph.

(2)(A) The Attorney General may not approve a [spousal second preference petition] "spousal alien immediate relative petition" filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless–

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term ["spousal second preference petition"] "spousal alien immediate relative petition" refers to a petition, seeking [preference status under section 203(a)(2)] immediate relative status under section 201(b)(2)(A)(i), for an alien as a spouse of an alien lawfully admitted for permanent residence.

* * * * * * *

(b) [After an investigation] (1) Except in the case of a petition under subsection (a)(1)(E), after an investigation of the facts in each case[, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(a)(3) or (6)] the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for a preference status under section 203(a) or 203(b), approve the petition and forward one copy thereof to the Department of State. In making determinations under section 203(b)(1)(A)(i) (relating to demonstration of extraordinary ability) the Attorney General shall consult with peer groups in the area of the alien's ability, and in making determinations under section 203(b)(1)(B)(i) (relating to international recognition as outstanding in a specific academic area), the Attorney General shall consult with peer groups in the academic area of the alien's recognized ability. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(2) The Attorney General shall require by regulation, as a condition for the acceptance and approval of a petition under this section with respect to immigrants described in section 203(b), the payment of a fee to recover the reasonable costs of processing such a petition with respect to immigrants described in such section.

* * * * * * *

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as a preference immigrant under section 203(a) or 203(b) or as an immediate relative under section 201(b) if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

[(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

[(g)(1)] (f)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b) (2)(A)(i), 203(a)(1), or

[203(a)(4)] 203(a)(3), as appropriate. After an investigation of the facts of each case the At orney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

* * * * * * *

[(h)] (g) Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

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ADJUSTMENT OF STATUS OF REFUGEES

SEC. 209. (a) ***

(b) [Not more than five thousand of the refugee admissions] Refugee admissions authorized under section 207(a) in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who–

(1) ***

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CHAPTER 2–QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

[(1) Aliens who are mentally retarded;

[(2) Aliens who are insane;

[(3) Aliens who have had one or more attacks of insanity;

[(4) Aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect;

[(5) Aliens who are narcotic drug addicts or chronic alcoholics;]

(1) Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services)–

(A) to have a physical or mental disorder, and exhibits a current behavior or has a history of behavior (associated with the disorder) that (i) poses or has posed a threat to property or the safety or welfare of the alien or others and (ii) as to a

history of behavior, has occurred so recently (taking into account the nature of the disorder) as to suggest the likelihood of its recurrence or the occurrence of other harmful behavior, or

(B) to be a drug abuser or addict;

* * * * * * *

[(11) Aliens who are polygamists or who practice polygamy or advocate the practice of polygamy;]

* * * * * * *

[(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);]

(14) Aliens seeking admission or status as an immigrant under section 203(b)(2) or as a nonimmigrant under section 101(a)(15)(H)(i)(b) or 101(a)(ii)(b) unless with respect to the aliens the Secretary of Labor certifies to the Secretary of State and the Attorney General that an attestation is on file and in effect under section 212(n) for the employer and occupational classification for which the alien will perform services;

* * * * * * *

(32) Aliens who are graduates of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and are coming to the United States principally to perform services as members of the medical profession, except such aliens who have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and who are competent in oral and written English. The exclusion of aliens under this paragraph shall apply to [preference immigrant aliens described in section 203(a)(3) and (6) and to nonpreference immigrant aliens described in section 203(a)(7)] preference immigrant aliens described in section 203(b)(2). For the purposes of this paragraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date;

* * * * * * *

(d)(1)***

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(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(1), in his discretion parole in to the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

* * * * * * *

(g) Any alien [who is excludable from the United States under paragraph (1) of subsection (a) of this section, or any alien] afflicted with tuberculosis in any form who (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence in accordance with such terms, conditions, and controls, if any, including the giving of a bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulations prescribe. [Any alien excludable under paragraph (3) of subsection (a) of this section becuase of past history of mental illness who has one of the same family relationships as are prescribed in this subsection for aliens afflicted with tuberculosis and whom the Secretary of Health and Human Services finds to have been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery shall be eligible for a visa in accordance with the terms of this subsection.] The Attorney General may waive the application of subsection (a)(1)(A) in the case of any immigrant, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

(n)(1) The attestation referred to in subsection (a)(14), with respect to an alien who is coming to the United States to be employed by an emloyer in an occupational classification, is an attestation as to the following:

(A) Subject to paragraph (3), the employer–

(i)(I) has made and is making positive recruitment efforts, in the recruitment area identified under paragraph (2)(A), reasonably designed to locate and employ able, willing, and qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) workers, and

(II) recites the specific actions the employer has taken with respect to such recruitment; and

(ii) has been unable to find such workers who are available at the time and place of need.

(B) The employer is offering and will offer (in the case of an nonimmigrant under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b), during the period of authorized employment or, in the case of an immigrant under section 203(b)(2), during the first year of employement of the alien by the employer) to aliens and to other individuals employed in the occupational classification and in the recruitment area (identified under paragraph (2)(A)) wages that are no less than the base prevailing wage level (determined under paragraph (6)) and working conditions that are not less than the prevailing working conditions for the occupational classification in the recruitment area.

(C) There is not a strike or lockout in the course of a labor dispute.

(D) The employer, at the time of execution of the attestation, has provided notice of the intention to file the attestation under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and recruitment area for which aliens are sought, or, if there is no such bargaining representative, to such State or local governmental entity as the Secretary of Labor designates (after consultation with appropriate labor and management organizations) for the recruitment area for purposes of this subparagraph.

The obligation to engage in positive recruitment under subparagraph (A) shall not apply to nonimmigrants under section 101(a)(15)(H)(i)(b) and shall terminate on the date that the alien is provided immigrant or nonimmigrant status in response to the attestation.

(2)(A) With respect to occupational classifications for which attestations may be filed, the Secretary of Labor (in this subsection referred to as the "Secretary") shall identify recruitment areas which are the areas of traditional or expected labor supply.

(B) The Secretary shall make available for public examination, within 2 working days after the date on which an attestation under paragraph (1) is filed, in Washington, D.C., a copy of each attestation (and accompanying documentation) filed under paragraph (1). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed or in effect under paragraph (1).

(3)(A) If 10 or more attestations meeting the requirements of paragraph (1) (including paragraph (1)(A)) within a region (as defined by the Secretary) (or 5 attestations within a rual region) have been filed within a 1-year period and are in effect with respect to employees in the same occupational classification, any succeeding attestation filed during the succeeding 2-year period for workers in that occupational classification and region may substitute, for the attestation as to the matters described in paragraph (1)(A), an attestation that the employer has not been able to find, after posting of the job offer and advertising to recruit for hire, workers for the occupational classification at the time a place needed.

(B) In subparagraph (A), the term "rural region" means a contiguous area of counties (no county of which is an urbanized area) which is identified by the Secretary as representing a labor market with respect to an occupational classification which is separate and distinct from those for adjoining urbanized areas.

(4)(A) If a bargaining representative described in paragraph (1)(D) or employee representative, within 30 days after the date the employer files an attestation under paragraph (1), submits to the Secretary a written request for a hearing respecting the matters required to be attested to in paragraph (1) and includes with such request a written statement of particular facts contradicting such attestation, the attestation shall not become effective until the date the Secretary has made a determination, after such a hearing, that the facts attested to are true. No attestation shall be effective under this subsection before the end of such 30-day period.

(B) Within 7 days after the date of submission of a written request under subparagraph (A), the Secretary shall provide for a determination as to whether or not a written statement of particular facts contradicting the attestation has been included. If it has, the Secretary shall provide for a notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, with respect to the attestation within 30 days of the date of the determination. After such a hearing, the Secretary shall make a determination with respect to whether the attestation meets the requirements of paragraph (1) by not later that 30 days after the date of the hearing. In the hearing, the burden of proof on the truth of the facts attested to shall be on the employer.

(C)(i) An attestation duly filed under paragraph (1) shall be deemed to have been certified by the Secretary and in effect under this subsection at the end of the 30-day period beginning on the date of its filing unless the Secretary otherwise notifies the employer and the Attorney General under clause (ii).

(ii) If a written request for a hearing has been submitted on a timely basis under this paragraph, the Secretary shall notify the Attorney General and the employer in writing that an attestation, which would otherwise become effective under clause (i), shall not become effective.

(D) The preceding provisions of this paragraph shall not apply to an attestation under paragraph (1) with respect to nonimmigrants described in section 101(a)(15)(H)(i)(b).

(E) The Secretary may not refuse to accept for filing a completed attestation filed under this subsection or review in any way such an attestation with respect to which a complaint has not been filed under this subsection.

(F) Subject to termination under paragraph (5), an attestation shall be effective only for petitions filed during the 1-year period beginning on the effective date of the attestation.

(5)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to include an element of the attestation required under paragraph (1), failure to meet a condition attested to, or misrepresentation of material facts in an attestation that is in effect under this subsection. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively, or to the extent that the complaint alleges a failure or misrepresentation for which there has been a determination on that issue in a hearing under paragraph (4)(B). The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same petitioner, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C) If the Secretary finds, after notice and opportunity for a hearing, an employer failure or that there was a misrepresentation of material fact in the attestation–

(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate, and

(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

(D) In addition to the sanctions provided under subparagraph (C), if the Secretary finds, after notice and opportunity for a hearing, that an employer has violated a condition of an attestation relating to the payment of wages at a specified wage level, the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with such condition.

(6)(A) For purposes of this subsection and section 214(f), the term “base prevailing wage level”, with respect to an occupational classification in an area for which a petition or attestation is filed for purposes of the respective provision of law, means–

(i) the actual wage level for the occupational classification at the place of employment, or

(ii) the prevailing wage level for the occupational classification and area determined under subparagraph (B),

whichever is greater, determined as of the time of filing the respective petition or attestation.

(B)(i) The Bureau of Labor Statistics in the Department of Labor shall periodically determine, for purposes of this subsection and section 214(f), the prevailing wage level for occupational classifications and areas for which determinations of prevailing wage levels are required under this subsection. In the case of a specific occupational classification for which a determination of prevailing wage level is not generally or readily available, the Bureau shall determine such a wage level within 30 days.

(ii)(I) If the Bureau has not determined a prevailing wage level within 30 days of the date of filing of an attestation, subject to subclause (II), the application of clause (ii) of subparagraph (A) shall be suspended until the date such a determination is made.

(II) When the Bureau makes such a determination, the employer shall provide, within 30 days of the date of the determination, for such adjustment of wages (including back pay) as provides for the application of such prevailing wage level under subparagraph (A) as though such level had been determined on a timely basis under subparagraph (B).

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ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) (1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 212(1) may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant under section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event for which the n nimmigrant is admitted.

(B)(i) The period of authorized status as a nonimmigrant under section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(ii) An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 101(a)(15)(P) may not be readmitted as such a nonimmigrant unless the alien has remained outside the United States for at least 3 months after the date of the most recent admission.

(b) Every alien (other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15)) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive

an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) [or (L)] , (L), (O), or (P)(i) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term “appropriate agencies of Government” means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants under section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for entry of aliens covered under such a petition.

(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for–

(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involved specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.

(3) The Attorney General shall approve a petition–

(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation with peer groups in the area of the alien's ability or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation with labor organizations with expertise in the skill area involved.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion.

(4)(A) A person may petition the Attorney General for classification of an alien as a nonimmigrant under clause (ii) of section 101(a)(15)(P).

(B) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved.

(C) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States, in order to assure reciprocity in fact with foreign states.

(5)(A) In the case of an alien admitted as a nonimmigrant and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer the alien–

(i) continues to be authorized to be employed in the occupation for that employer, and

(ii) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

(B) In the case of an alien admitted as a nonimmigrant and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer the alien–

(i) is not authorized to be employed in the occupation for that employer, and

(ii) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

(C) With respect to a nonimmigrant described in subparagraph (A) or (B) for whom such a strike or lockout occurs and who does not perform employment not authorized, any limit on the period of authorized stay shall be extended by the period of the strike or lockout.

(D) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H) (other than section 101(a)(15)(H)(ii)(a)) or section 101(a)(15)(P) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

(6) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(7) The Attorney General shall require by regulation, as a condition for the acceptance and approval of a petition under this section with respect to nonimmigrants under section 101(a)(15)(H), (L), (O), or (P)(i), the payment of a fee to recover the reasonable costs of processing a petition under this subsection with respect to such class of nonimmigrants.

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(f) With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15), the Attorney General shall grant such an alien work authorization to be employed in a position unrelated to the alien's field of study and off-campus if–

(1) the alien has completed 1 year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the base prevailing wage level (determined under section 212(n)(6)), and

(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection for a period of 3 years.

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)–

(A) under section 101(a)(15) (H)(i)(b) may not exceed 25,000,

(B) under section 101(a)(15) (H)(ii)(b), may not exceed 66,000, or

(C) under section 101(a)(15) (P)(i) or section 101(a)(15) (P)(iii) may not exceed 9,000.

(2) The numerical limitations under paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

(4) In case of a nonimmigrant described in section 101(a)(15) (H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant or otherwise obtaining or maintaining the status of a nonimmigrant.

(i)(1) For purposes of section 101(a)(15) (H)(i)(b) and paragraph (2), the term “specialty occupation” means an occupation that requires–

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 101(a)(15) (H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are–

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation;

(B) completion of the degree described in paragraph (1)(B) for the occupation; or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

(j)(1) An alien may not be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15) (J)(ii) unless the alien is entering under a program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15) (J)(ii) in any fiscal year may not exceed 50.

(k)(1) An alien may not be admitted as (or otherwise be provided the status of) a nonimmigrant described in section 101(a)(15)(J)(iii) unless–

(A) the alien is entering to participate in a program, which participation and program the Secretary of Labor determines meets the requirements of paragraph (2) and will provide the alien a uniquely American cultural experience and additional education; and

(B) the alien is entering to be placed with a family which has entered into an agreement described in paragraph (3) and which has not been found by the Secretary of Labor to have violated previously the terms of such an agreement.

If the Secretary determines that a sponsoring program no longer meets the requirements described in subparagraph (A), the Secretary shall disqualify the program under this subsection for a period of at least 3 years.

(2) The requirements of this paragraph with respect to an alien participating in a program are as follows:

(A) The alien participant must reside with a family that has entered into an agreement described in paragraph (3).

(B) The alien participant must be enrolled on an on-going basis in a course of study at an educational institution or program approved by the Attorney General under section 101(a)(15)(F).

(C) The alien participant must be provided, not less often than quarterly, a cultural experience (such as travel to national monuments, landmarks, or institutions) unique or specific to the United States.

(D) If the alien participant provides child care or related services in connection with participation in the program–

(i) the alien must be paid wages (as defined in section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) not less than the minimum wage applicable under section 6(a) of such Act (29 U.S.C. 206(a)), and

(ii) the alien may not provide such care or services for more than 40 hours each week.

(E) The program must provide a suitable bond or other undertaking, in an amount specified by the Attorney General (not to exceed $5,000 with respect to any alien participant) to assure that the alien departs from the United States at the time of expiration of the authorized period of stay under the program.

(3) The agreement described in this paragraph between a family and an alien participant shall obligate the family to provide for meeting the requirements specified in subparagraphs (B) through (D) of paragraph (2). Such agreement shall be in a form approved by the Secretary of Labor and may be enforced by the alien.

(l)(1) No alien shall be entitled to nonimmigrant status under section 101(a)(15)(D) if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 2101(46) of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

(2) An alien described in paragraph (1)–

(A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

(B) shall be considered not to be a bona fide crewman for purposes of section 252(b).

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CONDITIONAL PERMANENT RESIDENT STATUS FOR
CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) ***

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(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.–

(1) ***

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(4) HARDSHIP WAIVER.–The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that–

(A) extreme hardship would result if such alien is deported, [or]

(B) the qualifying marriage was enterd into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) [by the alien spouse for good cause] and the alien was not at fault in failing to meet the requirements of paragraph (1)[.], or

(C) the qualifying marriage was entered into in good faith by the alien spouse and after the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetuated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

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CHAPTER 4–PROVISIONS RELATING TO ENTRY AND EXCLUSION

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PHYSICAL AND MENTAL EXAMINATION

SEC. 234. The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the special inquiry officers, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aleins (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under [paragraphs (1), (2), (3), (4), or (5)] paragraph (1) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under [paragraphs (1), (2), (3), (4), or (5)] paragraph (1) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

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EXCLUSIONS OF ALIENS

SEC. 236. (a) ***

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(d) If a medical officer or civil surgeon or board of medical officers has certified under section 234 that an alien is afflicted with a disease specified in section 212(a)(6), or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under [paragraphs (1), (2), (3), (4), or (5) of section 212(a)] section 212(a)(1), the decision of the special inquiry officer shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of a special inquiry officer. If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 212(a)(6), the alien may appeal upon the excluding decision in accordance with subsection (b) of this section, and the provisions of section 213 may be invoked.

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CHAPTER 5–DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a)***

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(h) Paragraphs (1), (2), (5), (9), or (12) of subsection 241(other than so much of subsection (a)(1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(K) based upon circumstances that exist before the date the alien was provided such special immigrant status.

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ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT
OF PERSON ADMITTED FOR PERMANENT RESIDENCE [120]

SEC. 245. (a)***

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference [or nonpreference] visas authorized to be issued under sections [202(e) or 203(a)] 201(a) without the class to which the alien is chargeable [for the fiscal year then current] for the succeeding fiscal year.

* * * * * * *

(e)(1) [An alien] Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entering into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

* * * * * * *

(3) Paragraph (1) and section 204(h) shall not apply with respect to a marriage if the alien establishes to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter.

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CHAPTER 8–GENERAL PENALTY PROVISIONS

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BRINGING IN ALIENS SUBJECT TO DISABILITY OR AFFLICTED WITH DISEASE

SEC. 272. (a) Any person who shall bring to the United States an alien (other than an alien crewman) who is [(1) mentally retarded, (2) insane, (3) afflicted with physchopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict] excludable under section 212(a)(1) or (6), shall pay to the collector or customs of the customs district in which the place of arrival is located for each and every alien so afflicted, the sum of $1,000 unless (2) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land

in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of [such disease or disability] the excluding condition could not have been detected by the exercise of due diligence prior to the alien's embarkation.

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UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.–

(1) IN GENERAL.–It is unlawful for a person or other entity [to hire, or to recruit or refer for a fee, for employment in the United States]–

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) (i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

* * * * * * *

(b) EMPLOYMENT VERIFICATION SYSTEM.–The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.–

(A) IN GENERAL.–The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining–

(i) a document described in subparagraph (B), [or]
(ii) a document described in subparagraph (C) and a document described in subparagraph (D)., or
(iii) with respect to longshore work, the document or documents described in subparagraph (E)(i).

* * * * * * *

(E) DOCUMENTS ESTABLISHING RECIPROCITY OF LONGSHORE WORK.–

(i) IN GENERAL.–The document or documents described in this clause with respect to an individual's performance of longshore work are such a document or documents, in a form acceptable to the Attorney General, that establish that–
(I) the individual is a national of a reciprocal foreign state (described in clause (ii)), and
(II) the individual will perform such work in connection with a vessel that is documented and enrolled with a reciprocal foreign state.

(ii) RECIPROCAL FOREIGN STATE DEFINED.–In clause (i), the term "reciprocal foreign state" means a foreign state which the Attorney General has determined, in accordance with section 553 of title 5, United States Code–

(I) has in effect immigration laws and regulations which authorize, on a nationwide basis, the performance of longshore work by United States nationals who are crewmembers of vessels which are documented and enrolled in the United States; and

(II) in the territory or coastal waters of which United States nationals described in subclause (I) have performed such work during the six months preceding the application of clause (i) with respect to a national of the state or vessel documented and enrolled with the state.

* * * * * * *

(h) MISCELLANEOUS PROVISIONS.–

(1) * * *

* * * * * * *

(4) SPECIAL RULES RESPECTING LONGSHORE WORK.–

(A) TREATMENT OF CERTAIN LONGSHORE WORK.–For purposes of this section, any person or other entity, including but not limited to ships agents, brokers, charterers, and procurers of labor, acting independently or on behalf of any other such person or entity, who brings into the United States (or coastal waters thereof) an individual who performs longshore work (as defined in subparagraph (D)), shall be considered to have hired such individuals for employment in the United States within the meaning of subsection (a) as of the first date that the individual first performs such work.

(B) PAPERWORK REQUIREMENT FOR LONGSHORE WORK.–In applying the requirements of paragraph (3) of subsection (b) (relating to retention of verification forms) to employment described in subparagraph (A), the person or entity shall designate, in writing to the Attorney General, a person or entity located at a port in the United States in the vicinity of the location of the longshore work involved who agrees to be responsible for the retention and making available for inspection of such forms under such paragraph.

(C) NO AUTHORIZATION MERELY THROUGH CLASSIFICATION AS ALIEN CREWMEN.–The mere classification of an alien as a nonimmigrant under section 101(a)(15)(D) (without the document or documents described in subsection (b)(1)(E)(i) with respect to the alien) shall not be considered to authorize, for purposes of this section and section 274B, the performance of longshore work by that alien.

(D) LONGSHORE WORK DEFINED.–In this paragraph and subsection (b)(1), the term "longshore work"includes activities relating or incident to the loading or unloading of cargo, including the operation of cargo-related equipment, whether or not integral to the vessel, and the securing of the vessel, in the United States or the coastal waters thereof; except that, for purposes of subsection (b)(1)(E)(ii), such term includes such activities with respect to vessels in (or in the coastal waters of) the reciprocal foreign state.

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DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a)***

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(q)(1) In addition to any other fee authorized by law, the Attorney General shall charge and collect a fee in the amount specified in paragraph (2) for the provision of lawful permanent resident status to an alien under subparagraph (A), (B), (C), or (D) of section 203(b)(1) or under section 203(b)(2) or for the provision of nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) on or after October 1, 1991.

(2)(A) Except as provided in subparagraph (B), the amount of the fee under this paragraph is $1,000.

(B) In the case of a petitioner–

(i) that has fewer than 50 employees, there shall be no fee under this paragraph, or

(ii) that–

(I) has more than 49, but fewer than 200, employees, or

(II) has 200 or more employees and is a nonprofit, charitable agency or governmental agency,

the amount of the fee shall be $^{1/2}$ of the amount otherwise established.

(3) The fee under this subsection shall only apply to the principal immigrant or nonimmigrant and not to the spouse or children of such an alien.

(4) The fee under this subsection shall be paid by the employer petitioning to import the alien into the United States at a time and in a manner specified by the Attorney General.

(5) All of the fees collected under this subsection shall be deposited in a separate account within the general fund of the Treasury of the United States, to remain available until expended to carry out sections 112 and 113 of the Family Unity and Employment Opportunity Immigration Act of 1990.

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TITLE III–NATIONALITY AND NATURALIZATION

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CHAPTER 2–NATIONALITY THROUGH NATURALIZATION

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REQUIREMENTS AS TO UNDERSTANDING THE ENGLISH LANGUAGE,
HISTORY, PRINCIPLES, AND FORM OF GOVERNMENT OF THE UNITED STATES

SEC. 312. No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate–

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the date of the filing of his petition for naturalization as

provided in section 334 of this Act, [is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence] either (A) is over 50 years of age and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence, or (B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence: Provided further, That the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant; and

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ALIEN RELIEVED FROM TRAINING AND SERVICE IN THE ARMED FORCES OF THE UNITED STATES BECAUSE OF ALIENAGE BARRED FROM CITIZENSHIP

SEC. 315. (a) Notwithstanding the provisions of section 405(b) but subject to subsection (c), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

* * * * * * *

(c) An alien shall not be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of the United States pursuant to the exercise of rights under a treaty, if before the time of the exercise of such rights the alien served in the Armed Forces of a foreign country of which the alien was a national.

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TITLE IV–MISCELLANEOUS AND REFUGEE ASSISTANCE

CHAPTER 1–MISCELLANEOUS

* * * * * * *

SEC. 404 (a) * * *

(b) (1) There are authorized to be appropriated (for fiscal year 1991 and any subsequent fiscal year) to an immigration emergency fund, to be established in the Treasury, [$35,000,000,] an amount sufficient to provide for a balance of $35,000,000 in such fund, to be used to carry out paragraph (2) and to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

(2)(A) Whenever a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter, subject to subparagraph (B), funds in the immigration emergency fund provided for under paragraph (1) shall be available for reimbursement of localities that have provided assistance to aliens in that district who have asylum applications pending.

(B) Not more than $20,000,000 shall be made available for all localities under this paragraph.

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SECTION 3304 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 3304. APPROVAL OF STATE LAWS.

(a) REQUIREMENTS.–The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that–

(1) * * *

* * * * * * *

(14)A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 212(d)(5) of the Immigration and Nationality Act),

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SECTION 1614 OF THE SOCIAL SECURITY ACT

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who–

(A) * * *

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 212(d)(5) of the Immigration and Nationality Act), or

* * * * * * *

SECTION 2 OF THE IMMIGRATION NURSING RELIEF ACT OF 1989

SEC. ADJUSTMENT OF STATUS FOR CERTAIN H-1 NONIMMIGRANT NURSES.

(a) IN GENERAL.–The numerical limitation of sections 201 and 202 of the Immigration and Nationality Act shall not apply to the adjustment of status under section 245 of such Act of an immigrant[, and the immigrant's accompanying spouse and children]–

(1) who, as of September 1, 1989, has the status of a non-immigrant under paragraph (15)(H)(i) of section 101(a) of such Act to perform services as a registered nurse,

(2) who, for at least 3 years before the date of application for adjustment of status (whether or not before, on, or after, the date of the enactment of this Act), has been employed as a registered nurse in the United States, and

(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(14) of such Act.

Such numerical limitations also shall not apply to the adjustment of status of, or issuance of an immigrant visa to, the immigrant's spouse and children if accompanying or following to join the immigrant. The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

(b) TRANSITION.–For purposes of adjustment of status under section 245 of the Immigration and Nationality Act in the case of an alien who, as of [December 31,] September 1, 1989, is present in the United States in the [lawful] status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse, or who is the spouse or child of such an alien, unauthorized employment performed before the date of the enactment of the Family Unity and Employment Opportunity Immigration Act of 1990 shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and such an alien shall be considered as having continued to maintain [lawful status as such a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out subsection (a)] lawful status throughout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 102(f)(1)(A) of the Family Unity and Employment Opportunity Immigration Act of 1990.

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IMMIGRATION REFORM AND CONTROL ACT OF 1986

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TITLE II–LEGALIZATION

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SEC 204. STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS.

(a) * * *

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(c) PROVIDING ASSISTANCE.–(I) Of the amounts allotted to a State under this section, the State may only use such funds, in accordance with this section–

(A) * * *

* * * * * * *

(E)(i) subject to clause (ii), to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on nationl origin or citizenship status,

(ii) except that the State agencies shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

Subject to paragraph (2), the State may select the distribution of the use of such funds among such purposes. For purposes of subparagraphs (A) and (C), the term "eligible legalized alien" includes an alien who applies on a timely basis to become an eligible legalized alien beginning on the date that the alien applies for lawful temporary status under section 210, 210A, or 245A of the Immigration and Nationality Act and ending on the date that there has been a final determination with respect to such application.

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TITLE III–REFORM OF LEGAL IMMIGRATION

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PART B–OTHER CHANGES IN THE IMMIGRATION LAW

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SEC. 315. MISCELLANEOUS PROVISIONS.

(a) ***

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[(d) DENIAL OF CREW MEMBER NONIMMIGRANT VISA IN CASES OF STRIKES.–(1) Except as provided in paragraph (2), during the one-year period beginning on the date of enactment of this Act, an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

[(2) Paragraph (1) shall not apply to an alien employee who was employed before the date of the strike concerned and who is seeking admission to enter the United States to continue to perform services as a crewman to the same extent and on the same routes as the alien performed such services before the date of the strike.]

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DISSENTING VIEWS

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We oppose H.R. 4300 because it: (1) Dramatically increases the numbers of immigrants without compensating for the heavy financial impact on state and local governments; (2) serves special interests, not the national interest; (3) does not set an overall level of immigration which includes illegal immigrants; (4) penalizes business for legitimate use of foreign workers; (5) rewards illegal immigration; (6) blurs the distinctions between U.S. citizens and permanent resident aliens, thus removing the incentive to become citizens; (7) contains discriminatory country programs; and (8) upsets some of the carefully crafted compromises of the Immigration Reform and Control Act of 1986.

***6775** The United States cannot take every alien who wishes to immigrate to the U.S. The U.S., as a sovereignty with the right and responsibility to control its borders, must set limits on the number of immigrants admitted to the U.S.

Pursuant to current law, the United States bestows its immigration privileges to 500,000 legal immigrants per year. This level of immigration is nearly equal to the total number of immigrants in all the other countries of the world. The Senate bill, S. 358, increases annual immigration levels by around 25 percent (130,000) over current law, while H.R. 4300 advocates a more than 65 percent increase in levels (minimum of 840,000).

The American people did not request H.R. 4300 or any other legal immigration bill. Every poll taken in the past decade has shown that the majority of Americans do not want an increase in legal immigration. The most recent national poll, conducted by the Roper Organization and released in June 1990, found that 77 percent of all Americans believe that the United States should not increase current immigration levels (among Hispanic-Americans 74 percent and among black Americans 78 percent). In fact, 67 percent of Americans felt that legal immigration should be reduced.

A majority of Americans do not support increased immigration, and do not support H.R. 4300, because it would negatively impact the U.S. public interests in improving education for American's children; in improving wages and working conditions for American workers; in improving training programs for displaced or underqualified American workers; in improving health care for America's disadvantaged; in providing more affordable housing for young and poorer Americans; and in improving our environment and making more productive use of America's natural resources.

Immigrants are not the cause of the social problems that afflict the United States. Yet population growth is a significant contributing factor to many of these problems and makes their solutions more difficult. Immigration now accounts for one-third to one-half of America's population growth.

A significant increase in immigration-related population growth without a thorough consideration of these social problems is, at best, foolish. H.R. 4300 fails to consider these problems and provides no solution to the impact that immigration has on these national problems.

IMPACTS THE STATE AND LOCAL GOVERNMENTS

H.R. 4300 increases the numbers of visas per year from 500,000 (current law) to 840,000 to 870,000 per year. While the federal government has exclusive control over the number of people who enter the country as immigrants, the immigrant-receiving states are at the mercy of the federal policy-makers on the question of immigration levels.

All immigrants have effects on state and local government costs which are not controllable, such as (1) education (including bilingual and multilingual instruction), (2) public health services, and (3) infrastructure and resources (such as water, transportation systems ***6776** and energy). Population growth, including that from legal immigrants, generate costs in these areas. It is not just illegal aliens or refugees who generate such costs.

States can control the level of welfare benefits they provide to immigrants, and the federal government should not be financially responsible for such costs.

However, states cannot control their education costs since all children, including the children of illegal aliens, are entitled to a public education. States also cannot control the use of emergency health care, and most state and local governments are either legally required or morally obligated to provide it to all their residents–legal or illegal–insured or uninsured. Similarly, infrastructure and resource use are generally not controllable and are used by all residents.

Congress should recognize that, if it is going to oblige state governments to spend more money on education, health care, and infrastructure by enacting laws increasing immigration levels, it should pay part of the bill.

H.R. 4300 does not even consider these factors.

DOES NOT SUPPORT THE NATIONAL INTEREST

Just as the American people did not request the levels in H.R. 4300, they did not suggest the terms of the new immigration system which it creates. Instead of fashioning a policy for the national interest of all Americans, H.R. 4300 responds to every special interest group that has made a demand on the U.S. immigration system.

H.R. 4300 expands immigration privileges to specific regions and countries, under the guise of creating a more diverse immigration flow, notwithstanding that the population of the U.S. is already among the most diverse in the world. Instead of creating an underlying immigration system which is neutral as to race, religion, or national origin, H.R. 4300 grants additional visas to specific countries and regions which, the bill alleges, have been treated unfairly. This is not a rational way to create immigration policy.

DOES NOT INCLUDE ILLEGAL IMMIGRANTS IN OVERALL NUMBERS

H.R. 4300 fails to consider the number of illegal aliens in the overall immigration flow and their impact. Doris Meissner and Robert Bach, in their study, “America's Labor Market in the 1990's: What Role Should Immigration Play?,” estimate that 200,000 new illegal immigrants permanently enter the U.S. each year.

Illegal aliens are not to be ignored: they work in the U.S., they send their children to U.S. schools, they use some social services, they use the infrastructure, and they are counted in the Census–which includes counting them when opportioning seats in the House of Representatives. Therefore, they should be counted when we consider our immigration levels.

In testimony before the House Subcommittee on Immigration, Refugees and International Law, Ms. Meissner recommended that ***6777** we consider all entrants–including illegal aliens but excluding refugees–when setting an overall level of immigration. We should heed her sound advice.

PENALIZES BUSINESS FOR LEGITIMATE USE OF FOREIGN WORKERS

We oppose, as does the Administration, H.R. 4300's provisions which significantly impair employers from a reasonable use of foreign workers, even when the need is satisfactorily documented and demonstrated.

First, H.R. 4300 imposes a tax on employers for use of all foreign workers. Employers who have demonstrated that they have attempted, but not located needed workers, should not be penalized for seeking alien workers.

H.R. 4300 also create an employer-sponsored immigrant category without distinguishing between skilled and unskilled workers. As the numerous witnesses before the Subcommittee on Immigration, Refugees and International Law testified, the United States needs a skilled workforce. Without a distinction between skilled and unskilled workers, unskilled workers may take visas from the needed skilled workers.

H.R. 4300 rewrites and makes more burdensome the current labor certification procedure, a process which requires the employer seeking foreign workers to first seek American workers. H.R. 4300 changes the requirements to include the provision of notice of the filing of an attestation (the new term for the process) to local unions. If the union requests a hearing before the Department of Labor and presents facts which contradict an employer's attestation, then the employer may not hire the foreign workers until the hearing process is completed.

We oppose this provision, because, without justification, it is more burdensome. Also, the Department of Labor is currently developing its own reform of the labor certification process which will incorporate labor market data to identify occupations in which foreign workers might be admitted into the U.S. without interfering with the job opportunities of U.S. workers. Secretary Dole's letter to the Committee states her strong objection to this provision.

H.R. 4300 also places a numerical limitation on the currently unlimited H–1b category of visas for professional temporary workers. While the numbers of H–1b visas currently granted is unknown, it is believed that the 25,000 limitation is substantially lower than that currently granted. Therefore, we oppose placing a limit on this category without first examining the current level of use and other pertinent information.

The Administration opposes as premature all of the provisions which make extensive reforms to the nonimmigrant visa system. We agree.

REWARDS ILLEGAL IMMIGRATION THROUGH AMNESTY PROGRAM

We oppose two provisions in H.R. 4300 which provide for an amnesty of illegal aliens who have entered after the enactment date of the Immigration Reform and Control Act of 1986. H.R. 4300's ***6778** new amnesties violate IRCA's promise of a one-time-only amnesty. We agree with the Administration in its opposition to these new amnesties.

REMOVES THE INCENTIVE TO BECOME CITIZENS

We agree with the Administration in its opposition to H.R. 4300's expansion of the “immediate relative” categoty to include the spouses and children of lawful permanent residents. This change would remove the distinction between the petitioning rights of citizens and those of permanent resident aliens. We believe that this change would discourage aliens from seeking naturalization and thereby from assimilating into the national mainstream. This provision undermines a fundamental precept of U.S. immigration policy: aliens should be encouraged to naturalize and participate fully in our society.

COUNTRY SPECIFIC PROVISIONS

We oppose the provisions which purport to diversify the flow of immigrants by granting additional visas to specified countries, as described in the dissenting views to H.R. 4300. We agree with the Administration that, while a number of regions and countries are underrepresented under the current system, the appropriate approach is to readjust the underlying system to make it equitable, not to give additional visas to specific countries.

The Administration also opposes the transition programs which provide special immigration benefits to natives of specific countries, regions or continents, which included an amnesty for illegal aliens from adversely affected countries. We also object to H.R. 4300's designation of certain countries, regions or continents.

UPSETS THE CAREFULLY CRAFTED COMPROMISES OF
THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

We agree with the Administration in its opposition to all provisions in H.R. 4300 which amend the Immigration Reform and Control Act of 1986 ("IRCA"). The provisions in H.R. 4300 substantially upset the carefully crafted compromise between the legalization of undocumented aliens and employer sanctions.

Our objections include the sections providing a 1-year delay in the deadline for filing application for adjustment from temporary to permanent residence for legalized aliens; permitting extended application periods as a court ordered remedy; certain clarifications of disqualification of legalized aliens from cash welfare programs; and the elimination of paperwork requirement for recruiters and referrers.

PRINCIPLES FOR IMMIGRATION LEGISLATION

Legal immigration legislation should adhere to certain fundamental principles. These are:

(1) U.S. immigration laws should identify and advance the national interests of the U.S., and not seek solely to satisy the demands of special interests groups.

***6779** (2) Levels of immigration should not exceed the U.S.'s capacity to absorb and assimilate immigrants into American society.

(3) Levels of immigration should not impede our ability to address other important societal concerns.

(4) Immigration laws should be based upon the desires and needs of the American people, not upon the desires and needs of the millions of people who wish to immigrate to the U.S. Immigration to any country is a privilege given by the sovereignty, not an inherent right of the alien.

(5) Immigrants should be selected fairly and individually.

(6) The immigration system should not discriminate for or against persons based upon race, national origin, religion or ethnicity.

(7) The immigration system should not impede the ability of U.S. residents at the bottom of the socio-economic ladder from advancing.

(8) Funds for the state and local governments must be provided to support increase in the levels of immigration. State and local governments ultimately bear the vast majority of the financial responsibility, yet have no real role in the creation of levels of immigration.

H.R. 4300 fails to follow these important principles.

We share the Administration's strong objections to this legislation, and we encourage either its substantial amendment or its rejection by the House.

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